

OREGON BULLETIN

Supplements the 2010 *Oregon Administrative Rules Compilation*

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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 - 05

AUTHORIZATION FOR OREGON LIQUOR CONTROL COMMISSION ACCESS TO LAW ENFORCEMENT DATA SYSTEM

ORS 181.010(6) and OAR 257-010-0025(1)(b) authorize the Governor to allow designated state and local agencies to access Law Enforcement Data System (LEDS) “for agency employment purposes, licensing purposes or other demonstrated needs when designated by order of the Governor.”

Executive Order No. 90-05 grants LEDS access to a number of state agencies, including the Oregon Liquor Control Commission’s Compliance Services Division, and establishes the conditions under which such access is authorized. Subsequent Executive Orders have authorized access for additional state and local agencies for various purposes. In addition, ORS 471.695 authorizes the Oregon Liquor Control Commission (OLCC) to perform criminal background investigations on certain employees who work in the OLCC licensing or enforcement divisions or have access to criminal background investigations.

This order amends Executive Order No. 90-05 to allow any division of OLCC to access LEDS for purpose of conducting background investigations on persons OLCC employs, and persons who have applied for employment with the OLCC.

THEREFORE, IT IS ORDERED AND DIRECTED:

1. Pursuant to ORS 181.010(6) and OAR 257-010-0025(1)(b), I hereby authorize the Oregon State Police to provide the OLCC with access to the Oregon State Police criminal offender information system for purpose of conducting background investigations on persons OLCC employs, and persons who have applied for employment with the OLCC, for the purpose of protecting public safety and guaranteeing the security of confidential information.

2. Executive Order No. 90-05 continues to govern the compilation, maintenance and dissemination of criminal offender information as defined in ORS 181.010(3), and that Order continues to govern the access to the Oregon State Police Law Enforcement Data System, as authorized by this Order.

Done at Salem, Oregon, this 8th day of April, 2010.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

DEQ REQUEST FOR COMMENT PROPOSED CLEANUP ACTION AT THE USPS-PROCESSING AND DISTRIBUTION CENTER PORTLAND, OREGON

COMMENTS DUE: June 1, 2010

PROJECT LOCATION: 715 NW Hoyt Street, Portland, Oregon.

PROPOSAL: DEQ is proposing approval of remedial actions to address soil and groundwater contamination at the United States Postal Service — Processing and Distribution (USPS-P&DC) property in Portland. The proposed remedies are based on site investigation, risk assessment, and feasibility study analysis completed to date. Site soil and groundwater contain contamination associated with past railroad and gas manufacturing activity, and pockets of petroleum contamination from more recent operations. The proposed remedy under existing USPS occupancy is maintenance of the site buildings and paving, and use of measures to prevent utility worker exposure to contamination. If the site is redeveloped, removal of soil contamination ‘hot spots’ and capping of site soil are recommended, along with measures to prevent construction and utility worker exposure to site contamination. Installation of a vapor mitigation system is also expected to be necessary. Under both the USPS and redevelopment use scenarios, restrictions on site use would be formalized in an Easement and Equitable Servitude recorded with Multnomah County.

HIGHLIGHTS: The approximately 13-acre USPS property is located in an area of mixed commercial and residential development in downtown Portland. All outgoing mail for the State of Oregon is processed through the facility. The site contains three buildings (P&DC facility, vehicle maintenance facility, and parking garage) with the remainder covered by paving. Postal operations began on the site in the early 1960s. From the late 1800s to 1950s, the site was used as a rail yard. A gas manufacturing plant operated in the northwest site corner from approximately 1893 to the 1930s. Multiple phases of site investigation have been completed on-site, with that since 1999 performed with DEQ oversight in the Voluntary Cleanup Program. Investigation has identified wide-spread contamination of shallow soil with arsenic, and lesser contamination by other metals and organic contaminants. In the northwest site corner, deeper soil and groundwater contamination are present associated with former gas plant activity. Risk assessment work (finalized 2008) has identified two ‘use’ scenarios for the site, each of which poses different risks. Under continued USPS operation (Existing Site Use), risk is limited to utility workers provided that site buildings and paving remain intact. If the site is redeveloped (Hypothetical Future Site Use), there is a greater risk posed to potential site occupants including commercial workers and urban residents. Possible cleanup options for the site were evaluated in 2008 Focused Feasibility Study completed for DEQ. Based on this document, and an independent analysis of site conditions and risk, DEQ is proposing the following remedial actions to address contamination at the site: a) for existing site use and continuation of that site use by USPS, maintenance of site buildings and paving to prevent USPS worker exposure to contaminated soil, and use of a notification plan and protective equipment to prevent on-site utility workers from exposure to soil and groundwater contamination; b) for the hypothetical redevelopment of the site, removal of high concentration (hot spot) soil, installation of barriers to prevent vapor migration (as needed), capping of the site to prevent contact with contaminated soil, and use of a notification plan and personal protective equipment to prevent utility and construction worker exposure to site contamination. The proposed remedy is considered to be consistent with Oregon rule and statute and protective of human health.

HOW TO COMMENT: The project file 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 “Proposed Remedial Action” memo are available 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 2183 in the Site ID box and click “Submit” at the bottom of the page. Next, click the link labeled 2183 in the Site ID/Info column. To be considered, written comments must be received by 4:30 PM on May 30, 2010 and sent to Daniel Hafley, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the proposed cleanup action. A public notice of the final decision will be published in this publication.

REQUEST FOR COMMENTS PROPOSED CLEANUP DECISION FOR FORMER DURHAM PIT LANDFILL NORTH

COMMENTS DUE: May 31, 2010, 5 p.m.

PROJECT LOCATION: Former Durham Pit Landfill North (currently occupied by PacTrust Business Center and the Oregon Business Park I) is located at 16505 SW 72nd Avenue in Tigard, Oregon, between SW Upper Boones Ferry Road, SW Findlay Road and Interstate Highway 5. The property is located adjacent the Bridgeport Village Development site (also known as the former Durham Quarry).

PROPOSAL: The proposed remedial action was developed in accordance with Oregon Revised Statutes (ORS) 465.200 through 465.380, and Oregon Administrative Rules (OAR) Chapter 340, Division 122, Section 0090 (340-122-0090).

DEQ’s proposed cleanup actions include a combination of institutional controls and site monitoring to address risk associated with methane gas and verify that methane is not accumulating in buildings and other confined spaces on the site. Methane control measures include: (1) institutional controls, such as deeded property-use controls and methane hazard communication; and (2) long-term methane monitoring of building interiors, monitoring wells and confined spaces. The proposed institutional controls and methane monitoring program are consistent with those implemented at the adjacent Bridgeport Village Development site.

HIGHLIGHTS: The 56.7 acre site is the location of a former gravel quarry that was operated by Washington County from approximately 1939 to 1990. Backfilling operations began in the early 1970s and subsequently redeveloped to form the current business park property. Environmental investigations at the site have found methane gas in the subsurface at concentrations greater than DEQ’s regulatory level of 1.25 percent. At those greater concentrations, methane poses a potential risk to human health and safety. The presence of methane gas is attributed to the decomposition of organic material in the fill; likely periodic unauthorized disposal. Methane monitoring over a 4-year period found methane gas at concentrations in the subsurface ranging from no detection to 77 percent. Methane monitoring during this period has not detected methane gas in building interiors.

HOW TO COMMENT: You can review a detailed description of the site and DEQ’s proposed cleanup action in a Staff Report, project files, remedial investigation and other reports available for public review at the DEQ. For a review appointment call 503-229-6729. Information is also available on DEQ’s web site at: <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. DEQ will then issue a Record of Decision 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

People with hearing impairments may call 711.

OTHER NOTICES

PROPOSED REMEDIAL ACTION FOR THOMAS SALES & SERVICE, BEND, OR

COMMENTS DUE: May 30, 2010

PROJECT LOCATION: 2060 NE Highway 20, Bend, Deschutes 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 Evaluation.

HIGHLIGHTS: An underground injection control (UIC) system was cleaned and the accumulated sediment was removed and tested for the presence of petroleum constituents. One of the UIC system's drywells was abandoned by removal; groundwater was not encountered at the site. Approximately 12 tons of accumulated sediment and petroleum contaminated soil (PCS) were excavated in April 2008 and taken to Deschutes County's Knott Landfill for disposal.

Petroleum contaminated soil, which contains lead and naphthalene at concentrations that exceed their respective risk-based concentrations for an occupational worker scenario, remain at the site. However, the PCS occurs at depths of 12-feet to 14-feet below ground surface, which is considered to be protective of human health, welfare, and the environment.

A risk-based assessment was performed by the consultant Kleinfelder West, Inc., showing that residual petroleum hydrocarbons do not pose an unacceptable risk to all reasonably likely current exposure pathways as long as a contaminated media management plan is put in-place for any excavation work undertaken in the areas of the UIC system. The site is in an area served by a municipal water system.

Residual contaminants at the site do not currently produce odors or other nuisance conditions.

If implemented as proposed, this risk-based closure will achieve protective conditions at the site as defined in OAR 340-122-0040.

COMMENT: 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 located at: 475 NE Bellevue Drive, Suite 110, Bend, OR 97701. To schedule an appointment or make inquiries, contact the project manager, Joe Klemz at (541)633-2015.

Written comments should be sent to the attention of Mr. Klemz at the address listed above and must be received by May 30, 2010. Questions and/or comments may also be directed to Mr. Klemz via email at 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.

A CHANCE TO COMMENT ON A PROPOSED CONDITIONAL NO FURTHER ACTION FOR THE PEAK LUMBER PROPERTY, LOCATED AT 201 MAIN STREET, PHILOMATH, OREGON

Oregon Department of Environmental Quality (DEQ) invites public comment on a proposed conditional no further action (CNFA) for a cleanup of soil contamination at the former Peak Lumber property, located at 201 Main Street, Philomath, Oregon.

DEQ has completed oversight of remedial action at the former Peak Lumber site (Site). The Site is located in a mixed commercial/industrial/residential area. When Peak Lumber operated from this location, it was used as a planer mill and as office space.

Contamination in soil at the site resulted from spills of pentachlorophenol and related compounds from past lumber milling and anti-sapstaining operations. Diesel contamination in soil also resulted from refueling operations near two small above ground storage tanks.

Peak Lumber has completed cleanup at the Site involving removal of contaminated soil. DEQ proposes to make this the final remedy for the site, with the addition of an Easement and Equitable Servitude (EES) that will require the property to remain in commercial or industrial use. Approximately 6 tons of diesel contaminated soil were removed from two former above ground

diesel storage tanks and taken to a landfill. Approximately 336 tons of soil were removed from areas of the site involving application of pentachlorophenol as an anti-sapstain solution and were taken to a landfill.

DEQ is recommending a conditional no further action at the site since contaminated soils have been removed. Residual levels of contamination are present at the site. However, the residual levels are safe for workers or construction crews that could be exposed to surface or near-surface soils.

The EES that DEQ requires will run with the land to ensure that future owners of the property have knowledge of site conditions and ensure that the site use remains commercial or industrial. With DEQ concurrence, the EES could be removed from the property deed if additional site investigation or testing were performed that demonstrated additional controls were no longer needed.

Project documents for this site are available for public review at DEQ's Eugene office, 165 E. 7th Avenue, Suite 100, Eugene 97401. Contact the file specialist at (541) 686-7838 or 1-800-844-8467 (toll-free in Oregon) for an appointment. Please send written comments to Norman Read at the listed above address or via email at read.norm@deq.state.or.us. DEQ must receive written comments by 5 p.m., May 31, 2010.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR FORMER SEASWIRL BOATS SITE

COMMENTS DUE: May 31, 2010

PROJECT LOCATION: 710 "C" Street, Culver, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.320 and Oregon Administrative Rules (OAR) 340-122-100, the Department of Environmental Quality (DEQ) is proposing approval of cleanup conducted at the former Seaswirl Boats site. Boats were manufactured at the site from 1972 until closure in 2007 under three corporate owners, most recently by Genmar Holdings.

HIGHLIGHTS: A phase I and phase II environmental site assessment was completed in 2002. Soil samples indicated limited petroleum contamination associated with compressor blow down areas. Genmar completed limited soil removals in 2002 to remove the contamination.

Additional data gaps at the site were investigated under DEQ's Independent Cleanup Pathway in early 2010 and did not document any other additional environmental concerns.

HOW TO COMMENT: The full file, including the project documents, are available for review at DEQ's Bend office, 475 NE Bellevue Drive, Suite 110, Bend, OR 97701, (541) 388-6146. Office hours are 8 a.m. to noon and 1 to 5 p.m., Monday through Friday. Questions or concerns regarding DEQ's proposed decision should be sent to the project manager at the Department of Environmental Quality, Eastern Region, 475 NE Bellevue Drive, Suite 110, Bend, OR 97701, or via e-mail to anderson.david@deq.state.or.us

THE NEXT STEP: Following the public comment period and consideration of any comments received, DEQ expects to issue a 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.

People with hearing impairments may call DEQ's TTY number, 503-229-6993.

NOTICE OF PROPOSED CONDITIONAL NO FURTHER ACTION, UNION PACIFIC RAILROAD LA GRANDE RAIL YARD SITE, LA GRANDE, OREGON

COMMENT DUE: May 31, 2010

PROJECT LOCATION: La Grande, Oregon

OTHER NOTICES

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action determination for the Union Pacific Railroad Company (UPRR) La Grande Rail Yard site (the Site) located in La Grande based on the remedial actions performed to date. Current operations at the Site consist of rail car switching, main line crew change outs, and track maintenance and operations activities. No fueling operations occur at the Site.

Investigations of soil, groundwater, and surface water began in 1978 when releases of diesel were discovered in the Spruce Street underpass. Releases of hazardous substances at and from the Site were confirmed in 1981. Characterization of the nature and extent of contaminants at the Site was performed during the Remedial Investigation during several phases both on the UPRR property and on surrounding properties. In addition, several remedial actions and pilot tests were performed. Remedial actions were performed in accordance with DEQ's *Interim Record of Decision* dated March 31, 1998 and DEQ's *Record of Decision* dated February 12, 2007. A Consent Judgment between DEQ and UPRR was entered into on December 10, 2007 to facilitate the implementation of the cleanup alternatives.

Remedial actions performed to date to address the presence of petroleum contaminants and underlying constituents in contaminated soil and groundwater at and near the site include the preparation of a Soil Management Plan, recordation of institutional controls on the site and off-site properties, abandonment or reconstruction of backyards wells, long term groundwater monitoring, and the updating of two city ordinances that refer to the Diesel Impact Area and a requirement that any well installation within this area requires approval from the Oregon Water Resources and DEQ. The existing ordinances (City Ordinance 3013 and 2980) were updated and adopted in October 2009 as part of the comprehensive land use plan for the City of La Grande.

Long-term groundwater monitoring will continue to be performed to monitor any long-term trends and to verify that product and dissolved phase plumes are not migrating outside of the defined Locality of the Facility. Groundwater monitoring will continue through at least 2016 under the Consent Judgment. The site will remain listed on the DEQ's Confirmed Release List and Inventory of Hazardous Substances.

Site specific information is also available by contacting Katie Robertson, DEQ's project manager for this site. The Administrative File for this facility is located at DEQ's Pendleton office, and can be reviewed in person by contacting project manager at the number below to arrange for an appointment. Several of the site documents and reports are available on the web through DEQ's Environmental Cleanup Site Information (ECSI) database located at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 0631.

HOW TO COMMENT: The public comment period will extend from May 1 to 31, 2010. Please address all comments and/or inquiries to project manager at the following address:

Katie Robertson
Department of Environmental Quality
700 SE Emigrant, Suite 330
Pendleton, OR 97801
(541) 278-4620
robertson.katie@deq.state.or.us

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

THE NEXT STEP: DEQ will consider all public comments received before making a final decision on the proposed Conditional No Further Action determination. DEQ will provide written responses to all received public comments.

OPPORTUNITY TO COMMENT PROPOSED NO FURTHER ACTION STEVE'S AUTO REPAIR & SERVICE ENTERPRISE, OREGON

COMMENT DUE: May 31, 2010

PROJECT LOCATION: 207 S. River Street, Enterprise

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a No Further Action (NFA) determination for Steve's Auto Repair & Service site located at 207 S. River Street in Enterprise, Oregon. The site is also proposed for delisting from DEQ's Confirmed Release List and Inventory of Hazardous Substances.

The Leaking Underground Storage Tank (LUST) Program has reviewed site assessment and remedial activities performed at the site. The site is proposed for a risk-based closure and issuance of a No Further Action determination. All of the potential exposure concerns were addressed during the development of the site-specific conceptual site model.

Additional information concerning site-specific investigations and remedial actions is available in DEQ's LUST database located on the web at <http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp> under LUST Number 32-92-0230.

Site specific information is also available by contacting Katie Robertson, DEQ's project manager for this site. The Administrative File for this facility is located at DEQ's Pendleton office, and can be reviewed in person by contacting project manager at the number below to arrange for an appointment.

HOW TO COMMENT: The public comment period will extend from May 1 to 31, 2010. Please address all comments and/or inquiries to project manager at the following address:

Katie Robertson
Department of Environmental Quality
700 SE Emigrant, Suite 330
Pendleton, OR 97801
(541) 278-4620
robertson.katie@deq.state.or.us

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

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the No Further Action determination. DEQ will provide written responses to all received public comments.

A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AT THE FORMER SUNNY BROOK DAIRY CORVALLIS, OREGON

COMMENTS DUE: May 31, 2010

PROJECT LOCATION: 1025-1045 NW 9th Street, Corvallis, Oregon.

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with the Gables Partners, LLC for the former Sunny Brook Dairy property located at 1025-1045 NW 9th Street, Corvallis, Oregon (the "Property").

HIGHLIGHTS: Gables Partners, LLC (Gables) is acquiring the Property to allow Gables to provide beneficial redevelopment of the Property and return the Property to productive use. The Property was used historically as a dairy and had three underground diesel and two gasoline tanks located in three separate tank nests that supported the dairy's operations, all of which had releases of petroleum products to the soil and shallow groundwater. In the early 1990's, the USTs were removed and the associated soil contamination reportedly remediated. However, the environmental consultant doing the work was subsequently prosecuted criminally by the DEQ for submitting falsified reports, placing at question the validity of the reported work at the Sunny Brook Dairy property. This uncertainty precluded the owners from being able to sell the property. Recent soil and groundwater sampling completed by Gables established that some residual petroleum product contamination remains in the soil and shallow groundwater associated with the two gasoline tank pits; however, all detected contaminants are below DEQ's applicable risk-based cleanup levels.

OTHER NOTICES

The Consent Judgment will require Gables to place institutional controls on the Property precluding the installation on-property water well(s) or use of the shallow groundwater. Gable will agree to provide access to the Property for any additional investigation and removal or remedial actions that may be required, and to implement any institutional or engineering controls that may be necessary.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool that facilitates the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a property with existing contamination. DEQ has approved more than 100 Prospective Purchaser Agreements throughout the State since the program began.

The proposed Consent Judgment will provide Gables with a release from liability for claims by the State of Oregon under ORS §465.255 relating to any historical releases of hazardous substances at or from the Property. The proposed Consent Judgment will also provide Gables with protection from potential contribution actions by third parties for recovery of remedial action costs associated with any historical releases at or from the Property. DEQ retains all existing rights it may have as to all other parties potentially liable for any releases.

HOW TO COMMENT: Written comments concerning the proposed Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm June 31, 2009. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Property may be reviewed at DEQ's Western Region office in Salem by contacting Bruce Scherzinger at (503) 378-5038.

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

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

REQUEST FOR COMMENTS ON PROPOSAL TO CLEAN UP FORMER PONDS AT OAKRIDGE INDUSTRIAL PARK, OAKRIDGE

COMMENTS DUE: 5 pm on Monday May 31, 2010

PROJECT LOCATION: Oakridge Industrial Park, Oakridge

PROPOSAL: Per OAR 340-120-0100, a 30-day public comment period is required before a proposed Remedial Action can be approved by the DEQ. The City of Oakridge is proposing to conduct cleanup of two former pond areas with contaminated sediment at the Oakridge Industrial Park. The former cooling water pond sediments and the former storm water detention pond sediments are contaminated from historical releases of Polychlorinated Biphenyls (PCBs), dioxins, and metals from the former mill site that occupied the site. The City of Oakridge has conducted investigation and cleanup of these contaminants, as well as other contaminants since the City took ownership of the former mill site in 1995.

The City proposes to clean up the sediments in the former cooling ponds by capping the sediment in the former cooling ponds with

clean fill and by removing and disposing of contaminated sediment from the former storm water detention ponds. The work will be funded by a Brownfield Cleanup Grant utilizing American Recovery and Reinvestment Act of 2009 funds awarded to the Oregon Business Development Department from the US Environmental Protection Agency.

HIGHLIGHTS: Various contaminants including PCBs from on-site electrical equipment, dioxin from wood treating chemicals, and petroleum compounds and metals from various historical mill operations, are in the former cooling water pond sediment and in the former storm water detention pond sediment above DEQ screening values for cleanup.

During mill operations the former cooling water ponds were used to cool warm water from the kiln driers before the water left the facility. The cooling water ponds have not been used for cooling since mill operations ceased in the late 1980s. However, the cooling water ponds are active ponds incorporated into the site's surface water drainage system. The City of Oakridge is proposing to fill the cooling water ponds, with clean fill, extend drainage piping, and perform wetlands mitigation on the surrounding former log ponds. The area will be graded to the surrounding land surface which will provide additional industrial land.

The former storm water detention ponds were used to retain site surface water before discharging to Salmon Creek during mill operations. The storm water ponds were decommissioned when mill operations ceased in the late 1980s. Currently the ponds are dry. The dry sediment will be removed and disposed in an off-site landfill and soil samples will be collected for confirmation. The area will be graded and zoned for residential use.

DEQ is soliciting public comment on the cleanup proposal.

HOW TO COMMENT: A report titled "Assessment of Brownfield Cleanup Alternatives, Oakridge Industrial Park", prepared for The City of Oakridge details the need for cleanup and supports the proposed remedial actions. The report is available online at <http://www.deq.state.or.us/lq/ECSI/ecsi.htm> on the Environmental Site Cleanup Inventory as site # 234 in the documents section or by contacting the DEQ project manager, Bryn Thoms at 541-687-7424 or at 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 May 31, 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 remedial action will be implemented. DEQ may approve, modify, or deny the proposed remedial action.

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.

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.*

**Board of Chiropractic Examiners
Chapter 811**

Rule Caption: Increase chiropractic assistant initial training hours from six to twelve, other provisions.

Date: 5-27-10 **Time:** 1:30 p.m. **Location:** OBCE Offices
3218 Pringle Rd. SE, #150
Salem, OR

Hearing Officer: Dave McTeague, Executive Director

Stat. Auth.: ORS 684

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

Proposed Amendments: 811-010-0110

Last Date for Comment: 5-27-10

Summary: Increase chiropractic assistant initial training hours from six to twelve, other provisions.

Rules Coordinator: Dave McTeague

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

Telephone: (503) 378-5816

Rule Caption: Establishes minimum requirements for chiropractic pre-payment plans, addresses refunds and treatment plans.

Date: 5-27-10 **Time:** 1:30 p.m. **Location:** OBCE Offices
3218 Pringle Rd. SE, #150
Salem, OR

Hearing Officer: Dave McTeague, Executive Director

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155(b)

Proposed Adoptions: 811-015-0002

Last Date for Comment: 5-27-10

Summary: Establishes minimum requirements for chiropractic pre-payment plan, addresses refunds and treatment plans.

Rules Coordinator: Dave McTeague

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

Telephone: (503) 378-5816

**Board of Licensed Professional Counselors and Therapists
Chapter 833**

Rule Caption: Creation of a Supervisor Registry.

Date: 5-20-10 **Time:** 3 p.m. **Location:** 2nd Floor Board Rm.
3218 Pringle Rd. SE
Salem, OR

Hearing Officer: Becky Eklund

Stat. Auth.: ORS 675.705-675.835

Stats. Implemented: ORS 675.705-675.835

Proposed Adoptions: 833-130-0010, 833-130-0020, 833-130-0030, 833-130-0040, 833-130-0050, 833-130-0060, 833-130-0070

Last Date for Comment: 5-20-10, Close of Hearing

Summary: Creation of a supervisor registry, establishing requirements and procedures for placement on the registry.

Rules Coordinator: Becky Eklund

Address: 3218 Pringle Road SE, Suite 250, Salem, OR 97302

Telephone: (503) 378-5499, ext. 3

**Board of Nursing
Chapter 851**

Rule Caption: Fee for Retired Nurse Status Eliminated.

Date: 6-17-10 **Time:** 9 a.m. **Location:** 17938 SW Upper Boones
Ferry Rd.
Portland, OR 97224

Hearing Officer: Pat Markesino, Board President

Stat. Auth.: ORS 678.050 & 678.410

Stats. Implemented: ORS 678.050 & 678.410

Proposed Amendments: 851-002-0010

Last Date for Comment: 6-15-10, 5 p.m.

Summary: These rules cover the agency fees. This rule amendment eliminates the fee for retired nurse status.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Rule Caption: CNA 2 Registration Fee Removed.

Date: 6-17-10 **Time:** 9 a.m. **Location:** 17938 SW Upper Boones
Ferry Rd.
Portland, OR 97224

Hearing Officer: Pat Markesino, Board President

Stat. Auth.: ORS 678.101 & 678.410

Stats. Implemented: ORS 678.101 & 678.410

Proposed Amendments: 851-002-0040

Last Date for Comment: 6-15-10, 5 p.m.

Summary: These rules cover the agency fees, This rule amendment removes the CNA 2 registration fee.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Rule Caption: Rules identify accreditation bodies for continuing education presented to meet CNS certification and renewal requirements.

Date: 9-16-10 **Time:** 9 a.m. **Location:** 17938 SW Upper Boones
Ferry Rd.
Portland, OR 97224

Hearing Officer: Pat Markesino, Board President

Stat. Auth.: ORS 678.372

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 678.372
Proposed Amendments: 851-054-0010, 851-054-0040, 851-054-0050, 851-054-0055

Last Date for Comment: 9-14-10, 5 p.m.

Summary: These rules cover Clinical Nurse Specialists. These rule amendments specify accreditation bodies for continuing education presented to meet certification and renewal requirements.

The hearing was originally scheduled for June 17, 2010. That hearing date has been canceled and this notice reschedules that hearing for September 16, 2010.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Rule Caption: Revision of Rules Relating to Standards of Nursing Assistants and Medication Aides.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 6-17-10 | 9 a.m. | 17938 SW Upper Boones Ferry Rd. Portland, OR 97224 |

Hearing Officer: Pat Markesino, Board President

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150, 678.440 & 678.442

Proposed Amendments: 851-062-0010, 851-062-0016, 851-062-0050, 851-062-0055, 851-062-0070, 851-062-0100, 851-062-0110

Proposed Repeals: 851-062-0005, 851-062-0015

Last Date for Comment: 6-15-10, 5 p.m.

Summary: These rules establish the standards for certification of nursing assistants and medication aides. These rule amendments update the language related to the implementation of the CNA 2 level, add language to permit a RN or LPN with a current, unencumbered license to obtain a CNA 2, provide clarification on the process for a student nurse to obtain a CNA 2, and introduce language related to reactivation of a CNA 2.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Rule Caption: Rules Revised Relating to Standards and Authorized Duties for Nursing Assistants and Medication Aides.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 6-17-10 | 9 a.m. | 17938 SW Upper Boones Ferry Rd. Portland, OR 97224 |

Hearing Officer: Pat Markesino, Board President

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Proposed Amendments: 851-063-0020, 851-063-0030, 851-063-0035

Proposed Repeals: 851-063-0040, 851-063-0050, 851-063-0060

Last Date for Comment: 6-15-10, 5 p.m.

Summary: These rules cover the standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides. The rule amendments establish CNA 2 core authorized duties, remove language related to additional tasks, and reorganize the authorized duties to match the curriculum domains in the Board of Nursing's curriculum policies to make it easier to navigate the two documents.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Board of Pharmacy Chapter 855

Rule Caption: Amend rules on duty to report, adopt rules for MTM and make other housekeeping changes.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 5-18-10 | 10 a.m. | 800 NE Oregon St., Rm. 1B Portland, OR |

Hearing Officer: Tony Burt

Stat. Auth.: ORS 689.205

Other Auth.: 2009 OL Ch. 300, 536 & 756, ORS 676.150 & 689.455 & HB 2118 (2009)

Stats. Implemented: ORS 689.155 & 689.774

Proposed Adoptions: 855-019-0205

Proposed Amendments: 855-006-0005, 855-010-0005, 855-010-0015, 855-010-0045, 855-019-0100, 855-019-0200, 855-019-0240, 855-019-0250, 855-019-0300, 855-019-0310, 855-025-0020, 855-025-0050, 855-110-0005, 855-110-0007

Last Date for Comment: 5-18-10, 5 p.m.

Summary: 2009 OL, Chapters 536 (ORS 676.150 & ORS 689.455) and 756 (2009 HB 2118) adds new requirements for licensees to report unprofessional conduct and criminal offenses. New rules and amendments in Divisions 06, 019 and 025 implement the laws. Amendments to Division 019 also revise requirements for out-of-state pharmacists, and add rules for Medication Therapy Management (MTM) that was approved in concept by the Board in January 2009. Amendments to Division 010 clarifies different types of Board meetings and adds language to permit criminal background checks on current Board employees and applicants for employment with the Board. Division 110 is revised to add the Workforce Data Collection Fee, a fee for Charitable Pharmacy outlets, both required by statute, and changes the intern license term from four years to two years.

Rules Coordinator: Karen MacLean

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

Telephone: (971) 673-0001

Rule Caption: Create framework for receipt and distribution of donated prescription drugs to needy individuals (Charitable Pharmacies).

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 5-18-10 | 10 a.m. | 800 NE Oregon St., Rm. 1B Portland, OR |

Hearing Officer: Tony Burt

Stat. Auth.: ORS 689.205

Other Auth.: 2009 OL Ch. 300 & ORS 689.770–689.780

Stats. Implemented: ORS 689.155 & 689.774

Proposed Adoptions: 855-044-0001, 855-044-0005, 855-044-0010, 855-044-0020, 855-044-0030, 855-044-0040, 855-044-0050, 855-044-0060, 855-044-0070, 855-044-0080, 855-044-0090

Last Date for Comment: 5-18-10, 5 p.m.

Summary: Creates Division 044. 689.774 requires the Board to adopt rules to permit the distribution of donated prescription drugs to needy individuals through a Charitable Prescription Drug Program.

These rules create a structure for the donation, storage and distribution of such drugs in a manner that provides safeguards to the recipient.

Rules Coordinator: Karen MacLean

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

Telephone: (971) 673-0001

Rule Caption: Reschedule methamphetamine as Controlled Substance Schedule I and marijuana as Controlled Substance Schedule II.

| | | |
|--------------|-----------------------------|---|
| Date: | Time: | Location: |
| 5-18-10 | 11 a.m. (see note below) | 800 NE Oregon St., Rm. 1B Portland, OR |

Hearing Officer: Tony Burt

Stat. Auth.: ORS 689.205

Other Auth.: 2009 OL Ch. 898, ORS 475.059 & 475.065

Stats. Implemented: ORS 475.035 & 689.155

Proposed Amendments: Rules in 855-080

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 5-18-10, 5 p.m.

Summary: ORS 475.059 and ORS 475.065 (2009 OL, Ch. 898) requires the Board to reschedule marijuana from Controlled Substance Schedule I to Schedule II, III, IV or V. The Board has reviewed many pieces of research material and at this time feels that Schedule II is the most appropriate. The Board reserves the right to reschedule marijuana in any of the Schedules II-V based on information it has reviewed and any additional information it receives during the public comment period. The Board is also required to reschedule methamphetamine, except for accepted medical use, as a Schedule I drug. The other amendments correct errors and update rules in accordance with changes in federal regulations.

Documents relating to this matter can be reviewed on the Board's website at www.pharmacy.state.or.us

Note: Times are approximate as the Board is holding a public hearing on other issues on the same day. Depending on the number of people wishing to testify, the Hearing Officer may take a break for lunch and resume at 1:00 p.m..

Rules Coordinator: Karen MacLean

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

Telephone: (971) 673-0001

Board of Radiologic Technology Chapter 337

Rule Caption: Name Change — Adding Modalities; Diagnostic Medical Sonography, MRI and nuclear Medicine — July 1, 2010.

| Date: | Time: | Location: |
|---------|------------|---|
| 5-17-10 | 10:30 a.m. | PSOB 800 NE Oregon St., Rm. 1A Portland, OR 97232 |

Hearing Officer: Carol Parks, AAG

Stat. Auth.: ORS 183 & 688

Other Auth.: HB 2245 (2009)

Stats. Implemented: ORS 183, 688.405–688.605, 688.915 & 688.990

Proposed Adoptions: 337-010-0007, 337-010-0009, 337-010-0013, 337-010-0014, 337-010-0016, 337-010-0023, 337-010-0026, 337-021-0001, 337-030-0002, 337-030-0005, 337-030-0010, 337-030-0015, 337-030-0020, 337-030-0025

Proposed Amendments: 337-010-0006, 337-010-0008, 337-010-0010, 337-010-0011, 337-010-0015, 337-010-0025, 337-010-0030, 337-010-0031, 337-010-0045, 337-020-0015, 337-020-0040, 337-021-0005, 337-021-0010, 337-021-0020, 337-021-0030, 337-021-0040, 337-021-0070

Proposed Repeals: 337-010-0012, 337-010-0020, 337-010-0036, 337-010-0055, 337-010-0060, 337-010-0061, 337-010-0065, 337-010-0075, 337-020-0010

Last Date for Comment: 5-31-10, 5 p.m.

Summary: The Board is adopting and repealing rules to change its name from the Oregon Board of Radiologic Technology (OBRT) to the Oregon Board of Medical Imaging (OBMI). In addition, there are housekeeping changes to include a fee, board composition, fingerprint card and background requirements and further clarification to existing modalities and a national title change for the Limited Permit Holder to Limited X-ray Machine Operators (LXMO). These rules assist in the implementation of statutory changes made by HB 2245 and approved during the Sonography, Magnetic Resonance Imaging (MRI) and Nuclear Medicine Technology.

Rules Coordinator: Linda Russell

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

Telephone: (971) 673-0216

Bureau of Labor and Industries Chapter 839

Rule Caption: Conforms certain minimum wage/overtime exemptions to federal law; clarifies meal period rule.

Stat. Auth.: ORS 653.261(1)

Stats. Implemented: ORS 653.010–653.261

Proposed Amendments: 839-020-0004, 839-020-0050, 839-020-0125

Last Date for Comment: 5-24-10

Summary: The proposed rule amendments: (1) Conform the state minimum wage exemption on ORS 653.020(14) for individuals “employed in domestic service employment in or about a family home to provide companionship services for individuals who, because of age to infirmity, are unable to care for themselves” to the federal definition/exemption, by specifying in the definition of “Companionship services” in OAR 839-020-0004(11) that such individuals are not required to be employed by the individual for whom they provide such services in order to be exempt; (2) Conform the minimum wage requirement in the overtime exemption in state law for certain computer system analysts, computer programmers, software engineers, or other similar skilled workers, to that in federal law, which requires such workers to be paid the equivalent of \$27.63 per hour for each hour worked (although not necessarily on an hourly basis); and (3) Clarify that, except as otherwise provided in agency’s meal and rest periods rule, employees who are not relieved of all duties for 30 continuous minutes during their meal period must be paid for the entire 30-minute meal period.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Amended to update and clarify OEGB’s qualified status changes.

| Date: | Time: | Location: |
|---------|---------|---|
| 5-20-10 | 10 a.m. | PEBB/OEGB Boardroom 1225 Ferry St. SE Salem, OR 97301 |

Hearing Officer: Staff

Stat. Auth.: ORS 243.860–243.886

Stats. Implemented: ORS 243.864

Proposed Amendments: 111-040-0040

Last Date for Comment: 5-31-10

Summary: OAR 111-040-0040 is amended to update and clarify the Oregon Educators Benefit Board’s qualified status changes. The amendment would allow an OEGB member who has experienced significant changes in cost, which result in a negative impact, to be able to make a change to their current benefit selections.

Rules Coordinator: April Kelly

Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301

Telephone: (503) 378-6588

Department of Agriculture, Oregon Dairy Products Commission Chapter 617

Rule Caption: Amend Administrative Rule for First Processors of Milk to delete reference to repealed ORS 576.135(3).

Stat. Auth.: ORS 576.304

Other Auth.: Motion made by Commission on 2-16-10

Stats. Implemented: ORS 576.325 & 576.351

Proposed Amendments: 617-010-0085

Last Date for Comment: 5-31-10, Close of Business

NOTICES OF PROPOSED RULEMAKING

Summary: Amends Administrative Rule language for First Processors of Milk to delete reference to repealed ORS 576.135(3) assessments to be withheld and paid by first processors.

Rules Coordinator: Pete Kent

Address: 10505 SW Barbur Blvd, Portland, OR 97219

Telephone: (503) 229-5033

Department of Agriculture, Oregon Mint Commission Chapter 642

Rule Caption: Increases the assessment rate for all mint oil produced in Oregon.

| Date: | Time: | Location: |
|---------|---------|--|
| 5-19-10 | 10 a.m. | Hood River Hotel 102 Oak Ave. Hood River, OR |

Hearing Officer: Jim Clouc

Stat. Auth.: ORS 576.304 & 576.325-576.365

Other Auth.: Motion made by Commission on 3-18-10

Stats. Implemented: ORS 576.325-576.365

Proposed Amendments: 642-010-0010

Last Date for Comment: 5-19-10, Close of Hearing

Summary: Increases the assessment for all mint oil produced in Oregon from 6 cents (\$.06) per pound to 10 cents (\$.10) per pound beginning July 1, 2010.

Rules Coordinator: Lisa Ostlund

Address: PO Box 3366, Salem, OR 97302

Telephone: (503) 364-2944

Department of Agriculture, Oregon Tall Fescue Commission Chapter 607

Rule Caption: Increases the assessment rate for all tall fescue seed produced in Oregon.

| Date: | Time: | Location: |
|---------|--------|--|
| 5-20-10 | 7 a.m. | Elmer's Pancake House 2802 Santiam Hwy. Albany, OR |

Hearing Officer: Alex Duerst

Stat. Auth.: ORS 576.304 & 576.325-576.365

Other Auth.: Motion made by Commission at 4-15-10 mtg.

Stats. Implemented: ORS 576.325-576.365

Proposed Amendments: 607-010-0020

Last Date for Comment: 5-20-10, Close of Hearing

Summary: Increases the assessment for all tall fescue seed produced in Oregon from two and one-half tenths of one percent (0.25%) to three and one-half tenths of one percent (0.35%) of the purchase price per pound, clean seed basis beginning July 1, 2010.

Rules Coordinator: Lisa Ostlund

Address: PO Box 3366, Salem, OR 97302-0366

Telephone: (503) 364-2944

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

Rule Caption: Clarifies licensing requirements for solar photovoltaic installations.

| Date: | Time: | Location: |
|---------|-----------|--|
| 5-18-10 | 9:30 a.m. | 1535 Edgewater St. NW Salem, OR 97304 |

Hearing Officer: Aeron Teverbaugh

Stat. Auth.: ORS 455.117 & 479.730

Stats. Implemented: ORS 479.630 & 479.730

Proposed Adoptions: 918-282-0400

Last Date for Comment: 5-21-10, 5 p.m.

Summary: The proposed rule clarifies the licensing requirements for installing photovoltaic (PV) systems. In general, the proposed rule restates the scope of work allowed under ORS 479.630 with regard

to the limited renewable energy technician's license. The proposed rule also clarifies that an electrical license is not required for installation of purely structural components of a PV system.

Rules Coordinator: Dolores Wagner

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

Telephone: (503) 373-1258

Rule Caption: Allows a minor label permit for the installation of electric vehicle charging units in residences.

| Date: | Time: | Location: |
|---------|---------|------------------------------------|
| 5-18-10 | 10 a.m. | 1535 Edgewater St. NW Salem, OR |

Hearing Officer: Ree Armitage

Stat. Auth.: ORS 455.065

Stats. Implemented: ORS 455.065

Proposed Amendments: 918-311-0065

Last Date for Comment: 5-21-10, 5 p.m.

Summary: The proposed rule would allow the use of an electrical minor label for the installation of electric vehicle supply equipment (EVSE) units in the garages of one and two family dwellings, reducing the number of required inspections to one in ten in certain specified installations. The proposed rule will streamline the process for installation of the units during the influx of these devices to Oregon and show Oregon is taking steps to facilitate emerging technology.

Rules Coordinator: Dolores Wagner

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

Telephone: (503) 373-1258

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

Rule Caption: Biennial Adjustment to Securities Fees; IARD Licensing Investment Advisers.

| Date: | Time: | Location: |
|--------|--------|---|
| 6-3-10 | 9 a.m. | 350 Winter St. NE, Conference Rm. 260 Salem, OR |

Hearing Officer: Lauren Winters

Stat. Auth.: ORS 59.049 & 59.175

Stats. Implemented: ORS 59.049 & 59.175

Proposed Amendments: 441-049-1001, 441-175-0002, 441-175-0100, 441-175-0165

Last Date for Comment: 6-10-10, 5 p.m.

Summary: Based on analysis of securities fees in other states, the amendments to these rules impact the filing fees for unit investment trusts, broker-dealers, and broker-dealer salespersons. For unit investment trusts, the initial notice fee increases from \$350 to \$500 per portfolio, and the renewal fee increases from \$350 to \$500 per portfolio. For a broker-dealer, the renewal license fee increases from \$200 to \$250. For a broker-dealer salesperson, the initial license fee increases from \$50 to \$55. Oregon law allows the Director of Consumer and Business Services to establish procedures for licensing investment advisers and to coordinate licensing with any national registration, licensing or notice filing system. The amendment to the application procedures for licensing state investment advisers streamlines the licensing process by requiring applicants to apply for an Oregon license through the Investment Adviser Registration Depository (IARD), an online database that the Financial Industry Regulatory Authority ("FINRA") administers and eliminates paper filing.

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

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Revise rules to remove references to payday and title lending from consumer finance rules.

Date: 5-17-10
Time: 2 p.m.
Location: 350 Winter St. NE, Rm. F
Salem, OR 97301

Hearing Officer: Sarah Hackett

Stat. Auth.: 2010 OL Ch. 23 § 27

Stats. Implemented: 2010 OL Ch. 23

Proposed Amendments: 441-730-0000, 441-730-0010, 441-730-0015, 441-730-0025, 441-730-0030, 441-730-0050, 441-730-0070, 441-730-0080, 441-730-0100, 441-730-0110, 441-730-0120, 441-730-0130, 441-730-0140, 441-730-0160, 441-730-0170, 441-730-0180, 441-730-0200, 441-730-0205, 441-730-0246, 441-730-0255, 441-730-0260

Proposed Repeals: 441-730-0165, 441-730-0271, 441-730-0272, 441-730-0275, 441-730-0280, 441-730-0310

Last Date for Comment: 5-21-10, 5 p.m.

Summary: These proposed rules remove rules related to payday and title lending from OAR 441-730, leaving only rules that apply to consumer finance lenders. They are proposed in response to SB 993 (2010) which moves statutes related to payday and title lending ORS 725, to a different, as yet unassigned, statute.

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: Adopt new rules for payday and title loans in compliance with SB 993.

Date: 5-17-10
Time: 3 p.m.
Location: 350 Winter St. NE, Rm. F
Salem, OR 97301

Hearing Officer: Sarah Hackett

Stat. Auth.: 2010 OL Ch. 23 § 27

Stats. Implemented: 2010 OL Ch. 23

Proposed Adoptions: 441-735-0000, 441-735-0010, 441-735-0015, 441-735-0025, 441-735-0030, 441-735-0050, 441-735-0060, 441-735-0070, 441-735-0080, 441-735-0100, 441-735-0110, 441-735-0120, 441-735-0130, 441-735-0140, 441-735-0160, 441-735-0165, 441-735-0205, 441-735-0240, 441-735-0250, 441-735-0255, 441-735-0271, 441-735-0272, 441-735-0275, 441-735-0280, 441-735-0310, 441-735-0320

Last Date for Comment: 5-21-10, 5 p.m.

Summary: These proposed rules would create a new rule division for payday and title lending. The rules are in response to SB 993 (2010) which moves payday and title loan statutes out of ORS 725, to a different, as yet unassigned, statute. The rules are very similar to the rules that had been in OAR 441-730 that were applicable to payday and title lending.

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 Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Adopting Permanent Rules Governing State Program for Continuation of Health Benefit Plans.

Date: 6-3-10
Time: 1:30 p.m.
Location: Labor & Industries Bldg.
Conference Rm. F
350 Winter St.
Salem, OR

Hearing Officer: Jeannette Holman

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 734.610 & 2009 OL Ch. 73 (Enrolled HB 2433)

Proposed Adoptions: 836-053-0851, 836-053-0856, 836-053-0861, 836-053-0866

Proposed Repeals: 836-053-0850, 836-053-0855, 836-053-0860, 836-053-0865, 836-053-0850(T), 836-053-0855(T), 836-053-0860(T), 836-053-0865(T)

Last Date for Comment: 6-10-10

Summary: Oregonians who lose their jobs have two options to continue coverage under their group health plan. If their former employer has 20 or more workers, they are eligible under the Consolidated Omnibus Budget Reconciliation Act (COBRA). If their former employer has fewer than 20 workers, they are eligible under Oregon's state continuation law. The federal economic stimulus package extends 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.

The Legislative Assembly declared an emergency exists so House Bill 2433 could take effect immediately upon passage, and on April 28, 2009, the director adopted temporary rules OAR 836-053-0850T, 836-053-0855T, 836-053-0860T, 836-053-0865T (the Temporary Rules) in recognition of the need to expedite the rules to put in place the mechanisms to facilitate Oregonians obtaining the subsidy. The permanent rules became effective October 23, 2009.

The director again adopted temporary rules in December 2009 and March 2010 in response to federal extensions and changes to the federal subsidy program.

These rules enact permanent provisions that establish the requisite notice insurers must provide to assistance eligible individuals, revise the dates of eligibility for the federal subsidy and establish eligibility requirements to maximize the benefit. The existing temporary rules expire June 16, 2010 and these rules are intended to replace the current permanent rules and temporary amendments to those rules in their entirety.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

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

Rule Caption: Propose to adopt federal amendments to hexavalent chromium in general industry, construction, and maritime activities.

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

Stats. Implemented: ORS 654.001-654.295

Proposed Amendments: 437-002-0360, 437-003-0001, 437-005-0001

Last Date for Comment: 6-1-10

Summary: This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

Federal OSHA revised the notification requirements in the Hexavalent Chromium (Cr(VI)) standard in general industry, construction, and maritime activities. Employers will be required to notify employees of the results of all exposure determinations regardless of exposure levels.

Oregon OSHA proposes to adopt the changes in general industry, construction, and maritime activities as published in the March 17, 2010 Federal Register.

Please visit our web site www.orosha.org

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

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

Department of Corrections

Chapter 291

Rule Caption: Active and Inactive Probation Supervision for Offenders.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OL Ch. 660

Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OL Ch. 660

Proposed Amendments: 291-206-0005 – 291-206-0030

Last Date for Comment: 5-25-10

Summary: Amendment of these rules is necessary provide further clarification for implementation of Or Laws 2009 Ch 660 (HB 3508), which allows an offender sentenced to probation to be eligible for a reduction in the period of active probation for compliance with the conditions of probation and the offender's supervision plan. Modification of these rules includes defining compliance with conditions of probation and the supervision plan, explaining the process for placing an offender on inactive supervision, and clarifying that the rules apply to offenders convicted of a crime committed before July 1, 2011, and who are on probation on or after February 24, 2010.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: Amends administrative rules for earned time credits for inmates in light of 2009 and 2010 legislative enactments.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120–421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2010 OL Ch. 2 (SB 1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120–421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2010 OL Ch. 2 (SB 1007)

Proposed Amendments: 291-097-0005, 291-097-0010, 291-097-0015, 291-097-0020, 291-097-0023, 291-097-0025, 291-097-0030, 291-097-0040

Last Date for Comment: 6-30-10

Summary: These rule amendments are needed to implement House Bill 2623 (2009), Senate Bill 1007 (2010), and other housekeeping issues.

HB 2623 (2009) authorizes inmates to be eligible for earned time credits, not to exceed 60 days, for obtaining a high school diploma, General Educational Development (GED) certificate, or a certificate or degree from a post-secondary education institution as defined in ORS 337.511 or a journey level certification from a registered apprenticeship program as defined in ORS 660.010. HB 2623 applies to inmates who obtain a diploma, certificate or degree on or after January 1, 2010.

SB 1007 (2010) amended Oregon Laws 2009, chapter 660 (HB 3508) by restricting the number of inmates who were eligible for an increase in earned time credits under HB 3508. Specifically, SB 1007 limited the increase in earned time to 30 percent to only those inmates who are sentenced for otherwise eligible crimes on or after July 1, 2009 for crimes committed before February 17, 2010. Second, SB 1007 further amended HB 3508 by removing the possibility of an increase in earned time to 30 percent if a sentencing court had not entered a supplemental judgment authorizing an increase in earned time to 30 percent before February 17, 2010.

Additionally, the Department's current administrative rules do not adequately address how earned time credits will be applied toward inmates' sentences following violations of the conditions of transi-

tional leave, second look conditional release, and escape situations. The Department needs to amend its administrative rules in order to address these potential "gaps" in its administrative rules.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: Presentence Reports.

Stat. Auth.: ORS 179.040, 144.120, 144.185, 144.791, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 144.120, 144.185, 144.791, 423.020, 423.030 & 423.075

Proposed Amendments: 291-038-0005, 291-038-0015

Last Date for Comment: 6-30-10

Summary: The rule change is needed to implement Or Laws 2005 Ch 473 (SB 914 (2005)). That legislation directs the Oregon Department of Corrections to require that a presentence report provide an analysis of the disposition most likely to reduce the defendant's criminal conduct, explain why the disposition would have such an effect, and provide an assessment of the availability to the defendant of relevant programs and treatment. The Criminal Justice Commission is amended its rule pertaining to Presentence Reports to be consistent changes adopted by the Department of Correction to implement SB 914.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Environmental Quality

Chapter 340

Rule Caption: This rulemaking increases water quality permit fees by 3% to address increasing permit program costs.

| Date: | Time: | Location: |
|---------|--------|--|
| 5-27-10 | 6 p.m. | DEQ, Conference Rm. 475 Bellevue, Suite 110 Bend, OR |
| 6-1-10 | 6 p.m. | DEQ, Large Conf. Rm. 221 Stewart Ave., Suite 201 Medford, OR |
| 6-2-10 | 6 p.m. | DEQ, Rm. EQC A 811 SW Sixth Ave., 10th Flr. Portland, OR |

Hearing Officer: DEQ Staff

Stat. Auth.: ORS 468.020 & 468.065

Stats. Implemented: ORS 468.065, 468B.035 & 468B.051

Proposed Amendments: 340-045-0075, 340-071-0140

Last Date for Comment: 6-7-10, 5 p.m.

Summary: This proposal to revise the Oregon Administrative Rules will increase water quality permit fees. DEQ proposes to increase fees for all National Pollution Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permits by 3% to address increased water quality permit program costs. WPCF-Onsite septic system permits are included in the proposed fee increase. Suction dredge permits covered by General Permits 700-PM are not included in the proposed fee increase.

To submit comments to request additional information, please contact Chris Clipper at the Department of Environmental Quality (DEQ) by mail at 811 SW Sixth Ave., Portland, OR 97204, by email at 2010wqfeerule@deq.state.or.us, by phone at (503) 229-5656; toll free in Oregon at 800-452-4011, ext. 5656; by fax at (503) 229-6037, or visit DEQ's website at http://www.deq.state.or.us/news/public_notices/PN.asp.

Rules Coordinator: Maggie Vandehey

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

Telephone: (503) 229-6878

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Update Air Quality Ambient Benchmark Concentrations for Ethyl Benzene, Lead, Manganese and Mercury. (Additional Public Hearing and Extension of Public Comment Period.)

Date: 5-18-10
Time: 6-8 p.m.
Location: Oregon Dept. of Transportation
123 NE Savier
Flanders, OR

Hearing Officer: Gregg Lande

Stat. Auth.: ORS 468A

Stats. Implemented:

Proposed Amendments: 340-246-0090

Last Date for Comment: 6-30-10, 5 p.m.

Summary: The Oregon Department of Environmental Quality is proposing to adopt a new air toxic ambient benchmark concentration for ethyl benzene and revise three current benchmarks for lead, manganese, and mercury. Air toxics are pollutants known or suspected to cause cancer or other serious health effects. Ambient benchmarks are concentrations of air toxics that serve as goals in the Oregon program. They are based on levels protective of human health considering sensitive populations, like the elderly and children. The Air Toxics program requires a periodic review of ambient benchmark concentrations to keep abreast of new scientific understanding of chemical toxicity and exposure.

The Oregon Environmental Quality Commission adopted the original fifty-one benchmarks in 2006, which have been used to support the scientifically sound evaluation and decision-making. Together with air measurement and emission estimates, these benchmarks allow DEQ to better understand air toxics problems throughout the state.

DEQ and its Air Toxics Advisory Committee evaluated new developments for four air toxics: lead, ethyl benzene, manganese and mercury. In 2008 the U.S. Environmental Protection Agency adopted a new lower federal National Ambient Air Quality Standard for lead. In addition, the California Environmental Protection Agency's Office of Environmental Health and Hazard Assessment concluded that ethyl benzene should be considered a cancer-causing agent, and that acceptable ambient thresholds for manganese and mercury exposure should be lowered, making them more protective of children's health. After consultation with the committee, DEQ concluded that the benchmark for lead should be aligned with the federal standard, a new benchmark should be added for ethyl benzene, and the current benchmark for manganese should be made more protective. DEQ and the advisory committee agree that at this time there is no new scientific evidence sufficient to warrant lowering DEQ's current benchmark concentration for mercury, although the rule should clarify that this concentration applies only to elemental mercury.

To request additional information regarding this rulemaking; please contact: Gregg Lande at the Department of Environmental Quality, Air Quality Division, call toll free in Oregon 800-452-4011 or 503-229-6411 or visit DEQ's public notices webpage: <http://www.deq.state.or.us/news/publicnotices/PN.asp>

To comment on this rulemaking, submit your comments to: Gregg Lande, Oregon Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204 or by fax to 503-229-5675 or by email to benchmarkupdate@deq.state.or.us

Rules Coordinator: Maggie Vandehey

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

Telephone: (503) 229-6878

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Department of Fish and Wildlife Chapter 635

Rule Caption: Oregon Ocean Commercial, Terminal Area, and Coastal Zone Sport Salmon Fisheries.

Date: 6-4-10
Time: 8 a.m.
Location: Dept. of Fish & Wildlife
Commission Rm.
3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146, 506.036, 506.119, 506.129 & 506.750, et Seq.

Other Auth.: Magnusson-Stevens Sustainable Fisheries Act.

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

Proposed Adoptions: Rules in 635-003, 635-013, 635-014, 635-016
Proposed Amendments: Rules in 635-003, 635-013, 635-014, 635-016

Proposed Repeals: Rules in 635-003, 635-013, 635-014, 635-016

Last Date for Comment: 6-4-10

Summary: Amend rules relating to commercial and sport salmon fishing in the Oregon ocean terminal areas and in the Marine Northwest and southwest zones consistent with guidelines established by the Oregon Fish and Wildlife Commission and Pacific Fishery Management Council and enacted Federal Regulations.

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

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Rule Caption: Adopt Summer and Fall Recreational Fisheries for the Columbia River.

Date: 6-4-10
Time: 8 a.m.
Location: Dept. of Fish & Wildlife
Commission Rm.
3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

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

Stats. Implemented: ORS 496.162, 506.036, 506.119, 506.129 & 506.750, et Seq.

Proposed Adoptions: Rules in 635-017, 635-023

Proposed Amendments: Rules in 635-017, 635-023

Proposed Repeals: Rules in 635-017, 635-023

Last Date for Comment: 6-4-10

Summary: Amend rules relating to recreational salmon fishing in the Columbia River.

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

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Rule Caption: Rules regarding furbearer harvest, seasons and bag limits for the 2010-2011 and 2011-2012 seasons.

Date: 6-4-10
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

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

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

Proposed Amendments: Rules in 635-043, 635-045, 635-048, 635-050, 635-200

Last Date for Comment: 6-4-10

Summary: Amend rules regarding seasons and bag limits for the 2010-2011 and 2011-2012 furbearer harvest and pursuit seasons.

Rules Coordinator: Therese Kucera

NOTICES OF PROPOSED RULEMAKING

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

Telephone: (503) 947-6033

Rule Caption: 2011 annual changes to game mammal hunting regulations, plus 2010 controlled hunt tag numbers.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 6-4-10 | 8 a.m. | 3406 Cherry Ave. NE Salem, OR 97303 |

Hearing Officer: Fish & Wildlife Commission

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

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Proposed Amendments: Rules in 635-002, 635-045, 635-060, 635-065, 635-066, 635-067, 635-068, 635-069, 635-070, 635-071, 635-072, 635-073, 635-075, 635-078, 635-080

Last Date for Comment: 6-4-10

Summary: Establish 2010 controlled hunt tag numbers and/or season dates, bag limits, open areas, location of cooperative travel management areas, and controlled hunting regulations. Proposed quotas for 2011 cougar seasons and spring bear limited, first-come first-serve and controlled hunt tag numbers for 2011. These proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2010 and again for adoption in October 2010. Rules will be amended regarding the definition of "take".

Propose 2011 hunting regulations for game mammals, including season dates, bag limits, open areas, location of cooperative travel management areas, and controlled hunting regulations. Proposed quotas for 2011 cougar seasons and spring bear limited, first-come first-serve and controlled hunt tag numbers for 2011. These proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2010 and again for adoption in October 2010. Rules will be amended regarding the definition of "take".

Amend the rules that ban the importation of certain cervid parts from states that have confirmed the presence of Chronic Wasting Disease. These states include but are not limited to Missouri, North Dakota and Virginia.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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

Rule Caption: Standards for Payments to Residential Programs.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 5-13-10 | 9 a.m. | DHS Bldg., Rm. 137A 500 Summer St. NE. Salem, OR |
| 5-17-10 | 9 a.m. | Bend DHS Bldg. 1300 NE Wall St. Bend, OR |
| 5-18-10 | 9 a.m. | Pendleton Lifeways, Large Group Rm. 331 SE 2nd St. Pendleton, OR |
| 5-24-10 | 9 a.m. | Medford Job Council Board Rm. 673 Market St. Medford, OR |

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 409.110, 409.050 & 443.450

Stats. Implemented: ORS 430.2110, 443.400-443.460 & 443.991

Proposed Adoptions: 309-011-0105, 309-011-0110, 309-011-0115

Last Date for Comment: 5-28-10

Summary: These all new rules will prescribe standards for occupancy payments in residential facilities.

Rules Coordinator: Richard Luthe

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

Telephone: (503) 947-1186

Rule Caption: Amending the "Community Mental Health Housing Fund" rules to update and expand the rules.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 5-21-10 | 1 p.m. | DHS Bldg. 500 Summer St., Room 137A Salem, OR |

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 409.050 & 430.640

Stats. Implemented: ORS 426.502-426.508

Proposed Adoptions: 309-036-0130, 309-036-0135, 309-036-0140

Proposed Amendments: 309-036-0100, 309-036-0105, 309-036-0110, 309-036-0115, 309-036-0120

Proposed Repeals: 309-036-0125

Last Date for Comment: 5-28-10

Summary: The Addictions and Mental Health (AMH) Division is proposing to amend and adopt rules in OAR 309-036 "Community Mental Health Housing Fund" in order to update and expand the rules to standardize the application, funding and monitoring processes and to specifically address uses of real property. Other "housekeeping" revisions are also being made.

Rules Coordinator: Richard Luthe

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

Telephone: (503) 947-1186

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

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

| Date: | Time: | Location: |
|--------------|--------------|--------------------------------------|
| 5-25-10 | 10 a.m. | 500 Summer St., Rm. 255 Salem, OR |

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 181.537, 183.417, 409.050, 409.610, 410.070, 411.060, 411.070, 411.083, 411.117, 411.122, 411.404, 411.704, 411.706, 411.816, 412.001, 412.006, 412.014, 412.024, 412.049, 412.064, 412.124, 414.025, 414.231, 414.342, 414.712, 414.826, 414.831, 414.839, 657A.340 & 657A.450

Other Auth.: 42 USC 1396r-5(d)(3); Medicare Improvements for Patients and Providers Act of 2008 (122 Stat. 2503); Social Security Administration Program Operations Manual System (POMS) SI 01130.40; Social Security Administration Program Operations Manual System (POMS) SI 01320.900, SI 00502.280 & SI 01330.550

Stats. Implemented: ORS 181.537, 183.417, 409.010, 409.050, 409.610, 410.070, 411.060, 411.070, 411.083, 411.117, 411.122, 411.404, 411.704, 411.706, 411.816, 411.825, 412.001, 412.006, 412.014, 412.024, 412.049, 412.064, 412.124, 414.025, 414.047, 414.231, 414.342, 414.712, 414.826, 414.831, 414.839, 657A.340 & 657A.450

Proposed Adoptions: 461-135-1101

Proposed Amendments: 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, 461-135-0400, 461-135-0415, 461-135-0570, 461-135-1100, 461-135-1149, 461-135-1175, 461-145-0040, 461-145-0143, 461-145-0320, 461-145-0820, 461-145-0830, 461-155-0270, 461-155-0500, 461-155-0693, 461-160-0015, 461-160-0620, 461-165-0030, 461-165-0100, 461-165-0180, 461-170-0011, 461-175-0200, 461-180-0050, 461-180-0090, 461-180-0120

Proposed Repeals: 461-115-0230(T), 461-115-0430(T), 461-135-0570(T), 461-135-1175(T), 461-170-0011(T), 461-175-0200(T)

Last Date for Comment: 5-27-10, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: 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). This rule also is being amended to remove references to the Senior Prescription Drug Assistance Program to comply with Senate Bill 154 (2009 Or. Laws ch. 263) ending the program and repealing its statutory authority.

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 (the individuals who live together with or without benefit of a dwelling) 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. This rule also is being amended to state that in the Extended Medical Assistance (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), Refugee Assistance Medical - Basic (REFM), Medical Coverage for Children in Substitute or Adoptive Care (SAC), and Temporary Assistance for Needy Families (TANF) programs an individual must be eligible for and receive an SSI cash payment to be excluded from the financial group.

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 to receive benefits from a Department program is being amended to restate 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. This rule also is being amended to restate that a Supplemental Nutrition Assistance Program (SNAP) applicant who fails to attend a scheduled interview must contact the Department within 30 days of the application filing date to eligible for benefits. This rule is also being amended to state additional hardship conditions allowing a client to forgo an interview, including: age, disability, and transportation difficulties due to financial hardship.

OAR 461-115-0430 about when the Department periodically redetermines a client's eligibility for benefits is being amended to state the Department redetermines 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 Healthy 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 the 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 were 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 is 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 461-145-0143 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 month are excluded from earned income for clients in the Healthy KidsConnect (HKC) program.

OAR 461-160-0015 about resource limits in eligibility determinations for the Department's programs is being amended to state

NOTICES OF PROPOSED RULEMAKING

there is no resource limit for a client in the Healthy KidsConnect (HKC) program. This rule also 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.

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 ORS 414.826, 414.831, and 414.839.

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 and the deadline for reporting the changes.

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. This rule also is being amended to comply with federal law by restating how the Department determines the effective date for starting the Medicare Savings Program (MSP) benefits.

The 21 rule changes described above to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867, House Bill 2116). The legislation required 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 implemented the Healthy KidsConnect (HKC) program to expand health insurance coverage for children. Eligibility is determined by the Department, and enrollment for HKC is through the Office of Private Health Partnerships (OPHP). The Department also is making these rule changes to make temporary rule changes made January 1, 2010, January 26, 2010, and April 1, 2010 permanent.

OAR 461-135-0400 about the specific eligibility requirements for child care payments and the Employment Related Day Care (ERDC) program is being amended to restate when a filing group (the individuals whose circumstances are considered in the eligibility determination process) is not eligible for program benefits.

OAR 461-135-0415 about the requirement for a client in the Employment Related Day Care (ERDC) program to make a copayment to the primary provider of child care is being amended to state how the Department determines the amount of the copayment due from the client to the provider.

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 in response to a recent change in the Food and Nutrition Service interpretation of federal SNAP law to state that an individual 18 years of age or older and under 50 years of age, enrolled at least half time in higher education, and receiving Training Unemployment Insurance (TUI) benefits from the Oregon Employment Department is eligible for SNAP benefits.

This rule also is being amended to make permanent the temporary changes to this rule made effective February 5, 2010.

OAR 461-135-1175 about the Senior Farm Direct Nutrition Program (SFDNP) is being amended to restate the countable income eligibility requirement for the program, state that the Department processes applications for the program in the order in which the applications are received, and state that the program remains open each year until the funding for the program runs out. This rule also is being amended to make permanent the temporary changes to this rule made effective April 1, 2010.

OAR 461-145-0040 about how the Department treats burial arrangements and burial funds when calculating a client's assets is being amended to state how, in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs, the Department treats the amount of an irrevocable arrangement to cover burial costs.

OAR 461-145-0320 about how the Department treats the value of life and burial insurance policies when determining a client's eligibility and benefit level is being amended to define key terms related to life and burial insurance policies and state how the Department treats the value of life and burial insurance policies in the General Assistance (GA), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. This rule also is being amended to state how the Department treats a dividend accumulation when determining a client's eligibility. This rule also is being amended to remove unnecessary references to grandfathered Oregon Supplemental Income Program (OSIP) and OSIPM program clients and the OSIP program.

OAR 461-145-0820 about how the Department determines the value of the assets (income and resources) of a sponsor it deems to a sponsored noncitizen is being amended to restate how the Department calculates the value of the resources deemed available to a noncitizen client of the Oregon Supplemental Income Program Medical (OSIPM) program.

OAR 461-145-0830 about when the Department deems assets (income and resources) of a sponsor to the sponsored noncitizen and how the Department deems the income of a sponsor to the sponsored noncitizen is being amended to restate how a sponsored noncitizen establishes indigence in all programs except the Medical Assistance Assumed (MAA), Oregon Health Plan (OHP), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs. This rule also is being amended to state how long the deeming period lasts and the effective date of the end of deeming for a noncitizen client of the Oregon Supplemental Income Program Medical (OSIPM) program. This rule also is being amended to state that the process used to determine the amount of income considered available to the noncitizen from the noncitizen's sponsor and the spouse of the sponsor is not applicable to clients in the Employment Related Day Care (ERDC), OSIPM, Refugee Assistance (REF), Refugee Assistance Medical - Basic (REFM), and SNAP programs. This rule also is being amended to state when the income of the sponsor or the sponsor's spouse is not considered available to the sponsored noncitizen and what deductions are made if the income is considered available.

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 was discontinued effective January 1, 2010 in response to House Bill 3065 (2009 Or. Laws ch. 849). This rule also is being amended to make permanent the temporary rule changes effective January 1, 2010.

NOTICES OF PROPOSED RULEMAKING

OAR 461-155-0500 about special needs payments is being amended in response to recent legislation, HB 3065 (2009 Or. Laws ch. 849), to restate the types of ongoing special needs payments the Department may make. This rule also is being amended to remove unnecessary language about types of payments and the basic standard in the General Assistance (GA), General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance for Needy Families (TANF) programs.

OAR 461-155-0693 about the transportation services special need payment for Oregon Supplemental Income Program Medical (OSIPM) program clients is being amended to correctly state the income standard used to determine eligibility for this payment.

OAR 461-160-0620 about the income deductions allowed in and the calculation of an Oregon Supplemental Income Program Medical (OSIPM) client's liability when the client is receiving long-term care or waived services is being amended to reflect the annual federal increase to the minimum maintenance need standard and shelter standard that are used to calculate how much of the client's income can be diverted to the community spouse. This rule also is being amended to remove the reference to the OSIP program maintenance standard and replace it with a reference to the OSIPM maintenance standard as use of the OSIP program standard was discontinued effective January 1, 2010 in response to House Bill 3065 (2009 Or. Laws ch. 849).

OAR 461-165-0100 about the date the Department issues benefits to eligible clients is being amended to remove references to the Oregon Supplemental Income Program (OSIP) and the OSIP program supplemental income payment as the payments were discontinued effective January 1, 2010 in response to HB 3065 (2009).

OAR 461-165-0180 about how the Department determines if a child care provider is eligible to receive payments from the Department is being amended in response to House Bill 2868 (2009 Or. Laws ch. 319) to state when a child care provider must attend a training provided by the Department or a Child Care Resource and Referral agency.

OAR 461-175-0200 which provides general information about the decision notices the Department sends to clients is being amended to remove the requirement that the Department send clients in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), and Refugee Assistance Medical - Basic (REFM) programs an approval notice informing the client of the opportunity to volunteer for JOBS participation and of the procedure for Job Opportunity and Basic Skills (JOBS) program entry within one month following an eligibility determination. The Department also is amending this rule to implement the recent Healthy Kids legislation (2009 Oregon Laws Chapter 867, House Bill 2116). The legislation required 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 implemented the Healthy KidsConnect (HKC) program to expand health insurance coverage for children. Eligibility is determined by the Department, and enrollment for HKC is through the Office of Private Health Partnerships (OPHP). OAR 461-175-0200 which provides general information about the decision notices the Department sends to clients is being amended to cross-reference OAR 461-175-0300 where the circumstances under which the Department need not send a decision notice to a client in the prenatal expansion program described in OAR 410-120-0030 or the HKC program are found. A decision notice is a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program. This rule also is being amended to make temporary rule changes made effective February 23, 2010 permanent.

OAR 461-180-0050 about the effective dates for closing or suspending benefits in the Department's programs and OAR 461-180-

0120 about the effective dates for removing an individual from a benefit group (the individuals who receive benefits) are being amended to state when program benefits end or are reduced in the event that an individual in the benefit group dies. OAR 461-180-0050 also is being amended to remove references to effective dates for closing or suspending benefits when prospective budgeting is used.

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 May 27, 2010 at 5:00 p.m. Written comments may be e-mailed 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

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

Rule Caption: July 2010 — Outreach worker site agreements.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 5-18-10 | 2-4 p.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301 |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.040 & 409.050

Stats. Implemented: ORS 414.041

Proposed Adoptions: 410-120-0045

Last Date for Comment: 5-20-10

Summary: The General Rules Services program administrative rules govern DMAP payment for services to clients. DMAP will adopt rule 410-120-0045 that will take the place of the current contracting process for DMAP outreach sites. The proposed OAR will contain the same roles and responsibilities outlined in the current contracts.

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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Rule Caption: July 2010 — Semi-annual Preferred Drug List (PDL) update, new drug coverage, pharmacy billing and dispensing rule revisions.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 5-18-10 | 2-4 p.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301 |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065 & 414.360

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0000, 410-121-0030, 410-121-0040, 410-121-0100, 410-121-0146, 410-121-0147, 410-121-0185

Proposed Repeals: 410-121-0144

Last Date for Comment: 5-20-10

Summary: The Pharmaceutical Services program rules (division 121) govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP needs to amend the administrative rules listed above to clarify current policies and procedures for pharmacy providers to ensure DMAP OARs are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance.

DMAP will amend as follows:

410-121-0000: Adding definition of "Usual and Customary Price."

NOTICES OF PROPOSED RULEMAKING

410-121-0030: Semi-annual update to the Preferred Drug List (PDL).

410-121-0040: New drug coverage and associated Prior Authorization (PA) criteria to be explained in relation to whether the new product is in a drug class with existing PA criteria or not and whether or not the product is used to treat a condition below the funding line on the Prioritized List of Services and establishes when PA criteria for new products will be reviewed by the Drug Utilization Review (DUR) Board.

410-121-0100 Changes in provisions relating to limits on disclosure of Protected Health Information (PHI) to conduct annual medication reviews for all foster children receiving more than 2 psychotropic drugs or any child under 6 years old on any psychotropic drug pursuant to the implementation of HB 3114.

410-121-0144: This rule will be repealed. Prescribers do not need to indicate a client's diagnosis on a prescription, nor do pharmacies need the information. The intent of this rule is captured in ORS 410-121-0147 which describes drugs not covered for payment because they may be used to treat diagnoses below the funded line on the Health Services Commission's Prioritized List and serves as the basis for denial of PAs for below the line diagnosis.

410-121-0146: Clarification of quantity limits for many drugs as being a 34 day supply with exceptions for many drugs dispensed through DMAP's contracted mail order, Indian Health mail order pharmacy providers, and 340B pharmacies, as well as preferred PDL generics and generics in non-PDL classes that cost less than \$10 a month and are maintenance medications. All drugs classes indicated in this rule which are prohibited from exceeding a 34 day supply remain as such.

410-121-0147: Pursuant to the repeal of 410-121-0144, change proposes to add language to that prohibits payments for drugs that treat excluded services under OHP coverage. Adds provision for coverage of select oral nutritionals, supplements, and vaccinations.

410-121-0185: Expansion of Current Procedural Terminology (CPT) Codes for vaccination administration reimbursement.

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

Rule Caption: July 1, 2010 Rule Revisions.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 5-18-10 | 2-4 p.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301 |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-122-0010, 410-122-0020, 410-122-0040, 410-122-0055, 410-122-0080, 410-122-0184, 410-122-0202, 410-122-0203, 410-122-0205, 410-122-0207, 410-122-0208, 410-122-0210, 410-122-0211, 410-122-0280, 410-122-0325, 410-122-0340, 410-122-0540, 410-122-0560, 410-122-0625, 410-122-0630, 410-122-0655, 410-122-0658, 410-122-0662, 410-122-0680, 410-122-0720

Last Date for Comment: 5-20-10

Summary: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend as follows:

410-122-0010 Definitions: Clarifies definition of "Home."

410-122-0020 Orders: Removes signature stamp as an acceptable signature.

410-122-0040 Prior Authorization: Deletes (3) "For clients with Medicare coverage, prior authorization is only required for DMEPOS not covered by Medicare". Clarifies authorization requirements for non-contiguous out-of-state providers.

410-122-0055 OHP Standard Benefit Package Limitations: Corrects text.

410-122-0080 Conditions of Coverage, Limitations, Restrictions and Exclusions: Clarifies conditions of coverage for services provided by non-contiguous out-of-state providers. Clarifies other conditions of coverage.

410-122-0184 Repairs, Servicing, Replacement, Delivery and Dispensing: Deletes obsolete labor code E1340. Adds K0739 labor code.

410-122-0202 Positive Airway Pressure (PAP) Devices for Adult Obstructive Sleep Apnea (OSA): Clarifies conditions of coverage.

410-122-0203 Oxygen and Oxygen Equipment: Adds E0433 portable liquid oxygen system, monthly rental. Updates narrative changes to E0441, E0442, E0443 and E0444.

410-122-0205 Respiratory Assist Devices: Removes duplicate language for adult obstructive sleep apnea already found in 410-122-0202.

410-122-0207 Respiratory Supplies: Deletes obsolete code J7051.

410-122-0208 Suction Pumps: Removes asterisk associated with E0600 in the table.

410-122-0210 Ventilators: Clarifies conditions of coverage.

410-122-0211 Cough Stimulating Device: Clarifies that E0482 may be covered for a client residing in a nursing facility.

410-122-0280 Heating/Cooling Accessories: Updates narrative changes to E0249.

410-122-0325 Motorized/Power Wheelchair Base: Clarifies Assistive Technology Professional (ATP) requirements for power wheelchairs.

410-122-0340 Wheelchair Options/Accessories: Deletes obsolete codes E2223 and E2399. Add code E1225.

410-122-0540 Ostomy Supplies: Deletes obsolete code A4365 adhesive remover wipes. Adds replacement code A4456.

410-122-0560 Urological Supplies: Deletes obsolete code A4365 adhesive remover wipes. Adds replacement code A4456.

410-122-0625 Surgical Dressing: Deletes obsolete codes A6200, A6201 and A6202.

410-122-0630 Incontinent Supplies: Adds code T4543.

410-122-0655 External Breast Prostheses: Deletes redundant text. Text in (1) (c) is same as (1) (i).

410-122-0658 Gradient Compression Stockings: Deletes obsolete code A6543. Updates narrative changes to A6549.

410-122-0662 Ankle-Foot-Orthoses and Knee-Ankle-Foot Orthoses: Removes 728.71 plantar fasciitis, an unfunded condition.

410-122-0680 Facial Prostheses: Deletes obsolete code A4365 adhesive remover wipes. Adds replacement code A4456.

410-122-0720 Pediatric Wheelchairs: Clarifies Assistive Technology Professional (ATP) requirements for power wheelchairs.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.

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

Rule Caption: July 2010 rule revisions.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 5-18-10 | 2-4 p.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301 |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050, 414.051, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Proposed Amendments: 410-123-1000, 410-123-1160, 410-123-1220, 410-123-1260

Last Date for Comment: 5-20-10

Summary: The Dental Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend rules listed above to add orthodontia coverage for clients with

NOTICES OF PROPOSED RULEMAKING

the diagnosis of cleft palate; to add coverage of fixed partial denture sectioning in limited circumstances; to change and clarify the time-frame limitation for fabrication of dentures for non-pregnant adults (within six months of most recent extractions); to clarify limitations for adjustments and repairs of dentures; to change limitation for laboratory reline after placement of immediate denture; and other minor clarifications. DMAP will amend rules to clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance and help facilitate provider compliance with eligibility, service coverage and limitations, prior authorizations, and billing requirements. Text will be revised to improve readability and take care of necessary housekeeping corrections.

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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Rule Caption: July 1, 2010 — EPSDT program; add services; update tables for Prior Authorization, Not-Covered/Bundled Services, and Immunization.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 5-18-10 | 2-4 p.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301 |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.040, 409.050 & 414.065

Other Auth.: Oregon State Medicaid Manual (Sec. 513.2, 5-15)

Stats. Implemented: ORS 414.019, 414.025, 414.065 & 414.150

Proposed Amendments: 410-130-0200, 410-130-0220, 410-130-0245, 410-130-0255

Last Date for Comment: 5-20-10

Summary: The Medical-Surgical Services program administrative rules govern DMAP payment for services to certain clients. DMAP needs to amend rules as follows:

410-130-0200-to clarify services for which treating practitioners are responsible for obtaining prior authorization (PA) and to clarify that clients who are dual-eligible for both Medicare and Medicaid enrollment must have PA for bariatric services and evaluations;

410-130-0220- to add codes that are excluded for coverage by the Health Services Commission and to delete codes that are now covered for reimbursement;

410-130-0245 to include and clarify one-time lead investigation reimbursement;

410-130-0255 to update immunization codes covered under Vaccines for Children (VFC).

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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Rule Caption: July 2010 — update criteria for definitions, pharmacy, continuity of care, quality improvement, accessibility, hearings, member education, ENCC, Ombudsman, billing and quality assurance.

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|--------------|--------------|---|
| Date: | Time: | Location: |
| 5-18-10 | 2-4 p.m. | HSB Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301 |

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050, 414.051, 414.065 & 414.707

Stats. Implemented: ORS 414.065 & 414.707

Proposed Amendments: 410-141-0000, 410-141-0070, 410-141-0160, 410-141-0200, 410-141-0220, 410-141-0300, 410-141-0405, 410-141-0407, 410-141-0420 & 410-141-0740

Last Date for Comment: 5-20-10

Summary: The Oregon Health Plan (OHP or Managed Care) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to clients. DMAP needs to

amend rules as follows: 410-141-0000: to update definitions; 410-141-0070 and 410-141-0420: to update pharmacy criteria; 410-141-0160, 410-141-0200, 410-141-0220, 410-141-0300, 410-141-0405 to update ENCC definition; and 410-141-0740: to update quality assurance criteria.

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: Registry of Emergency Health Care Services Volunteers and Designation of Emergency Health Care Centers.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 5-26-10 | 10 a.m. | 800 NE Oregon St., Rm. 1D Portland, OR 97232 |

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 401.651-401.670

Other Auth.: SB 8 (2009 OL Ch. 382) & HB 3021 (209 OL Ch. 718)

Stats. Implemented: ORS 401.651-401.670

Proposed Adoptions: 333-003-0116, 333-003-0118, 333-003-0210

Proposed Amendments: 333-003-0100, 333-003-0105, 333-003-0110, 333-003-0115, 333-003-0120, 333-003-0125, 333-003-0130, 333-003-0140

Proposed Repeals: 333-003-0135

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

Summary: The Department of Human Services, Public Health Division is proposing to adopt and amend Oregon Administrative Rules relating to the registration and activation of emergency health care services volunteers and the designation of emergency health care centers in response to the passage of SB 8 and HB 3021 during the 2009 Legislative Session.

These rules address the extended liability protection and workers' compensation protection to qualified emergency service volunteers and reorganize current rules in order to provide consistency and clarity. The rules also help to build more programmatic structure and streamline processes to strengthen the registration process of emergency health care services volunteers and the designation of emergency health care centers.

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

Rule Caption: Homecare Workers Enrolled in the Client-Employed Provider Program.

| | | |
|--------------|--------------|--|
| Date: | Time: | Location: |
| 5-17-10 | 10 a.m. | Human Services Bldg. 500 Summer St. NE, Rooms 137CD Salem, OR 97301 |

Hearing Officer: Staff

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Other Auth.: ORS 243.650, 243.672 & 243.676

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

Proposed Amendments: 411-031-0020, 411-031-0030, 411-031-0040, 411-031-0050

Proposed Repeals: 411-031-0040(T)

Last Date for Comment: 5-21-10, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to update the home-care workers rules in OAR chapter 411, division 031 to:

- Add or amend definitions;
- Clarify provider enrollment standards and criteria;
- Clarify when SPD may deny, inactivate, or terminate provider enrollment;
- Comply with the 2009-2011 Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union (SEIU), Local 503, Oregon Public Employees Union (OPEU);
- Clarify the administrative review process for provider enrollment terminations; and
- Provide general housekeeping to reflect current practices, improve readability, and establish consistency with other SPD rules.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Rule Caption: Adult Protective Services and Alleged Elderly Abuse.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 5-21-10 | 11 a.m. | Human Services Bldg. 500 Summer St. NE, Rooms 137CD Salem, OR 97301 |

Hearing Officer: Staff

Stat. Auth.: ORS 124.050–124.095 & 410.070

Other Auth.: HB 2175 (2007), Ch. 444 (2007 OL), HB 2442 (2009), Ch. 837 (2009 OL), SBI 670 (2009), Ch. 708 (2009 OL) & 45 CFR 164.512

Stats. Implemented: ORS 124.050–124.095

Proposed Adoptions: 411-020-0025, 411-020-0085

Proposed Amendments: 411-020-0000, 411-020-0002, 411-020-0010, 411-020-0015, 411-020-0020, 411-020-0030, 411-020-0040, 411-020-0060, 411-020-0070, 411-020-0080, 411-020-0090, 411-020-0100, 411-020-0110, 411-020-0120, 411-020-0130

Proposed Repeals: 411-021-0000, 411-021-0005, 411-021-0010, 411-021-0015, 411-021-0020, 411-021-0025, 411-020-0002(T), 411-020-0020(T), 411-020-0025(T), 411-020-0030(T), 411-020-0085(T), 411-020-0100(T), 411-020-0120(T)

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

Summary: 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 (DHS), Seniors and People with Disabilities Division (SPD) is proposing to update the adult protective services (APS) rules in OAR chapter 411, division 020 to permanently:

- Clarify the jurisdiction of the population served by changing “adults with disabilities” to “adults with physical disabilities” throughout the rules;
- Expand the definition of abuse in OAR 411-020-0002 for incidents occurring on or after January 1, 2010. This definition conciliates ORS 124.050 and the licensing statutes and definitions of abuse for foster home and assisted living and residential care facilities;
- Add definitions in OAR 411-020-0002 for “adult”, “services”, “multidisciplinary team (MDT)”, and “multidisciplinary team members”;
- Expand the definitions of “disability” to add brain injury and dementia, “law enforcement agency” to include federal law enforcement agencies, and “mandatory reporters” to include new Senate Bill 670 (2009) designated mandatory reporters;
- Adopt OAR 411-020-0025 for MDT;
- Add MDT to exceptions to confidentiality that allow disclosure of client information in OAR 411-020-0030;
- Transfer the after-hours screening rule from OAR 411-021-0010 to OAR 411-020-0060;

- Adopt OAR 411-020-0085 requiring notification of law enforcement under certain circumstances. Information in regards to notifying law enforcement contained in OAR 411-020-0100 and OAR 411-020-0120 has been transferred to OAR 411-020-0085;

- Transfer the rule for evidentiary photographing of clients and clients’ possessions from OAR 411-021-0015 to OAR 411-020-0100 and OAR 411-020-0120; and

- Expand OAR 411-020-0100 to allow for the disclosure of the conclusion (substantiated, not substantiated, inconclusive) to the reported victim and reported perpetrator to implement House Bill 2175 (2007), Abuse and Neglect Screening Project.

In addition, SPD is proposing to repeal the alleged elderly abuse rules in OAR chapter 411, division 021 because the rules are redundant with the APS rules in OAR chapter 411, division 020.

SPD is also proposing general housekeeping changes to reflect current practices, improve readability, and establish consistency with other SPD rules.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Rule Caption: Nursing Facilities, 2009 Legislative Changes.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 5-21-10 | 1:30 p.m. | Human Services Bldg. 500 Summer St. NE, Rooms 137CD Salem, OR 97301 |

Hearing Officer: Staff

Stat. Auth.: ORS 124.050, 410.070, 441.020, 441.055, 441.615, 441.635, & 441.637

Other Auth.: HB 2442 (2009), Ch. 837 (2009 OL), HB 2139 (2009), Ch. 539 (2009 OL) & SB 163 (2009), Ch. 72 (2009 OL)

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637, 441.650

Proposed Adoptions: 411-089-0070, 411-089-0075

Proposed Amendments: 411-085-0005, 411-085-0020, 411-089-0030, 411-089-0140

Proposed Repeals: 411-085-0005(T), 411-085-0020(T), 411-089-0030(T), 411-089-0075(T), 411-089-0140(T), 411-089-0150

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

Summary: To comply with the 2009 legislative changes from House Bill 2442, House Bill 2139, and Senate Bill 163, the Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to permanently update 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;
- 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;
- Clarify the role of the Facility Fund as described in ORS 441.301, 441.303, and 441.336; and
- Provide general housekeeping to reflect current practices, improve readability, and establish consistency with other SPD rules.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Department of Justice Chapter 137

Rule Caption: Child support guidelines: general provisions; calculating support; income; parenting time; rebuttals and timeframes for mailing.

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 25.270–25.290 & 180.345
Stats. Implemented: ORS 25.270–25.290 & 183.415
Proposed Adoptions: 137-050-0760
Proposed Amendments: 137-050-0700, 137-050-0710, 137-050-0715, 137-050-0730, 137-055-2160
Proposed Repeals: 137-050-0700(T), 137-050-0710(T), 137-050-0715(T), 137-050-0760(T), 137-055-2160(T)
Last Date for Comment: 5-26-10, 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, and is changed from the version noticed on January 8, 2010, by adding return of capital to the list of possible rebuttals to income.

OAR 137-050-0700 is being amended to clarify the manner in which support is to be calculated when a child does not reside with either parent.

OAR 137-050-0710 is being amended to correct a math error in determining a parent's pro rata portion of combined income.

OAR 137-050-0715 is being amended to remove return of capital from actual income.

OAR 137-050-0730 is being amended to clarify how parenting time is calculated when a child does not reside with either parent.

OAR 137-055-2160 is being amended to clarify time frames when service is made by mail and is changed from the version noticed on January 8, 2010, by adding provisions for weekends and holidays, and for clarifying date of service for substitute service is by mailing, not by postmark.

Rules Coordinator: Vicki Tungate
Address: 494 State Street, Salem, Oregon 97301
Telephone: (503) 986-6086

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Department of Oregon State Police
Chapter 257

Rule Caption: Creates hearing process for vehicle tows conducted by OSP pursuant to ORS 819.110 and 819.120.

Stat. Auth.: 2009 OL Ch. 371 (HB 2739)
Stats. Implemented: 2009 OL Ch. 371 (HB 2739)
Proposed Adoptions: 257-045-0010, 257-045-0020, 257-045-0030, 257-045-0040, 257-045-0050
Proposed Amendments: 257-001-0005
Proposed Repeals: 257-045-0010(T) – 257-045-0050(T)
Last Date for Comment: 5-24-10

Summary: 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
Address: Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310
Telephone: (503) 934-0228

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Rule Caption: Clarifies which tow businesses and individuals are subject to the rules; method of recording hearings.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Proposed Amendments: 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
Last Date for Comment: 5-24-10

Summary: These amendments will make permanent the amendments contained in the temporary rules which became effective August 6, 2009. The administrative rules in existence prior to the temporary rule amendments referred to the undefined terms of "approved tow business," "authorized tow business," and "registered tow business," as well as the defined terms of "tow business" and "qualified tow business." Additionally, the rules required that "tow businesses" (when applying for a letter of appointment), or "qualified tow business" (after having received a letter of appointment) must be licensed as a "separate legal entity." Moreover, under ORS chapter 648, and "entity" for purposes of licensing includes domestic corporations but not assumed business names. The Department currently has several "qualified tow businesses" on the non-preference tow rotation list that operate under assumed business names. These rules clearly identify which tow businesses may conduct non-preference tows on behalf of the Department and create a clearer distinction between "tow business" generally and "qualified tow business" in particular, and clarify that "qualified tow businesses" include tow businesses that operate under assumed names. These rules further clarify that tow businesses acting through their authorized agents or representatives must complete applications to letters of appointment and certify compliance with all applicable laws and the Department's administrative rules. These rules also clarify when the Department shall deny, suspend, or revoke either the application of a tow business, or the letter of appointment of a qualified tow business, when the tow business, qualified tow business, or owner or employee of a tow business or qualified tow business, is convicted of a felony conviction. Finally, these rules delete the requirement that Department hearings must be recorded on tape, and allows the department to record hearings by any means, including digital recording.

Rules Coordinator: Cort Dokken
Address: Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310
Telephone: (503) 934-0228

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

Rule Caption: Updates DMV rules for abandoned vehicles and vehicle appraisers to comply with law changes.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 819.012, 819.014, 819.016, 819.018, 819.215, 819.480 & 2009 OL Ch. 371
Stats. Implemented: ORS 809.700, 819.012, 819.014, 819.016, 819.018, 819.030, 819.100, 819.110, 819.120, 819.140, 819.150, 819.160, 819.170, 819.180, 819.185, 819.190, 819.210, 819.215, 819.480, 819.482 & 822.700 & 2009 OL Ch. 371

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 735-024-0075, 735-024-0130, 735-158-0000, 735-158-0005, 735-158-0010

Proposed Repeals: 735-024-0080

Last Date for Comment: 5-21-10

Summary: In part, chapter 371, Oregon Laws 2009 amended and repealed many of the statutes pertaining to disabled or abandoned vehicles taken into custody by a public body, including disposal of such vehicles. This 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 repealed because ORS 819.220, the statutory authority for the rule, is repealed.

DMV filed temporary rules because there was not sufficient time to complete the permanent rulemaking process to coincide with the January 1, 2010 effective date of chapter 371, Oregon Laws 2009. DMV now proposes to file permanent rules to amend OAR 735-024-0075, 735-024-0130, 735-158-0000, 735-158-0005 and 735-158-0010 and repeal 735-024-0080.

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: Adopt-A-Highway Program.

Stat. Auth.: ORS 184.616, 184.619 & 366.158

Stats. Implemented: ORS 366.158

Proposed Adoptions: 734-029-0045

Proposed Amendments: 734-029-0005, 734-029-0010, 734-029-0020, 734-029-0030, 734-029-0040

Last Date for Comment: 5-21-10

Summary: The Adopt-A-Highway program described in ORS 366.158 allows for the beautification of state highways with an emphasis on litter clean up. Chapter 547, 2009 laws (HB 2424) expanded the Adopt-A-Highway program to include the removal of noxious weeds. These rules describe how an individual, group, or business may obtain a permit from the Department of Transportation to adopt a section of state highway to remove noxious weeds, clean up litter, or both.

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, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

.....

Rule Caption: Notification of Hazardous Tree Removal from Private Property.

Stat. Auth.: ORS 184.616, 184.619, 366.205 & 366.365

Stats. Implemented: ORS 366.365

Proposed Adoptions: 734-035-0150

Last Date for Comment: 5-21-10

Summary: HB 2235 of the 2009 legislative session (Chapter 130, 2009 laws) grants the Department of Transportation authority to go on private property without notifying the property owner when the Department determines that a tree creates an immediate and substantial risk of damage or injury to the state highway. These rules describe how the Department will attempt to locate and notify the private property owner of its actions.

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, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Land Conservation and Development Department Chapter 660

Rule Caption: Amending department rules to comply with Religious Land Use and Institutionalized Persons Act (RLUIPA) requirements.

Date:

6-3-10

Time:

9 a.m.

Location:

The Outpost

201 W Main St.

John Day, OR 97845

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040

Other Auth.: Statewide planning goals (OAR 660-015), especially goals 3 & 14

Stats. Implemented: ORS 197.040, 215.213, 215.243 & 215.283

Proposed Amendments: 660-033-0120, 660-033-0130

Last Date for Comment: 6-3-10

Summary: OAR 660-033-0130 describes the standards applicable to permitted and conditional non farm uses on agricultural lands. Subsection 2 prohibits certain new uses within three miles of an urban growth boundary (UGB), unless an exception is taken to Statewide Planning Goal 3 (Agricultural Lands). OAR 660-033-0120 (Uses Authorized on Agricultural Lands) describes, in a table format, which uses are allowed (with to without conditions, additional restrictions or exceptions) or disallowed altogether on agricultural lands. Churches and certain other uses in the Parks/Public/Quasi-public category (including schools) are the sole uses subject to the 3-mile limitation as described above. The genesis for this limitation was to protect the integrity of UGBs. *Young v. Jackson County*, 58 Or LUBA 64 (2008) (affirmed without opinion by the Oregon Court of Appeals, *Young v. Jackson County*, 277 Or App 290, 205 P3d 890 (2009) requires that LCDC revisit its division 33 rules. The LUBA opinion concluded that the application of the 3-mile rules with regard to the proposed church violates the "equal terms" provision of RLUIPA.¹ The "equal terms" provision prohibits government from implementing a land-use regulation in a manner that treats religious assemblies and institutions less favorably than secular assemblies and institutions.

LCDC approved The LCDC Policy Agenda for 2009-11 in August 2009, including an item seeking resolution of the conflict of the OAR 660, division 33 rules with the RLUIPA cases in Oregon. In October 2009 LCDC authorized creation of a workgroup to "consider and propose amendments, as appropriate, to OAR 660, division 33 (Agricultural Lands), regarding religious uses and assemblies on EFU-zoned lands within 3 miles of an urban growth boundary." The workgroup concluded its work in April 2010, and has proposed rule amendments for OAR 660, division 33, OAR 660-033-0120 and 0130. The proposed amendments limit the permitted design capacity for enclosed structures on EFU-zoned property within three miles (outside) of a UGB, with regard to certain uses in the Parks/Public/Quasi-public category of OAR 66, division 033-0120, Table 1.

¹Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), Pub. L. No. 106-274, 114 Stat. 803 (codified as amended at 42 U.S.C. § 2000cc (2206)).

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

.....

Land Use Board of Appeals Chapter 661

Rule Caption: Amends Land Use Board of Appeals' administrative rules pursuant to periodic rule review.

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 183.335 & 183.715

Proposed Amendments: 661-001-0000, 661-010-0000, 661-010-0015, 661-010-0021, 661-010-0025, 661-010-0026, 661-010-0030, 661-010-0035, 661-010-0039, 661-010-0040, 661-010-0045, 661-010-0050, 661-010-0052, 661-010-0055, 661-010-0065, 661-010-0067, 661-010-0075

Last Date for Comment: 6-1-10

Summary: The following summarizes the major substantive amendments:

OAR 661-001-0000 is being amended to conform to the timing provisions of proposed rulemaking with recent statutory changes and to update the mailing list of parties entitled to notice.

OAR 661-010-0000 is being amended to reflect the new effective date of the rules.

OAR 661-010-0015 is being amended to specify what will be considered as proof of mailing to comply with LUBA's deadlines. Clarifies the procedures that LUBA will take when it receives a Notice of Intent to Appeal without the required filing fee. The deposit for costs shall also be raised from \$150 to \$200.

OAR 661-010-0021 is being amended to clarify that filing or refiling of a Notice of Intent to Appeal may be accomplished via U.S. mail on or before the due date. Also, the rule is being amended to clarify that an intervenor need not file a new motion to intervene when the petitioner files an amended notice of intent to appeal or if the petitioner refiles the original notice of intent to appeal.

OAR 661-010-0025 is being amended to increase the type of media that LUBA will accept as the local record. The requirements for the table of contents of a record are also being amended to require that any attached exhibits be listed separately at the end of the table of contents. Amendment allows parties to accept electronic versions of the record. Amendment also provides LUBA will have discretion to accept a record with minor defects.

OAR 661-010-0026 is being amended to require a governing body's legal council to file a response or advise LUBA of the parties' efforts to resolve a record objection within 14 days of the filing of a record objection.

OAR 661-010-0030 is being amended to only allow cross assignments of error if they are presented in a cross petition for review. Amendment also requires that maps be included when helpful in illustrating material facts.

OAR 661-010-0035 is being amended to clarify that cross assignments of error are not allowed in respondent's briefs.

OAR 661-010-0039 is being amended require that a reply brief be filed within seven days of the respondent's brief and to clarify how a party may respond to an amicus brief or a state agency brief.

OAR 661-010-0040 is being amended to limit the time that petitioner may reserve for rebuttal to 10 minutes and limits the use of rebuttal time to address arguments raised by respondent(s).

OAR 661-010-0045 is being amended to provide LUBA with discretion to take evidence when there is a jurisdictional dispute. Rule is also being amended to provide LUBA with the ability to order the time to continue to run while the board addresses a motion to take evidence.

OAR 661-010-0050 is being amended to clarify that intervention in an appeal that is consolidated with other appeals does not allow for intervention in the other appeals. Rule is also being amended to clarify that an intervenor need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refilled.

OAR 661-010-0052 is being amended to clarify when an amicus brief must be filed.

OAR 661-010-0055 is being amended to clarify that consolidation of appeals does not affect the status of the parties to each appeal.

OAR 661-010-0065 is being amended to change the amount of time for filing certain motions from 10 days to 14 days to conform to other time limits.

OAR 661-010-0067 is being amended to provide for an automatic time extension for filing a Petition for Review when the parties agree to an extension regarding a record objection.

OAR 661-010-0075 is being amended to raise the recoverable copying costs from \$0.20 to \$0.25 per page. Rule amendment also clarifies when a document will be deemed received by LUBA. The rule amendment further clarifies that the lead petitioner shall be responsible for notifying the other petitioners of documents and other communications that they receive from the Board. Finally, the rule is being amended to provide how LUBA will process an appeal that is transferred from the Oregon Department of Land Conservation and Development.

Rules Coordinator: William F. Wilson

Address: Land Use Board of Appeals, 550 Capitol St. NE, Suite 235, Salem, OR 97301-2552

Telephone: (503) 378-2986

Oregon Board of Dentistry Chapter 818

Rule Caption: Adopt/amends/repeals rules: Anesthesia, Limited Access Permit, Specialty Advertising, Continuing Education, Application to Practice as a Specialist.

| Date: | Time: | Location: |
|---------|-----------|--|
| 5-21-10 | 7:30 a.m. | 1600 SW 4th Ave. 5th Floor, Conf. Rm. 541 Portland, OR |

Hearing Officer: Board President/Designee

Stat. Auth.: ORS 679 & 680

Other Auth.: 2009 OL Ch. 582 (HB 3204) & 2009 OL Ch. 595 (HB 2009)

Stats. Implemented: ORS 679.120, 679.140(2)(e), 679.060, 679.070, 679.250(7)(9)(10), 680.020, 680.200(2)(a) & 680.205

Proposed Adoptions: 818-026-0065

Proposed Amendments: 818-001-0087, 818-015-0007, 818-021-0017, 818-021-0070, 818-026-0000, 818-026-0010, 818-026-0020, 818-026-0030, 818-026-0035, 818-026-0040, 818-026-0050, 818-026-0055, 818-026-0060, 818-026-0070, 818-026-0080, 818-026-0110, 818-026-0120, 818-026-0130, 818-035-0065, 818-042-0040

Proposed Repeals: 818-026-0100, 818-035-0075

Last Date for Comment: 5-20-10, 4 p.m.

Summary: The Board is amending 818-001-0087 Fees, to raise licensing fees.

The Board is amending 818-015-0007 Specialty Advertising, to correct the name of a dental specialty.

The Board is amending 818-021-0017 Application to Practice as a Specialist, to clarify who may serve as the Chief Examiner for specialty examinations.

The Board is amending 818-021-0070 Continuing Education – Dental Hygienists, to reflect the changes made as a result of HB 3204, Oregon Law Chapter 582 (2009 Laws).

The Board is amending 818-035-0065 Limited Access Permit, to reflect the changes made as a result of HB 3204, Oregon Law Chapter 582 (2009 Laws).

The Board is repealing 818-035-0075 Initial Issuance of Permit – Fee, to eliminate the prorating of application fees.

The Board is amending 818-026-0000 Purpose; 818-026-0010 Definitions; 818-026-0020 Presumption of Degree of Central Nervous System Depression; 818-026-0030 Requirement for Anesthesia Permit, Standards and Qualifications of an Anesthesia Monitor; 818-026-0035 Classes of Anesthesia Permit; 818-026-0040 Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Permits; Class 1 Permit, 818-026-0050 Class 2 Permit; 818-026-0055 Dental Hygiene and Dental Assistant Procedures Performed under Conscious Sedation; 818-026-0060 Class 3 Permit; 818-026-0070 Class 4 Permit; 818-026-0080 Standards Applicable When a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia; 818-026-0110 Office Evaluations; 818-026-0120 Reporting of Death, Serious Complications or Injury; and 818-

NOTICES OF PROPOSED RULEMAKING

026-0130 Anesthesia Committee to reflect changes in the rules and regulations governing the administration of anesthesia based on new guidelines recommended by the American Dental Association.

The Board is adopting 818-026-0065 Deep Sedation, to reflect changes in the rules and regulations governing the administration of anesthesia based on new guidelines recommended by the American Dental Association.

The Board is repealing 818-026-0100, as it is no longer applicable.

The Board is amending 818-042-0040 to include an additional Expanded Function Dental Assistant duty and a new prohibited act for Dental Assistants.

Rules Coordinator: Sharon Ingram

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

Telephone: (971) 673-3200

Oregon Board of Naturopathic Medicine
Chapter 850

Rule Caption: To clarify what information naturopathic physicians must self-report to the board.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Proposed Amendments: 850-050-0120, 850-0050-0130

Last Date for Comment: 5-31-10

Summary: To clarify what information naturopathic physicians must report to the board.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

Rule Caption: Clarifying some formulary classifications.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Proposed Amendments: 850-060-0226

Last Date for Comment: 5-31-10

Summary: Make the following changes to 850-060-0226:

(3) add " ...only) limited to the following:";

(26)(a) "Alcohol Deterrents limited to the following:

(A) Acamprosate;

(B) Disulfiram;

(C) Naltrexone

(26)(e) "Biologic Response Modifiers, limited to Interferons"

(26)(m) "Other Miscellaneous Therapeutics limited to the fol-

lowing:

(A) Alfuzosin Hydrochloride;

(B) Drotrecogin Alfa (Activated);

(C) Lanreotide Acetate;

(D) Rilonecept;

(E) Sapropterin Dihydrochloride;

(F) Tamsulosin Hydrochloride"

(26)(l) Protective Agents (this classification is removed)

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

Oregon Business Development Department
Chapter 123

Rule Caption: This division of rules relates to Enterprise Zones and is being repealed.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.050–285C.250

Proposed Repeals: Rules in 123-065

Last Date for Comment: 6-7-10

Summary: This division of rules relating to Enterprise Zones is being repealed. Seven new divisions will replace 123-065.

123-650 Enterprise Zone Creation and Amendment

123-656 Tribally and Federally Based Zone Designations

123-662 Electronic Commerce Enterprise Zones

123-668 Local Enterprise Zone Sponsorship

123-674 Standard Exemption on Taxable Enterprise Zone Property

123-680 Rural Renewable Energy Development Zones

123-690 Long-Term Rural Enterprise Zone Incentives

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules relate to Enterprise Zone creation and amendment.

Stat. Auth.: ORS 285A.075 & 285C.060

Stats. Implemented: ORS 285C.050–285C.250

Proposed Adoptions: 123-650-0001, 123-650-0059, 123-650-0100, 123-650-0500, 123-650-0700, 123-650-1000, 123-650-1100, 123-650-1500, 123-650-2000, 123-650-2100, 123-650-2200, 123-650-2300, 123-650-2400, 123-650-2500, 123-650-2600, 123-650-3000, 123-650-3100, 123-650-3200, 123-650-3300, 123-650-3400, 123-650-5000, 123-650-5100, 123-650-5200, 123-650-5500, 123-650-7000, 123-650-7100, 123-650-7200, 123-650-7300, 123-650-7400, 123-650-9100, 123-650-9300

Last Date for Comment: 6-7-10

Summary: This new division replaces and focuses on a portion of the enterprise zone division (123-065). In this case, this division of administrative rules governs the existence, modification and termination of regular enterprise zones areas, as sponsored by city, port and county governments.

These rules comply with legislation from the 2009 legislation session through HB 2152 which changes the departments name to Oregon Business Development Department.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules relate to tribally and federally based enterprise zone designations.

Stat. Auth.: ORS 285A.075 & 285C.060

Stats. Implemented: ORS 285C.085 & 285C.300–285C.320

Proposed Adoptions: 123-656-0001, 123-656-0100, 123-656-1000, 123-656-1200, 123-656-1400, 123-656-1600, 123-656-2000, 123-656-2100, 123-656-2300

Last Date for Comment: 6-7-10

Summary: This new division replaces and focuses on a portion of the enterprise zone division (123-065). In this case, this division of administrative rules addresses the existence of enterprise zones respective to Oregon-based tribes and special federal designations.

These rules also comply with SB 726 resulting from the 2009 Legislative which created reservation partnership zones as well as HB 3680 from the 2010 Special Session. HB 2152 in the 2009 Legislative Session changed the name of department to the Oregon Business Development Department.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules relate to electronic commerce enterprise zones.

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 285A.075, 285C.050(5), 285C.060(1) & 285C.095(2)

Stats. Implemented: ORS 285C.050, 285C.095, 285C.100, 285C.135, 285C.180, 285C.185, 315.507 & 315.508

Proposed Adoptions: 123-662-0001, 123-662-0100, 123-662-1000, 123-662-1200, 123-662-2000, 123-662-2500

Last Date for Comment: 6-7-10

Summary: This new division replaces and focuses on a portion of the enterprise zone division (123-065). In this case, this division specifies matters related to areas designated for electronic commerce and the tax incentives especially available in them, including but not limited to the electronic commerce overlay of an enterprise zone.

These rules comply with legislation from the 2009 legislative session through HB 2152 which changed the name of the department to Oregon Business Development Department.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules relate to local enterprise zone sponsorship.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050–285C.250 & 285C.320 & 285C.350 - 285C.370

Proposed Adoptions: 123-668-0001, 123-668-0100, 123-668-1000, 123-668-1100, 123-668-1300, 123-668-1400, 123-668-1600, 123-668-1700, 123-668-2000, 123-668-2100, 123-668-2200, 123-668-2300, 123-668-2400, 123-668-2500

Last Date for Comment: 6-7-10

Summary: This new division replaces and focuses on a portion of the enterprise zone division (123-065). In this case, this division provides guidance and parameters application to selected issues regarding how the local sponsor operates and controls and enterprise zone with respect to business tax incentives.

These rules comply with HB 2152 from the 2009 Legislative Session which changes the name of the department to Oregon Business Development Department.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules relate to standard exemption on taxable enterprise zone property.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050–285C.250

Proposed Adoptions: 123-674-0001, 123-674-0100, 123-674-0200, 123-674-0500, 123-674-0600, 123-674-0700, 123-674-1000, 123-674-1100, 123-674-1200, 123-674-1300, 123-674-1400, 123-674-1400, 123-674-1500, 123-674-1600, 123-674-1700, 123-674-2000, 123-674-2100, 123-674-2300, 123-674-2500, 123-674-3000, 123-674-3100, 123-674-3200, 123-674-3500, 123-674-3700, 123-674-4000, 123-674-4100, 123-674-4200, 123-674-4300, 123-674-4600, 123-674-4800, 123-674-5000, 123-674-5100, 123-674-5200, 123-674-5300, 123-674-5400, 123-674-5500, 123-674-6000, 123-674-6100, 123-674-6200, 123-674-6300, 123-674-6400, 123-674-6600, 123-674-6610, 123-674-6620, 123-674-6630, 123-674-6880, 123-674-7200, 123-674-7210, 123-674-7220, 123-674-7230, 123-674-7240, 123-674-7250, 123-674-8000, 123-674-8100, 123-674-8200, 123-674-8300

Last Date for Comment: 6-7-10

Summary: This new division replaces and focuses on a portion of the enterprise zone division (123-065). In this case, this division clarifies, specifies and establishes elements of the Oregon Enterprise Zone Act for the determinations, procedures and requirements relevant to the three to five year exemption from property taxes on qualified property of eligible business firms in any enterprise zone.

These rules comply with legislation from 2009 through HB 2152 which changes the name of the department and legislation from the 2010 Special Session through HB 3609.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules relate to rural renewable energy development zones.

Stat. Auth.: ORS 285A.075 & 285C.370

Stats. Implemented: ORS 285C.350–285C.370

Proposed Adoptions: 123-680-0001, 123-680-1000, 123-680-1200, 123-680-1400, 123-680-1600

Last Date for Comment: 6-7-10

Summary: This new division replaces and focuses on a portion of the enterprise zone division (123-065). In this case, this division specifies matters related to the creation of a Rural Renewable Energy Development Zone (“RREDZ”).

These rules comply with legislation in the 2009 session through HB 2152 which changes the name of the department to Oregon Business Development Department.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules relate to long-term rural enterprise zone incentives.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.400–295C.420 & 317.124–317.131

Proposed Adoptions: 123-690-0001, 123-690-0100, 123-690-0500, 123-690-2000, 123-690-2100, 123-690-2300, 123-690-2400, 123-690-4000, 123-690-4200, 123-690-4400, 123-690-4600, 123-690-5000, 123-690-5200, 123-690-6000, 123-690-6200, 123-690-8000, 123-690-8100, 123-690-8500

Last Date for Comment: 6-7-10

Summary: This new division replaces and focuses on a portion of the enterprise zone division (123-065). In this case, this division addresses determinations, procedures and requirements of the up to 15 years of exemption from property taxes and corporate excise tax credits on a qualifying investment inside a rural enterprise zone in a county experiencing particular economic hardship.

These rules comply with legislation in the 2009 session through HB 2152 which changes the name of the department to Oregon Business Development Department.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: These rules have been revised for clarity and to comply with current statute.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.075 & 285A.065

Proposed Amendments: 123-125-0000, 123-125-0020, 123-125-0040

Last Date for Comment: 5-24-10

Summary: These rules have been revised due to comply with HB 2152 brought in the 2009 Legislative Session. The name of the department has been changes, some definitions have been deleted and other revised.

Statute references have been updated as well as other small house-keeping changes.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

NOTICES OF PROPOSED RULEMAKING

Oregon Criminal Justice Commission Chapter 213

Rule Caption: Presentence Reports.
Stat. Auth.: ORS 137.656 & 137.667
Stats. Implemented: ORS 137.656, 137.667 & SB 914 (2005)
Proposed Amendments: 213-013-0010
Last Date for Comment: 6-30-10
Summary: The rule change is needed to implement Or Laws 2005 Ch. 473 (SB 914 (2005)). That legislation directs the Oregon Department of Corrections to require that a presentence report provide an analysis of the disposition most likely to reduce the defendant's criminal conduct, explain why the disposition would have such an effect, and provide an assessment of the availability to the defendant of relevant programs and treatment. The Criminal Justice Commission is amending its rule pertaining to Presentence Reports to be consistent with changes adopted by the Department of Corrections to implement SB 914.
Rules Coordinator: Craig Prins
Address: Oregon Criminal Justice Commission, 885 Summer St. NE, Salem, OR 97301
Telephone: (503) 378-4830

Oregon Department of Education Chapter 581

Rule Caption: Modifies rules relating to food safety inspections.
Date: 5-26-10 **Time:** 1 p.m. **Location:** 255 Capitol St. NE, Rm. 251 Salem, OR 97310
Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 326.051
Other Auth.: 7 CFR 210 & 7 CFR 220.7
Stats. Implemented: ORS 326.051
Proposed Amendments: 581-051-0305, 581-051-0306
Last Date for Comment: 5-26-10, 5 p.m.
Summary: Modifies rules relating to food safety inspections that apply to public and private schools and child care institutions.
Rules Coordinator: Diane Roth
Address: 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5791

Rule Caption: Provides definition of virtual public charter school.
Date: 5-26-10 **Time:** 1 p.m. **Location:** 255 Capitol St. NE, Rm. 251 Salem, OR 97310
Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 338.025
Stats. Implemented: ORS 338.025
Proposed Adoptions: 581-020-0337
Last Date for Comment: 5-26-10, 5 p.m.
Summary: Provides definition of virtual public charter school that applies to charter school laws to implement provision of SB 767 (2009). The rule was previously adopted as a temporary rule.
Rules Coordinator: Diane Roth
Address: 255 Capitol St NE, Salem, OR 97310
Telephone: (503) 947-5791

Rule Caption: Establishes requirements for concussion training of coaches.
Date: 5-26-10 **Time:** 1 p.m. **Location:** 255 Capitol St. NE, Rm. 251 Salem, OR 97310
Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 336.485
Stats. Implemented: ORS 336.485
Proposed Adoptions: 581-022-0421
Last Date for Comment: 5-26-10, 5 p.m.
Summary: The 2009 Legislative Assembly adopted SB 348 which requires coaches of school athletic teams to receive annual training

on concussions. The bill directed the State Board of Education to establish requirements and a timeline for the training.
Rules Coordinator: Diane Roth
Address: 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5791

Rule Caption: Specifies requirements related to educational assistants employed by public education providers.
Date: 5-26-10 **Time:** 1 p.m. **Location:** 255 Capitol St. NE, Rm. 251 Salem, OR 97310

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Proposed Amendments: 581-037-0005, 581-037-0006, 581-037-0015, 581-037-0025
Proposed Repeals: 581-037-0030
Last Date for Comment: 5-26-10, 5 p.m.
Summary: The rule amendments modify requirements relating to educational assistants including paraprofessionals and instructional aides. The amendments make the rules compliant with federal law. The amendments include provisions on supervision, qualifications, assignment and supervision.
Rules Coordinator: Diane Roth
Address: 255 Capitol St NE, Salem, OR 97310
Telephone: (503) 947-5791

Rule Caption: Modifies rules relating to public charter schools.
Date: 5-26-10 **Time:** 1 p.m. **Location:** 255 Capitol St. NE, Rm. 251 Salem, OR 97310

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 338.025
Stats. Implemented: ORS 338
Proposed Adoptions: 581-020-0333, 581-020-0335
Proposed Amendments: 581-020-0301, 581-020-0359, 581-020-0380
Last Date for Comment: 5-26-10, 5 p.m.
Summary: SB 767 requires public charter schools to have a sound financial management system. The rule provides the minimum requirements for this system. These rule amendments were previously done as temporary rules. The rules changes also repeal some out of date temporary rules that duplicate other rules.
Rules Coordinator: Diane Roth
Address: 255 Capital St NE, Salem, OR 97310
Telephone: (503) 947-5791

Rule Caption: Establishes requirements for awarding credits towards high school graduation for assessments.
Date: 5-26-10 **Time:** 1 p.m. **Location:** 255 Capitol St. NE, Rm. 251 Salem, OR 97310

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 329.451
Stats. Implemented: ORS 329.451
Proposed Adoptions: 581-022-1132
Proposed Amendments: 581-022-1131
Last Date for Comment: 5-26-10, 5 p.m.
Summary: The rule implements ORS 329.451(3) to allow school districts and schools to award high school credits in English or mathematics towards graduation for students who meet or exceed achievement standards on statewide assessments.
Rules Coordinator: Diane Roth
Address: 255 Capitol St NE, Salem, OR 97310
Telephone: (503) 947-5791

NOTICES OF PROPOSED RULEMAKING

Oregon Housing and Community Services Department Chapter 813

Rule Caption: Allows reservation of program tax credits to leverage federal and state funding; rule clarification language.

Date: 5-26-10
Time: 1:30–2:30 p.m.
Location: North Mall Office Bldg.
725 Summer St. NE, Rm. 124A
Salem, OR

Hearing Officer: Loren Shultz

Stat. Auth.: ORS 456.515–456.720, 315.164–315.169 & 458.650

Stats. Implemented: ORS 315.167

Proposed Adoptions: 813-041-0027

Proposed Amendments: 813-041-0000, 813-041-0010, 813-041-0015, 813-041-0020, 813-041-0030

Proposed Repeals: 813-041-0000(T), 813-041-0005, 813-041-0010(T), 813-041-0015(T), 813-041-0020(T), 813-041-0025, 813-041-0027(T), 813-041-0030(T), 813-041-0035(T)

Last Date for Comment: 6- 9-10, Close of Business

Summary: 813-041-0000 — Administrative Changes - language clarification.

813-041-0005 — Repeal - definitions are found within statutes.

813-041-0010 — Language in rule clarified. Allows the department to issue reservation letters for projects waiting for a firm commitment of financing.

813-041-0015 — Allows the department to create a soft set-aside of credits for on-farm projects. Amends the criteria for the department's evaluation of the application. Limits the tax credit award to the minimum amount required to make the project financially viable. Language in rule is clarified.

813-041-0020 — Removes the ability for a new application to be submitted for the next calendar year for a standby application that expires on December 31. Language in rule is clarified.

813-041-0025 — Simplification of rule language. Approval is governed by ORS 315.167(5)

813-041-0027 — Rule language clarified

813-041-0030 — Rule language clarified

813-041-0035 — Rule repealed. Language to be incorporated in agency's rulemaking rule.

Rules Coordinator: Sandy McDonnell

Address: North Mall Office Building, 725 Summer Street NE, Suite B, Salem, Oregon 97301

Telephone: (503) 986-2012

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend beer, wine and cider coupon rules to allow cross-promotional generic and retailer sponsored coupons.

Date: 5-25-10
Time: 10 a.m.
Location: 9079 SE McLoughlin Blvd.
Portland, OR 97222

Hearing Officer: Jennifer Huntsman

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

Stats. Implemented: ORS 471.730(7)

Proposed Amendments: 845-007-0010, 845-007-0015

Last Date for Comment: 6-8-10

Summary: OAR 845-007-0015 Advertising Media, Coupons: This rule regulates the sorts of advertising and coupons which are allowed for the sale of beer, wine and cider in Oregon. The proposal to amend this rule came from a Business Partners Joint Steering Committee workgroup and was subsequently supported by the entire Steering Committee. Staff is proposing, per the Business Partners recommendation, to amend the rule in regards to cross-promotional coupons so as to allow alcohol manufacturers to provide coupons for generic non-alcohol products in addition to the currently allowed branded products. The proposal includes that all such coupons, branded and generic, be redeemable only by mail. Because the consumer would receive the rebate directly from the manufacturer, the issue of financial assistance to the retailer is eliminated. Addition-

ally, while this rule matter is open, staff recommends adding language addressing retailer sponsored coupons, where the retailer bears all of the costs. The current rule language addresses only manufacturer coupons and many of its restrictions are to prevent financial assistance to retailers. Financial assistance is not an issue for coupons sponsored solely by a retailer, so staff recommends new language clarifying that retailer coupons, such as rain checks and discounts off of a total grocery purchase, are allowed.

OAR 845-007-0010 Definitions: This rule contains the definitions applicable to the Commission's Division 7 Advertising rules. Staff recommends amending section (3) of this rule to clarify our definition of "coupon."

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Align standards in rule for disability proposed orders and non-disability proposed orders.

Date: 5-25-10
Time: 1 p.m.
Location: PERS Boardroom
11410 SW 68th Pkwy.
Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 183.310–183.550, 183.600–183.690 & 238.650

Stats. Implemented: ORS 238.320–238.345

Proposed Amendments: 459-015-0030

Last Date for Comment: 6-4-10

Summary: In OAR 459-015-0030, Hearings on Denial or Discontinuation of Disability Retirement Allowances, remove language about proposed order becoming final in 90 days to align standards for disability proposed orders and non-disability proposed orders.

Copies of the proposed rules are available to any person upon request. Proposed rules are also available at http://www.oregon.gov/PERS/about_us.shtml. Public comments 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

Rule Caption: Clarifies payment of a disability retirement allowance and selection of a disability benefit option.

Date: 5-25-10
Time: 1 p.m.
Location: PERS Boardroom
11410 SW 68th Pkwy.
Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320, 238.325 & 238.330

Proposed Amendments: 459-015-0055

Last Date for Comment: 6-4-10

Summary: The proposed rule modification clarify when a disability payment is due, and that the time period for which a payment of a disability retirement allowance shall commence refers to business days, not calendar days. Other changes to the rule include elimination of redundant language and clarification that if a member's disability retirement allowance is canceled before the first benefit payment or is discontinued, the option selected for the purposes of that disability retirement allowance is canceled and a new option may be selected upon a subsequent disability or a service retirement.

Copies of the proposed rules are available to any person upon request. Proposed rules are also available at http://www.oregon.gov/PERS/about_us.shtml. Public comments may be mailed to the above address or sent via email to Daniel.Rivas@state.or.us

Rules Coordinator: Daniel Rivas

NOTICES OF PROPOSED RULEMAKING

Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281
Telephone: (503) 603-7713

Rule Caption: Repeal obsolete rule regarding employer record-keeping for multiple qualified retirement plans.

Stat. Auth.: ORS 238.630, 238.705 & 238.650

Stats. Implemented: ORS 238.630

Proposed Repeals: 459-009-0120

Last Date for Comment: 5-20-10

Summary: The rule is based on Internal Revenue Code (IRC) section 415(e), which has been repealed. PERS recommends repealing the rule as part of a larger set of housekeeping updates.

Copies of the proposed rules are available to any person upon request. Proposed rules are also available at http://www.oregon.gov/PERS/about_us.shtml. Public comments may be mailed to the above address or sent via email to Daniel.Rivas

Rules Coordinator: Daniel Rivas@state.or.us

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

Telephone: (503) 603-7713

Rule Caption: Repeal redundant and obsolete rule regarding distribution of member account in event of death.

Stat. Auth.: ORS 238.390 & 238.650

Stats. Implemented: ORS 238.390

Proposed Repeals: 459-014-0100

Last Date for Comment: 5-20-10

Summary: The current rule provision no longer reflect administration of death benefits, and because the correct information is clearly outlined in ORS 238.390, the OAR is being repealed.

Copies of the proposed rules are available to any person upon request. Proposed rules are also available at http://www.oregon.gov/PERS/about_us.shtml. Public comments 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

Oregon Student Assistance Commission Chapter 575

Rule Caption: Agency authority for adjusting grant awards and setting application deadlines.

| Date: | Time: | Location: |
|---------|-----------|---|
| 5-21-10 | 9:30 a.m. | 1500 Valley River Dr. Columbia Rm. Eugene, OR |

Hearing Officer: Beverly Boyd

Stat. Auth.: ORS 348

Stats. Implemented: ORS 348

Proposed Amendments: 575-031-0020, 575-031-0025

Last Date for Comment: 5-21-10

Summary: The proposed rule changes make permanent a temporary emergency rule filed November 24, 2009, that establishes the Commission's authority to prescribe application deadlines for the Oregon Opportunity Grant and to make per capita mid-year reductions to grant awards if appropriations are insufficient to meet the needs of all eligible applicants. The proposed changes also amend current rule to incorporate a statutory change in House Bill 3702, signed into law on March 4, 2010.

Rules Coordinator: Beverly R. Boyd

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

Telephone: (541) 687-7394

Oregon University System, Oregon State University Chapter 576

Rule Caption: Sets fees/charges at Oregon State University, fiscal year 2010-2011; changes fee book location.

| Date: | Time: | Location: |
|---------|--------|--|
| 5-25-10 | 1 p.m. | OSU, Memorial Union Room 206 Corvallis, OR |

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070 & 352.360

Other Auth.: OAR 580-040-0010

Stats. Implemented: ORS 351.070 & 352.360

Proposed Amendments: 576-010-0000

Last Date for Comment: 6-4-10, 5 p.m.

Summary: The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2010-2011. The rules states: "The University hereby adopts by reference a list of fees and charges for fiscal year 2010-2011. The list of fees and charges is available at Oregon State University's Valley Library, and is hereby incorporated by reference in the rule."

The amendment will also eliminate one location of placement of the Fee Book for viewing prior to the rulemaking hearing.

Rules Coordinator: Barbara Melton

Address: Office of the General Counsel, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128

Telephone: (541) 737-6262

Rule Caption: Repeal Student Organization rules and rely on OSU policy statements in their place.

| Date: | Time: | Location: |
|---------|--------|--|
| 5-25-10 | 1 p.m. | OSU, Memorial Union Room 206 Corvallis, OR |

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070

Other Auth.: OAR 576-018-0000 et seq.

Stats. Implemented: ORS 351.070

Proposed Repeals: 576-018-0000, 576-018-0010, 576-018-0020, 576-018-0030, 576-018-0040, 576-018-0050, 576-018-0060, 576-018-0070, 576-018-0080, 576-018-0090, 576-018-0100, 576-018-0110, 576-018-0120, 576-018-0130, 576-018-0140, 576-018-0150, 576-018-0160, 576-018-0170, 576-018-0180, 576-018-0190, 576-018-0200, 576-018-0220, 576-018-0230, 576-018-0240, 576-018-0250, 576-018-0260

Last Date for Comment: 6-4-10, 5 p.m.

Summary: OSU has in place a set of administrative rules governing university student organizations. See OAR 576-018-0000 et seq. Internal University matters, however, are generally more appropriately governed by University policies, rather than administrative rules. In recognition of the fact that these rules govern internal University matters, OSU proposes to repeal the OAR 576-018-0000 et seq administrative rules and replace them with OSU policies currently under development and to be adopted approximately simultaneously with this proposed repeal.

Rules Coordinator: Barbara Melton

Address: Office of the General Counsel, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128

Telephone: (541) 737-6262

Rule Caption: Amend and update OSU's Student Conduct Code.

| Date: | Time: | Location: |
|---------|--------|--|
| 5-25-10 | 1 p.m. | OSU, Memorial Union Room 206 Corvallis, OR |

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070

Other Auth.: OAR 580-012-0010 & 580-022-0045

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 351.070
Proposed Adoptions: 576-015-0021
Proposed Amendments: 576-015-0005, 576-015-0010, 576-015-0020, 576-015-0025, 576-015-0030, 576-015-0035, 576-015-0040, 576-015-0043, 576-015-0045, 576-015-0050, 576-015-0055, 576-015-0056, 576-015-0057, 576-015-0060
Proposed Repeals: 576-015-0015
Last Date for Comment: 6-21-10, 5 p.m.

Summary: OSU is amending its Student Conduct Code to add to and clarify the student conduct that may warrant disciplinary action by the University and the sanctions that may be imposed for such conduct. The amendments address specific areas of concern including cases of stalking, harassment, computer misuse, hazing and violations made possible by advances in technology. The amendments also make minor changes and clarifications to the process by which discipline is imposed.

Rules Coordinator: Barbara Melton
Address: Office of the General Counsel, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128
Telephone: (541) 737-6262

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**Oregon University System,
Southern Oregon University
Chapter 573**

Rule Caption: Parking Enforcement and Appeals.
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 352.360
Proposed Amendments: 573-050-0025, 573-050-0045
Last Date for Comment: 5-31-10
Summary: This amendment in division 50 moves language to correct subsections of the rule.
Rules Coordinator: Treasa Sprague
Address: Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520
Telephone: (541) 552-6319

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**Parks and Recreation Department
Chapter 736**

Rule Caption: Addition of recreational immunity language to division 15 rules and redefining Express Check-In.
Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.111, 390.121 & HB 3637 (2010)
Proposed Amendments: 736-015-0006, 736-015-0010, 736-015-0015, 736-015-0020, 736-015-0026, 736-015-0030, 736-015-0035, 736-015-0040, 736-015-0043
Last Date for Comment: 5-31-10
Summary: This will make permanent the temporary rule change approved by the OPRD Commission at their march 2010 meeting, which provides users who are charged a fee for facilities the notice

now required by law regarding recreational immunity and to make a minor house-keeping correction redefining Express Check-In as Pre-Registration.

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

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**Secretary of State,
Archives Division
Chapter 166**

Rule Caption: Updates retention periods in OAR 166, Divisions 150, 200, 300, 400, 450 & 475.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 5-17-10 | 9 a.m. | Archives Bldg. 800 Summer St. NE. Salem, OR 97310 |

Hearing Officer: Adrianos Polous
Stat. Auth.: ORS 98, 192 & 357
Stats. Implemented: ORS 192 & 357
Proposed Amendments: Rules in 166-150, 166-200, 166-300, 166-400, 166-450, 166-475

Last Date for Comment: 5-24-10, 5 p.m.
Summary: Proposed amendments would add records series for unclaimed property and customer debit and credit account information to establish clear retention schedule authority. Additionally an amendment to 166-400 lengthens retention on Home Schooling records to reflect the long term need for retaining this series of records. Finally, an amendment to 177-475 adds Criminal Background Check Records not currently present in the Higher Education/University General Records Retention Schedule.

Rules Coordinator: Julie Yamaka
Address: 800 Summer Street NE., Salem, OR 97310
Telephone: (503) 378-5199

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

Rule Caption: Mandatory notary education online list of approved providers.

Stat. Auth.: ORS 194.028
Stats. Implemented: ORS 194.028
Proposed Amendments: 160-100-1110
Last Date for Comment: 5-21-10, 5 p.m.

Summary: This amended rule removes reference to the online list of approved providers being searchable by a specific county, as each provider is authorized to provide notary education statewide.

Rules Coordinator: Karen Hutchinson
Address: 255 Capitol St NE, Suite 151, Salem OR 97310
Telephone: (503) 986-2364

ADMINISTRATIVE RULES

Board of Architect Examiners Chapter 806

AE 2-1997, f. & cert. ef. 9-24-97; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 2-2004, f. & cert. ef. 3-2-04; BAE 7-2006, f. & cert. ef. 12-13-06; BAE 1-2010, f. & cert. ef. 4-6-10

Rule Caption: Current Professional Proficiency.

Adm. Order No.: BAE 1-2010

Filed with Sec. of State: 4-6-2010

Certified to be Effective: 4-6-10

Notice Publication Date: 1-1-2010

Rules Amended: 806-010-0060, 806-010-0145

Subject: This rule amendment modifies the definition of current professional proficiency in order to hold all individual architects licensed in Oregon to the same standards for continuing professional education requirements.

Rules Coordinator: Carol Moeller—(503) 763-0662, ext. 23

806-010-0060

Abandonment and Reinstatement of Practice

(1) **Inactive Status.** Unless otherwise provided by the Board, a licensee's certificate becomes inactive at the end of the grace periods, or on the 61st day following the renewal deadline date if registrant fails to meet renewal requirements as designated by statute or rule (including, but not limited to, failure to comply with the continuing professional education (CPE) program or failure to pay renewal fees or accrued penalties). A registrant may also request inactive status prior to the 61st day following the renewal deadline date. An inactive Oregon certificate prohibits an architect from practicing architecture in Oregon, as defined by statute and rule. An inactive Oregon certificate also prohibits use of the architect title in Oregon, as defined by statute and rule.

(2) The Board may reinstate an inactive licensee's certificate to practice architecture to active status from inactive status as provided in this rule:

(a) **Inactive for less than or equal to five years.** An inactive licensee whose certificate has been inactive in Oregon for less than, or equal to, five years may gain reinstatement to active status only after:

(A) Filing an application for reinstatement;

(B) Demonstrating current professional proficiency, as outlined under subsection (3)(a) of this rule; and

(C) Paying the reinstatement fee (See Schedule of Actual Fees, OAR 806-010-0105).

(b) **Inactive over five years.** An individual who held a previously active license in Oregon whose license has been inactive for greater than five years, may gain reinstatement to active status only after:

(A) Filing a current reinstatement application;

(B) Payment of the reinstatement fee and the registration fee (See Schedule of Actual Fees, OAR 806-010-0105);

(C) Demonstration of current professional proficiency, as outlined under subsection (3)(a) or (3)(b) of this rule;

(D) Providing verification of meeting the National Council of Architect Registration Board (NCARB)'s seismic requirements, or the equivalent, as determined by this Board; and

(E) Passing a jurisprudence examination and oral interview by the Board.

(c) **"Architect Emeritus".** An Architect Emeritus seeking reinstatement of his or her Oregon registration that became inactive as an "Architect Emeritus" may gain reinstatement as follows:

(A) An Architect Emeritus in that status **for equal to or less than five years** may gain reinstatement to active status, at the discretion of the Board, only upon:

(i) Filing a reinstatement application;

(ii) Demonstration of current professional proficiency, as outlined in subsection (3) of this rule; and

(iii) Payment of the reinstatement fee.

(B) An Architect Emeritus in that status **for greater than five years** may gain reinstatement to active status only upon meeting the requirements listed in OAR 806-010-0060(2)(b).

(3) **"Current Professional Proficiency".** For purposes of this rule, current professional proficiency may be established by any one of the following:

(a) Submitting to the Board verifiable evidence of compliance with the aggregate continuing professional education (CPE) requirements for the reporting periods that the certificate was inactive in Oregon;

(b) Satisfying the requirements of OAR 806-010-0020 or 806-010-0035.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.080

Hist.: AE 5, f. 12-22-64; AE 2-1978, f. & ef. 3-6-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 2-1980, f. & ef. 10-3-80; AE 1-1987, f. & ef. 3-30-87; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96;

806-010-0145

Continuing Professional Education

(1) **CPE Required to Practice:** In order to continue to practice architecture in Oregon, every person holding an active certificate of registration with this Board must submit a complete report of CPE as part of the renewal process as outlined in OAR 806-010-0090.

(2) **Purpose and Scope:** These rules provide for a CPE program to insure that all architects remain informed of those technical subjects necessary to safeguard the health, safety, and welfare of the public. These rules will apply to all architect certificate holders in Oregon.

(3) **Requirements:** To renew or reinstate registration, in addition to other requirements, an architect must have acquired CPE for each renewal period since the architect's last renewal, or be exempt from these CPE requirements.

(a) Within a two-year renewal cycle, a minimum of 24 CPE hours must be acquired in subjects that relate to safeguarding the health, safety, and welfare of the public.

(b) If an architect exceeds the CPE requirement in a renewal period, the architect may carry a maximum of 12 CPE hours forward into the next renewal period.

(c) Failure to comply with these requirements may result in non-renewal of the architect's registration, other disciplinary action, or both.

(4) **Initial Registration, Reissued Certificates, and during the Transition to two-year renewal cycles:** Registrants who receive an initial or reissued certificate to practice architecture in Oregon will comply with the CPE requirements on a pro-rated basis, calculated at one CPE hour per month, including the month of issuance or reissuance, until June 30th of the renewal cycle end.

(5) **Reporting and Record Keeping:**

(a) A registered architect must complete and submit forms approved by the board certifying to the architect's having acquired the required CPE hours;

(b) An architect's submission may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance must be maintained by the architect for one renewal cycle beyond the period for which the form was submitted. If selected for the CPE review by the Board, the applicant must provide such evidence to verify attendance at reported CPE activities;

(c) If the board disallows any CPE hours, the architect shall have six months from notice of disallowance to make up the deficiency by acquiring the required number of CPE hours and reporting evidence of the completion of such hours to the Board. Such CPE hours must not again be used for any subsequent renewal. No such allowance will be made if the board finds following notice and hearing that the architect willfully disregarded these requirements;

(d) Acceptable CPE activities will be reported in a minimum of one hour segments. One CPE hour will represent a minimum of 50 minutes of actual course time. No credit will be allowed for introductory remarks, meals, breaks, or administration matters related to courses of study;

(e) Failure to fulfill the CPE requirements and/or file the required renewal report, properly and completely, including all required signatures and fees, shall result in non-renewal of an architect's certificate of registration or disciplinary action, or both, unless a complete renewal has been received by the Board prior to the deadline and the minimum CPE requirements have been met.

(f) In addition to allowed carryover hours, CPE must be acquired during the renewal cycle outlined in OAR 806-010-0090.

(g) Any false statements or misrepresentations with respect to course attendance or any other aspect of continuing professional educational activity shall subject the architect to license revocation or other disciplinary action.

(h) CPE hours may be reported on a current Board renewal form or by submitting a transcript from the American Institute of Architects, Continuing Education Program, that document CPE credits were earned by the architect during the renewal period.

(6) **Activities:** The following suggested list may be used by all registrants in determining the types of activities, which may fulfill CPE requirements. (Refer to section (5) for reporting and record keeping procedures.)

(a) CPE hours in attendance at short courses or seminars, in HSW subjects related to the practice of architecture and sponsored by colleges or universities.

ADMINISTRATIVE RULES

(b) CPE hours in attendance at technical presentations in HSW subjects related to the practice of architecture which are held in conjunction with conventions or at seminars related to materials use and function. Such presentations as those sponsored by the American Institute of Architects, Construction Specifications Institute, Construction Products Manufacturers Council or similar professional organizations.

(c) CPE hours acquired in structured self-study courses such as those sponsored by NCARB, AIA, or similar organizations, and dealing with HSW subjects related to the practice of architecture.

(d) A maximum of three CPE hours may be claimed as preparation time for each class hour spent teaching architectural courses or seminars in HSW subjects. College or University faculty may not claim CPE hours for teaching regular curriculum courses.

(e) CPE hours spent in architectural research in HSW subjects and has been published or formally presented to the profession or public.

(f) Reading designated articles or completing structured coursework in HSW subjects found in architectural journals or on web sites and receiving a certificate of completion issued by the provider. The professional journal articles dated before two years prior to the date of testing will not be allowed as acceptable CPE.

(g) Taking and passing college or university credit courses in HSW subject matter and dealing with architectural subjects. Each semester hour of credit awarded by the college or university each term will equal 15 CPE hours. Each quarter hour of credit awarded by the college or university each term will equal 10 CPE hours;

(h) CPE hours spent in professional service to the public which draws upon the registrant's professional expertise on boards and commissions that are charged with the protection of the health, safety, and welfare of the public, such as: serving on councils or commissions, planning commissions, building code advisory boards, budget committees, parks commissions, or urban renewal boards or committees;

(7) **Activities Not Allowed:** The purpose of the CPE requirement for license renewal in Oregon is to require architects to obtain regular and continual education in subjects that relate to the health, safety, and welfare of the public during the course of their professional life. As such, the following CPE hours are not allowed:

(a) Time spent on the same CPE, even if obtained on different dates, may be used only once during a renewal period to meet the renewal/CPE requirements.

(b) Time spent in unstructured programs or self-directed study.

(c) Time spent on architectural educational tours of cities, buildings, or public places, unless there is a significant HSW component to the tour curriculum.

(d) Time spent as a mentor for a person enrolled in the IDP program.

(e) Time spent in any teaching program sharing professional skills, such as the Architects in Schools (AIS) program.

(8) **Exemptions:** A registered architect may be exempt from Oregon's CPE requirements if the architect submits acceptable documentation that for not less than 18 months of the current renewal cycle the architect has met one of the following exemption criteria:

(a) Has served honorably on active duty in the military service;

(b) During the full period covered by this Board's renewal, the architect was actively registered as an architect in another Board-recognized jurisdiction that has a mandatory CPE requirement for renewal of an architect's registration;

(c) **Special Exemption** — The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The architect must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board.

[ED. NOTE: Schedules & Forms referenced are available from the agency.]

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.125 & 671.080

Hist.: BAE 1-2000, f. & cert. ef. 2-23-00; BAE 2-2000, f. & cert. ef. 7-24-00; BAE 3-2001, f. & cert. ef. 10-4-01; BAE 3-2002, f. 7-10-02 cert. ef. 7-15-02; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03; BAE 5-2004, f. & cert. ef. 5-5-04; BAE 7-2006, f. & cert. ef. 12-13-06; BAE 2-2008, f. 3-7-08, cert. ef. 7-1-08; BAE 1-2010, f. & cert. ef. 4-6-10

Board of Chiropractic Examiners Chapter 811

Rule Caption: Repeals requirement for Deceased Chiropractor Clinic Name Change.

Adm. Order No.: BCE 1-2010

Filed with Sec. of State: 4-15-2010

Certified to be Effective: 4-15-10

Notice Publication Date: 3-1-2010

Rules Amended: 811-010-0120

Subject: Repeals unnecessary requirement for Deceased Chiropractor Clinic Name Change.

Rules Coordinator: Donna Dougan—(503) 378-5816

811-010-0120

Chiropractic Professional Corporation and Business Entity Majority Ownership

(1) Definitions. As used in this rule, unless the context requires otherwise:

(a) "Business entity" means:

(A) A professional corporation organized under ORS Chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A limited liability company organized under ORS Chapter 63 or comparable law of another jurisdiction;

(C) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS Chapter 67 or comparable law of another jurisdiction; or

(D) A limited partnership organized under ORS Chapter 70, predecessor law or comparable law of another jurisdiction.

(b) "Majority ownership interest" means more than 50 percent of:

(A) The issued voting stock of a professional corporation;

(B) The members of a limited liability company; or

(C) Participation in the profits of a partnership.

(c) "Organizational document" means:

(A) The articles of incorporation of a professional corporation, or comparable document of another jurisdiction;

(B) The articles of organization of a limited liability company, or comparable document of another jurisdiction;

(C) The partnership agreement and, for a limited liability partnership, its registration, or comparable document(s) of another jurisdiction; or

(D) A certificate of limited partnership, or comparable document of another jurisdiction.

(d) "Owner" means a voting shareholder of a professional corporation, member of a limited liability company, or partner of a partnership.

(e) "Principal" means a person who is a director of a professional corporation, manager of a limited liability company, or general partner of a limited partnership.

(2) Requirements for business entities organized to practice chiropractic. The purpose of this rule is to protect the public by ensuring that business entities are organized for the purpose of providing chiropractic health care by majority owned and controlled Oregon licensed chiropractic physicians and/or chiropractic health care in a multi-disciplinary setting which are majority owned and controlled by Oregon licensed health care professionals.

(a) In a business entity organized for the purpose of practicing chiropractic:

(A) The majority ownership interest shall be held by chiropractic physicians licensed in this state to practice chiropractic.

(B) A majority of the principals shall be chiropractic physicians who are licensed in this state to practice chiropractic.

(C) All officers except the secretary and treasurer, if any, must be chiropractic physicians who are licensed in this state to practice chiropractic. Any two or more offices may be held by the same person.

(b) A professional corporation may be a shareholder of a professional corporation organized for the purpose of practicing chiropractic solely for the purpose of effecting a reorganization as defined in the Internal Revenue Code.

(c) Business entities organized before August 15, 2001 that are not in compliance with the provisions of this rule have until August 15, 2002 to come into compliance.

(d) The Board of Chiropractic Examiners has the discretion to allow business entities to apply for a waiver of the majority ownership requirement provided full disclosure of clinic ownership is provided to the Board of Chiropractic Examiners, a plan and timetable is presented for a transition to meet the requirements of this rule, and the Board finds that the health and welfare of the patient is the first priority of the Chiropractic physicians and business entity.

(e) Upon a finding that a holder or owner of a chiropractic practice has failed to comply with the provisions of this rule or the regulations prescribed by the Board pursuant to the practice of chiropractic, the Board of Chiropractic Examiners may consider the failure to comply with this rule as a violation of this rule which may subject a holder or owner to discipline pursuant to ORS 684.100.

ADMINISTRATIVE RULES

(3) Powers of professional corporations organized to practice chiropractic.

(a) A professional corporation organized for the purpose of practicing chiropractic has the powers enumerated in ORS 60.077 and 60.081, except as provided otherwise by the Board of Chiropractic Examiners.

(b) A general corporation under the provisions of ORS Chapter 60 may not be organized to practice chiropractic.

(4) Proxies.

(a) A proxy to exercise voting rights in a business entity organized for the purpose of practicing chiropractic may be given under the following conditions:

(A) If the voting rights belong to a chiropractic physician licensed in this state to practice chiropractic, the proxy may be given only to an owner of the same business entity who is also a chiropractic physician licensed in this state to practice chiropractic, or to an attorney licensed in this state to practice law.

(B) If the voting rights do not belong to a chiropractic physician licensed in this state to practice chiropractic, the proxy may be given only to another owner of the same business entity whether or not the other owner is a chiropractic physician licensed in this state to practice chiropractic, or to an attorney licensed in this state to practice law.

(b) No voting trust may be created to exercise the voting rights of one or more owners of a business entity organized for the purpose of practicing chiropractic.

(c) Two or more persons with voting rights in a business entity organized for the purpose of practicing chiropractic may enter into a voting agreement provided that the voting agreement does not transfer voting rights from an individual who is a chiropractic physician licensed in this state to practice chiropractic to an individual who is not so licensed. Notwithstanding any provision of this subsection, voting rights may be transferred to an attorney licensed in this state to practice law.

(5) Acquisition and disposition of ownership interest.

(a) Persons with an ownership interest in a business entity organized for the purpose of practicing chiropractic may acquire, transfer, assign or dispose of such ownership interest only in a manner that leaves the business entity in compliance with the provisions of this rule.

(b) If the majority ownership interest of a business entity organized for the purpose of practicing chiropractic is no longer held by chiropractic physician(s) licensed in this state to practice chiropractic due to such ownership interest being held by an administrator, executor, personal representative, guardian, conservator or receiver of the estate of a former owner, or by a transferee who receives such ownership interest by operation of law or court decree, such administrator, executor, personal representative, guardian, conservator, receiver or transferee may act in the same ownership capacity as the former owner, including acting in the former owner's capacity as principal or officer, until the ownership requirements are in compliance with the provisions of this rule, but not to exceed six months following receipt or transfer of such ownership interest.

(c) Subject to subsection (a) of this section, the organizational document, bylaws or agreements among owners of a business entity organized for the purpose of practicing chiropractic may provide limitations on the ability to acquire, transfer, assign or dispose of an ownership interest in the business entity.

(d) Subject to subsection (a) of this section, the articles of incorporation, bylaws or agreements among shareholders of a professional corporation may provide for the purchase or redemption of shares by the corporation.

(6) Disqualification of chiropractic physician; disposition of ownership interest.

(a) If a chiropractic physician practicing chiropractic on behalf of a business entity is disqualified from practicing chiropractic for more than six months or assumes a public office, the duties of which prohibit practicing chiropractic for more than six months under the rules of the Board of Chiropractic Examiners or other law, within 60 days after the disqualification or prohibition, the chiropractic physician's ownership interest shall be disposed of in accordance with section (5); or

(A) In the case of a professional corporation, the corporation shall have the right to redeem the shares of the chiropractic physician.

(B) In the case of a limited liability company, the chiropractic physician shall cease to be a member by withdrawal or expulsion.

(C) In the case of a partnership, the chiropractic physician shall cease to be a partner by withdrawal, dissociation or expulsion

(b) If the disposition of ownership interest under subsection (a) of this section results in less than majority ownership of the business entity by chiropractic physicians licensed in this state to practice chiropractic, the busi-

ness entity shall have six months from the date of disqualification or prohibition to come into compliance with the majority ownership provisions of this rule.

(c) If a chiropractic physician practicing chiropractic on behalf of a business entity is disqualified from practicing chiropractic for six months or less or assumes a public office, the duties of which prohibit practicing chiropractic for six months or less under the rules of the Board of Chiropractic Examiners or other law, the chiropractic physician may retain interest in the business entity and may remain a principal of the business entity during the period of disqualification or prohibition, unless otherwise prohibited under the rules of the Board of Chiropractic Examiners or by law.

(7) Disposition of ownership interest upon death of owner.

(a) A business entity organized for the purpose of practicing chiropractic may provide for the disposition of the ownership interest of a deceased owner in the organizational document, in the bylaws, by agreement between owners or between the business entity and its owners, providing such disposition leaves the business entity in compliance with the provisions of this rule.

(b) If there is no provision for the disposition of a deceased owner's interest as described in subsection (a) of this section, the ownership interest shall be disposed of in any manner that leaves the business entity in compliance with the provisions of this rule and the laws of this state.

(c) If the ownership interest of a deceased owner is not disposed of within twelve months after the owner's death, a special meeting of the remaining owners shall be called within fourteen months after the owner's death to decide by vote of the remaining owners whether the business entity shall dispose of such ownership interest in accordance with the provisions of this rule, or whether the business entity shall be voluntarily dissolved. The action determined to be taken by the remaining owners shall be completed within eighteen months after the owner's death. The Board may grant an extension of this time period upon request.

(d) If the deceased owner of a business entity organized for the purpose of practicing chiropractic was the sole owner of the business entity at the time of death:

(A) The business entity shall cease the practice of chiropractic as of the date of the owner's death unless it has retained the services of another chiropractic physician licensed in this state to practice chiropractic.

(B) Notwithstanding section (2)(c) of this rule, within twelve months after the date of the owner's death, the business entity shall be dissolved unless the ownership interest of the deceased owner has been sold or assigned to one or more chiropractic physicians who are licensed in this state to practice chiropractic.

(8) Multidisciplinary Provisions. A business entity may be organized for the purpose of rendering professional services within two or more health-related licensed professions, provided the majority ownership interest is held by persons licensed in this state in a health-related licensed profession and such licensees are acting only within their license scope of practice and code of professional conduct and are subject to the disciplinary authority of their respective licensing board.

Stat. Auth.: ORS 58 & 684

Stats. Implemented: ORS 58.367 & 684.155(1)(b)

Hist.: BCE 2-2001, f. 8-14-01, cert. ef. 8-15-01; BCE 3-2002, f. & cert. ef. 10-10-02; BCE 1-2010, f. & cert. ef. 4-15-10

**Board of Massage Therapists
Chapter 334**

Rule Caption: Board Member Stipend.

Adm. Order No.: BMT 1-2010

Filed with Sec. of State: 4-12-2010

Certified to be Effective: 4-12-10

Notice Publication Date: 2-1-2010

Rules Adopted: 334-001-0055

Subject: 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 rule. To comply with the new law the OBMT is adding a rule to address the Board Member 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 charge to the budget nor any fiscal impact of this rules adoption.

Rules Coordinator: Diana Nott—(503) 365-8657

ADMINISTRATIVE RULES

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.

Stat. Auth.: ORS 182.460 & 687.121

Stats. Implemented: ORS 182.460 & 687.121

Hist.: BMT 1-2010, f. & cert. ef. 4-12-10

Board of Parole and Post-Prison Supervision Chapter 255

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

Adm. Order No.: PAR 3-2010

Filed with Sec. of State: 3-26-2010

Certified to be Effective: 3-26-10

Notice Publication Date: 2-1-2010

Rules Amended: 255-032-0005, 255-032-0011, 255-032-0015, 255-032-0025, 255-032-0029

Rules Repealed: 255-032-0026, 255-032-0005(T), 255-032-0011(T), 255-032-0015(T), 255-032-0025(T), 255-032-0029(T)

Subject: 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, (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 requirement that the Board's final order shall be accompanied by findings of fact and conclusions of law.

Rules Coordinator: Michelle Mooney—(503) 945-0914

255-032-0005

Prison Term Hearing to Be Held

(1) An adult person convicted of Aggravated Murder under ORS 163.095 shall receive a hearing within one year of sentencing. A person convicted of Murder under ORS 163.115 that was committed on or after June 30, 1995, and who was sentenced to life with a twenty-five (25) year minimum shall receive a hearing within one year of sentencing. At the hearing the Board shall set a review date congruent with the minimum terms set forth in OAR 255-032-0010 rather than a parole release date. In lieu of holding a hearing, the Board may determine the prison term/murder review date by administrative file pass.

(2) Adult persons sentenced to death or life without the possibility of release or parole shall not receive a hearing.

(3) Adult persons sentenced to life with a twenty (20) or thirty (30) year minimum for aggravated murder shall receive a prison term hearing pursuant to ORS 144.120 if they also have a sentence to the Department of Corrections' custody for a crime other than aggravated murder.

(4) Inmates, who were juveniles and waived to adult court pursuant to ORS 419C.340 through 419C.364, and were under the age of 17 years at the time of their crime(s), and were convicted of Aggravated Murder, per ORS 163.095, and whose crimes were committed after October 31, 1989 and prior to April 1, 1995, shall receive a prison term hearing. At the hearing, the Board shall set a review date consistent with the terms set forth in OAR 255-032-0011 rather than a projected parole release date.

Stat. Auth.: ORS 144.120, 163.095, 163.115, 419C.340 & 419C.364

Stats. Implemented: ORS 163.105

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10; PAR 3-2010, f. & cert. ef. 3-26-10

255-032-0011

Schedule of Initial Parole Consideration for Inmates Described in OAR 255-032-0005(4)

(1) The Board shall conduct a hearing pursuant to OAR 255-030-0013, 255-030-0015, 255-030-0021, 255-030-0023 and 255-030-0025 through 255-030-0055.

(2) The Board shall set a review date pursuant to Exhibit P-III, or deny parole, pursuant to OAR 255-035-0030.

(3) The method established by sections (1) to (3) of OAR 255-035-0021 shall not apply to inmates described in 255-032-0005(4). To determine the unified range for inmates described in OAR 255-032-0005(4) with

consecutive sentences for aggravated murder, the Board shall establish the matrix range for each crime by using the inmate's history/risk score pursuant to Exhibit P-III. The unified range shall be the sum of the ranges established under this section.

(4) The Board may depart from the appropriate matrix range for inmates described in OAR 255-032-0005(4) only upon making a specific finding that there is aggravation or mitigation which justifies departure from the range pursuant to Exhibits E-1 and E-2. The Board shall clearly state on the record the facts and specific reasons for its finding. The Board may give items of aggravation and mitigation different weight and not necessarily balance them one for one. Exhibit D does not apply to inmates described in 255-032-0005(4). The Board cannot apply aggravating or mitigating factors to adjust an inmate's matrix range more than one level up or down. Mitigating factors cannot reduce an inmate's matrix range below the lowest possible range on the matrix.

(5) If the Board denies parole, the inmate may petition for review after 480 months from the adjusted inception date. If the Board determines, following a review of the inmate's petition and institutional record, there are reasonable grounds to believe that rehabilitation may have occurred and that the possibility of parole should be considered, a review hearing shall be scheduled.

(6) If the Board sets a review date pursuant to Exhibit P-III, the Board shall conduct a progress review five years prior to the established review date. The progress review does not require a hearing with the inmate; however, the inmate may submit materials to be considered. The purpose of the progress review is to determine the inmate's institutional conduct and rehabilitation efforts since the prison term hearing.

(7) The Board may determine a parole release date or future review dates any time after the established review date. The Board may order a psychological evaluation. Refusal to submit to an evaluation if one is ordered will be grounds for automatic deferral of the hearing for up to five years or a lesser time if deemed appropriate by the Board. If parole was previously denied, that decision will remain in effect and further petitions for review will not be considered at less than two (2) year intervals.

(8) At the review hearing, the Board will consider, but is not limited to, the following:

(a) The inmate's involvement in correctional treatment, medical care, educational, vocational or other training in the institution which will substantially enhance his/her capacity to lead a law-abiding life when released;

(b) The inmate's institutional employment history;

(c) The inmate's institutional disciplinary conduct;

(d) The inmate's maturity, stability, demonstrated responsibility, and any apparent development in the inmate's personality which may promote or hinder conformity to law;

(e) The inmate's past use of narcotics or other dangerous drugs, or past habitual and excessive use of alcohol;

(f) The inmate's prior criminal history, including the nature and circumstances of previous offenses;

(g) The inmate's conduct during any previous period of probation or parole;

(h) The inmate does/does not have a mental or emotional disturbance, deficiency, condition or disorder predisposing them to the commission of a crime to a degree rendering them a danger to the health and safety of the community;

(i) The adequacy of the inmate's parole plan including community support from family, friends, treatment providers, and others in the community; type of residence, neighborhood or community in which the inmate plans to live;

(j) There is a reasonable probability that the inmate will remain in the community without violating the law, and there is substantial likelihood that the inmate will conform to the conditions of parole.

NOTE: The decision for the Board shall be whether there are significant indications of reformation and rehabilitation such that the offender does not represent a risk to the community and that it is in the offender's and the community's best interest that he/she be released to the community under conditions of supervision. If the Board does not make the above finding, the Board shall set a subsequent review hearing date not to exceed five (5) years from the present review.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 144.110(2)(b), 163.105(1), 161.620 & 144.780

Stats. Implemented:

Hist.: PAR 4-1999, f. & cert. ef. 5-18-99; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10; PAR 3-2010, f. & cert. ef. 3-26-10

255-032-0015

Petition/Purpose for Review Hearing

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

ADMINISTRATIVE RULES

(1) Any time after completion of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or

(2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between June 30, 1995 through October 22, 1999; or

(3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before June 30, 1995; or

(4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or

(5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Stat. Auth.: ORS 163.115

Stats. Implemented: ORS 163.105 (1977-1983), 163.105 (1984-1994), 163.105 (1995-1999) & 163.105 (2001)

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 3-2004(Temp), f. & cert. ef. 4-15-04 thru 10-11-04; PAR 6-2004, f. & cert. ef. 6-14-04; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10; PAR 3-2010, f. & cert. ef. 3-26-10

255-032-0025

Manner of Review Hearing

(1) The proceedings shall be governed by the procedures for records, disclosure, and notice outlined in divisions 15 and 30.

(2) At the hearing, the inmate has:

(a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(b) If the inmate is without sufficient funds to employ an attorney, the right to Board appointed legal counsel. Board payment to legal counsel shall not exceed \$100 per hour and \$1000 per case. The attorney shall send the Board a billing within 90 days of the hearing.

(c) The right to a subpoena issued by the Board upon a showing of the general relevance and reasonable scope of the evidence sought, and pursuant to Board rules.

(3) The initial testimony of each witness shall not exceed ten minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the board's decision. The presiding Board member may exclude or limit irrelevant, immaterial or unduly repetitious testimony and evidence.

(4) Pursuant to ORS 144.120, the crime victims have the right to appear at the hearing, or to submit a written statement concerning the crime and the person responsible. For the purposes of these rules, victim means any person determined by the prosecuting attorney, the court, or the Board to have suffered direct financial, psychological, or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor. The victim may be represented by counsel or a designee of the victim's choice. If a victim chooses to speak, his/her statement should be concluded within 15 minutes. The Board may allow the victim to exceed that period when additional time is needed.

(5) Pursuant to ORS 144.120, the district attorney from the committing jurisdiction has the right to appear at the hearing, or to submit a written statement concerning the crime and the inmate. The district attorney may be represented by a designee if he/she wishes. The district attorney's statement should be concluded within 15 minutes. The Board may allow the statement to exceed that period when additional time is needed.

(6) If upon hearing all the evidence, the full Board, upon a unanimous vote of all members, or by such other vote as is specified in statute, finds that the inmate is capable of rehabilitation and that the terms of the inmate's confinement should be changed to life imprisonment with the possibility of parole or work release, it shall convert the terms of the inmate's confinement to life imprisonment with the possibility of parole or work release and may set a parole release date. Otherwise, the Board shall deny the relief sought in the petition. The Board's final order granting or denying relief shall be accompanied by findings of fact and conclusions of law. 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.

(7) When an inmate has a consecutive sentence for a crime other than Aggravated Murder or Murder as described in OAR 255-032-0005, the Board shall determine the prison term for the consecutive sentences(s) pursuant to ORS 144.120. The prison term for the consecutive sentence(s) will not begin to run until and unless the Board orders a release date on the Aggravated Murder sentence established pursuant to ORS 163.105, or the Murder sentence established pursuant to ORS 163.115.

Stat. Auth.: ORS 144.120, 163.105, 163.115, 183.415

Stats. Implemented:

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 4-1989, f. & ef. 11-1-89; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 3-2001, f. & cert. ef. 2-6-01; PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; PAR 5-2007, f. & cert. ef. 7-30-07; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10; PAR 3-2010, f. & cert. ef. 3-26-10

255-032-0029

Subpoenas for a Murder Review Hearing

(1) Inmates must make their own arrangements for calling and presenting witnesses. However, upon the request of an inmate, and upon a proper showing of general relevance and reasonable scope of the evidence being sought, the Board may issue subpoenas on behalf of the inmate.

(2) Witnesses are not required to appear in person unless good cause can be shown why an in-person appearance is necessary. Witnesses may participate via teleconference.

(3) Witnesses appearing pursuant to subpoena, other than inmates, state officers, or employees of the Board, must receive fees and mileage payable by the Board as prescribed by law for witnesses in ORS 44.415(2), provided the Board certifies that the witness's testimony was relevant and material to the hearing.

Stat. Auth.: ORS 44.415 & 183.440

Stats. Implemented:

Hist.: PAR 2-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; PAR 5-2007, f. & cert. ef. 7-30-07; PAR 4-2009(Temp), f. & cert. ef. 9-29-09 thru 3-28-10; PAR 3-2010, f. & cert. ef. 3-26-10

Bureau of Labor and Industries

Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2010.

Adm. Order No.: BLI 13-2010

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rules amend the prevailing rates of wage as determined by the Commissioner of Labor and Industries for the period beginning January 1, 2010.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2010, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2010, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to January 1, 2010 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 1, 2010).

(b) Amendments/Corrections to January 1, 2010 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 1, 2010).

(c) Amendments/Corrections to January 1, 2010 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 8, 2010).

(d) Amendments/Corrections to January 1, 2010 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective January 22, 2010).

(e) Amendments/Corrections to Oregon Determination 2010-01 (effective April 1, 2010).

(f) Amendments/Corrections to January 1, 2010 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective April 1, 2010).

ADMINISTRATIVE RULES

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2010, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-1-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. & 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef. 1-19-10; BLI 4-2010, f. & cert. ef. 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10

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**Department of Consumer and Business Services,
Director's Office
Chapter 440**

Rule Caption: Public Records Requests.

Adm. Order No.: DO 2-2010

Filed with Sec. of State: 4-15-2010

Certified to be Effective: 5-1-10

Notice Publication Date: 3-1-2010

Rules Amended: 440-005-0015, 440-005-0020, 440-005-0025, 440-005-0030

Subject: The goal of DCBS rules regarding public records requests is to ensure the public has the ability to inspect public records the agency maintains while protecting the integrity of the records. DCBS

is amending these rules to reflect recent changes in the law. The permanent rule addresses the following:

(1) How the public can make public records requests;

(2) How the department calculates fees and considers fee waivers; and

(3) How the public can find the current fee schedule and other information needed to make public records requests.

Rules Coordinator: Kristen Miller—(503) 947-7866

440-005-0015

Access to Records

(1) The director, in carrying out responsibilities under ORS 192 as custodian of public records, shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the department's duties.

(2) Public records of the department may be inspected or examined during the normal working days and hours of the offices of the department at which the records are kept. The inspection or examination shall take place at the main office, a field office, or any other reasonable location designated by the director.

(3) Access to and disclosure of the public records are subject to ORS 192.410 to 192.505, 654.120, 697.732, 706.720, 722.419, 731.264, 731.312, 734.650, 734.830, 744.245 and any other references establishing an exemption to disclosure of public records.

Stat. Auth.: ORS 192.430, 192.440, 656.726, 697.732, 731.244, 731.282, 731.284 & 731.804

Stats. Implemented: ORS 192.430, 192.440, 192.502, 654.120, 697.732, 706.720, 722.419, 731.264 & 731.312

Hist.: IF 1-1989, f. 6-7-89, cert. ef. 6-15-89; IF 2-1990, f. & cert. ef. 6-4-90; DCBS 2-1994, f. 7-8-94, cert. ef. 8-1-94; DO 2-2010, f. 4-15-10, cert. ef. 5-1-10

440-005-0020

Requests to Inspect or Obtain Copies of Public Records

(1) A request to inspect or obtain copies of a public record or information from public records may be made in writing, in person, or by phone. Written requests shall include:

(a) Contact information, such as name, mailing address, telephone number, and e-mail address of the requestor.

(b) A sufficiently detailed description of the records requested to allow the department to search for and identify records.

(2) DCBS will maintain the procedure for making public records request on its Web site: http://egov.oregon.gov/DCBS/records_request.shtml. The procedure includes a contact person for each division and a list of current fees and charges.

Stat. Auth.: ORS 192, 656, 697 & 731

Stats. Implemented: ORS 192.430

Hist.: IF 1-1989, f. 6-7-89, cert. ef. 6-15-89; DO 2-2010, f. 4-15-10, cert. ef. 5-1-10

440-005-0025

Payment for Inspection and Copies of Public Records

(1) A person who is receiving a copy of a public record or information from a public record shall pay for the department's actual cost for:

(a) Staff time necessary to locate and handle the records, to delete material exempt from disclosure and to supervise the inspection by the requestor;

(b) Producing the copy or the information; and

(c) Other supplies or services necessary to furnish the copy or information.

(2) If the cost of providing the records is higher than \$25, the department will provide a written cost estimate to the requestor. The requestor must confirm whether he or she wants the department to proceed with responding to the request.

(3) The director may reduce or waive payment of the fee for access of a public record if the director determines that the reduction or waiver will aid the effective administration of department operations or if the release of the information benefits the general public.

(4) The director shall not require payment of fees for the first copy of publications, statutes, administrative rules or public records from public libraries, public educational institutions, or from a federal, state, county or city agency participating in a cooperative program with the department or any company or individual who is the subject of documents such as workers' compensation claim files.

(5) The requestor shall pay all fees for access of a public record in advance unless later payment is approved by the director.

Stat. Auth.: ORS 192.430, 192.440, 656.726, 697.732, 731.244, 731.282, 731.284 & 731.804

Stats. Implemented: ORS 192.440

Hist.: IF 1-1989, f. 6-7-89, cert. ef. 6-15-89; IF 2-1990, f. & cert. ef. 6-4-90; DCBS 2-1994, f. 7-8-94, cert. ef. 8-1-94; DO 2-2010, f. 4-15-10, cert. ef. 5-1-10

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440-005-0030

Fees and Miscellaneous Charges

The director establishes fees and miscellaneous charges in agency policy, reviewed periodically to ensure all charges reflect no more than the actual cost of producing and processing. The department posts current fees and charges on its Web site: http://egov.oregon.gov/DCBS/records_request.shtml. This information is also available by calling or writing the department.

Stat. Auth.: ORS 192.430, 192.440, 656.726, 697.732, 731.244, 731.282, 731.284 & 731.804
Stats. Implemented: ORS 192.440, 731.282, 731.284 & 731.804
Hist.: IF 1-1989, f. 6-7-89, cert. ef. 6-15-89; IF 2-1990, f. & cert. ef. 6-4-90; DCBS 2-1994, f. 7-8-94, cert. ef. 8-1-94; DO 2-2003, f. 8-15-03, cert. ef. 1-1-04; DO 2-2010, f. 4-15-10, cert. ef. 5-1-10

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

Rule Caption: Set fees for banking program.

Adm. Order No.: FCS 2-2010

Filed with Sec. of State: 3-16-2010

Certified to be Effective: 3-16-10

Notice Publication Date: 2-1-2010

Rules Amended: 441-500-0020

Subject: These rules revise the annual fees paid by banks and non-Oregon institutions.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-500-0020

Fees for Banks, Trust Companies, Savings Banks, Extranational Institutions, Savings Associations and Call for Reports

(1) Definitions.

(a) As used in this rule, “assets” means;

(A) The average assets of an Oregon based insured institution; or

(B) The average Oregon assets of an extranational institution.

(b) For the purposes of determining averages in subsections (1)(a):

(A) Average assets for an Oregon based insured institution shall be determined from the quarterly Call Reports of Condition and Income filed with the applicable federal supervisory agency for the calendar year immediately preceding the due date of the fee assessment; and

(B) Average Oregon assets in for an extranational institution shall be determined from the quarterly reports of Oregon Assets filed with the Director for the calendar year immediately preceding the due date of the assessment.

(2) Call for Reports. To the extent any report used to determine the fee assessment is not required to be filed or made available to the Director under other Banking Rules, the specific reports shall be provided by the insured institution or extranational institution upon the call of the Director to allow the fee assessments to be determined.

(3) Subject to section (10) of this rule, the annual fee assessment under ORS 706.530 for an insured institution subject to the jurisdiction of the Director, including a savings association, is: If assets are:

(a) Less than \$10 million, \$800 plus .000275 of all assets;

(b) \$10 million or more but less than \$25 million, \$1,625 plus .000200 of all assets;

(c) \$25 million or more but less than \$100 million, \$2,895 plus .000153 of all assets;

(d) \$100 million or more but less than \$500 million, \$9,795 plus .000090 of all assets;

(e) \$500 million or more but less than \$1 billion, \$22,795 plus .000066 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$24,795 plus .000064 of all assets;

(g) \$2 billion or more but less than \$3 billion, \$26,795 plus .000063 of all assets;

(h) \$3 billion or more but less than \$4 billion, \$29,795 plus .000062 of all assets;

(i) \$4 billion or more, \$33,795 plus .000061 of all assets.

(4) Subject to section (10) of this rule, the annual fee assessment determined in section (3) of this rule shall include a risk-based assessment calculated on the basis of the CAMELS rating assigned to the insured institution as of December 31 in the calendar year immediately preceding the due date of the risk-based assessment. The rate of the risk-based assessment is as follows: [Table not included. See ED. NOTE.]

(5) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.530 for each trust company subject to the Director’s jurisdiction is \$2,000 plus:

(a) .000060826 of the first \$150 million in managed assets; and .000030413 of managed assets greater than \$150 million;

(b) .0000152065 of the first \$150 million in custodial assets; and .0000076075 of custodial assets greater than \$150 million.

(6) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.530 and 713.090 for each extranational institution is: If Oregon assets are:

(a) Less than \$10 million, \$845 plus .000310 of all assets;

(b) \$10 million or more but less than \$25 million, \$2,545 plus .000140 of all assets;

(c) \$25 million or more but less than \$100 million, \$3,545 plus .000100 of all assets;

(d) \$100 million or more but less than \$500 million, \$6,745 plus .000068 of all assets;

(e) \$500 million or more, but less than \$1 billion, \$10,245 plus .000061 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$15,245 plus .000056 of all assets;

(g) \$2 billion or more, \$17,245 plus .000055 of all assets.

(7) The fees assessed by this rule are not subject to prorate or refund.

(8) If no fee is assessed during any year under sections (3) or (5) of this rule because an insured institution did not have Oregon assets during the calendar year immediately preceding the due date of the assessment, the insured institution may be charged for actual cost, if the Director participates in any examination of the institution during the same calendar year. Actual cost shall be determined in the same way as provided in OAR 441-500-0030.

(9) All fees assessed under sections (3) to (6) of this rule are due and payable on April 1 of each calendar year.

(10)(a) The Director may by order reduce the fees assessed for any specific year.

(b) When a fee is assessed under sections (3) to (6) of this rule, the assessment shall not be less than:

(A) \$5,000 for an insured institution, including a savings association, under section (3);

(B) \$2,500 for a trust company under section (5) and an extranational institution under section (6).

(11) The charges for special examination and special attention provided in OAR 441-500-0030 are in addition to and not in lieu of the fees assessed by this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 705.620

Stats. Implemented: ORS 706.530

Hist.: FID 2-1986, f. & ef. 3-7-86; FID 3-1986, f. & ef. 5-15-86; FID 4-1986, f. & ef. 7-25-86; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-002-0100; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1993, f. & cert. 2-23-93; FCS 4-1994, f. & cert. ef. 4-25-94; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0020; FCS 6-2007, f. & cert. ef. 10-22-07; FCS 1-2008, f. & cert. ef. 1-28-08; FCS 2-2009, f. & cert. ef. 2-3-09; FCS 9-2009, f. 9-15-09, cert. ef. 9-25-09; FCS 2-2010, f. & cert. ef. 3-16-10

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

Adm. Order No.: FCS 3-2010

Filed with Sec. of State: 3-18-2010

Certified to be Effective: 3-22-10

Notice Publication Date: 2-1-2010

Rules Adopted: 441-730-0026, 441-730-0027, 441-730-0125, 441-860-0085, 441-870-0081

Rules Amended: 441-730-0070, 441-730-0320, 441-860-0090, 441-865-0025, 441-865-0060, 441-870-0080

Subject: 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 requirements 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 rules revise the bonding requirements for

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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 rules related to consumer finance lenders update the advertising requirements, create a new bonding requirement, and create a new state background check requirement. The 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—(503) 947-7484

441-730-0026

Corporate Surety Bond for Consumer Finance Licensees Employing a Mortgage Loan Originator

(1) This rule applies to a consumer finance company licensed under ORS 725.010 to 725.270 and OAR chapter 441, division 730 that employs one or more mortgage loan originators. The corporate surety bond must be in a form and on terms approved by the director.

(2) A corporate surety bond under this rule must be renewed or replaced annually, concurrently with the license renewal of any mortgage loan originators employed by the consumer finance company.

(3) A consumer finance company must maintain a corporate surety bond during the period the company employs a mortgage loan originator. The corporate surety bond must remain in effect for at least five years after the person ceases to employ one or more mortgage loan originators. A person must file a claim against the corporate surety bond before the bond expires as described in this section.

(4) At least five years after a consumer finance company ceases to originate residential mortgage loans, the person or the writer of the corporate surety bond may apply to the director for release of the corporate surety bond. Unless the director determines that claims are pending against the person for violation of ORS 86A.100 through 86A.095, the director will release the corporate surety bond.

(5) By July 31, 2010, a consumer finance company that employs one or more mortgage loan originators must have a corporate surety bond in the amount of \$25,000.

(6) By December 31, 2010, a consumer finance license that employs one or more mortgage loan originators must have a corporate surety bond in the amount of \$50,000.

(7) On and after December 31, 2012, the sum of the corporate surety bond for a consumer finance company that employs one or more mortgage loan originators must be calculated based on the last required annual report submitted under OAR 441-730-0320. The sum of each consumer finance company's corporate surety bond must be determined as follows:

(a) For a consumer finance company that has not previously conducted business involving the origination of residential mortgage loans, the corporate surety bond must be in the amount of \$50,000.

(b) For a consumer finance company making or negotiating less than \$10,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$50,000.

(c) For a consumer finance company making or negotiating \$10,000,000 or more but less than \$25,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$75,000.

(d) For a consumer finance company making or negotiating \$25,000,000 or more but less than \$50,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$100,000.

(e) For a consumer finance company making or negotiating \$50,000,000 or more but less than \$100,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$150,000.

(f) For a consumer finance company making or negotiating more than \$100,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$200,000.

(8) Notwithstanding section (7) of this rule, a person that obtains and maintains one or more consumer finance licenses in this state may provide a corporate surety bond in an amount to cover the entire surety amounts required for one or more of the person's consumer finance companies in an amount meeting the minimum bond amounts of sections (7)(a) through (f) of this rule.

Stat. Auth.: ORS 86A.242
Stats. Implemented: ORS 86A.227
Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-730-0027

State Criminal Records Check

(1) A consumer finance company that makes or offers to make residential mortgage loans must conduct a state criminal records check of an employee prior to the person originating residential mortgage loans.

(a) The consumer finance company must 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 consumer finance company 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) If the state criminal records check discloses a disqualifying conviction under ORS 86A.212, an applicant for a mortgage loan originator license may not be employed and a currently employed mortgage loan originator must cease making residential mortgage loans immediately.

(3) The consumer finance company must maintain state criminal records check documents in a secure location and must make these available to the director for examination at any reasonable time or times and may require, without subpoena, the production of such records at the office of the director as often as is reasonably necessary. The consumer finance company must preserve these records for three years after they terminate the employment of the mortgage loan originator. After the retention period, the consumer finance company must destroy these files in a secure manner.

(4) This rule applies to employees of consumer finance companies hired or employed on or after August 1, 2010.

Stat. Auth.: ORS 59.972, 86A.242
Stat. Implemented: ORS 59.972
Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-730-0070

Advertising Regulations

(1) A consumer finance licensee or other person shall not, in any advertisement printed, displayed, published, distributed, or broadcasted, including on the Internet, by the consumer finance licensee or on their behalf include any reference to the supervision of the business of the consumer finance licensee by this state or any department or official of this state, except the phrase "licensed under the Oregon Consumer Finance Act" or "subject to state regulation" or both.

(2) A consumer finance licensee or other person shall not, in any advertisement printed, displayed, published, distributed, broadcast, including on the Internet, by the licensee or on their behalf, use any name other than the name under which their license is issued.

(3) A consumer finance licensee shall retain a copy of all advertising for the period beginning with the date of the last examination in a designated licensed office, or with the prior approval of the director, at another location until an examiner has reviewed the material.

(4) If a consumer finance licensee makes or offers to make residential mortgage loans, they must ensure that the unique identifiers assigned to their mortgage loan originators are clearly displayed on:

(a) Solicitations that are from a particular mortgage loan originator or a group of mortgage loan originators;

(b) Advertisements that are from a particular mortgage loan originator or a group of mortgage loan originators;

(c) Promotional materials that are from a particular mortgage loan originator or a group of mortgage loan originators; and

(d) Their website if it lists the names of individual mortgage loan originators in relation to residential mortgage loans.

(5) A mortgage loan originator employed by a consumer finance licensee who solicits, promotes, or otherwise advertises residential mortgage loans must comply with the applicable provisions of OAR 441-870-0080.

(6) Notwithstanding the provisions of sections (1) and (2) of this rule:

(a) A consumer finance licensee that makes, offers to make, or closes the majority of loans in a licensed location shall prominently post their license in a manner conspicuous to the public; or

(b) If a consumer finance licensee makes, offers to make, or closes the majority of loans electronically, they must prominently post their license on their website and at their licensed location in a manner conspicuous to the public.

(7) The posted license shall state that the business is licensed and regulated by the Department of Consumer and Business Services, and will include the Department's toll-free telephone number for public inquiries or complaints.

Stat. Auth.: ORS 725.505, 86A.242
Stats. Implemented: ORS 725.060, 86A.239

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Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0045; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-730-0125

Residential Borrower Files for Mortgage Loans

(1) In addition to any records required to be kept under OAR 441-730-0110 and 441-730-0120, a consumer finance company that makes or offers to make a residential mortgage loan must ensure that the following are prepared and maintained in the loan file:

(a) A summary of the key terms of the approval of the loan;

(b) A copy of each residential mortgage loan application with the signature and the unique identifier of the mortgage loan originator who took or received the application, who offered to negotiate or negotiated the loan, or who closed the loan;

(c) A copy of all documentation relied upon in making the loan decision;

(d) A copy of the borrower executed note and executed trust deed;

(e) A copy of all correspondence with the borrower in writing or in a format easily converted to writing;

(f) A copy of the good faith estimate prepared under Regulation X, 24 C.F.R. Part 3500 and translated as applicable to comply with ORS 86A.198;

(g) If required to be prepared for the residential mortgage transaction, a copy of the final credit report, or the report relied upon for the loan decision, if other than the final credit report, received on the borrower including documentation of borrower payment history;

(h) If required to be prepared for the Oregon residential mortgage transaction, a copy of any disclosure required by Regulation Z, 12 C.F.R. Part 226 and translated as applicable to comply with ORS 86A.198, including, but not limited to, the Truth in Lending disclosure statement;

(i) A copy of the final HUD-1 settlement statement required by 24 C.F.R. Part 3500; and

(j) A copy of the statement that notifies the borrower that loan documents associated with the transaction will be in English and that advises the borrower to obtain appropriate assistance, with any necessary translations as required by ORS 86A.195.

(2) Records retained under this rule may be kept in a written format or in a format easily converted to writing.

Stat. Auth.: ORS 86A.242

Stat. Implemented: ORS 725.230

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-730-0320

Licensee Reporting

(1) For calendar year 2010 and thereafter, consumer finance licensees are required to file their annual report by March 31 of each year. Consumer finance licensees must also provide known information on any felony conviction, or any conviction involving theft or fraud, of any executive officer, director, managing partner, or the manager of any office location that occurred during the period covered by the report. The report shall cover operations for the period of the previous calendar year. For purposes of this rule, "operations for the period of the previous calendar year" includes any of the following that has not previously been brought to the attention of the director in writing:

(a) A new qualified person or office manager;

(b) A new experienced person;

(c) Material changes in business plan; or

(d) Any criminal conviction entered against any person named in the application.

(2) An Oregon-licensed mortgage loan originator employed by a consumer finance licensee must comply with the applicable provisions of OAR 441-880-0040 regarding notification of a change in employment.

(3) In addition, on or before March 31, 2012, and in each subsequent calendar year thereafter, a report of condition must be filed with the National Mortgage Licensing System and Registry of the business and operations related to Oregon residential mortgage transactions. The notice must be in a form approved by the director. This report may be filed by:

(A) Each mortgage loan originator making residential mortgage loans;

(B) The consumer finance licensee employing mortgage loan originators for all residential mortgage loans on behalf of all of its mortgage loan originators; or

(C) The company headquarters or home office of one or more consumer finance licensees on behalf of all of the mortgage loan originators of the consumer finance licensees.

Stat. Auth.: ORS 725.505, 86A.242

Stats. Implemented: ORS 725.190, 86A.239

441-860-0085

Corporate Surety Bond for Mortgage Bankers or Mortgage Brokers Acting as or Employing a Mortgage Loan Originator

(1) This rule applies to a mortgage banker or mortgage broker licensed under ORS 86A.100 to 86A.095 and OAR chapter 441, division 860 that either acts as the applicant's sole mortgage loan originator or employs one or more mortgage loan originators. A mortgage banker or mortgage broker must maintain a corporate surety bond during the time the person acts as a mortgage loan originator or during the time the person employs a mortgage loan originator. The corporate surety bond must be in a form and on terms approved by the director and must be renewed or replaced annually as a condition of renewal.

(2) The corporate surety bond must remain in effect for at least five years after the person ceases to be licensed as a mortgage banker or mortgage broker. A consumer must file a claim against the corporate surety bond before the bond expires as described in this section.

(3) At least five years after a person ceases to be licensed as a mortgage banker or mortgage broker, the person or the writer of the corporate surety bond may apply to the director for release of the corporate surety bond. Unless the director determines that claims are pending against the person for violation of ORS 86A.100 through 86A.095, the director will release the corporate surety bond.

(4) Prior to December 31, 2010, every mortgage banker or mortgage broker must maintain a corporate surety bond in the amount of \$25,000.

(5) For each additional branch location of the applicant licensed to engage in residential mortgage transactions prior to December 31, 2010, the requirement will increase by \$5,000 until the corporate surety bond or irrevocable letter of credit reaches a maximum of \$50,000.

(4) On and after December 31, 2010, the sum of the corporate surety bond must be calculated based on the last required residential mortgage lending report submitted under OAR 441-865-0025. The sum of the corporate surety bond must be determined as follows:

(a) For a person that has not previously conducted business involving the origination of residential mortgage loans in Oregon, the corporate surety bond must be in the amount of \$50,000.

(b) For a person making or negotiating less than \$10,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$50,000.

(c) For a person making or negotiating \$10,000,000 or more but less than \$25,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$75,000.

(d) For a person making or negotiating \$25,000,000 or more but less than \$50,000,000 in mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$100,000.

(e) For a person making or negotiating \$50,000,000 or more but less than \$100,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$150,000.

(f) For a person making or negotiating \$100,000,000 or more in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond must be in the amount of \$200,000.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.227

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-860-0090

Corporate Surety Bond or Irrevocable Letter of Credit for Mortgage Bankers Not Employing Mortgage Loan Originators

(1) Every applicant for a license as a mortgage banker who will not act as or employ a mortgage loan originator and does not take an application for a residential mortgage loan, or offer or negotiate terms for a residential mortgage loan must file a corporate surety bond or irrevocable letter of credit with the director as specified in this rule in a form and on terms approved by the director. The corporate surety bond must be renewed or replaced annually as a condition of renewal.

(2) Every person licensed as a mortgage banker must maintain a corporate surety bond or irrevocable letter of credit as specified in this rule during the time the mortgage banker or mortgage broker is licensed but does not act as or employ a mortgage loan originator. The corporate surety bond or irrevocable letter of credit must remain in effect for at least five years after the person ceases to be licensed as a mortgage banker. A consumer must file a claim against the corporate surety bond or irrevocable letter of credit before the corporate surety bond or irrevocable letter of credit expires as described in this section.

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(3) At least five years after a person ceases to be licensed as a mortgage banker, the person or the writer of the corporate surety bond or irrevocable letter of credit may apply to the director for release of the corporate surety bond or irrevocable letter of credit. Unless the director determines that claims are pending against the person for violation of ORS 86A.100 through 86A.095, the director will release the corporate surety bond or irrevocable letter of credit.

(4) Prior to December 31, 2010, every mortgage banker must maintain a corporate surety bond or irrevocable letter of credit in the amount of \$25,000.

(5) For each additional licensed branch location of the applicant engaging in residential mortgage transactions prior to December 31, 2010, the requirement will increase by \$5,000 until the corporate surety bond or irrevocable letter of credit reaches a maximum of \$50,000.

(4) On and after December 31, 2010, the corporate surety bond or irrevocable letter of credit must be calculated based on the last required residential mortgage lending report submitted under OAR 441-865-0025. The sum of the corporate surety bond or irrevocable letter of credit must be determined as follows:

(a) For a person that has not previously conducted business involving the origination of residential mortgage loans in Oregon, the corporate surety bond or irrevocable letter of credit must be in the amount of \$50,000.

(b) For a person making or negotiating less than \$10,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$50,000.

(c) For a person making or negotiating \$10,000,000 or more but less than \$25,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$75,000.

(d) For a person making or negotiating \$25,000,000 or more but less than \$50,000,000 in mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$100,000.

(e) For a person making or negotiating \$50,000,000 or more but less than \$100,000,000 in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$150,000.

(f) For a person making or negotiating \$100,000,000 or more in residential mortgage loans in Oregon in the previous calendar year, the corporate surety bond or irrevocable letter of credit must be in the amount of \$200,000.

Stat. Auth.: ORS 86A.136
Stats. Implemented: ORS 86A.10669
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 2-2004, f. & cert. ef. 8-5-04; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-865-0025

Residential Mortgage Lending Reports

No later than 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 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.

(4) In addition, no later than March 31, 2011, and in each subsequent calendar year thereafter, a mortgage banker or a mortgage broker must file a report of condition to the National Mortgage Licensing System and Registry of the mortgage banker's or mortgage broker's business and operations in Oregon related to residential mortgage transactions.

Stat. Auth.: ORS 86A.112
Stats. Implemented: ORS 86A.112, 86A.239
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; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-865-0060

Residential Borrower Files

(1) For residential mortgage transactions, and in addition to the books and records required under the provisions of OAR 441-865-0010 to 441-865-0090, a mortgage banker that does not fund a loan or mortgage broker that does not fund a loan must prepare and maintain the following:

(a) A copy of each executed loan application form, including the unique identifier of the mortgage loan originator that took the residential mortgage loan application and offered to negotiate or negotiated the terms of the loan;

(b) A copy of each executed fee agreement, if prepared;

(c) In the case of residential or single family loans, a borrower acknowledged statement that a loan interest rate will float or a copy of the executed lock agreement. The lock agreement shall specify at a minimum the: date of the agreement; file identification, and property address; lock-in rate; lock expiration date; disclosure that the lock may be subject to change if any of the loan factors change; and disclosure that if the lock expires, the rate and points are subject to change; and the term of the loan.

(d) A copy of all correspondence with the borrower in writing or in a format easily converted to writing;

(e) A copy of any documents noting approval or denial of a borrower's mortgage loan application;

(f) A copy of all documents submitted by a borrower to the mortgage banker or mortgage broker in connection with the loan application;

(g) If required to be prepared for the residential mortgage transaction, a copy of the good faith estimate required by Regulation X, 24 C.F.R. Part 3500, and translated as applicable to comply with 86A.198;

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(h) A copy of the executed Authorization to Release Credit Information Form;

(i) Copies of every credit report accessed by the mortgage banker or mortgage broker in connection with the transaction;

(j) If required to be prepared for the residential mortgage transaction, copies of the Truth in Lending Disclosure Statement required by Regulation Z, 12 C.F.R. Part 226 and translated as applicable to comply with ORS 86A.198;

(k) If required to be prepared for the residential mortgage transaction, a copy of the final HUD-1 settlement statement required by 24 C.F.R. Part 3500; and

(2) For residential mortgage transactions, and in addition to the books and records required under the provisions of OAR 441-865-0010 to 441-865-0090, a mortgage banker that funds a loan must keep the following in the loan file:

(a) A summary of information on the loan funding program parameters required for the loan's key terms;

(b) A copy of each executed loan application form, including on the form the unique identifier of the mortgage loan originator that took the residential mortgage loan application and offered to negotiate or negotiated the terms of the loan;

(c) A copy of all documentation relied upon in making the loan decision;

(d) A copy of the borrower executed note and executed trust deed;

(e) A copy of the good faith estimate prepared under Regulation X, 24 C.F.R. Part 3500 and translated as applicable to comply with ORS 86A.198;

(f) If required to be prepared for the residential mortgage transaction, a copy of the every credit report accessed by the mortgage banker or mortgage broker in connection with the transaction;

(g) If required to be prepared for the residential mortgage transaction, a copy of any disclosure required by Regulation Z, 12 C.F.R. Part 226 and translated as applicable to comply with 2009 Or Laws ch. 603, § 3, including, but not limited to, the Truth in Lending disclosure statement;

(h) A copy of the final HUD-1 settlement statement required by 24 C.F.R. Part 3500; and

(i) A copy of the statement that notifies the borrower that loan documents associated with the transaction will be in English and that advises the borrower to obtain appropriate assistance, with any necessary translations as required by ORS 86A.195.

(3) If the loan is funded by an investor other than persons enumerated in ORS 59.035(4) or (5), the mortgage banker or mortgage broker must comply with the records requirements under OAR 441-865-0080.

Stat. Auth.: ORS 86A.112 & 86A.136

Stats. Implemented: ORS 86A.112

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 3-2010, f. 3-18-10, cert. ef. 3-22-10

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;

(p) Solicitations from a particular mortgage loan originator or a group of mortgage loan originators without the unique identifier of each mortgage loan originator;

(q) Advertisements pertaining to a particular mortgage loan originator or a group of mortgage loan originators without the unique identifier of each mortgage loan originator;

(r) Promotional materials pertaining to a particular mortgage loan originator or a group of mortgage loan originators without the unique identifier of each mortgage loan originator; and

(s) Websites if the website lists the mortgage loan originator's name in relation to residential mortgage lending without the unique identifier of the particular mortgage loan originator.

(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; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

441-870-0081

Use of Certification or Professional Designations by Mortgage Banker, Mortgage Broker, or Mortgage Loan Originator

(1) The use of a certification or professional designation by any mortgage banker, mortgage broker, or mortgage loan originator in connection with making, negotiating or offering to make or negotiate a mortgage banking loan or a mortgage loan, taking a residential mortgage loan application, offering or negotiating the terms of a residential mortgage loan, selling real estate paper, or accepting funds for investment in real estate paper, that indicates or implies that the person has special certification or training, in such a way as to mislead any person is a dishonest, fraudulent or illegal practice

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or conduct under ORS 86A.115. Prohibited use of a certification or designation under this rule includes, but is not limited to, the following activities:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation.

(b) Use of a nonexistent or self-conferred certification or professional designation.

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have.

(d) Use of a certification that falsely states or implies specialized knowledge of the financial needs of a particular segment of the population or class of borrowers that the person using the certification or professional designation does not have.

(e) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(A) Is primarily engaged in the business of instruction in sales or marketing, or both;

(B) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(C) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(D) Does not have reasonable continuing education requirements for its designees to maintain the designation or certificate.

(2) The director recognizes a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of section (1) (e) of this rule when the organization is accredited by:

(a) The American National Standards Institute;

(b) The National Commission for Certifying Agencies;

(c) The National Association of Mortgage Brokers;

(d) The Mortgage Bankers Association; or

(e) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued from the organization does not primarily apply to sales or marketing, or both.

(3) The director will consider whether a combination of words or an acronym would constitute a certification or professional designation that falsely indicates or implies that a person has special certification or training in advising or servicing a particular segment of the population or class of borrower.

(4) This rule does not apply to use of any of the following designations, titles, degrees, or certifications used by a person unless the facts and circumstances associated with the use of the designation indicate that the designation suggests or implies a greater degree of certification or training than the person possesses or that the designation otherwise misleads borrowers:

(a) A job title within an organization that is licensed, registered, or authorized by a state or federal financial services regulatory agency, when that job title:

(A) Indicates seniority or standing within the organization; or

(B) Specifies an individual's area of specialization within the organization.

(b) A degree, certificate, or designation evidencing completion of an academic program at an institution of higher education that has been accredited by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(5) Violation of section (1) of this rule is an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person, for the purposes of ORS 86A.154.

(6) The prohibitions in this rule and the remedy available to the director do not limit the director's authority to enforce existing provisions of law and apply existing remedies.

Stat. Auth.: ORS 86A.136, 86A.163, 86A.242

Stats. Implemented: ORS 86A.115, 86A.154, 86A.163

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Implementation of One Percent Health Insurance Premium Assessment.

Adm. Order No.: ID 7-2010

Filed with Sec. of State: 3-25-2010

Certified to be Effective: 3-25-10

Notice Publication Date: 3-1-2010

Rules Adopted: 836-009-0020, 836-009-0025, 836-009-0030, 836-009-0035, 836-009-0040

Rules Repealed: 836-009-0020(T), 836-009-0025(T), 836-009-0030(T), 836-009-0035(T), 836-009-0040(T)

Subject: This rulemaking permanently adopts temporary rules that expire on March 26, 2010 and makes some clarifications in response to questions raised as HB 2116 was implemented. House Bill 2116 was enacted by the Legislative Assembly in June 2009 and took effect September 28, 2009. The bill established a one percent assessment on health insurers based on the gross amount of premiums earned by the insurer during each calendar quarter. The bill included an option for the insurers to include the amount of the assessment in their premium rates. For existing approved rates, insurers were allowed to include an additional one percent beginning October 1, 2009, without submitting their premium rate to the Insurance Division for review and approval. If an insurer opted to include the additional one percent, the insurer was required to include a notice with all consumer billings explaining the increase.

In February 2010, the Legislative Assembly amended ORS 743.961 to correct a problem identified in the original bill. SB 1047 clarified that only premiums from health plan policies delivered or issued for delivery in Oregon were subject to the assessment, not policies insuring Oregon residents but issued in another state. The rules adopted reflect this correction in the assessment.

These rules are necessary to fully implement the health plan premium assessment, including clarification of certain terms and information about reporting requirements relating to the assessment and requirements for an insurer that chooses to add the one percent assessment to an existing approved rate.

Rules Coordinator: Sue Munson—(503) 947-7272

836-009-0020

Definitions

As used in OAR 836-009-0020 to 836-009-0040:

(1) "Gross amount of premiums" has the meaning given in ORS 731.808. "Gross amount of premiums" includes premiums earned from riders that are subject to the assessment.

(2) "Health insurer" means any insurer or health care service contractor receiving premiums derived from health plan policies delivered or issued for delivery in Oregon.

(3) "Health plan" has the meaning given in ORS 743.960. As used in the types of insurance excluded from "health plan," "disability insurance" includes accidental death and dismemberment insurance.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 743.960, 743.961 & 743.965

Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10; ID 7-2010, f. & cert. ef. 3-25-10

836-009-0025

Verified Assessment Reporting and Form

(1) Beginning October 1, 2009, every health insurer shall pay an assessment to the Department of Consumer and Business Services in the amount of one percent of the gross amount of premiums earned during each calendar quarter. The health insurer shall submit the assessment no later than 45 days following the end of each calendar quarter.

(2) A health insurer must pay the assessment described in ORS 743.961 on the gross amount of premiums earned from policies delivered or issued for delivery in Oregon.

(3) To calculate the premiums earned for a calendar quarter, the health insurer must deduct returned premiums from premiums received by the insurer and its insurance producers during a calendar quarter.

(4) In addition to any information requested by the Department of Consumer and Business Services, the health insurer must submit with the assessment a verified form created by the Department of Consumer and Business Services and posted on the department's website and must report:

(a) All of the health plans issued or renewed during the calendar quarter for which the assessment is paid; and

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(b) The gross amount of premiums earned by line of insurance from all health plans issued or renewed during the calendar quarter for which the assessment is paid.

(5) The one percent assessment imposed under ORS 743.960, 743.961, 743.965 and section 8, chapter 867, Oregon Laws 2009 (Enrolled House Bill 2116) is in addition to and not in lieu of any other tax, surcharge, or assessment imposed on the insurer and applies to premiums earned by health insurers from October 1, 2009 through September 30, 2013.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.960, 743.961, 743.965 & 2009 OL Ch. 867, § 8 (HB 2116)
Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10; ID 7-2010, f. & cert. ef. 3-25-10

836-009-0030

One-Time Increase in Existing, Approved Premium Rates

(1) Beginning October 1, 2009, a health insurer may but is not required to increase existing premium rates by up to one percent in accordance with the limitations provided in section 8, chapter 867, Oregon Laws 2009 (Enrolled House Bill 2116). In order to determine the amount of increase of existing rate that is allowed, the insurer shall multiply the existing premium by 1 percent. The result derived from multiplying the premium by .01 is the maximum amount of increase the insurer may add to an existing, approved rate.

(2) If an insurer miscalculates the one-time increase allowed under section (1) of this section, and if the insurer has already issued billing statements, the insurer may refund amounts collected in excess of one percent by crediting customers in subsequent billings, by issuing separate refunds, or credit customers by other methods as long as all refunds are made or the insurer has resolved the issue by the close of the 2009 calendar year. An increase to existing rates may not be applied retroactively.

(3) If the Department of Consumer and Business Services has already approved a health insurer's existing rate, the health insurer should not file for approval of the one-time premium rate increase allowed by section (1) of this rule.

(4) If a health insurer that has already had its rates approved does increase its rates by an amount up to the allowed one percent, the insurer must include a notice that explains the rate increase with the first consumer billing reflecting the rate increase. The notice may be printed on the consumer billing, on a sticker affixed to the consumer billing, or on a separate insert with the consumer billing. A health insurer that bills electronically may include the notice electronically or may send the notice separately by mail. The notice should not be sent with subsequent future billings. A health insurer may communicate with customers in other ways but the insurer may not alter, modify, or add to the notice required by this section, and a health insurer may not list the assessment as a separate line item on consumer billing statements.

(5) The notice required under section (4) of this rule shall be either of the following:

(a) Notice 1: "Your health insurance premium reflects a new one percent tax. These tax funds together with federal matching funds will be used to provide health benefits for uninsured Oregon children.;" or

(b) Notice 2: "Beginning [insert date on or after October 1, 2009], your health insurance premium will increase to reflect a one percent tax on health insurance premiums. Funds raised by this tax will be matched more than 2 to 1 by the federal government and will provide access to health care coverage for 80,000 low and moderate-income Oregon children who currently have no health insurance. Ultimately, expanding health care coverage to those who are uninsured is expected to decrease the portion of your premium that currently helps offset the unpaid medical bills of others."

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.960, 743.961, 743.965 & 2009 OL Ch. 867, § 8 (HB 2116)
Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10; ID 7-2010, f. & cert. ef. 3-25-10

836-009-0035

Inclusion of Assessment in Future Rate Filings

(1) In future rate filings, a health insurer may include amounts actually paid toward the assessment. In those rate filings, the health insurer should report the amounts actually paid toward the assessment as an element of administrative expense or retention. If a health insurer includes in rate filings the amounts actually paid toward the assessment, the health insurer should not send the notice set out in OAR 836-009-0030(4) with consumer billing statements.

(2) If a health insurer increases an existing, approved rate by the allowed amount, a subsequent rate filing that includes amounts actually paid toward the assessment must include only amounts actually paid toward

the assessment in excess of the amounts received as a result of the one percent increase in the existing, approved rate.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.960, 743.961, 743.965 & 2009 OL Ch. 867, § 8 (HB 2116)
Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10; ID 7-2010, f. & cert. ef. 3-25-10

836-009-0040

Assessment Derived from Premiums Derived From Contracts not Subject to Rate Approval

(1) Any health insurer deriving premiums from contracts of insurance not subject to the Department of Consumer and Business Services' rate approval authority may increase existing rates on such contracts by one percent but also must provide one of the notices set out in OAR 836-009-0030 with the first consumer billing that reflects the rate increase. The notice must be in the form described in 836-009-0030 and may not be altered, modified, or added to. A health insurer subject to the Department of Consumer and Business Services' rate approval authority may not list the assessment as a separate line item on the consumer billing statement. The notice should not be sent with subsequent consumer billings statements.

(2) In order to determine the amount of increase of existing rate that is allowed, the insurer shall multiply the existing premium by one percent. The result derived from multiplying the premium by .01 is the maximum amount of increase the insurer may add to an existing contractual rate.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 743.960, 743.961, 743.965 & 2009 OL Ch. 867, § 8 (HB 2116)
Hist.: ID 7-2009(Temp), f. 9-30-09, cert. ef. 10-1-09 thru 3-26-10; ID 7-2010, f. & cert. ef. 3-25-10

Rule Caption: Identification of forms approved by IIPRC that need not be separately reviewed in Oregon.

Adm. Order No.: ID 8-2010

Filed with Sec. of State: 3-31-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 3-1-2010

Rules Adopted: 836-010-0012

Rules Amended: 836-010-0000, 836-010-0011

Subject: This rulemaking identifies those forms that have been approved by the Interstate Insurance Product Regulation Commission (IIPRC) that do not need to be separately reviewed prior to approval by Oregon. The director finds that for these forms, the approval process of the IIPRC provides Oregon policyholders substantially the same protection as, or better protections, than the approval process available under Oregon law.

Rules Coordinator: Sue Munson—(503) 947-7272

836-010-0000

Statutory Authority and Implementation

(1) OAR 836-010-0000, 836-010-0011 and 836-010-0021 are adopted under the authority of ORS 731.244 and 731.296, to aid in giving effect to provisions of ORS Chapters 737, 742 and 743 relating to the filing of rates and policy forms with the Director. The requirements of OAR 836-010-0000, 836-010-0011 and 836-010-0021 are in addition to any other requirements established by statute or by rule or bulletin of the Department.

(2) OAR 836-010-0000, 836-010-0011, and 836-010-0021 apply to all filings submitted or resubmitted to the Director on or after May 1, 2002.

(3) OAR 836-010-0012 applies to all filings submitted or resubmitted to the Director on or after April 1, 2010.

Stat. Auth.: ORS 731.244 & 2007 OL Ch. 544 § 1 (HB 2224, 2007)
Stats. Implemented: ORS 731.296, 737.205, 737.207, 742.001, 743.015, 743.018 & 2007 OL Ch. 544 § 1 (HB 2224, 2007)
Hist.: ID 9-1994, f. 7-1-94, cert. ef. 7-15-94; ID 20-1997(Temp), f. 12-29-97, cert. ef. 12-30-97 thru 6-11-98; ID 11-1998, f. & cert. ef. 8-10-98; ID 11-2002(Temp), f. & cert. ef. 4-18-02 thru 10-11-02; ID 20-2002, f. 10-11-02, cert. ef. 10-12-02; ID 8-2010, f. 3-31-10, cert. ef. 4-1-10

836-010-0011

Filing, Review of Rates and Forms

(1) Except as provided in this section, this rule applies to filings of all insurers, including health care service contractors as defined in ORS 750.005, multiple employer welfare arrangements as governed by 750.301 to 750.431 and fraternal benefit societies as governed by ORS Chapter 748. This rule does not apply to:

(a) Purchasing group insurance filings.

(b) Negotiated forms as described in ORS 742.003, but only if each of the negotiated forms is issued only to one policyholder, the insurer has

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determined that the forms comply with benefits and coverages mandated by statute and the forms have a company-assigned form number.

(c) Forms approved by the Interstate Insurance Product Regulation Commission and identified by the Director of the Department of Consumer and Business Services in OAR 836-010-0012.

(2) An insurer must follow the applicable standards set forth on the Oregon Insurance Division's website, <http://www.oregoninsurance.org/doc/rateform.htm>, when making rate and form filings, except that if the insurer files electronically on SERFF (System for Electronic Rates and Forms Filing), the insurer must comply with the Oregon standards set forth in SERFF.

(3) An insurer must submit a completed certificate of compliance as provided in this section with each filing of a new or revised rate and each filing of a new or amended form. The insurer must use the certificate of compliance in **Exhibit 1** to this rule. The certificate of compliance must certify compliance with the applicable filing requirements and product standards set forth on the Oregon Insurance Division's website, http://www.oregoninsurance.org/docs/serff/filing_requirements.htm, or on the SERFF system for Oregon, if filed electronically. The certificate must be accompanied by the applicable product standards form. A certificate of compliance must be completed and signed by:

(a) An officer of the insurer who is authorized by the insurer to do so; and

(b) Signed by the filer who is specifically designated by the insurer to prepare and make the filing.

(4) An insurer filing changes to a form or forms that were previously approved must highlight or otherwise visually call attention to the changes in new or revised forms and must submit a letter explaining the changes.

(5) A filing received for prior approval by the Department that does not contain a certificate of compliance and does not comply with the standards referenced in this rule is incomplete and will be returned to the insurer as disapproved.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 731.244, 731.296 & 2007 OL Ch. 544 § 1 (HB 2224, 2007)
Stats. Implemented: ORS 731.296, 737.205, 737.207, 742.001, 743.015 & 743.018 & 2007 OL Ch. 544 § 1 (HB 2224, 2007)
Hist.: ID 9-1994, f. 7-1-94, cert. ef. 7-15-94; ID 11-1996, f. 6-28-96, cert. ef. 7-1-96; ID 20-1997(Temp), f. 12-29-97, cert. ef. 12-30-97 thru 6-11-98; ID 11-1998, f. & cert. ef. 8-10-98; Administrative correction 6-25-99; ID 6-2000, f. & cert. ef. 7-19-00; ID 3-2001, f. 3-19-01, cert. ef. 5-1-01; ID 11-2002(Temp), f. & cert. ef. 4-18-02 thru 10-11-02; ID 20-2002, f. 10-11-02, cert. ef. 10-12-02; ID 8-2010, f. 3-31-10, cert. ef. 4-1-10

836-010-0012

Forms Approved by Interstate Insurance Product Regulation Commission

(1) The director finds that for the forms listed in section (2) of this rule, the approval process of the Interstate Insurance Product Regulation Commission, when taken as a whole, gives Oregon policyholders substantially the same protection as or better protections than the approval process available under the laws of this state, when considered in light of:

(a) The product standards and review procedures the commission uses;

(b) The nature of the insurance product reviewed; and
(c) The consumer needs that the insurance product serves.

(2) The following forms approved by the Interstate Insurance Product Regulation Commission need not be reviewed prior to approval, but must comply with filing directions established by the Department:

(a) Individual Flexible Premium Adjustable Life Insurance Policy.
(b) Waiver of Monthly Deduction Benefit Rider.
(c) Waiver of Premium Benefit Rider.
(d) Waiver of Premium Benefit for Child Insurance in the Event of Payor's Total Disability or Death Rider.
(e) Individual Life Insurance Application.
(f) Individual Life Application Change Form.
(g) Forms Used to Exclude Policy Coverage Based on the Underwriting Process

(3) Nothing in this section affects the director's authority to withdraw approval of any policy form under ORS 742.007 or to regulate the marketing and use of any approved policy form under the laws of this state.

(4) This rule applies to insurance policy forms filed with the Director of the Department of Consumer and Business Services on or after April 1, 2010.

Stat. Auth.: ORS 731.244 & 2007 OL Ch. 544 § 1 (HB 2224, 2007)
Stats. Implemented: 2007 OL Ch. 544 § 1 (HB 2224, 2007)
Hist.: ID 8-2010, f. 3-31-10, cert. ef. 4-1-10

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

Rule Caption: Time frames for requesting Preferred Worker Program incentives.

Adm. Order No.: WCD 1-2010(Temp)

Filed with Sec. of State: 4-15-2010

Certified to be Effective: 4-15-10 thru 10-11-10

Notice Publication Date:

Rules Amended: 436-110-0240, 436-110-0290, 436-110-0336, 436-110-0351

Subject: These temporary rule amendments clarify time frames for requesting Preferred Worker Program (PWP) incentives.

To be eligible for premium exemption and claim cost reimbursement, the employer at injury must notify its insurer that it has hired a Preferred Worker within 90 days from the date of hire. However, OAR 436-110-0240 prescribes certain text that must be included in insurers' notices to employers regarding PWP benefits, and the text in the permanent rule includes: "You must request Preferred Worker Program assistance from the Workers' Compensation Division within 180 days of the worker's claim closure date." The wording of this notice has not made it clear that the 180-day time frame applies to other benefits but not to premium exemption and claim cost reimbursement. The revised notice in the temporary rules refers to the 90-day time frame. In addition, OAR 436-110-0290, which provides conditions for employer at injury use of the PWP, now states the 90-day time frame.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-110-0240

Insurer Participation in the Preferred Worker Program

(1) The insurer of the employer at injury must be an active participant in providing reemployment assistance. Participation includes issuing notices of the assistance available from the Preferred Worker Program.

(2) The insurer must notify the worker and employer at injury in writing of the reemployment assistance available from the fund. A notice must be issued:

(a) Within five days of a worker's release for work after the worker has been declared medically stationary by the attending physician;

(b) Upon determination of eligibility or ineligibility of the worker for vocational assistance under OAR 436-120; and

(c) Upon approval of a Claim Disposition Agreement.

(3) Pursuant to section (2) of this rule, the Notice to the Worker must appear in bold type and contain the following language:

The Preferred Worker Program helps Oregon's injured workers get back to work. To find out whether you qualify, contact the Preferred Worker Program at one of the telephone numbers, fax numbers, or addresses listed below. For the Salem office call: (503) 947-7588, 1-800-445-3948, or FAX (503) 947-7581.

For the Medford office call: (541) 776-6032, 1-800-696-7161, or FAX (541) 776-6022.

Or write the Preferred Worker Program at: 350 Winter Street NE, P.O. Box 14480, Salem, Oregon 97309-0405; or 1840 Barnett Road, Suite C, Medford, Oregon 97504-8293.

(4) Under section (2) of this rule, the Notice to the Employer must appear in bold type and contain the following language:

If your worker is unable to return to regular work because of injury-caused limitations, you may be eligible for the Preferred Worker Program incentives including Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, and Worksite Modification, which you may use to re-employ your worker.

To be eligible for Premium Exemption and Claim Cost Reimbursement you must notify your insurer that you have hired a Preferred Worker within 90 days from the date of hire.

For all other Preferred Worker Program benefits you must request assistance from the Workers' Compensation Division within 180 days of the worker's claim closure date. To find out about the Preferred Worker Program, contact the program at one of the telephone numbers, fax numbers, or addresses listed below. For the Salem office call: (503) 947-7588, 1-800-445-3948, or FAX (503) 947-7581.

For the Medford office call: (541) 776-6032, 1-800-696-7161, or FAX (541) 776-6022.

Or write the Preferred Worker Program at: 350 Winter Street NE, P.O. Box 14480, Salem, Oregon 97309-0405; or 1840 Barnett Road, Suite C, Medford, Oregon 97504-8293.

(5) The insurer must provide the division with Preferred Worker information in the form and format the director prescribes in OAR 436-030, upon the following:

(a) Claim closure according to ORS 656.268;

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(b) Within 30 calendar days from the insurer's receipt of the earliest Opinion and Order of an Administrative Law Judge, Order on Reconsideration, Order on Review by the Board, decision of the Court of Appeals, or stipulation which grants initial permanent disability after the latest opening of the worker's claim; and

(c) Approval of a Claim Disposition Agreement according to ORS 656.236 and documented medical evidence indicates permanent disability exists as a result of the injury or disease, and the worker is unable to return to regular employment.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)

Stats. Implemented: ORS 656.340(1), (2), (3), 656.622 & 656.726(4)

Hist.: WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0017; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

436-110-0290

Employer at Injury Use of the Preferred Worker Program

The conditions for the employer at injury to activate the Preferred Worker Program include:

(1) To be eligible for Premium Exemption and Claim Cost Reimbursement, the employer at injury must notify the insurer they have hired a Preferred Worker within 90 days of the date of hire. Premium Exemption starts on the date of hire.

(2) However, if on the date of hire the worker's eligibility has not been determined, the employer at injury must request an eligibility determination from the division within 90 days from the date of hire. If the worker is eligible, Premium Exemption starts on the date the division determines the worker is eligible.

(3) For all other Preferred Worker Program benefits the employer at injury must request Preferred Worker Program assistance from the division within 180 days of the worker's claim closure date, with the following exception. When Worksite Modifications are provided, and the modifications are completed and verified by the division more than 150 days after the worker's claim-closure date, the employer at injury will have 30 calendar days from the verification date to request other assistance.

(4) In calculating the 180-day period under this rule, the claim closure date will not be included, and if the 180th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 180-day period.

(5) The worker must agree to accept the new or modified regular job in writing. The job offer must include:

(a) The start date. If the job starts after the modifications are in place, so note;

(b) Wage and hours;

(c) Job site location; and

(d) Description of job duties.

(6) If the employer at injury uses Worksite Modification assistance and the employer or worker later requests additional modifications for the same job, the employer's Worksite Modification benefit will be exhausted before using the worker's Worksite Modification benefits.

(7) All other provisions under OAR 436-110 apply unless otherwise indicated.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 1-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

436-110-0336

Wage Subsidy — Employer at Injury Activated

Wage Subsidy may be activated by the employer at injury as follows:

(1) The job must be within the worker's injury-caused restrictions. If a worksite modification is necessary to meet this requirement, Wage Subsidy will not be approved until the modification is complete, and verified by a representative of the division.

(2) The employer must complete and sign a Wage Subsidy Agreement, and send it to the division in the timeframes allowed in OAR 436-110-0290.

(3) The completed and signed job offer must accompany the request as required in OAR 436-110-0290(5), unless it was already submitted with another request.

(4) The employer at injury may use Wage Subsidy once during an eligibility period.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 1-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

436-110-0351

Worksite Modification — Employer at Injury Activated

Conditions for use of Worksite Modifications by the employer at injury are as follows:

(1) The employer at injury may use Worksite Modification assistance once for a job provided for their injured worker, or a second time if the worker changes to another job with the employer at injury within the timeframes allowed in OAR 436-110-0290(3).

(2) Modifications are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005(9).

(3) The division must approve, by authorized signature, a completed and signed *Worksite Modification Agreement* prior to any reimbursement or *Authorization for Payment*.

(4) Modifications may be provided for requests received within 180 days from the worker's claim closure date. Additional modifications may be provided under an approved agreement by addendum for requests received within three years from the date the worker started work for the employer in employment for which the Worksite Modification request was made.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 1-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

Department of Corrections Chapter 291

Rule Caption: Active and Inactive Probation Supervision for Offenders.

Adm. Order No.: DOC 4-2010(Temp)

Filed with Sec. of State: 3-23-2010

Certified to be Effective: 3-23-10 thru 9-19-10

Notice Publication Date:

Rules Amended: 291-206-0005, 291-206-0010, 291-206-0015, 291-206-0020, 291-206-0025

Subject: Temporary amendment of these rules is necessary provide further clarification for implementation of Or Laws 2009 Ch 660 (HB 3508), which allows an offender sentenced to probation to be eligible for a reduction in the period of active probation for compliance with the conditions of probation and the offender's supervision plan. Modification of these rules includes defining compliance with conditions of probation and the supervision plan, explaining the process for placing an offender on inactive supervision, and clarifying that the rules apply to offenders convicted of a crime committed on or before July 1, 2011 and who are on probation on or after February 24, 2010.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-206-0005

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, 423.075, 423.478, 423.483, 423.525, and 423.530.

(2) Purpose: The purpose of these rules is to describe the manner in which an offender sentenced to probation under the rules of the Oregon Criminal Justice Commission may be placed on inactive supervision or returned to active supervision in accordance with the provisions of Or Laws 2009 Ch 660.

(3) Policy:

(a) It is the policy of the Department of Corrections that eligible offenders sentenced to probation may be considered by the supervisory authority for a reduction in the period of active probation for compliance with conditions of probation and their supervision plan pursuant to Or Laws 2009 Ch 660, as provided in these rules.

(b) Offenders whose supervision has been transferred to another state under the Interstate Compact for Adult Offender Supervision are ineligible for inactive probation under these rules.

(c) These rules apply to offenders convicted of a crime committed before July 1, 2011, and who are on probation on or after February 24, 2010.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660

Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660

Hist.: DOC 3-2010, f. & cert. ef. 2-24-10; DOC 4-2010(Temp), f. & cert. ef. 3-23-10 thru 9-19-10

ADMINISTRATIVE RULES

291-206-0010

Definitions

(1) **Active Probation Supervision:** Supervision requiring the supervising officer's regular contact and monitoring to assure continued compliance with the general and special conditions of probation supervision.

(2) **Compensatory Fines:** A court-imposed penalty for the commission of a crime resulting in injury for which the person injured has a remedy by civil action (unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction). The court may award compensatory fines in addition to restitution.

(3) **Compliance with the Conditions of Probation and Supervision Plan:** For purposes of these rules an eligible offender shall be deemed by the supervisory authority to be in compliance with the conditions of probation and any applicable supervision plan if:

(a) All special conditions imposed by the sentencing court for the offender on the term of probation under consideration for inactive supervision have been satisfactorily completed, including the full payment of any restitution or compensatory fine ordered;

(b) There have been no technical violations of probation conditions reported to the sentencing court for the immediate six months prior to the consideration for inactive status;

(c) There have been no new crime violations of probation conditions reported to the sentencing court during the term of probation under consideration for inactive supervision; and

(d) All terms of any applicable supervision plan have been satisfied.

(4) **Inactive Probation Supervision:** A reduced level of supervision that does not include any direct supervision by a supervising officer or regular reporting; however, the offender remains subject to arrest by a supervising officer for violations of condition of supervision and return to active supervision at any time until expiration of the term of probation. All general and special conditions of supervision remain in effect with the following exceptions:

(a) General Condition #1 — Pay supervision fees (fines, restitution or other fees previously ordered by the court remain in effect); and

(b) Special conditions specifically deleted by the court.

(5) **Offender:** Any person under supervision who is on parole, post prison supervision, transitional leave, local control or probation status.

(6) **Supervising Officer:** The parole and probation officer assigned to supervise the offender.

(7) **Supervisory Authority:** The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate correction supervision services, custodial facilities, or both per ORS 144.087(1).

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660

Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660; DOC 4-2010(Temp), f. & cert. ef. 3-23-10 thru 9-19-10

Hist.: DOC 3-2010, f. & cert. ef. 2-24-10; DOC 4-2010(Temp), f. & cert. ef. 3-23-10 thru 9-19-10

291-206-0015

Period of Active Probation Supervision

(1) Except as provided in subsections (2), (3), and (4) of this rule, all persons convicted of a felony committed on or after November 1, 1989 and sentenced to probation under the rules of the Oregon Criminal Justice Commission shall serve a minimum period of active probation supervision as follows:

(a) Nine months of active probation supervision for crimes in crime categories 1 and 2;

(b) Twelve months of active probation supervision for crimes in crime categories 3, 4, and 5;

(c) Eighteen months of active probation supervision for crimes in crime categories 6, 7, and 8; or

(d) Thirty months of active probation supervision for crimes in crime categories 9, 10, and 11.

(2) All persons convicted of a felony and who are subject to a departure sentence as authorized by OAR 213-005-0008(2) shall serve a minimum period of active supervision, which equals one-half of the supervision period ordered by the sentencing court.

(3) All persons convicted of a felony and sentenced to probation pursuant to ORS 137.012 shall serve a minimum period of active supervision, which equals one-half of the supervision period ordered by the sentencing court.

(4) All persons convicted of a felony committed before November 1, 1989 and sentenced to probation shall serve a minimum period of active supervision, which equals one-half of the supervision period ordered by the sentencing court.

(5) When an eligible offender has served the minimum period of active probation supervision established under subsections (1), (2), (3), and (4) of this rule, the supervisory authority may place the offender on inactive supervision status in the manner provided in these rules.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660

Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660
Hist.: DOC 3-2010, f. & cert. ef. 2-24-10; DOC 4-2010(Temp), f. & cert. ef. 3-23-10 thru 9-19-10

291-206-0020

Inactive Supervision

(1) Upon completion of the minimum period of active supervision as authorized in OAR 291-206-0015, the supervising officer or designee shall review the offender's file and determine if the offender is in compliance with the offender's probation conditions and any applicable supervision plan as defined in these rules.

(a) If the supervising officer or designee determines that the offender is in compliance, the supervising officer shall recommend to the supervisory authority that it place the offender on inactive probation supervision, not to exceed the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws. Upon receiving a request from the supervising officer, the supervising authority shall place the offender on inactive probation supervision if the supervisory authority determines that the offender is in compliance with probation conditions and any applicable supervision plan as defined in these rules.

(b) If the supervising officer or designee determines that the offender is not in compliance with the conditions of probation and any applicable supervision plan, the supervisory authority shall extend the period of active probation supervision for the remainder of the supervision period imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws.

(2) Notwithstanding subsection (1)(b) of this rule, the supervising authority may later place the offender on inactive probation supervision upon request of the supervising officer if the supervisory authority determines that the offender has subsequently come into compliance with the conditions of probation and any applicable supervision plan, and that inactive probation supervision for the offender is in the best interest of the offender and the community.

(3) **Offenders on or Requesting Compact Supervision in Another State:**

(a) Offenders whose supervision has been transferred to another state under the Interstate Compact for Adult Offender Supervision are ineligible for inactive probation under these rules.

(b) An offender requesting to leave the State of Oregon to reside in another state while on inactive supervision must receive approval for transfer of the offender's supervision through the Interstate Compact process before being allowed to do so.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660

Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660
Hist.: DOC 3-2010, f. & cert. ef. 2-24-10; DOC 4-2010(Temp), f. & cert. ef. 3-23-10 thru 9-19-10

291-206-0025

Return to Active Supervision

(1) An offender remains subject to arrest for violations of conditions of supervision while on inactive probation supervision.

(2) Once an offender has been placed on inactive probation supervision, the supervisory authority may return an offender to active probation supervision for the remainder of the supervision period imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws, when the supervisory authority receives a report from a parole and probation officer showing good cause why inactive probation supervision is no longer in the offender's best interest or in the best interest of the community.

(3) If the supervisory authority has good cause to return an offender to active probation supervision, and the whereabouts of the offender is unknown, the supervising officer may request that the supervisory authority or the court issue a warrant for the offender's arrest.

(4) After reviewing the report submitted under subsection (2) of this rule, the supervisory authority may return the offender to active probation supervision not to exceed the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws, if the supervisory authority finds that returning the offender to active probation supervision is in the best interest of the offender and the community.

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(5) When an offender is returned to active probation supervision, all general conditions and all previously imposed special conditions shall be in effect.

(6) Once returned to active probation supervision after a period of inactive probation supervision, the supervisory authority may again place the offender on inactive probation supervision upon request of the supervising officer if the supervisory authority determines that the offender has subsequently come into compliance with the conditions of probation and any applicable supervision plan, and that inactive probation supervision for the offender is in the best interest of the offender and the community.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 2009 OR Laws Ch. 660
Hist.: DOC 3-2010, f. & cert. ef. 2-24-10; DOC 4-2010(Temp), f. & cert. ef. 3-23-10 thru 9-19-10

Rule Caption: Release Subsidies for Inmates.

Adm. Order No.: DOC 5-2010

Filed with Sec. of State: 4-6-2010

Certified to be Effective: 4-6-10

Notice Publication Date: 12-1-2009

Rules Adopted: 291-157-0021

Rules Amended: 291-157-0005, 291-157-0010, 291-157-0015, 291-157-0035

Rules Repealed: 291-157-0020, 291-157-0025, 291-157-0041, 291-157-0055, 291-157-0005(T), 291-157-0010(T), 291-157-0015(T), 291-157-0021(T), 291-157-0035(T)

Subject: These amendments are necessary to update and the rules to current practices for allocation of release subsidies to counties, and incidental funds to inmates.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-157-0005

Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: To assure inmates have access to basic financial support for release.

(3) Policy: It is the policy of the Department of Corrections to establish a program to provide releasing inmates with financial assistance to meet minimum release needs, in accordance with the requirements set by ORS 421.125(2)(b), and within funds appropriated for this purpose.

Stat. Auth.: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Hist.: CD 17-1979(Temp), f. & ef. 8-30-79; CD 21-1979, f. & ef. 11-29-79; CD 14-1981(Temp), f. & ef. 5-20-81; CD 32-1981, f. & ef. 6-30-81; CD 20-1983, f. & ef. 5-2-83; CD 42-1983(Temp), f. & ef. 10-14-83; CD 5-1984, f. & ef. 4-9-84; CD 5-1985(Temp), f. & ef. 6-17-85; CD 62-1985, f. & ef. 8-16-85; CD 19-1986(Temp), f. 6-30-86, ef. 8-15-86; CD 28-1986, f. & ef. 8-20-86; CD 20-1988, f. & cert. ef. 11-18-88; CD 14-1994, f. 7-19-94, cert. ef. 8-1-94; DOC 20-2009(Temp), f. & cert. ef. 11-13-09 thru 5-12-10; DOC 5-2010, f. & cert. ef. 4-6-10

291-157-0010

Definitions

(1) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(2) Release Subsidy: Financial assistance allocated to a releasee by the county for the purpose of purchasing essential goods or services related to release needs.

(3) Release Counselor: A person employed by the Department of Corrections charged with release planning for inmates.

(4) Incidental Funds: Funds not to exceed \$25 allocated to a releasee by the Department of Corrections for immediate financial assistance upon release.

(4) Releasee: Any inmate that is being released to or has been released to the community on parole, post-prison supervision, or discharge status.

(5) Trust Account Funds: Those monies deposited to an inmate's trust account which may be used by the inmate to purchase authorized items or services during his/her incarceration or be assessed by the functional unit to pay any indebtedness incurred while under supervision of the Department of Corrections.

Stat. Auth.: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Hist.: CD 17-1979(Temp), f. & ef. 8-30-79; CD 21-1979, f. & ef. 11-29-79; CD 14-1981(Temp), f. & ef. 5-20-81; CD 32-1981, f. & ef. 6-30-81; CD 20-1983, f. & ef. 5-2-83; CD 42-1983(Temp), f. & ef. 10-14-83; CD 5-1984, f. & ef. 4-9-84; CD 5-1985(Temp), f. & ef. 6-17-85; CD 62-1985, f. & ef. 8-16-85; CD 19-1986(Temp), f. 6-30-86, ef. 8-15-86; CD

28-1986, f. & ef. 8-20-86; CD 20-1988, f. & cert. ef. 11-18-88; CD 14-1994, f. 7-19-94, cert. ef. 8-1-94; DOC 7-1998, f. 3-26-98, cert. ef. 4-1-98; DOC 20-2009(Temp), f. & cert. ef. 11-13-09 thru 5-12-10; DOC 5-2010, f. & cert. ef. 4-6-10

291-157-0015

Procedures

(1) Notice to Inmates: Each inmate is responsible for saving money for release purposes. All monies received in the trust account during his/her incarceration will be tallied and the total figure may be the basis for approval or denial of release subsidies in accordance with ORS 421.125.

(2) Administration: The Assistant Director for Transitional Services or designee is responsible for the administration of the release subsidy program. However, eligibility for release subsidies and coordination of payments for releasees shall be determined by the local county director of community corrections or designee.

(3) Twenty percent of the total allocation of subsidy monies will be retained by the Transition and Release administrator for institution release purposes and may be used towards incidental funds.

(4) The balance of allocated subsidy monies will be distributed to all counties via the community corrections work load formula. Counties will receive subsidy funds through the quarterly allotment process.

Stat. Auth.: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Hist.: CD 17-1979(Temp), f. & ef. 8-30-79; CD 21-1979, f. & ef. 11-29-79; CD 14-1981(Temp), f. & ef. 5-20-81; CD 32-1981, f. & ef. 6-30-81; CD 20-1983, f. & ef. 5-2-83; CD 42-1983(Temp), f. & ef. 10-14-83; CD 5-1984, f. & ef. 4-9-84; CD 5-1985(Temp), f. & ef. 6-17-85; CD 62-1985, f. & ef. 8-16-85; CD 19-1986(Temp), f. 6-30-86, ef. 8-15-86; CD 28-1986, f. & ef. 8-20-86; CD 20-1988, f. & cert. ef. 11-18-88; CD 14-1994, f. 7-19-94, cert. ef. 8-1-94; DOC 7-1998, f. 3-26-98, cert. ef. 4-1-98; DOC 20-2009(Temp), f. & cert. ef. 11-13-09 thru 5-12-10; DOC 5-2010, f. & cert. ef. 4-6-10

291-157-0021

Distribution and Processing of Incidental Funds

(1) The inmate's release counselor will:

(a) Interview the releasee to determine specific needs.

(b) Review the inmate's trust account history and inmate support system in the community.

(c) Determine if the releasee is in need of incidental funds based on the information gathered.

(2) If it is determined that the releasee is in need of incidental funds, the release counselor will notify Central Trust.

(3) Upon receipt of notification from a release counselor that incidental funds are needed, Central Trust will issue funds to the inmate via a check or by placing the funds on the inmate's Offender Debit Card.

Stat. Auth.: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Hist.: DOC 20-2009(Temp), f. & cert. ef. 11-13-09 thru 5-12-10; DOC 5-2010, f. & cert. ef. 4-6-10

291-157-0035

Appeal Process

Appeal Rights: An inmate or releasee may appeal decisions in the application of this rule by using the process outlined in the Department of Corrections rule on Grievance Review System (Inmate) (OAR 291-109).

Stat. Auth.: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.125, 423.020, 423.030 & 423.075
Hist.: CD 20-1983, f. & ef. 5-2-83; CD 5-1985(Temp), f. & ef. 6-17-85; CD 62-1985, f. & ef. 8-16-85; CD 19-1986(Temp), f. 6-30-86, ef. 8-15-86; CD 28-1986, f. & ef. 8-20-86; CD 20-1988, f. & cert. ef. 11-18-88; CD 14-1994, f. 7-19-94, cert. ef. 8-1-94; DOC 7-1998, f. 3-26-98, cert. ef. 4-1-98; DOC 20-2009(Temp), f. & cert. ef. 11-13-09 thru 5-12-10; DOC 5-2010, f. & cert. ef. 4-6-10

Rule Caption: Amends administrative rules for earned time credits for inmates in light of 2009 and 2010 legislative enactments.

Adm. Order No.: DOC 6-2010(Temp)

Filed with Sec. of State: 4-14-2010

Certified to be Effective: 4-14-10 thru 10-11-10

Notice Publication Date:

Rules Amended: 291-097-0005, 291-097-0010, 291-097-0015, 291-097-0020, 291-097-0023, 291-097-0025, 291-097-0030, 291-097-0040

Subject: These temporary rule amendments are needed to implement House Bill 2623 (2009), Senate Bill 1007 (2010), and other house-keeping issues.

HB 2623 (2009) authorizes inmates to be eligible for earned time credits, not to exceed 60 days, for obtaining a high school diploma, General Educational Development (GED) certificate, or a certificate or degree from a post-secondary education institution as defined in ORS 337.511 or a journey level certification from a registered

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apprenticeship program as defined in ORS 660.010. HB 2623 applies to inmates who obtain a diploma, certificate or degree on or after January 1, 2010.

SB 1007 (2010) amended Oregon Laws 2009, chapter 660 (HB 3508) by restricting the number of inmates who were eligible for an increase in earned time credits under HB 3508. Specifically, SB 1007 limited the increase in earned time to 30 percent to only those inmates who are sentenced for otherwise eligible crimes on or after July 1, 2009 for crimes committed before February 17, 2010. Second, SB 1007 further amended HB 3508 by removing the possibility of an increase in earned time to 30 percent if a sentencing court had not entered a supplemental judgment authorizing an increase in earned time to 30 percent before February 17, 2010.

Additionally, the Department's current administrative rules do not adequately address how earned time credits will be applied toward inmates' sentences following violations of the conditions of transitional leave, second look conditional release, and escape situations. The Department needs to amend its administrative rules in order to address these potential "gaps" in its administrative rules.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-097-0005

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120, 421.121, 421.122, 423.020, 423.030 and 423.075.

(2) The purpose of this rule is to establish procedures for calculating, applying, retracting, and restoring earned time, statutory good time and extra good time credits, and for recommending modifications of parole release dates to the Board of Parole and Post-Prison Supervision, for inmates sentenced for crimes committed on or after November 1, 1989 (sentencing guidelines), and for inmates sentenced for crimes committed prior to November 1, 1989 (matrix sentences).

(3) Policy:

(a) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed on or after November 1, 1989 (sentencing guidelines), may be considered for a reduction in their term of incarceration pursuant to ORS 421.121, as set forth in these rules.

(A) Inmates sentenced under sentencing guidelines may be eligible to earn sentence reduction credits (earned time credits) up to a maximum of 20 percent of each sentencing guidelines sentence. Inmates sentenced under sentencing guidelines on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced under the sentencing guidelines prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, may be eligible to earn sentence reduction credits (earned time credits) up to a maximum of 30 percent of each sentencing guidelines sentence.

(i) For inmates sentenced on or after November 1, 1989 and who obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010, the earned time credits received by the inmate are dependent on institution conduct and compliance with his/her Oregon Corrections Plan.

(ii) For inmates sentenced on or after November 1, 1989 and who obtain a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, the earned time credits received by the inmate are dependent on institution conduct, compliance with his/her Oregon Corrections Plan, and the inmate having obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(B) Earned time credits are designed to provide a minimum amount of time credits necessary to serve as adequate incentive for appropriate institutional behavior, program participation, and for certain inmates, obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institu-

tion as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(b) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible for prison term reduction credits (statutory good time and extra good time credits) pursuant to ORS 421.120, as set forth in these rules.

(c) It is the policy of the Department of Corrections that inmates sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible to receive a recommendation from the Department to the Board of Parole and Post-Prison Supervision that the inmate receive prison term reduction credits for an earlier date, as set forth in these rules.

(d) It is the policy of the Department of Corrections to develop Oregon Corrections plans on all inmates assigned to a Department of Corrections facility.

(e) It is the policy of the Department of Corrections to not calculate earned time for boarders from another state or those inmates serving only pre-sentencing guidelines sentences or sentences of death, life without the possibility of parole or life with the possibility of parole.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2010 OL Ch. 2 (SB 1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2010 OL Ch. 2 (SB 1007)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

291-097-0010

Definitions

(1) Certificate or Degree from a Post-Secondary Education Institution: A certificate or degree awarded by a post-secondary education institution as defined in ORS 337.511 for satisfactory completion of a course of study, which has been approved by the State Board of Education.

(2) Earned Time Credits: Sentence reduction credits (days), up to 30 percent of the sentence imposed, that can be earned by an inmate sentenced under sentencing guidelines, pursuant to ORS 421.121, and these rules. The inmate earns the reductions by compliance with his/her Oregon Corrections Plan and institution conduct.

(a) An inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010 prior to January 1, 2010, earns the reductions by compliance with his/her Oregon Corrections Plan and institution conduct.

(b) An inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010 on or after January 1, 2010, earns the reductions by institutional conduct, compliance with his/her Oregon Corrections Plan, and obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(3) Earned Time Release Date: The release date that has been achieved by an inmate, calculated by subtracting the earned time credits accrued from the maximum date.

(4) Extra Good Time Credits: Sentence reduction credits (days) that can be earned by an inmate sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines), for satisfactory work assignment or participation in an educational program, pursuant to ORS 421.120(1)(c), (d) and (e) and 421.122, and these rules. Days earned reduce the statutory good time date. Methods of computation are delineated in OAR 291-097-0070.

(5) Final Review Period: An increment of at least four months prior to an inmate's projected release date.

(6) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(7) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, or an Assistant Director and has responsibility for the delivery of program services or coordination of program operations.

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(8) Judgment: Document issued by the court that commits an inmate to the legal and physical custody of the Department of Corrections, and reflects the inmate's term of incarceration, term of post-prison supervision, and court-ordered supervision conditions, if any.

(9) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(10) Offender: Any person under the supervision of the Department of Corrections, local supervisory authority or community corrections who is on probation, parole or post-prison supervision status.

(11) Offender Information & Sentence Computation Unit (OISC): The functional unit charged to administrate applicable statutes pertaining to sentencing; develop, implement and revise applicable processes for inmate and offender sentence computation; respond to public information requests with regard to inmates and offenders; certify an inmate's release date; and provide supportive services to Department facilities with regard to inmate sentencing.

(12) Oregon Corrections Plan (OCP): An automated case management tool incorporated into the Corrections Information System that serves as the primary tool for tracking an inmate's progress in working to mitigate the identified risk factors.

(13) Parole Release Date: The date on which an inmate is ordered to be released from an indeterminate prison sentence(s) to parole by the Board of Parole and Post-Prison Supervision. Parole release may be to the community, detainee or to another Department of Corrections sentence.

(14) Post-Secondary Education Institution: An education institution as defined in ORS 337.511.

(15) Pre-Sentence: That period of time a defendant spends in physical custody or incarceration from the point of arrest to the date of delivery to the Department to serve that sentence.

(16) Prison Term:

(a) Sentencing Guidelines Sentences: The length of incarceration time within a Department of Corrections facility as established by the court in the judgment for each crime of conviction.

(b) Pre-Sentencing Guidelines Sentences: The length of required incarceration time within a Department of Corrections facility as established by the order of the Board of Parole and Post-Prison Supervision setting of a parole release date.

(17) Prison Term Analyst: The staff person from OISC responsible for calculating inmates' sentences, applying sentence reduction credits and establishing release dates pursuant to applicable rules and statutes.

(18) Projected Release Date: The date upon which an inmate is anticipated to complete service of the prison term.

(19) Restoration of Earned Time, Statutory Good Time, Extra Good Time Credits: Where previously retracted earned time, statutory good time, extra good time and previously forfeited statutory good time and extra good time for parole violators are granted and applied back to the inmate's sentence.

(20) Retraction: Where previously granted earned time, statutory good time or extra good time credits are forfeited by an inmate as a result of a significant negative action on the part of the inmate, in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105), or forfeiture of program earned time credits granted following the effective date of this rule for inmates identified for residential alcohol and drug treatment (SCF 25) who fail to satisfactorily complete the prescribed program during their term of incarceration.

(21) Review Period: A six-month increment, beginning with an inmate's admission date, used to determine an inmate's compliance with institution behavior and his/her OCP.

(22) Short-Term Transitional /Non-Prison Leave: A leave for a period not to exceed 90 days preceding an established release date that allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. Short-term transitional leave/non-prison leave is granted in accordance with ORS 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves, and Supervised Trips (OAR 291-063).

(23) Special Case Factor 25: An inmate identified as both highly criminal and highly involved with drugs or alcohol through intake screening or subsequent assessment who is required to participate and complete a residential alcohol and drug program if available prior to the inmate's release.

(24) Statutory Good Time Credits: Prison term reduction credits (days) applicable to sentences for crimes committed prior to November 1, 1989 (matrix sentences) consisting of a reduction of one day for every two days served, pursuant to ORS 421.120(1)(a) and (b), and these rules. The application of statutory good time days establishes the initial statutory good

time date and is re-calculated upon parole revocation based on the length of the remaining sentence.

(25) Supplemental Judgment: The form of judgment prepared by and transmitted to a sentencing court pursuant to Oregon Laws 2009, Chapter 660, § 18 (House Bill 3508) which authorizes the Department to consider the inmate for a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent of the total term of incarceration in a DOC facility.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch 660. (HB 3508) & Ch. 623 (HB 2623)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

291-097-0015

Earned Time Credits

(1) Pursuant to ORS 421.121, inmates sentenced under sentencing guidelines may earn sentence reduction credits up to 20 percent of the total sentencing guidelines prison term imposed for acceptable participation in OCP requirements and for maintaining appropriate institution conduct, except inmates:

(a) Serving a sentence subject to ORS 137.635;

(b) Serving presumptive sentences or required incarceration terms under ORS 161.737;

(c) Serving statutory minimum sentences under ORS 137.700 or 137.707;

(d) Serving a presumptive sentence under ORS 137.719;

(e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;

(f) Serving time as a sanction for violation of conditions of post prison supervision; or

(g) Subject to any other Oregon statutes restricting earned time credits.

(2) Pursuant to ORS 421.121, inmates sentenced under sentencing guidelines on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced under the sentencing guidelines prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, may earn sentence reduction credits up to 30 percent of the total sentencing guidelines prison term imposed for acceptable participation in OCP requirements and for maintaining appropriate institution conduct, except inmates:

(a) Serving a sentence subject to ORS 137.635;

(b) Serving presumptive sentences or required incarceration terms under ORS 161.737;

(c) Serving statutory minimum sentences under ORS 137.700 or 137.707;

(d) Serving a presumptive sentence under ORS 137.719;

(e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;

(f) Serving time as a sanction for violation of conditions of post prison supervision;

(g) Subject to any other Oregon statutes restricting earned time credits;

(h) Released onto short-term transitional leave on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, § 18 (House Bill 3508);

(i) Released onto conditional release (Second Look) on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, § 18 (House Bill 3508);

(j) Released onto short-term transitional leave/non-prison leave on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, § 18 (House Bill 3508) as part of an Alternative Incarceration Program as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062);

(k) Whose prison term reached its earned time release date prior to or on August 31, 2009;

(l) Whose prison term reached its earned time release date prior to the date the sentencing court enters a supplemental judgment;

(m) Whose supplemental judgment approving a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent is:

(A) Dated after February 17, 2010 at 10 a.m.; or

(B) Dated on or after February 17, 2010, and the court made the order on the record in open court after February 17, 2010, at 10 a.m.; or

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- (n) Serving a sentence for the following crimes:
- (A) Rape in the Third Degree under ORS 163.355;
 - (B) Sodomy in the Third Degree under ORS 163.385;
 - (C) Sexual Abuse in the Second Degree under ORS 163.425;
 - (D) Criminally Negligent Homicide under ORS 163.145;
 - (E) Assault in the Third Degree under ORS 163.165;
 - (F) Assault in the Fourth Degree under ORS 163.160(3);
 - (G) A crime listed in ORS 137.700; or
 - (H) An attempt to commit a crime described in this subsection.
- Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & 2010 OL Ch. 2 (SB 1007)
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & 2010 OL Ch. 2 (SB 1007)
Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 3-1998(Temp), f. & cert. ef. 2-20-98 thru 8-17-98; DOC 19-1998, f. & cert. ef. 8-14-98; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

291-097-0020

Calculation and Application of Earned Time Credits

(1) For inmates sentenced on or after November 1, 1989, the maximum amount of earned time credits is 20 percent of the total sentencing guidelines sentence.

(a) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 10 percent for compliance with the Oregon Corrections Plan and 10 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(b) Pursuant to Oregon Laws 2009, chapter 623 and section (4) of this rule, consideration for earned time credit may also be given for an inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(2) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, the maximum amount of earned time credits is 30 percent of the total sentencing guidelines sentence.

(a) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 15 percent for compliance with the Oregon Corrections Plan and 15 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(b) Pursuant to Oregon Laws 2009, chapter 623 and section (4) of this rule, consideration for earned time credit may also be given for an inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(3) Earned Time Review Periods:

(a) Oregon Corrections Plan compliance is defined as acceptable participation in work and self-improvement programs required within the OCP. The required activities within the OCP are determined by ongoing assessment and evaluation, which begins at the inception of the inmate prison term.

(A) An inmate will be considered to be compliant if he/she was not failed from the required program activity(ies) during the review period under consideration, nor did the inmate refuse to participate in required programming during the review period under consideration.

(i) As needed, the counselor will communicate with the treatment or program providers as well as work crew supervisors to evaluate an inmate's compliance with the required program activity(ies).

(ii) If the inmate's counselor determines the inmate is non-compliant with the OCP, he/she will approve a program failure for documentation in the inmate's computer record.

(B) Inmates Needing Residential Alcohol and Drug Treatment:

(i) Inmates identified as needing Residential Alcohol and Drug treatment (SCF 25), and who are not within the timeframes for the program will not be responsible for entering or completing that specific program activity, but will be held responsible for completing all other available required activities identified within the OCP.

(ii) However, any program earned time previously applied, and any earned time credits as a result of the inmate obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, will be retracted during the final review period if it is determined the inmate has refused to enter, or failed to complete a residential alcohol and drug program prior to release.

(b) Institution conduct compliance is defined as maintaining Level I or Level II major misconduct-free behavior during the review period. Major misconduct is documented in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Any finding of a Level I or Level II major misconduct violation during the review period will be considered as noncompliance. The date of the adjudication, not of the incident, will be used for the date of the violation.

(c) At the end of each review period, the prison term analyst will review the inmate's computer records for information reflecting the inmate's compliance with the current Oregon Corrections Plan and institution conduct. Based on the information contained in the inmate's computer records, the prison term analyst will apply either:

(A) An effective 0, 10, or 20 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates sentenced on or after November 1, 1989, or

(B) An effective 0, 15, or 30 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010 or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits.

(d) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will review the inmate's institution file including any reports received from the housing facility to determine compliance with the current OCP and institution conduct.

(A) OCP compliance will be determined by the inmate's reported compliance with requirements as determined by Department staff or the housing facility staff.

(B) Due process comparable to the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) shall be applied. Institution conduct non-compliance will be determined by substituting the rule(s) of prohibited conduct, for the rule(s) violated at the housing facility, with the most equivalent charges as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The functional unit manager or designee may impose sanctions, in addition to that imposed by the housing facility, related to sentence reductions.

(e) For each review period under consideration for inmates housed in Oregon Department of Corrections facilities, the prison term analyst will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied to the inmate's sentence on the Earned Time Computation Form (CD 1154D).

(f) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied on the Earned Time Computation Form (CD 1154D).

(g) Upon the prison term analyst's or counselor's application of earned time credits toward an inmate's sentence for the review period under consideration, the OISC Unit will recompute the inmate's new earned time release date, file the Earned Time Computation Form (CD 1154D) in the institution file, and provide a copy of the determination to the inmate.

(4) Determination of Earned Time Credits for Education or Apprenticeship Certifications:

(a) Inmates who obtain a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010 are not eligible to be considered for earned time credits for education or apprenticeship certifications.

(b) Subject to OAR 291-097-0025 (Retraction of Earned Time Credits), OAR 291-097-0030 (Restoration of Earned Time Credits), and OAR 291-097-0040 (Determination of Earned Time Credits During Final Review Period for Sentencing Guidelines Sentences), at the time an inmate obtains a high school diploma, General Educational Development (GED)

ADMINISTRATIVE RULES

certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, the prison term analyst will apply the amount of earned time credits, not to exceed 60 days, to the amount of earned time credits actually received by the inmate for either maintaining appropriate institution conduct or compliance with his/her Oregon Corrections Plan, in order to bring the inmate's total earned time credits up to the amount of earned time credits the inmate would have received if the inmate maintained appropriate institution conduct and was in full compliance with his/her Oregon Corrections Plan as of the date the inmate obtained the education or apprenticeship certification.

(A) The Department may apply up to 60 days earned time credits for education or apprenticeship certifications toward prior earned time not credited to the sentence due to adjudicated misconduct during the presentence incarceration or while an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, or toward non-compliance with institutional conduct or the Oregon Corrections Plan, and toward earned time previously retracted during the service of the sentence.

(B) In no event will an inmate be credited with more earned time credits than the amount of earned time credits the inmate would have received toward the sentence if the inmate maintained appropriate institutional behavior and was in full compliance with his/her Oregon Corrections Plan as of the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(C) The earned time credits for education or apprenticeship certifications may not be applied to a sentence whose prison term reached its earned time release date prior to the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(D) An inmate may be credited with multiple education or apprenticeship certifications as long as no individual sentence receives more than 60 days total earned time credit for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(5) Determination of Earned Time Credits During Presentence Incarceration: For crimes committed on or after November 1, 1989, earned time credits will be computed for the period in which an inmate is in custody in a non-Department of Corrections facility prior to sentencing and admission to the Department of Corrections, based solely on the inmate's conduct in the facility.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For inmates sentenced on or after November 1, 1989, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(b) Any verified major misconduct equivalent to a Level 1 or Level 2 major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during any of the presentence incarceration credits applied to the sentence will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the total length of presentence incarceration.

(A) For inmates sentenced on or after November 1, 1989, conduct compliance will result in an effective 20 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, conduct compliance will result in an effective 30 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(6) If the inmate escapes, the prison term analyst will close out the current earned time review period, changing the current review period to end the day after escape. An inmate that is returned from an escape to a Department of Corrections facility will have the starting date of the new earned time credit cycle begin with the date of return. The escape will constitute a program failure for the period up to the escape.

(7) Alternative Incarceration Program:

(a) If, during any review period, the inmate is assigned to an Alternative Incarceration Program and for sufficient justification as determined by the functional unit manager's committee to be unsuccessful, the inmate will be considered a program failure as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062).

(b) If the inmate fails to successfully complete the short-term transitional leave (non-prison leave) granted through the Alternative Incarceration Program, the inmate will be considered a program failure and non-compliant with institution conduct for the length of the inmate's short-term transitional leave. The failure to successfully complete the short-term transitional leave (non-prison leave) will not result in a retraction of the portion of earned time credits for program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(3).

(8) Determination of earned time credits for inmates on non-AIP transitional leave:

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration on short-term transitional leave (OAR 291-063).

(A) Institution conduct and Oregon Corrections Plan compliance will be assumed while an inmate is released on short-term transitional leave.

(B) Earned time credits for the period on transitional leave will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto short-term transitional leave.

(b) A revocation of an inmate's short-term transitional leave is deemed non-compliance with the inmate's Oregon Corrections Plan and non-compliance with institution conduct. Upon revocation of short-term transitional leave, an inmate will receive an effective 0 percent reduction for OCP compliance and 0 percent reduction toward the sentencing guidelines sentence for institutional conduct proportional for the length of the inmate's short-term transitional leave.

(c) The failure to successfully complete the short-term transitional leave will not result in a retraction of the portion of earned time credits for program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(3).

(9) If all of an inmate's sentence(s) is vacated, reversed and remanded for new trial, or conviction affirmed and remanded for resentencing, the prison term analyst will close out the current earned time review period to end the day after release to the sentencing court. An inmate that is returned on a resentence will start a new review period, effective the date of return to a Department of Corrections facility. The new earned time credit cycle date will be reflected on the inmate's facesheet.

(10) Determination of earned time credits for inmates serving the remainder of a sentencing guidelines sentence on conditional release (Second Look):

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration in the community on conditional release, based solely on the inmate's compliance with his/her conditional release plan.

(b) Earned time credits for the period on conditional release (Second Look) will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto conditional release (Second Look).

(c) Conduct compliance will be assumed, unless the inmate's conditional release is revoked by the sentencing court.

(d) Any revocation of an inmate's conditional release prior to the inmate reaching his/her projected earned time date will result in an effective 0 percent reduction in the sentencing guidelines prison term for the length of the inmate's sentence being served in the community on conditional release.

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(11) If an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, earned time credits will be computed for the period in which the inmate is in custody based solely on the inmate's conduct in the county jail.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For inmates sentenced on or after November 1, 1989, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(b) Any verified major misconduct equivalent to a Level 1 or Level 2 major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during the incarceration will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(A) For inmates sentenced on or after November 1, 1989, conduct compliance will result in an effective 20 percent reduction in the sentencing guidelines prison term proportional for the length of incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, conduct compliance will result in an effective 30 percent reduction in the sentencing guidelines prison term proportional for the length of incarceration.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2009 OL Ch. 2 (SB 1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2009 OL Ch. 2 (SB 1007)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

291-097-0023

Court Notification of Inmate Eligibility for Increase in Earned Time Credits

Pursuant to Oregon Laws 2009, Chapter 660 § 18 (House Bill 3508), for inmates with sentencing guidelines sentences imposed prior to July 1, 2009 for crimes committed on or after November 1, 1989:

(1) Upon identifying an inmate who is eligible for earned time credits that exceed 20 percent, the Department will send written notification to the inmate, as well as the presiding judge, trial court administrator, and the district attorney of the county in which the inmate was sentenced, of the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits. The Department will also provide a supplemental judgment to the presiding judge and trial court administrator of the county in which the inmate was sentenced that lists the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits.

(2) The Department will not send a written notification or supplemental judgment for any sentence in which an inmate has completed his/her prison term prior to or on August 31, 2009.

(3) The Department will not send a written notification or supplemental judgment for any inmate on or after February 17, 2010.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508), 2010 OL Ch. 2 (SB 1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508), 2010 OL Ch. 2 (SB 1007)

Hist.: DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

291-097-0025

Retraction of Earned Time Credits

Time credits previously earned or applied will be retracted as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and

the disciplinary order directs that earned time credits earned or applied be forfeited in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291 105).

(a) A recommendation for retraction of earned time shall be within the range corresponding to the violation level as set forth in Table 1. [Table not included. See ED. Note.]

(b) A recommendation for retraction of earned time credits may not exceed the amount previously applied, including any amount credited to the inmate for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(2) Inmates identified as needing residential alcohol and drug treatment (SCF 25) who have not completed the prescribed program by their final review period will have all previously applied earned time for program compliance, as well as any amount credited to the inmate for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, retracted from the first full review period following September 1, 1996. Retraction of program earned time may not exceed the amount previously applied.

(a) If earned time is retracted during or after the final review period in which a final release date is calculated, the release date will be adjusted by the OISC Unit. After such a retraction, the new release date will remain as established by the OISC Unit and that inmate shall be ineligible for any future earned time credit.

(b) The prison term analyst will contact the counselor for confirmation of whether an SCF 25 inmate requires a retraction at the time of the final review. SCF 25 retractions will be documented in writing by the counselor.

(3) Failure to comply with the OCP during the final review period will result in a retraction of the portion of the earned time credits for program compliance advanced at the beginning of the final review period. The prison term analyst will document the retraction on the Earned Time Computation form (CD 1154D).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

291-097-0030

Restoration of Earned Time Credits

(1) Time credits that have been retracted may be restored upon recommendation of staff and approval of the functional unit manager or designee only for an inmate who has been involved in saving a life or through the Adjustments to final order process outlined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Time credits restored may not exceed those previously retracted.

(2) Restoration of time credits must be approved in writing by the functional unit manager or designee.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

291-097-0040

Determination of Earned Time Credits During Final Review Period for Sentencing Guideline Sentences

(1) Four months prior to an inmate's projected release date, prison term analysts (or the designated counselor for inmates housed in non-Oregon Department of Corrections facilities) will conduct a final review of inmates' earned time compliance. Final reviews will be conducted only for inmates serving a sentencing guidelines sentence. Prison term analysts will advance and apply earned time credits for the final review period as follows: Advancement and application of earned time credits for the final review period:

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(a) Except for residential alcohol and drug treatment (SCF 25) inmates, an inmate's full compliance with the OCP and institutional behavior will be assumed during the final review period.

(A) For inmates sentenced on or after November 1, 1989, the prison term analyst will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the prison term analyst will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(b) For residential alcohol and drug treatment (SCF 25) inmates, only institutional behavior compliance will be assumed during the final review period unless the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review.

(A) For inmates sentenced on or after November 1, 1989, if the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, if the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(C) For inmates sentenced on or after November 1, 1989, if the inmate has not successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 10 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(D) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, if the inmate has not successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 15 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(2) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is extended as a result of a new sentence or an adjustment in presentence time, the prison term analyst will delete the final review and any earned time credits advanced for the final review period. The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the extended prison term is reviewed in accordance with these rules.

(3) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is reduced, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period provided the inmate was in full compliance with his/her Oregon Corrections Plan and institutional behavior at the time of the final review.

(a) If the inmate was in partial compliance with his/her Oregon Corrections Plan or institutional behavior at the time of the final review, the prison term analyst will delete the final review and any earned time credits advanced for the final review period.

(b) The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the reduced prison term is reviewed in accordance with these rules.

(4) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period in accordance with OAR 291-097-0020(4).

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2010 OL Ch. 2 (SB 1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, 2009 OL Ch. 660 (HB 3508) & Ch. 623 (HB 2623) & 2010 OL Ch. 2 (SB 1007)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10

Department of Fish and Wildlife Chapter 635

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

Adm. Order No.: DFW 34-2010

Filed with Sec. of State: 3-16-2010

Certified to be Effective: 4-1-10

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Rules Amended: 635-017-0095, 635-023-0095, 635-042-0110

Rules Repealed: 635-023-0095(T)

Subject: These amended rules are 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 corrections to the regulations were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0095

Sturgeon Season

(1) The **2010 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2010 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the following periods:

(a) January 1 through March 31; and

(b) November 1 through December 31.

(3) The retention of white sturgeon in the areas identified in section (2) of this rule is prohibited April 1 through October 31.

(4) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(5) Only white sturgeon with a fork length of 38-54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

(6) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10

635-023-0095

Sturgeon Season

(1) The **2010 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2010 Oregon Sport Fishing Regulations**.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette

ADMINISTRATIVE RULES

River upstream to Willamette Falls and Multnomah Channel, is open to the retention of white sturgeon with a fork length of 38-54 inches, three days per week, Thursdays through Saturdays, during the following periods:

- (a) January 1 through July 31; and
- (b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

- (a) January 1 through April 30; and
- (b) May 22 through June 26 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 21, and from June 27 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to Washington shore during May 1 through August 31;

(b) From Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(9) Retention of green sturgeon is prohibited all year in all areas.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10

635-042-0110

Gary Island to Bonneville Dam (Area 2S) Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) from 3:00 p.m. to 10:00 p.m. daily, Monday through Friday (except on the observed Memorial Day holiday), from May 10 through June 20.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4 second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank, through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, both such deadline markers located approximately four miles downstream from Bonneville Dam.

(3) It is *unlawful* to use a gillnet having a mesh size less than 5 3/8 inches or more than 6 1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gillnet other than a single wall floater net, or to use a gillnet having slackers, or to use a gillnet of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982 (Temp), f. & ef. 6-11-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; 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 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 18-2008(Temp), f. 2-27-08, cert. ef. 5-12-08 thru 11-7-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-27-08; Administrative correction 9-29-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 59-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 6-19-09; Administrative correction 7-21-09; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10

Rule Caption: Commercial Fishing Period Added to Youngs Bay Select Area Salmon Season.

Adm. Order No.: DFW 35-2010(Temp)

Filed with Sec. of State: 3-23-2010

Certified to be Effective: 3-24-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-042-0145

Rules Suspended: 635-042-0145(T)

Subject: These rule modifications authorize an additional 12-hour commercial fishing period, from 6:00 p.m. Thursday March 25 through 6:00 a.m. Friday March 26, 2010, on the list of previously authorized fishing periods in the ongoing non-Indian commercial gillnet salmon fishery in the Youngs Bay Select Area upstream of the old Youngs Bay Bridge. Revisions are consistent with the action taken March 23, 2010 by the State of Oregon.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A); the spring fishery, paragraph (B); and summer fishery, paragraph (C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: Sunday, Tuesday, Wednesday and Thursday nights from February 21 through February 26, 2010 (4 nights) starting at 6:00 p.m. to 6:00 a.m. (12 hours); from 12:00 noon Sunday February 28 through 6:00 a.m. Monday March 1, 2010 (18 hours); from 12:00 noon Tuesday March 2 through 6:00 a.m. Wednesday March 3, 2010 (18 hours); from 12:00 noon Thursday March 4 through 6:00 a.m. Friday March 5, 2010 (18 Hours); from 12:00 noon Sunday March 7 through 6:00 a.m. Monday March 8, 2010 (18 hours); and 6:00 p.m. Wednesday March 10 through Thursday March 11, 2010 (12 hours).

(ii) Upstream of old Youngs Bay Bridge: 6:00 p.m. Sunday March 14 to 6:00 a.m. Monday March 15, 2010 (12 hours); 6:00 p.m. Sunday March 21 to 6:00 a.m. Monday March 22, 2010 (12 hours); 6:00 p.m. Thursday March 25 to 6:00 a.m. Friday March 26, 2010 (12 hours); 6:00 a.m. to 10:00 a.m. Monday March 29, 2010 (4 hours); and 12:00 noon to 4:00 p.m. Monday April 5, 2010 (4 hours).

(iii) Walluski Area: None.

(B) Spring Season: Entire Youngs Bay: 6:00 p.m. Thursday April 15 to 6:00 a.m. Friday April 16, 2010 (12 hours); 6:00 p.m. Monday April 19 to 6:00 a.m. Tuesday April 20, 2010 (12 hours); 6:00 p.m. Thursday April 22 to 6:00 a.m. Friday April 23, 2010 (12 hours); 6:00 p.m. Monday April 26 to 12:00 noon Tuesday April 27, 2010 (18 hours); 6:00 p.m. Thursday

ADMINISTRATIVE RULES

April 29 to 12:00 noon Friday April 30, 2010 (18 hours); and 12:00 noon Mondays to 12:00 noon Fridays (96 hours) beginning Monday May 3 through Friday June 11, 2010 (24 fishing days).

(C) Summer Season: Entire Youngs Bay: 6:00 a.m. Wednesdays to 6:00 a.m. Fridays (48 hours) beginning Wednesday June 16 through Friday July 30, 2010 (14 fishing days).

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) From February 21 through March 11 and from April 15 through July 30, 2010, the fishing area is identified as the waters of Youngs Bay with the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(B) From March 14 through April 5, 2010, the fishing area extends from the old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season. It is unlawful to use a gill net having a mesh size that is more than 9.75-inches during the spring and summer seasons.

(b) The use of additional weights or anchors attached directly to the headline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(3) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 18-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06;

DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 30-2008(Temp), f. 3-27-08, cert. ef. 3-30-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 24-2009(Temp), f. 3-10-09, cert. ef. 3-11-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 17-2010(Temp), f. & cert. ef. 2-22-10 thru 7-31-10; DFW 20-2010(Temp), f. & cert. ef. 2-26-10 thru 7-31-10; DFW 30-2010(Temp), f. 3-11-10, cert. ef. 3-14-10 thru 7-31-10; DFW 35-2010(Temp), f. 3-23-10, cert. ef. 3-24-10 thru 7-31-10

Rule Caption: Amend rules to add North Dakota to cervid part importation ban.

Adm. Order No.: DFW 36-2010(Temp)

Filed with Sec. of State: 3-30-2010

Certified to be Effective: 3-30-10 thru 9-25-10

Notice Publication Date:

Rules Amended: 635-065-0765

Subject: This temporary rule amends rules to add North Dakota to the list of states which the importation of certain cervid parts is banned.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-065-0765

Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is unlawful to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is unlawful to possess the meat or carcass of any pronghorn antelope, bighorn sheep, or Rocky Mountain goat without the animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, horns, and eyes if the animal is male.

(4) It is unlawful to possess the meat or carcass of any deer or elk without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer and elk is:

(a) Evidence of sex for deer and elk which will be taken out of Oregon is:

(A) For Bucks and Bulls: Either the head with antlers naturally attached to at least one quarter of the carcass or testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat. For hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(B) For Does and Cows: Either the head naturally attached to at least one quarter of the carcass or vulva or udder (mammary) naturally attached to one quarter of the carcass or to another major portion of meat.

(C) For Either Sex Hunts: Either the head naturally attached to at least one quarter of the carcass or reproductive organs (testicles, scrotum, penis, vulva, udder, mammary) naturally attached to one quarter of the carcass or to another major portion of meat. For bucks or bulls killed in either sex hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the

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highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(D) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(b) Evidence of sex for deer and elk which will not be taken out of Oregon is either:

(A) The animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, antlers, and eyes if the animal is male, or;

(B) The head naturally attached to at least one quarter of the carcass or reproductive organs naturally attached to one quarter of the carcass or to another major portion of meat as described in (4) (a) (i)-(iv) above.

(5) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the Department.

(6) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the Department or by the Oregon State Police.

(7) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the Department or by the Oregon State Police.

(8) It is unlawful to receive or have in possession any game mammal or part thereof which:

(a) Is not properly tagged;

(b) Was taken in violation of any wildlife laws or regulations; or

(c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(9) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the Department or personnel of the Oregon State Police prior to transporting.

(10) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the Department may be made available to scientific and educational institutions and for ceremonial purposes.

(11) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

(a) Meat that is cut and wrapped commercially or privately;

(b) Meat that has been boned out;

(c) Quarters or other portions of meat with no part of the spinal column or head attached;

(d) Hides and/or capes with no head attached;

(e) Skull plates with antlers attached that have been cleaned of all meat and brain tissue;

(f) Antlers with no tissue attached;

(g) Upper canine teeth (buglers, whistlers, ivories);

(h) Finished taxidermy heads.

(12) For the purposes of the parts and carcass import ban in subsection (11), the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Colorado, Illinois, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Oklahoma, South Dakota, Wisconsin, Wyoming, Utah, Virginia, West Virginia, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(13) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(14) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection (11) shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800° F or at lined landfills registered by Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection (11) shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 111-2005(Temp), f. & cert. ef. 9-23-05 thru 10-31-05; Administrative correction 11-18-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 135-2008, f. & cert. ef. 10-17-08; DFW 2-2009, f. & cert. ef. 1-9-09; DFW 8-2010(Temp), f. & cert. ef. 1-25-10 thru 7-24-10; DFW 21-2010(Temp), f. & cert. ef. 2-26-10 thru 8-24-10; DFW 36-2010(Temp), f. & cert. ef. 3-30-10 thru 9-25-10

Rule Caption: Modify Commercial Pacific Sardine and Sport Pacific Halibut Rules.

Adm. Order No.: DFW 37-2010

Filed with Sec. of State: 3-30-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 2-1-2010

Rules Amended: 635-004-0005, 635-004-0009, 635-004-0016, 635-039-0080, 635-039-0085

Rules Repealed: 635-004-0016(T)

Subject: This rule filing corrects some unintentional omissions in the filing of March 15, 2010. Modifications update the commercial Pacific sardine harvest specifications and sport Pacific halibut regulations for 2010 to conform with recent federal regulation changes. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0005

Scope of Rules

The Pacific halibut commercial fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 004 incorporates into Oregon Administrative Rules, by reference, the halibut management measures for 2010 included in the International Pacific Halibut Commission's News Release dated February 1, 2010, and to the extent they are consistent with **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996), Vol. 75, No. 52**, dated March 18, 2010 as amended by Federal Regulations. Therefore, persons must consult the Federal Regulations in addition to Division 004 to determine all rules applicable to halibut fishing requirements. It is unlawful to take halibut for commercial purposes except as set by Federal Regulations and the IPHC in accordance with a valid permit issued by the IPHC.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-0330; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; 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; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 29-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; Suspended by DFW 72-2005(Temp), f. & cert. ef. 7-7-05 thru 10-27-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10

635-004-0009

Halibut Seasons

The Pacific halibut commercial seasons in Oregon are regulated by the federal government and the International Pacific Halibut Commission

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(IPHC). OAR chapter 635, division 004 incorporates into Oregon Administrative Rules, by reference, the halibut management measures for 2010 included in the International Pacific Halibut Commission's News Release dated February 1, 2010, to the extent they are consistent with **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996), Vol. 75, No. 52**, dated March 18, 2010 as amended by Federal Regulations. Therefore, persons must consult the Federal Regulations in addition to division 004 rules to determine applicable halibut fishing seasons.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162, & 506.129
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10

635-004-0016

Harvest Guideline

(1) This rule incorporates, by reference, the sardine management measures for 2010, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660**, as amended by means of **Federal Register Vol. 75, No. 46** published March 10, 2010. 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; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions or News documents dated June 2008 and November 2009, the International Pacific Halibut Commission's News Release dated February 1, 2010 and the Oregon Department of Fish and Wildlife's "Staff recommended 2010 PACIFIC HALIBUT SPORT REGULATIONS" dated February 10, 2010 (copies available from agency); and to the extent consistent with that document, **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996), Vol. 75, No. 52**, dated March 18, 2010 as amended by Federal Regulations, and **Title 50 of the Code of Federal Regulations, Part 660, Subpart G (61FR34572, July 2, 1996), Vol. 74, No. 43**, dated March 6, 2009 as amended by Federal Regulations; to determine regulations applicable to this fishery.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; 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 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10

635-039-0085

Halibut Seasons

The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and included in the International Pacific Halibut Commission's News Release dated February 1, 2010 and the Oregon Department of Fish and Wildlife's "Staff recommended 2010 PACIFIC HALIBUT SPORT REGULATIONS" dated February 10, 2010 and to the extent they are consistent with **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) Vol. 75, No. 52**, dated March 18, 2010 as amended by Federal Regulations. Therefore, persons must consult the Federal Regulations in addition to division 039 rules to determine applicable halibut fishing seasons.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f. 8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10

Rule Caption: 2010 Commercial Spring Chinook Fishery in the Columbia River.

Adm. Order No.: DFW 38-2010(Temp)

Filed with Sec. of State: 3-30-2010

Certified to be Effective: 3-30-10 thru 4-30-10

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: Amended rule allows the non-Indian commercial spring Chinook fishery in the mainstem Columbia River to commence on March 30, 2010 from the mouth of the Columbia River upstream to the I-205 Bridge. Modifications are consistent with joint state action taken March 29, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0022

Spring Chinook Gillnet and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by drift net for commercial purposes from the mouth of the Columbia River upstream to the I-205 Bridge during the following period: Wednesday, March 30, 2010 from 12:00 p.m. to 12:00 a.m. (12 hours).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(c) Retention of green sturgeon is prohibited.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gillnet fishery: It is *unlawful* to use a gillnet.

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4 1/4 inches stretched taut. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of

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3/8 (0.375) inches or greater. Other permanent gear regulations remain in effect.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in section (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) Non-adipose fin-clipped salmon and all steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to the Department and Washington Department of Fish and Wildlife employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pump-

ing system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have attended a one-day workshop hosted by the Department or Washington Department of Fish and Wildlife to educate fishers on regulations and best methods for conduct of the fishery.

(15) Nothing in this section sets any precedent for any future spring Chinook fishery. The fact that an individual has attended a live capture training workshop does not entitle the individual to participate in any other fishery. If the Department authorizes a Live Capture fishery in the spring or at any other time, the Department may establish qualifications and requirements that are different from those already established. In particular, the Department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future Live Capture fisheries.

(16) As authorized by OAR-635-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, Lewis-B, Washougal River sanctuary and Sandy River sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, ORS 496.146, & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. & cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & cert. ef. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. & cert. ef. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. & cert. ef. 3-31-08, cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. & cert. ef. 4-7-08, cert. ef. 4-8-08 thru 9-27-08; DFW 34-2008(Temp), f. & cert. ef. 4-15-08 thru 9-27-08; Suspended by DFW 71-2008(Temp), f. & cert. ef. 6-28-08 thru 8-31-08; Administrative correction 10-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 30-2009(Temp), f. & cert. ef. 3-23-09, cert. ef. 3-27-09 thru 4-30-09; DFW 34-2009(Temp), f. & cert. ef. 4-6-09, cert. ef. 4-7-09 thru 4-30-09; DFW 36-2009(Temp), f. & cert. ef. 4-13-09, cert. ef. 4-14-09 thru 4-30-09; Administrative correction 5-20-09; DFW 38-2010(Temp), f. & cert. ef. 3-30-10 thru 4-30-10

Rule Caption: Allow Conversion of Glazed Sablefish Processed at Sea to Round Weight Pounds.

Adm. Order No.: DFW 39-2010(Temp)

Filed with Sec. of State: 3-30-2010

Certified to be Effective: 4-1-10 thru 9-27-10

Notice Publication Date:

Rules Amended: 635-006-0215

Subject: This amended rule allows fishers with Federal Groundfish Fixed Catcher Processor permits who process sablefish at sea to accurately record glazed sablefish pounds on a Fish Receiving Ticket. Wholesale fish dealers, canners, and buyers must report in round weight on the Fish Receiving Ticket using the conversion factor 0.95 to one.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-006-0215

Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish canners, or shellfish canners receiving food fish or shellfish from licensed commercial fishers or bait fishers;

(b) Limited Fish Sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all Fish Receiving Tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. The following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying the below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted — 1.15

(ii) Gilled, gutted, and headed — 1.30

(B) Halibut:

(i) Gilled and gutted — 1.15

(ii) Gilled, gutted, and headed — 1.35

(C) Sablefish:

(i) Gutted and headed — 1.60

(ii) Glazed — 0.95

(D) Pacific whiting:

(i) Fillet — 2.86

(ii) Headed and gutted — 1.56

(iii) Surimi — 6.25

(E) Razor Clams, shelled and cleaned — 2.0

(F) Scallops, shelled and cleaned — 12.2

(G) Thresher shark — 2.0

(H) Skates — 2.6

(I) Lingcod:

(i) Gilled and gutted — 1.1

(ii) Gilled, gutted and headed — 1.5

(J) Spot prawn, tails — 2.24

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due - in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent;

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5 percent.

(C) All other food fish and shellfish, 1.09 percent until the first Emergency Board hearing of 1993 and 1.25 percent, thereafter.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.119 & 508.530

Stats. Implemented: ORS 506.129, 508.535 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef.

5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; Administrative correction 12-23-09; DFW 39-2010(Temp), f. 3-30-10, cert. ef. 4-1-10 thru 9-27-10

Rule Caption: Rescind Previously Authorized Fishing Periods for Deep River and Youngs Bay Select Areas Fisheries.

Adm. Order No.: DFW 40-2010(Temp)

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0180

Rules Suspended: 635-042-0145(T), 635-042-0180(T)

Subject: Amended rules rescind previously authorized fishing periods in the winter non-Indian commercial seasons for Chinook salmon, white sturgeon and shad in the Deep River and Youngs Bay select areas of the Columbia River. Rescinded fishing periods are: From 7:00 p.m. April 5 to 7:00 a.m. April 6 (12 hours) and 7:00 p.m. April 7 to 7:00 a.m. April 8, 2010 (12 hours) in Deep River; and 12:00 noon to 4:00 p.m. April 5, 2010 (4 hours) in Youngs Bay. Modifications are consistent with the action taken April 1, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A); the spring fishery, paragraph (B); and summer fishery, paragraph (C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: Sunday, Tuesday, Wednesday and Thursday nights from February 21 through February 26, 2010 (4 nights) starting at 6:00 p.m. to 6:00 a.m. (12 hours); from 12:00 noon Sunday February 28 through 6:00 a.m. Monday March 1, 2010 (18 hours); from 12:00 noon Tuesday March 2 through 6:00 a.m. Wednesday March 3, 2010 (18 hours); from 12:00 noon Thursday March 4 through 6:00 a.m. Friday March 5, 2010 (18 Hours); from 12:00 noon Sunday March 7 through 6:00 a.m. Monday March 8, 2010 (18 hours); 6:00 p.m. Wednesday March 10 through 6:00 a.m. Thursday March 11, 2010 (12 hours); and 6:00 p.m. Sunday March 14 to 6:00 a.m. Monday March 15, 2010 (12 hours).

(ii) Upstream of old Youngs Bay Bridge: 6:00 p.m. Sunday March 21 to 6:00 a.m. Monday March 22, 2010 (12 hours); 6:00 p.m. Thursday March 25 to 6:00 a.m. Friday March 26, 2010 (12 hours); 6:00 a.m. to 10:00 a.m. Monday March 29, 2010 (4 hours).

(iii) Walluski Area: None.

(B) Spring Season:

(i) Entire Youngs Bay: 6:00 p.m. Thursday April 15 to 6:00 a.m. Friday April 16, 2010 (12 hours); 6:00 p.m. Monday April 19 to 6:00 a.m. Tuesday April 20, 2010 (12 hours); 6:00 p.m. Thursday April 22 to 6:00 a.m. Friday April 23, 2010 (12 hours); 6:00 p.m. Monday April 26 to 12:00 noon Tuesday April 27, 2010 (18 hours); 6:00 p.m. Thursday April 29 to 12:00 noon Friday April 30, 2010 (18 hours); and 12:00 noon Mondays to 12:00 noon Fridays (96 hours) beginning Monday May 3 through Friday June 11, 2010 (24 fishing days).

(C) Summer Season:

(i) Entire Youngs Bay: 6:00 a.m. Wednesdays to 6:00 a.m. Fridays (48 hours) beginning Wednesday June 16 through Friday July 30, 2010 (14 fishing days).

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) From February 21 through March 15 and from April 15 through July 30, 2010, the fishing area is identified as the waters of Youngs Bay with the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(B) From March 21 through March 29, 2010, the fishing area extends from the old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of

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the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is unlawful to use a gill net having a mesh size that is less than 7-inches during the winter season. It is unlawful to use a gill net having a mesh size that is more than 9.75-inches during the spring and summer seasons.

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(3) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. 2-19-10, cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) Winter season: Monday and Wednesday nights from 7:00 p.m. to 7:00 a.m. (12 hours) beginning February 22 through April 1, 2010 (12 nights).

(b) Spring season: Sunday and Wednesday nights from 7:00 p.m. to 7:00 a.m. (12 hours) beginning April 14 through June 10, 2010 (17 nights).

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(a) During the winter season, outlined above in (2)(a), it is unlawful to use a gill net having a mesh size that is less than 7-inches;

(b) During the spring season, outlined above in (2)(b) it is unlawful to use a gill net having a mesh size that is more than 9.75-inches.

(4) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in (2)(a) and (2)(b) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. 2-19-10, cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10

Rule Caption: Additional Commercial Spring Chinook Fishing Period In The Columbia River Mainstem.

Adm. Order No.: DFW 41-2010(Temp)

Filed with Sec. of State: 4-6-2010

Certified to be Effective: 4-7-10 thru 4-30-10

Notice Publication Date:

Rules Amended: 635-042-0022

Rules Suspended: 635-042-0022(T)

Subject: Amended rule allows the addition of a 4-hour fishing period to the non-Indian commercial spring Chinook season in the mainstem Columbia River commencing at 5:30 p.m. Wednesday April 7, 2010 from the mouth of the Columbia River upstream to the I-205 Bridge. Modifications are consistent with joint state action taken April 5, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-042-0022

Spring Chinook Gillnet and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by drift net for commercial purposes from the mouth of the Columbia River upstream to the I-205 Bridge during the following periods: Tuesday, March 30, 2010 from 12:00 p.m. to 12:00 a.m. (12 hours). Wednesday, April 7, 2010 from 5:30 p.m. to 9:30 p.m. (4 hours).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries.

(b) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. The weekly white sturgeon sales limit applies to combined mainstem and Select Area fisheries.

(c) Retention of green sturgeon is prohibited.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gillnet fishery: It is *unlawful* to use a gillnet.

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4 1/4 inches stretched taut. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Other permanent gear regulations remain in effect.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4 1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in section (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) Non-adipose fin-clipped salmon and all steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to the Department and Washington Department of Fish and Wildlife employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1 3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have attended a one-day workshop hosted by the Department or Washington Department of Fish and Wildlife to educate fishers on regulations and best methods for conduct of the fishery.

(15) Nothing in this section sets any precedent for any future spring Chinook fishery. The fact that an individual has attended a live capture training workshop does not entitle the individual to participate in any other fishery. If the Department authorizes a Live Capture fishery in the spring or at any other time, the Department may establish qualifications and requirements that are different from those already established. In particular, the Department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future Live Capture fisheries.

(16) As authorized by OAR-635-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, Lewis-B, Washougal River sanctuary and Sandy River sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, ORS 496.146, & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp), f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. & cert. ef. 3-1-06, cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & cert. ef. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. & cert. ef. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06

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thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. 3-31-08, cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. 4-7-08, cert. ef. 4-8-08 thru 9-27-08; DFW 34-2008(Temp), f. 4-14-08, cert. ef. 4-15-08 thru 9-27-08; Suspended by DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 10-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 30-2009(Temp), f. 3-23-09, cert. ef. 3-27-09 thru 4-30-09; DFW 34-2009(Temp), f. 4-6-09, cert. ef. 4-7-09 thru 4-30-09; DFW 36-2009(Temp), f. 4-13-09, cert. ef. 4-14-09 thru 4-30-09; Administrative correction 5-20-09; DFW 38-2010(Temp), f. & cert. ef. 3-30-10 thru 4-30-10; DFW 41-2010(Temp), f. 4-6-10, cert. ef. 4-7-10 thru 4-30-10

Rule Caption: Open Spring Chinook Sport Fishery On the Snake River Below Hells Canyon Dam.

Adm. Order No.: DFW 42-2010(Temp)

Filed with Sec. of State: 4-13-2010

Certified to be Effective: 4-24-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-023-0134

Subject: Amend rule to open a spring Chinook fishery from Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam on the Snake River beginning on April 24, 2010 to coincide with the State of Idaho's regulations for this fishery.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0134

Snake River Fishery

(1) The 2010 Oregon Sport Fishing Regulations provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2010 Oregon Sport Fishing Regulations.

(2) Notwithstanding, all other specifications and restrictions as outlined in the 2010 Oregon Sport Fishing Regulations, the following conditions apply:

(a) The Snake River from Dug Bar boat ramp upstream to the deadline below Hell's Canyon Dam is open seven (7) days per week, effective Saturday, April 24, 2010 until further notice.

(b) Daily bag limit is four (4) adipose fin-clipped spring Chinook salmon per day, of which no more than two (2) can be adults in excess of 24 inches in length. Anglers must cease fishing for salmon for the day when either four (4) salmon or two (2) adult salmon have been retained, whichever comes first.

(c) Barbless hooks are required.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10

Rule Caption: Permits Subsistence Fishing Below Bonneville Dam by Warm Springs and Umatilla Tribes.

Adm. Order No.: DFW 43-2010(Temp)

Filed with Sec. of State: 4-15-2010

Certified to be Effective: 4-15-10 thru 10-11-10

Notice Publication Date:

Rules Amended: 635-041-0005, 635-041-0015, 635-041-0020, 635-041-0025

Subject: These amended rules permit certain treaty Indian subsistence fisheries in the mainstem of the Columbia River below Bonneville Dam. The modifications are consistent with Memoranda of Understanding between the Umatilla and Warm Springs tribes and the Oregon Department of Fish & Wildlife, signed April 14, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0005

Applicability of Regulations

(1) The right to fish in accordance with OAR 635-041-0005 through 635-041-0085 is restricted to those individuals possessing Indian treaty

fishing rights pursuant to the Yakima Treaty (12 Stat. 951), the Warm Springs Treaty (12 Stat. 963), the Umatilla Treaty (12 Stat. 945), or the Nez Perce Treaty (12 Stat. 957).

(2) The fishing activities authorized by the aforementioned treaties for the Columbia River and its tributaries above Bonneville Dam or as authorized by agreement of parties pursuant to court order in *United States v. Oregon*, in the United States District Court for Oregon, Civil No. 68-513KI (*US v. Oregon*), are hereinafter referred to as the Treaty Indian Fishery.

(3) Nothing in these regulations shall prevent any individual having Indian treaty fishing rights from participating equally with other citizens in any other commercial fishery in Oregon so long as such individual complies with the commercial fishing laws and rules of the Commission applicable to such fishery.

(4) The taking of fish from the Columbia River or its tributaries above Bonneville Dam for commercial purposes is prohibited except by the persons, during the times, with the fishing gear, and in the areas specified in OAR 635-041-0005 through 635-041-0085.

(5) It is *unlawful* for any individual to take fish pursuant to the authority of any of the aforementioned treaties and OAR 635-041-0005 through 635-041-0085 who does not have in his or her possession an Indian tribal identification card which identifies him or her as a duly enrolled member of the Yakima, Warm Springs, Umatilla, or Nez Perce Tribe.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-79, Renumbered from 635-035-0005; 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 4-1984, f. & ef. 1-31-84; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 43-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

635-041-0015

Subsistence Fishing Authorized

(1) Subject to the closed area restrictions specified in OAR 635-041-0020, and to the gear restrictions specified in 635-041-0025, subsistence fishing is permitted the year round in the main Columbia River and its Oregon tributaries above Bonneville Dam.

(2) Members of the Confederated Tribes of the Umatilla Indian Reservation and Confederated Tribes of the Warm Springs Reservation of Oregon, as documented by an official tribal enrollment card in possession, may take Chinook, coho, sockeye, steelhead, walleye, carp, yellow perch, catfish, bass, and shad for subsistence purposes with the following conditions:

(a) The area open to subsistence fishing is limited to the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream from Bonneville Dam Powerhouse No. 1 in a straight line through the western tip of Pierce island, to a deadline marker on the Washington bank at Beacon Rock upstream to a point 600 feet downstream of Bonneville Dam, and excluding the following areas:

(A) Between markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creek out to the center of the Columbia River during August 16 to October 15;

(B) Inside the south navigation lock at Bonneville Dam from a marker on the western-most point of Robins Island to a marker on the Oregon mainland shore;

(C) From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shoreline marker at west end of riprap and from north shore between fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream; and

(D) From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on a mooring cell.

(b) In the area described in section (a) above, subsistence fishing is allowed daily except closed on Thursdays, Fridays and Saturdays when non-tribal salmon or steelhead fishing is allowed in this area.

(c) Allowable gear is limited to dipnet, bagnet, spear, gaff, club, foul-hook, and hook-and-line or other gear as specifically described in the *US v. Oregon 2008-2017 Management Agreement*, or the Memorandum of Understanding among the parties dated April 14, 2010, entered pursuant to the *US v. Oregon Management Agreement*.

(d) The sale of salmon and steelhead harvested in the area described in section (a) above is only allowed when commercial sale of platform and hook-and-line caught fish is allowed in Zone 6.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0015; 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 31-1982(Temp), f. & ef. 5-21-82; FWC 17-1983 (Temp), f. & ef. 5-10-83; FWC 4-1984, f. & ef.

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1-31-84, FWC 21-1984(Temp), f. & ef. 5-2-84; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 74-1987(Temp), f. & ef. 9-4-87; FWC 27-1994(Temp), f. 5-12-94, cert. ef. 5-15-94; FWC 33-1995(Temp), f. & cert. ef. 4-28-95; FWC 47-1995(Temp), f. & cert. ef. 6-5-95; DFW 43-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

635-041-0020

Areas Closed to Subsistence Fishing

Unless specifically authorized under OAR 635-041-0015, it is *unlawful* to engage in subsistence fishing at any time in:

(1) Those waters of the main stem Columbia River near Bonneville Dam westerly and downstream of a line from Light "4" on the Oregon shore, located approximately 200 yards upstream of the mouth of Eagle Creek, thence northerly to Light "5" located on Boat Rock in midriver, thence perpendicular to the thread of the river to a marker on the Washington shore.

(2) Those waters of the main stem Columbia River near The Dalles Dam easterly and upstream from a line at marker on Covington Point on the Oregon shore, thence in a westerly direction to a marker on the Washington shore beneath the Interstate Bridge to a point 200 feet above The Dalles Dam. Subsistence fishing for salmon and steelhead is allowed within this closed area except within 600 feet of fishway entrances, within 600 feet of the mouth of Fifteenmile Creek, and above The Dalles Dam.

(3) Those waters of the main stem Columbia River within a radius of one-quarter mile of the mouths of the Hood River, Deschutes River, Wind River, Little White Salmon River, Spring Creek, and Klickitat River.

(4) Those waters of the main stem Columbia River near John Day Dam from a line at marker on the Oregon shore located 600 feet below the fishway entrance, thence westerly to Light "2" located on the navigation lock wing wall, thence to a marker on the Washington shore easterly and upstream to 200 feet above John Day Dam.

(5) Those waters of the mainstem Columbia River near McNary Dam easterly and upstream from a line at marker on the Oregon shore located 600 feet below the fishway entrance, thence westerly to the end of the navigation lock wing wall, thence to a marker on the Washington shore.

(6) All fishways in Oregon tributary streams of the Columbia River within 100 feet above and below such fishways. This closure does not apply to the taking of lamprey eel so long as such taking does not interfere with the migration of salmon or steelhead through such fishways.

(7) Those waters of Eagle Creek from its mouth to 100 feet above the Department intake Dam.

(8) Those waters of Herman Creek from its mouth to 100 feet above the Department holding ponds.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 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 635-035-0020; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1991, f. & ef. 1-19-81; FWC 12-1981(Temp), f. & ef. 3-31-81; FWC 6-1982, f. & ef. 1-28-82; 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 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; DFW 43-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

635-041-0025

Subsistence Fishing Gear

(1) It is lawful at all times to take fish for subsistence purposes by dip net or bag net of a mesh size not exceeding five inches attached to a hoop 26 feet or less in circumference, or by spear, gaff, club, or fouling-hook or other gear specifically allowed pursuant to agreement of the parties to *United States v. Oregon*. All such fishing gear must be tended at all times.

(2) It is lawful to use angling gear as defined by the Oregon Wildlife Laws and regulations of the Department.

(3) It is *unlawful* to use gill nets, set nets, hoop nets, setlines, or dip nets or bag nets of a mesh size exceeding five inches, or any other type of fishing gear not otherwise specifically authorized in section (1) of this rule, except during the times and in the areas where such gear is authorized for commercial fishing.

(4) Notwithstanding the provisions of this rule a treaty subsistence fishing season with gillnets for salmon may occur provided rules for ceremonial fishing and notice requirement (OAR 635-041-0040) are followed.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 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 635-035-0025; 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 4-1984, f. & ef. 1-31-84; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; DFW 43-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

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

Rule Caption: Update the independent review process for patients or residents that refuse to be examined.

Adm. Order No.: MHS 6-2010(Temp)

Filed with Sec. of State: 3-24-2010

Certified to be Effective: 3-24-10 thru 9-20-10

Notice Publication Date:

Rules Amended: 309-114-0020

Subject: Oregon State Hospital has requested that the Addictions & Mental Health Division amend this rule in order to update the independent review process to state the procedures to be followed if a patient refuses to be examined.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-114-0020

Involuntary Administration of Significant Procedures to Persons Committed to the Division with Good Cause

(1) Good cause: Good cause exists to administer a significant procedure to a person committed to the Division without informed consent if in the opinion of the treating physician or psychiatric nurse practitioner after consultation with the treatment team the following factors are satisfied:

(a) Pursuant to OAR 309-114-0010(2), the person is deemed unable to consent to, refuse, withhold or withdraw consent to the significant procedure. This determination must be documented in the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, and include the specific questions asked and answers given regarding the patient's or resident's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment, including but not limited to all relevant factors listed in 309-114-0010(3)(a).

(b) The proposed significant procedure will likely restore, or prevent deterioration of, the person's mental or physical health; alleviate extreme suffering; or save or extend the person's life. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing.

(c) The proposed significant procedure is the most appropriate treatment for the person's condition according to current clinical practice, and all other less intrusive procedures have been considered and all criteria and information set forth in OAR 309-114-0010(3)(a) were considered. This factor is established conclusively for purposes of a hearing under 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing.

(d) The institution made a conscientious effort to obtain informed consent from the patient or resident. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the medication educator's form or progress note, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing. If the institution has reason to believe a patient or resident has limited English language proficiency or the patient requests it, then the institution will make reasonable accommodations to provide the patient or resident with meaningful access to the informed consent process, such as providing the patient or the resident with the opportunity to have an interpreter orally translate written materials into the patient's or resident's native language and provide translation during the treating physician's or psychiatric nurse practitioner's attempts to obtain informed consent and the medication educator's attempt to provide information about the significant procedure. A "conscientious effort" to obtain informed consent means the following:

(A) The patient's or resident's treating physician or psychiatric nurse practitioner made at least two good faith attempts to obtain informed consent by attempting to explain the procedure to the patient or resident and documenting those efforts in the patient's or resident's record; and

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(B) The medication educator made at least one good faith attempt to provide the information required in OAR 309-114-0010(3)(a), and explain and discuss the proposed procedure with the patient or resident.

(2) Independent Review: Prior to granting approval for the administration of a significant procedure for good cause to a person committed to the Division, the superintendent or chief medical officer of a state institution for the mentally ill shall obtain consultation and approval from an independent examining physician, or if a patient refuses to be examined, the superintendent or chief medical officer shall document that an independent examining physician made at least two good faith attempts to examine the patient. The superintendent or chief medical officer shall maintain a list of independent examining physicians and shall seek consultation and approval from independent examining physicians selected on a rotating basis from the list. The independent examining physician shall not be an employee of the Division, shall be a board-eligible psychiatrist, shall have been subjected to review by the medical staff executive committee as to qualifications to make such an examination, shall have been provided with a copy of administration rules OAR 309-114-0000 through 309-114-0030, and shall have participated in a training program regarding these rules, their meaning and application.

(3) Prior to granting approval for the administration of a significant procedure for good cause, the superintendent or chief medical officer of a state institution for the mentally retarded shall refer the matter for review to a disposition board convened for such purpose. The disposition board shall have five members: two employees from the state institution not directly involved in the treatment of the resident and three public members. Members of the disposition board shall be provided a copy of administrative rules OAR 309-114-0000 through 309-114-0030 and shall be part of a training program regarding their meaning and application.

(4) The superintendent or chief medical officer shall provide to a patient or resident to whom a significant procedure is proposed to be administered written advance notice of the intent to seek consultation and approval of an independent examining physician or review by a disposition board for the purpose of administering the procedure without the patient's or resident's consent.

(5) The physician selected to conduct the independent consultation or the disposition board shall:

(a) Review the person's medical chart, including the records of efforts made to obtain the person's informed consent, and

(A) Personally examine the person at least one time, or, in the case of the disposition board, interview the resident at least one time; or

(B) If the patient refuses to be interviewed or examined, the physician or board shall make two good faith attempts to interview or examine the patient. If the patient refuses to be interviewed or examined during these two good faith attempts, the independent consultation and approval requirement outlined in subsection (5)(a)(A) and (5)(b) of this rule shall be deemed to be fulfilled.

(b) Discuss the matter with the person to determine the extent of the need for the procedure and the nature of the person's refusal, withholding, or withdrawal or inability to consent to the significant procedure. This determination must be documented in the patient's or resident's records as well as the supporting evidence in the form of the specific questions asked and answers given regarding the patient's or resident's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment;

(c) Consider additional information, if any, presented prior to or at the time of examination or interview as may be requested by the person or anyone on behalf of the person;

(d) Make a determination whether the factors required under these rules exist for the particular person or that one or more factors are not present, and complete a report of his or her findings, which provides their approval or disapproval of the proposed significant procedure. The written report must be provided to:

(A) The superintendent or chief medical officer; and

(B) The person to whom a significant procedure is proposed to be administered, with a copy being made part of the person's record.

(6) Superintendent's Determination:

(a) The superintendent or chief medical officer shall approve or disapprove of the administration of the significant procedure to a person committed to the Division based on good cause, provided that if the examining physician, psychiatric nurse practitioner or disposition board found that one or more of the factors required by section (1) of this rule were not present or otherwise disapproved of the procedure, the superintendent or chief medical officer shall not approve the significant procedure and it shall not be performed;

(b) Approval of the significant procedure shall be only for as long as no substantial increase in risk is encountered in administering the significant procedure or significant procedure of a similar class during the term of a person's commitment but in no case longer than 180 days. Disapproval shall be only for as long as no substantial change occurs in the person's condition during the term of commitment but in no case longer than 180 days;

(c) Written notice of the superintendent's or chief medical officer's determination shall be provided to the person and made part of the person's record. This notice must be delivered to the patient or resident, and fully explained by facility medical staff. This notice must include a clear statement of the decision to treat without informed consent, specific basis for the decision, state what evidence was relied on to make the decision, and include a clear notice of the opportunity to ask for a contested case hearing with an administrative law judge if the patient or resident disagrees with the decision. Attached must be a form with a simple procedure to request a hearing. The patient or resident indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing pursuant to OAR 309-114-0025. The patient or resident shall have 48 hours to request a contested case hearing after receiving this notice. If the patient or resident does not request a hearing within the 48 hour period or the patient or resident subsequently withdraws his initial hearing request and is not already receiving the significant procedure, the institution may involuntarily administer the significant procedure. A patient or resident retains the right to request an initial hearing on the decision to administer a significant procedure without informed consent at any time.

(d) If the patient or resident withdraws his initial request for hearing or refuses to attend the initial hearing without good cause, the administrative law judge will issue a dismissal order pursuant to OAR 137-003-0672(3). A dismissal order will allow the institution to immediately administer the significant procedure without informed consent as if the patient or resident had never requested a hearing. If a dismissal order is issued, the patient or resident may request a second hearing. If the patient or resident withdraws his second request for hearing or refuses to attend the second hearing without good cause, the hearing will occur as scheduled with the institution presenting a prima facie case pursuant to ORS 183.417(4) and the administrative law judge will issue a proposed order by default. The institution will then issue a final order by default.

(e) Records of all reports by independent examining physicians or disposition boards and of the determinations of the superintendent or chief medical officer under this rule shall be maintained by the superintendent or chief medical officer in a separate file and shall be summarized each year. Such summaries shall show:

(A) Each type of proposed significant procedure for which consultation with an independent examining physician or review by a disposition board was sought;

(B) The number of times consultation or review was sought from a particular independent examining physician or disposition board for each type of proposed significant procedure;

(C) The number of times each independent examining physician or disposition board approved and disapproved each type of proposed significant procedure; and

(D) The number of times the superintendent or chief medical officer approved and disapproved each type of proposed significant procedure;

(E) Such summaries shall be public records and shall be made available to the public during reasonable business hours in accordance with ORS Chapter 192.

(7) When treatment is being administered without informed consent, the ward physician or psychiatric nurse practitioner will write a progress note addressing any changes in patient's or resident's capacity to give informed consent every 60 days.

(8) At any time that a patient's or resident's condition changes so that there appears to his or her treating physician or psychiatric nurse practitioner to be a substantial improvement in the patient's or resident's capacity to consent to or refuse treatment, a formal re assessment of the patient's or resident's capacity to consent shall occur, as described in OAR 309-114-0010 and 309-114-0020. No order to administer treatment without informed consent in non emergency situations shall be valid for longer than 180 days, or the duration of the commitment, whichever is shorter, without re establishing the need for the order by following the procedures described in OAR 309-114-0010 and 309-114-0020.

(9) When a patient or resident is transferred to a state institution from a community hospital or another state institution where he or she was already being treated with a significant procedure without informed consent, the receiving institution must apply OAR 309-114-0000 through 309-

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114-0030 no later than 7 days after the date of admission to the new institution. A state institution can honor an existing order for involuntary administration of a significant procedure without informed consent if procedures such as those outlined in OAR 309-114-0010 through 309-114-0030 have already been applied and all necessary documentation is in the patient's or resident's file.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-880, 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 3-2009, f. & cert. ef. 6-26-09; MHS 6-2010(Temp), f. & cert. ef. 3-24-10 thru 9-20-10

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Department of Human Services, Administrative Services Division and Director's Office Chapter 407

Rule Caption: Abuse Checks for Department of Human Services Employees and Volunteers.

Adm. Order No.: DHSD 2-2010

Filed with Sec. of State: 3-29-2010

Certified to be Effective: 3-29-10

Notice Publication Date: 3-1-2010

Rules Adopted: 407-007-0400, 407-007-0410, 407-007-0420, 407-007-0430, 407-007-0440, 407-007-0450, 407-007-0460

Rules Repealed: 407-007-0400(T), 407-007-0410(T), 407-007-0420(T), 407-007-0430(T), 407-007-0440(T), 407-007-0450(T), 407-007-0460(T)

Subject: The Department of Human Services (Department) is implementing ORS 409.027 for employees and volunteers. Adoption of these rules replaces temporary rules, effective 10/1/2009. The Department shall conduct an abuse check on subject individuals who are offered employment or volunteer placement with the Department. If the individual has potentially disqualifying abuse (a finding in an abuse investigation of founded or substantiated, with the subject individual having been determined responsible for the abuse), the Department shall conduct a weighing test to determine fitness for the position being sought. Subject individuals denied employment have contested case hearing rights. Subject individuals currently employed or in volunteer placement, or those offered employment or placement, are required to notify the Department's Office of Human Resources within five calendar days of being notified of being an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation. The Department shall apply relevant program administrative due process policies if the subject individual is identified as responsible in a founded or substantiated abuse investigation. The Department may remove a volunteer or employee from placement during or following an abuse investigation. The Department may investigate during or following an abuse investigation to determine whether to take any action, up to and including dismissal.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0400

Purpose

(1) The purpose of these rules, OAR 407-007-0400 to 407-007-0460, is to provide for the abuse check of Department of Human Services (Department) employees, volunteers, or individuals offered employment or placement by the Department to determine if they are fit to provide care.

(2) Although criminal records checks may occur concurrently with abuse checks performed under these rules and may share similar processes, the abuse check process is separate from the criminal records checks that may be performed under OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.025, 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0410

Purpose

As used in OAR 407-007-400 to 407-007-0460, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Abuse" has the meaning given in the Department's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of screening subject individuals as allowed by ORS 409.027.

(3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another state.

(4) "Approved" means that a subject individual, following a fitness determination, is fit to work, volunteer, be employed, or otherwise perform in a position where the subject individual may provide care.

(5) "Care" means the treatment, education, training, instruction, placement services, recreational opportunities, case management, supervision of these services for clients of the Department, or Department administration and support services for Department clients.

(6) "Closed case" means an abuse check that has been closed without a fitness determination.

(7) "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 services in positions covered by these rules.

(8) "Department" means the Department of Human Services.

(9) "Director" means the Department's Director or designee.

(10) "Fitness determination" means the outcome of an abuse check and, if necessary, a weighing test.

(11) "Founded or substantiated" has the meanings given in the Department's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(12) "Office of Human Resources" means the Department's Office of Human Resources.

(13) "Potentially disqualifying abuse" means:

(a) The finding of an abuse investigation report is founded or substantiated; and

(b) The subject individual is determined to have been responsible for the abuse.

(14) "Subject individual," means an individual who is:

(a) An employee, which includes:

(A) An individual who seeks to be employed by the Department to provide care or a Department Jobs Plus client who seeks placement at a Department site; or

(B) An individual who is currently employed by the Department to provide care or a current Department Jobs Plus client who is placed at a Department site.

(b) A volunteer, which includes:

(A) An individual or student, who seeks to be a volunteer to provide care on behalf of the Department;

(B) A Department Work Experience client who seeks placement as a volunteer at a Department site;

(C) An individual or student currently volunteering to provide care on behalf of the Department, over whom the Department has direction and control; or

(D) A Department Work Experience client who is placed at a Department site.

(15) "Weighing test" means a process carried out by the Department in which available information is considered in making a fitness determination.

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 2-2010, f. & cert. ef. 3-29-10

407-007-0420

Reporting Abuse Allegations Required

(1) This rule applies to any subject individual who is:

(a) A current Department employee;

(b) A current Department volunteer; or

(c) An individual seeking Department employment or volunteer placement, who has been offered Department employment or volunteer placement, pending the completion of the abuse check process.

(2) Subject individuals shall notify the Office of Human Resources within five calendar days of being notified that he or she has been identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation.

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 2-2010, f. & cert. ef. 3-29-10

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407-007-0430

Applicants to the Department for Employment or Volunteer Position

(1) Subject to any applicable collective bargaining agreements, this rule applies to any subject individual who is:

- (a) Offered employment or volunteer placement with the Department;
- (b) Offered a change in employment or volunteer placement within the Department.

(2) The Department may require a subject individual to have an abuse check in the following circumstances:

(a) A subject individual is offered employment or a volunteer placement with the Department.

(b) A subject individual is currently employed by or volunteering with the Department and is offered a new position within the Department. A change in a position requiring an abuse check may be due to but not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, bumping, or recall. For the abuse check to be required, there must be, as determined by the Office of Human Resources:

- (A) A significant change in position duties or responsibilities; or
- (B) A change in position classification.

(3) Using identifying information submitted on the Department's Background Check Request form, the Department may conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

(a) In order to complete an abuse check and fitness determination, the Department may require additional information from the subject individual including but not limited to additional background information or documentation regarding circumstances since the abuse occurred.

(b) If a subject individual is a represented Department employee, the process for obtaining additional information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.

(4) The Department may not determine a start date for a subject individual until the completion of an abuse check and a fitness determination of approval.

(5) If a subject individual has potentially disqualifying abuse, the Department shall conduct a weighing test in order to make a fitness determination. Factors to consider in a weighing test include but are not limited to:

- (a) The details regarding the abuse including but not limited to:
 - (A) Circumstances leading to the incident of abuse;
 - (B) The nature or type of abuse; and
 - (C) Other information gathered during the scope of the abuse investigation.

(b) The date of abuse incident and abuse investigation, and the age of the subject individual at the time of the abuse.

(c) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration to completeness, objectivity, and sufficiency.

(d) Due process provided to the subject individual after the abuse investigation.

(e) Required action resulting from the founded or substantiated abuse including but not limited to training, counseling, corrective or disciplinary action, and the subject individual's compliance.

(f) Circumstances related to the subject individual including but not limited to work history, education history, and other personal information provided by the subject individual.

(g) Changes in circumstances subsequent to the potentially disqualifying abuse.

(h) The relevancy of the abuse to the position the subject individual is seeking.

(6) Following an abuse check, the Department shall complete the fitness determination.

(a) The Department may approve a subject individual if:

- (A) The subject individual has no potentially disqualifying abuse; or
- (B) The subject individual has potentially disqualifying abuse but, after a weighing test, the Department determines that more likely than not the subject individual poses no risk to the Department, its clients, or vulnerable persons.

(b) The Department shall deny a subject individual who has potentially disqualifying abuse and, after a weighing test, the Department determines that more likely than not the subject individual poses a risk to the Department, its clients, or vulnerable individuals.

(7) The Department shall close the case if the subject individual discontinues the application or fails to cooperate with the abuse check process.

When the application is closed without a final fitness determination, the subject individual does not have a right to contest the closure.

(8) Upon completion of a fitness determination or in a closed case, the Department shall provide written notice to the subject individual. The notice shall:

- (a) Be in a Department approved format; and
- (b) Include an effective date of action.
- (c) For an outcome of denied:
 - (A) Include the reasons for the denial;
 - (B) Include information regarding appeal rights; and
 - (C) Include a statement that the notice becomes a final order in the event of a withdrawal during the contested case hearing process or a failure to appear at the contested case hearing.

(9) When a subject individual is denied or a case is closed, the individual may not work, volunteer, be employed, or otherwise perform in the position that the subject individual is seeking. If a current Department employee or volunteer is denied, the Office of Human Resources shall determine if the subject individual may continue in the current position that the subject individual is seeking to change.

(a) 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 contractual provisions;
- (B) Statutory provisions for unrepresented or management services employees; or
- (C) Relevant Department or statewide policies or procedures.

(b) For subject individuals who are current volunteers or Work Experience clients, a denial or closed case shall result in immediate dismissal.

(10) The Department shall document fitness determinations in writing and include all necessary details including but not limited to the potentially disqualifying abuse, the weighing test, or the reasons for a closed case.

(11) The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not ensure the same outcome of a new fitness determination.

(12) Only subject individuals not offered employment or a Jobs Plus position may contest the fitness determination.

(a) The contested case hearing process, pursuant to ORS Chapter 183 and OAR 407-007-0080, shall proceed if the subject individual requests a contested case hearing. Subject individuals must request a hearing within 15 calendar days after the effective date of action listed on the notice of fitness determination.

(b) The subject individual's hearing rights pertain to the action of denial of employment or placement, not the outcome of the abuse investigation.

(c) The only remedy that may be awarded is a fitness determination that the subject individual is approved or denied. 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.

(d) Subject individuals 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 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 subject individual.

(13) Subject individuals in volunteer or Work Experience placements must have a new abuse check every three years from the date of placement.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.010 & 409.027
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10

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.

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(3) The Department shall apply relevant program administrative due process policies if the subject individual is identified as responsible in a founded or substantiated abuse investigation.

(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 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, is justified.

(b) If the Office of Human Resources learns of potentially disqualifying abuse from previous investigations, the Office of Human Resources may initiate an investigation, to determine fitness for the position, 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 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; DHSD 2-2010, f. & cert. ef. 3-29-10

407-007-0450

Current Volunteers of the Department

(1) This rule applies to any subject individual who is a current Department volunteer.

(2) If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may remove the subject individual from placement and duties at any time during the investigation or any subsequent review.

(3) If removed from the placement, the subject individual may reapply for a placement under OAR 407-007-0430.

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 2-2010, f. & cert. ef. 3-29-10

407-007-0460

Confidentiality

(1) The Department shall maintain abuse investigation reports as confidential pursuant to ORS 409.027 and other applicable state and federal laws and rules.

(2) All abuse information and other records collected or developed during the abuse check process shall be kept confidential and disseminated only on a need-to-know basis as permitted by applicable Oregon statutes and administrative rules.

(3) Abuse investigation reports may be used among the organizational units of the Department for the purpose of screening subject individuals necessary to protect the Department's vulnerable clients from abuse.

(4) The Department may use abuse and neglect reports for decisions directly affecting vulnerable individuals if the vulnerable individual is also a subject individual.

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 2-2010, f. & cert. ef. 3-29-10

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 4-2010

Filed with Sec. of State: 4-2-2010

Certified to be Effective: 4-2-10

Notice Publication Date: 3-1-2010

Rules Amended: 413-015-0415, 413-015-0420

Rules Repealed: 413-015-0415(T), 413-015-0420(T)

Subject: OAR 413-015-0415 which was amended by temporary rule on January 1, 2010 and concerns the activities the Department conducts during a Child Protective Services (CPS) assessment is being amended in response to recent statutory changes 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.

OAR 413-015-0420 which was amended by temporary rule on February 12, 2010 and concerns the actions the Department takes when making an initial contact in response to suspected child abuse or neglect is being amended in response to a recent federal court opinion to remove language allowing a Child Protective Services (CPS) worker to make an exception to the requirement to notify parents of the intent to interview a child when the notification might compromise a criminal investigation.

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;

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(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.

(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.

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(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.

(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.

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(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:

(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

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; CWP 4-2010, f. & cert. ef. 4-2-10

413-015-0420

Make Initial Contact

The CPS worker must make an initial contact within the assigned response time line.

(1) To make an initial contact, the CPS worker must:

(a) Have face-to-face contact with and interview the alleged victim, his or her siblings, and other children living in the home. The purpose of the face-to-face contact and interview with the alleged victim, his or her siblings, and other children living in the home is to gather information regarding possible child abuse and neglect, assess if the children are vulnerable to identified safety threats, and assess the children's immediate safety. If it is not possible during the initial contact for the CPS worker to make a face-to-face contact with and interview the siblings or other children living in the home, the CPS worker must document why contact was not made and must complete the face-to-face contact and interview as soon as possible.

(b) Interview and observe children as follows:

(A) The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety.

(B) The CPS worker must make diligent efforts to contact the child at home, school, day care, or any other place where the worker believes the child may be found. If the CPS worker is unsuccessful, the CPS worker must document in the assessment activities section of the GAP all attempts made to contact the child and the dates of those attempted contacts.

(C) When the CPS worker contacts the child at home and the parent or caregiver is not present:

(i) The CPS worker must consult with a CPS supervisor and seek assistance from LEA if the referral indicates that: there may be severe harm or threat of severe harm to the child; there is reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling; or the child is inadequately supervised and there is an immediate need to evaluate the child's health and safety.

(ii) The CPS worker must wait until the parent is present in the home to complete a child interview in the home if the referral does not indicate severe harm or threat of severe harm to the child or if there is not reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling or that the child is inadequately supervised.

(D) When the CPS worker is denied access to the child or to the child's residence, the CPS worker must:

(i) If the referral indicates that the child may be unsafe, request assistance from LEA in assessing the situation and in taking the child into protective custody if needed.

(ii) If the referral indicates that the child is presently safe, the CPS worker must do the following:

(I) Attempt to contact other persons who may have relevant information regarding the referral;

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(II) Persist in attempts to gain cooperation from the family or caregivers, depending on the known child safety information; and

(III) Seek LEA assistance.

(iii) Consult with the CPS supervisor, the district attorney, assistant attorney general, or the county juvenile department to discuss possible juvenile court action; or

(iv) Seek a protective custody order from the juvenile court.

(E) The CPS worker must notify the parents or caregivers the same day a child is interviewed. If the same day notification could make a child or adult unsafe, a CPS supervisor may authorize an extension for one day to allow a planned notification that is less likely to compromise safety. The CPS worker must document the supervisory approval and an explanation describing the basis for the approval.

(F) The CPS worker must conduct interviews in a manner that assures privacy for the child.

(G) If the parent or caregiver is the alleged perpetrator or if the presence of the parent or caregiver might impede the interview, the CPS worker must attempt to interview children outside the presence of their parents or caregivers.

(H) A CPS worker must allow a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the abuse to have a personal representative be present during an interview. If a CPS worker believes that the personal representative would compromise the CPS assessment, the CPS worker may prohibit a personal representative from being present during the interview.

(I) The CPS worker must observe the child's injuries or signs of neglect. The CPS worker may need to remove a child's clothing to make adequate observations. In that event, the CPS worker must:

(i) Use discretion and make the child as comfortable as possible.

(ii) Seek parental consent and assistance, when possible and appropriate.

(iii) Consider requesting a worker or other support person, who is the same gender as the child, be present to serve as a witness and provide comfort for the child.

(J) The CPS worker may observe injuries to a child's anal or genital region if the child is not school aged and if the injury can be observed without the CPS worker touching the child's anal or genital region.

(c) Have face-to-face contact with and interview the non-offending parent or caregiver and all adults living in the home. The purpose of this face-to-face contact and interview is to find out what the non-offending parent or caregiver and other adults living in the home know about the alleged child abuse or neglect, gather information related to the safety of the child, and gather information to determine if the parent or caregiver can or cannot and will or will not protect the child. If it is not possible during the initial contact for the CPS worker to make face-to-face contact with and interview the non-offending parent or caregiver and other adults living in the home, the CPS worker must document why the contact was not made and must complete the face-to-face contact and interview as soon as possible.

(A) Whenever practicable, the CPS worker must interview both parents and caregivers in person, as follows:

(i) Interview each person individually;

(ii) Ask questions about domestic violence in separate interviews only; and

(iii) Provide all adults living in the home with a written notice that a criminal records check may be conducted on them.

(B) The CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(C) The CPS worker must interview the non-custodial legal parent during the CPS assessment. This is not required during the initial contact, but must be completed as part of the assessment process because the non-custodial parent may have essential information or be a placement resource. If the interview of the non-custodial legal parent may make a child or adult unsafe, a CPS supervisor may authorize an exception to this requirement based on written documentation that supports the conclusion that an interview with a non-custodial legal parent should not be conducted.

(d) Have face-to-face contact with and interview the alleged perpetrator. Except as provided in this subsection, the CPS worker must make face-to-face contact with and interview the alleged perpetrator during the initial contact when he or she is the child's custodial parent, caregiver, any person living in the home, or is present in the home when the CPS worker makes contact. The purpose of this interview is to evaluate the alleged perpetrator's reaction to allegations of abuse or neglect as well as to the child and

his or her condition, and to gather further information about the alleged perpetrator and the family in relation to the safety of the child. When the alleged perpetrator is a minor parent, the purpose is also to determine if the minor parent is an alleged victim of abuse (under paragraph (D) of this subsection).

(A) The CPS worker is not required to make face-to-face contact with or interview the alleged perpetrator during the initial contact if:

(i) The alleged perpetrator is not a custodial parent, caregiver, anyone living in the home, or is not present in the home when the CPS worker makes contact. The CPS worker still must interview the alleged perpetrator, but may complete the interview during the course of the CPS assessment; or

(ii) There is a criminal investigation and the interview cannot be coordinated with an LEA within the time lines for initial contact.

(B) The decision not to interview an alleged perpetrator as provided in subparagraphs (A)(i) or (ii) of this subsection must be approved by a CPS supervisor, and the CPS worker must document both the approval and the reason for not completing the interview.

(C) When interviewing the alleged perpetrator, the CPS worker must:

(i) Coordinate the interviews of the alleged perpetrator with LEA when law enforcement is conducting an investigation;

(ii) Consult with a CPS supervisor if an interview with the alleged perpetrator could make a child or adult unsafe;

(iii) Provide the alleged perpetrator with a written notice that a criminal records check may be conducted on them; and

(iv) Make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the Department or OYA, the CPS supervisor must notify the Department Office of Human Resources at the time of the assessment and at the time the assessment is reviewed as required in OAR 413-015-0475. The CPS supervisor must document the notifications in FACIS.

(D) When interviewing the alleged perpetrator who is a minor and the parent of the alleged victim, the CPS worker must ask questions to determine if there is an allegation of abuse or neglect with the minor parent as an alleged victim. If it is determined that there is an allegation of abuse or neglect with the minor parent as an alleged victim, the information must be reported to a screener.

(E) When interviewing an alleged perpetrator who is the parent or caregiver, the CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(e) Gather safety-related information through interviews and observation.

(A) The CPS worker must gather relevant information and facts necessary to complete all parts of the CPS assessment. The CPS worker must gather information through interview and observation about the following:

(i) The extent of the child abuse or neglect;

(ii) The circumstances surrounding the child abuse or neglect;

(iii) Child functioning;

(iv) Adult functioning;

(v) Parenting practices and skills; and

(vi) Disciplinary practices.

(B) Interview. If possible, family members should be interviewed separately in the following order, using information gathered from one interview to assist in the next interview:

(i) Alleged victim.

(ii) Siblings and other children in the home.

(iii) Non-offending parents and caregivers, including all of the non-offending adults in the home.

(iv) Non-custodial legal parent.

(v) Alleged perpetrator.

(C) The CPS worker must, to the extent possible, do the following during interviews with family members:

(i) Present identification to the family at the beginning of the interview and provide a business card or other document to the parents and caregivers containing the CPS worker's name and phone number.

(ii) Clearly state the reason for the interview, provide statutory authority to assess reports of child abuse and neglect, and give an explanation of the alleged child abuse or neglect.

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- (iii) Allow the parent or caregiver to respond to each allegation.
- (iv) Assure the privacy of the persons being interviewed.
- (v) Focus the interview on the safety of the children.
- (vi) Assess whether the parents or caregivers are involved in domestic violence.

(vii) Summarize and discuss the initial impressions and intentions resulting from the interview with appropriate family members or caregivers.

(viii) Obtain from the parents or caregivers the names of persons who can provide additional information in determining child safety and completing the CPS assessment.

(ix) Ask the parents and caregivers to sign an authorization to release information to enable Child Welfare to obtain confidential information from physicians, mental health providers, school employees, or other service or treatment providers.

(x) Inform the parents and caregivers about the Child Welfare grievance procedure.

(D) Observation. The CPS worker must observe the identified child, parent or caregiver, and the home environment. Specific areas for observation are:

(i) Physical condition of the child, including any observable effects of child abuse or neglect;

(ii) Emotional status of the child, including mannerisms, signs of fear, and developmental status;

(iii) Reactions of the parents or caregivers to the Department concerns;

(iv) Emotional and behavioral status of the parents or caregivers during the interviewing process;

(v) Interactions between family members, including verbal and body language;

(vi) Condition of the child's living space, including where the child sleeps; and

(vii) Physical condition of the home.

(f) **Determine if there is a safety threat.** During the initial contact, the CPS worker must determine, based on the information obtained at that time, if there is a safety threat to the child.

(A) To determine that there is a safety threat, the CPS worker must analyze the information gathered and conclude that:

(i) A specific, observable, describable family behavior, condition, or circumstance is present; and

(ii) The specific, observable, describable family behavior, condition, or circumstance reasonably could result in harm to a child.

(B) If the CPS worker determines during the initial contact that there is no safety threat and the child is safe, then the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(C) If the CPS worker determines there is a safety threat to the child, the CPS worker must determine if, because of the safety threat, the child is unsafe and a protective action is required. The CPS worker must then continue the activities required to sufficiently complete the CPS assessment.

(g) **Determine if the child is unsafe.** If the CPS worker determines, based on the available information, that there is a safety threat to the child, the CPS worker must determine if the safety threat makes the child unsafe.

(A) To assess the child's safety, the CPS worker must analyze the information gathered, and

(i) Determine if the child is vulnerable to harm resulting from the identified family behavior, condition, or circumstance, as described in OAR 413-015-0425.

(ii) Determine if the child's parent or caregiver can or cannot and will or will not protect the child from harm resulting from the identified family behavior, condition, or circumstance, as described in OAR 413-015-0430.

(B) If the CPS worker determines that the child is not vulnerable to harm resulting from the identified safety threat, then the child is safe and the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(C) If the CPS worker determines that the child's parent or caregiver can and will protect the child from harm resulting from the identified safety threat, then the child is safe. The CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(D) If the CPS worker determines that the child is vulnerable to the identified safety threat and the child's parent or caregiver cannot or will not protect the child from harm resulting from the identified safety threat, the child is unsafe and the CPS worker must initiate a protective action as described in OAR 413-015-0435. The CPS worker must then continue the activities required to sufficiently complete the CPS assessment.

(2) Documentation of the Initial Contact. The CPS worker must document the dates of the initial contact using the GAP. The CPS worker must document attempted and successful contacts.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 418.785 & 419B.005 - 419B.050

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 2-2008, f. & cert. ef. 4-1-08; CWP 15-2009, f. & cert. ef. 11-3-09; CWP 2-2010(Temp), f. & cert. ef. 2-12-10 thru 8-11-10; CWP 4-2010, f. & cert. ef. 4-2-10

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

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

Adm. Order No.: SSP 4-2010

Filed with Sec. of State: 3-31-2010

Certified to be Effective: 3-31-10

Notice Publication Date: 11-1-2009

Rules Amended: 461-155-0180

Subject: OAR 461-155-0180 about the poverty related income standards used in some of the Department's programs is being amended to state the monthly income standard when set at 201 percent of the federal poverty level. 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.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0180

Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2009 federal poverty level is set at the following amounts:

| Size of Group | Standard |
|---------------|----------|
| 1 | \$903 |
| 2 | 1,215 |
| 3 | 1,526 |
| 4 | 1,838 |
| 5 | 2,150 |
| 6 | 2,461 |
| 7 | 2,773 |
| 8 | 3,085 |
| 9 | 3,396 |
| 10 | 3,708 |
| +1 | 312 |

(3) A monthly income standard set at 133 percent of the 2009 federal poverty level is set at the following amounts:

| Size of Group | Standard |
|---------------|----------|
| 1 | \$1,201 |
| 2 | 1,615 |
| 3 | 2,030 |
| 4 | 2,444 |
| 5 | 2,859 |
| 6 | 3,273 |
| 7 | 3,688 |
| 8 | 4,102 |
| 9 | 4,517 |
| 10 | 4,931 |
| +1 | +415 |

(4) A monthly income standard set at 150 percent of the 2009 federal poverty level is set at the following amounts:

| Size of Group | Standard |
|---------------|----------|
| 1 | \$1,354 |
| 2 | 1,822 |
| 3 | 2,289 |
| 4 | 2,757 |
| 5 | 3,224 |
| 6 | 3,692 |
| 7 | 4,159 |
| 8 | 4,627 |

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(5) A monthly income standard set at 185 percent of the 2009 federal poverty level is set at the following amounts:

| Size of Group | Standard |
|---------------|----------|
| 1 | \$1,670 |
| 2 | 2,247 |
| 3 | 2,823 |
| 4 | 3,400 |
| 5 | 3,976 |
| 6 | 4,553 |
| 7 | 5,130 |
| 8 | 5,706 |
| 9 | 6,283 |
| 10 | 6,859 |
| +1 | +577 |

(6) A monthly income standard set at 200 percent of the 2009 federal poverty level is set at the following amounts:

| Size of Group | Standard |
|---------------|----------|
| 1 | \$1,805 |
| 2 | 2,429 |
| 3 | 3,052 |
| 4 | 3,675 |
| 5 | 4,299 |
| 6 | 4,922 |
| 7 | 5,545 |
| 8 | 6,169 |
| +1 | +624 |

(7) A monthly income standard set at 201 percent of the 2009 federal poverty level is set at the following amounts:

| Size of Group | Standard |
|---------------|----------|
| 1 | \$1,815 |
| 2 | 2,441 |
| 3 | 3,067 |
| 4 | 3,694 |
| 5 | 4,320 |
| 6 | 4,947 |
| 7 | 5,573 |
| 8 | 6,200 |
| 9 | 6,826 |
| 10 | 7,453 |
| +1 | +627 |

Stat. Auth.: ORS 411.060, 411.070, 411.816 & 412.049
 Stats. Implemented: ORS 411.060, 411.070, 411.816 & 412.049
 Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10

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

Adm. Order No.: SSP 5-2010

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 2-1-2010

Rules Adopted: 461-135-0498, 461-145-0184

Rules Amended: 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, 461-135-01195, 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, 461-180-0050, 461-193-0000, 461-193-0042

Rules Repealed: 461-115-0230(T), 461-115-0430(T), 461-135-0570(T), 461-135-1195(T), 461-145-0130(T), 461-145-0550(T), 461-150-0090(T), 461-165-0150, 461-170-0010(T), 461-170-0011(T)

Subject: 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 meeting 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

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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.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 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.

ORAR 461-145-0320 about how the Department treats the value of life and burial insurance policies when determining a client's eligi-

bility (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.

ORAR 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.

ORAR 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.

ORAR 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 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).

ORAR 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.

ORAR 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.

ORAR 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 house-

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hold. This rule also is being amended to make permanent the temporary rule changes effective January 1, 2010.

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.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0015

Definitions; SNAP

The following definitions apply to the rules of the SNAP program in chapter 461:

(1) A *disabled* individual or an individual with a *disability* means an individual who meets any of the following requirements:

(a) Receives SSI benefits under title XVI of the Social Security Act.

(b) Receives blindness or disability benefits under titles I, II, X, XIV, or XVI of the Social Security Act.

(c) Receives OSIP or other state or federal supplement under section 1616(a) of the Social Security Act based on disability or blindness criteria under title XVI of the Social Security Act.

(d) Receives state general assistance benefits based upon disability or blindness criteria under title XVI of the Social Security Act.

(e) Receives interim assistance pending receipt of SSI or receives disability-related medical assistance under title XIX of the Social Security Act.

(f) Receives a state or federally administered supplemental benefit under section 212(a) of Public Law 93-66.

(g) Receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible for Medicare by the Railroad Retirement Board.

(h) Receives an annuity payment under Section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and meets the disability criteria used under title XVI of the Social Security Act.

(i) Receives VA benefits for non-service or service connected disability rated or paid as total under title 38 of the United States Code.

(j) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.

(k) Has a disability considered permanent under 221(i) of the Social Security Act section and is the surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service connected death under title 38 of the United States Code.

(l) Is a veteran or surviving spouse of a veteran considered by the VA to be in need of Aid and Attendance benefits or permanently housebound under title 38 of the United States Code.

(m) Is a surviving child of a veteran and considered permanently incapable of self support under title 38 of the United States Code.

(2) *Elderly* means an individual 60 years of age or older.

(3) *Employee* means an individual who works for another in return for financial or other compensation such as rent, but does not include an independent contractor.

(4) *Employer* means a person that employs one or more individuals for wages, salary, or other compensation such as rent.

(5) *Externship* means a required period of supervised practice completed off campus or away from an individual's school of higher education (see OAR 461-135-0570) in order to complete the requirements for the individual's degree.

(6) *Graduate assistantship* means an appointment as a graduate student *employee* offering a financial payment to the graduate student for part-time work in teaching, administration, or research while the graduate student completes the academic requirements for an advanced degree at a school of higher education (see OAR 461-135-0570). A *graduate assistantship* includes such positions as graduate assistant, graduate research assistant, graduate teaching assistant, and graduate teaching associate.

(7) *Graduate fellowship* means a school of higher education (see OAR 461-135-0570) awarded program, targeted to a specific student group or

field of study, that may be awarded based on academic need, academic record, or merit.

(8) *Group living* means a public or private nonprofit residential setting that serves no more than 16 residents and is certified by State of Oregon under regulations issued under section 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)). To be eligible for SNAP benefits, a resident of such a *group living* arrangement must be blind or have a *disability*.

(9) An individual is *homeless* if the individual does not have a fixed or regular nighttime residence or has a primary residence that is one of the following:

(a) A supervised shelter that provides temporary accommodations.

(b) A halfway house or residence for individuals who may become institutionalized.

(c) A temporary accommodation in another individual's or family's residence for 90 days or less.

(d) A place not designed to be or ordinarily used as a place for individuals to sleep, such as a hallway, bus station, or similar place.

(10) *Internship* means an official or formal program through a school of higher education (see OAR 461-135-0570) to provide practical experience for an individual beginning an occupation or profession.

(11) A *migrant farmworker* is an individual who regularly travels away from their permanent residence overnight, usually with a group of laborers, to seek employment in an agriculturally related activity. If any member of a SNAP household fits the definition of migrant farmworker at any time during the redetermination period, the household is budgeted according to the policy on migrant farmworkers.

(12) A *primary person* means:

(a) An adult in the *filing group* (see OAR 461-110-0370) who is designated by the group to serve as the primary person. Where there is no adult, the group can designate another responsible person in the *filing group*.

(b) Once the primary person has been designated, the filing group cannot choose a different individual to be the primary person during the same certification period (see OAR 461-001-0000) or during an OFSET or job quit disqualification period, unless there is a change in the composition of the *household group* (see OAR 461-110-0210).

(13) *Seasonal farmworkers* are individuals employed in agricultural employment of a seasonal or temporary nature. If any member of a SNAP household fits the definition of seasonal farmworker at any time during the redetermination period, the household is budgeted according to policy on seasonal farmworkers. Seasonal farmworkers are not required to be absent overnight from their permanent residence when:

(a) Employed on a farm or ranch performing field work related to planting, cultivation, or harvesting operations; or

(b) Employed in a canning, packing, ginning, seed conditioning, or related research or processing operation, and transported to or from the place of employment by means of a day-haul operation.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 411.825 & 412.049

Hist.: 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 5-2010, f. & cert. ef. 4-1-10

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.

ADMINISTRATIVE RULES

(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:

(A) Except as provided for REF in OAR 461-135-0900(4), a client, including a client 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, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014 & 412.049

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; SSP 5-2010, f. & cert. ef. 4-1-10

ADMINISTRATIVE RULES

461-115-0230

Interviews

(1) In all programs except the BCCM, MAA, MAF, OHP, and SAC programs, the Department may conduct a required face-to-face interview by telephone or home visit if an authorized representative (see OAR 461-115-0090) cannot be appointed and participating in a face-to-face interview is a hardship (see section (3) of this rule) for the household.

(2) In the SNAP program:

(a) When a household meets the expedited services criteria, an interview may be postponed in accordance with OAR 461-115-0690.

(b) An interview must be scheduled so that the household has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.

(c) A face-to-face interview must be granted at the applicant's request.

(d) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.

(e) An applicant who fails to attend a scheduled interview and subsequently fails to contact the Department not later than 30 days following the date the application was filed is ineligible for benefits.

(f) Each client is interviewed face-to-face prior to initial certification and at least once every 12 months, except under the following circumstances:

(A) When a current hardship condition (see section (3) of this rule) is identified.

(B) The household meets either of the following criteria at recertification:

(i) Each adult member is elderly or meets the SNAP program definition of an individual with a *disability* (see OAR 461-001-0015), and there is no earned income; or

(ii) Each member of the SNAP program *filing group* (see OAR 461-110-0370) is receiving TANF or SFPSS program cash benefits.

(3) For the purposes of this rule, hardship conditions include, but are not limited to:

(a) Care of a household member;

(b) A client's illness;

(c) A commute of more than two hours from the client's residence to the nearest *branch office* (see OAR 461-001-0000);

(d) A conflict between the client's work or training schedule and the business hours of the *branch office*; and

(e) Transportation difficulties due to prolonged severe weather.

Stat. Auth.: ORS 411.060, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816 & 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 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 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-115-0430

Periodic Redeterminations; Not EA, ERDC, EXT, OHP, REF, REFM, SNAP, or TA-DVS

The Department periodically redetermines the eligibility of clients for benefits and assigns a *redetermination date* by which the next determination is required. The Department selects the *redetermination date* based on the client's circumstances and according to the following requirements:

(1) In the BCCM, GA, and GAM programs, the Department determines eligibility each 12 months.

(2) In the MAA, MAF, and SAC programs, the Department redetermines eligibility at least once every 12 months.

(3) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(4) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for MAA, MAF or OSIPM, a redetermination for QMB is completed with the redetermination of the other program.

(5) In the SFPSS program, the Department redetermines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.

(6) In the TANF program, the Department redetermines eligibility according to the following schedule:

(a) For a client not participating in the JOBS program — at least once every six months.

(b) For a client participating in the JOBS program — at least once every 12 months.

Stat. Auth.: ORS 411.060, 411.070, 411.404 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404 & 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 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 8-1992, f. & cert. ef. 4-1-92; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, 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 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; 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 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-115-0651

Required Verification and When to Verify; SNAP

(1) The Department must give households at least 10 days to provide required verification.

(2) All of the following information must be verified when a client initially applies for SNAP benefits:

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Alien status.

(c) Social Security Number (SSN) or application for an SSN.

(d) Countable income.

(e) Medical expenses, if they are used as a deduction.

(f) An order to pay child support and the amount actually paid.

(g) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(3) All of the following information must be verified when a client reapplies for SNAP benefits:

(a) Countable income.

(b) Previously unreported medical expenses, and recurring medical expenses which have changed by more than \$25.

(c) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(d) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(4) For cases using the Change Reporting System (CRS), each of the following changes reported during the certification period must be verified:

(a) A change in source of income, or the amount of stable income has changed by more than \$50.

(b) The amount of variable income from any source.

(c) Changes in reported medical expenses by more than \$25, and previously unreported medical expenses.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(5) For cases using the Simplified Reporting System (SRS), each of the following changes reported during the certification period must be verified in accordance with OAR 461-170-0103:

(a) Alien status and SSN or application for an SSN when a new member joins the benefit group.

(b) Countable income.

(c) Medical expenses, if used as a deduction.

(d) An order to pay child support and the amount actually paid, if used as a deduction.

(6) A claimed expense or cost may be used to determine the SNAP benefit only when the client provides the required or requested verification.

(7) In addition to the verification required by sections (2) to (5) of this rule, the income for a client must be verified every six months for SRS cases certified for twelve months, except those in which every adult member of the filing group is elderly or an individual with a *disability* (see OAR 461-001-0015) and has no earned income (NED).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; 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 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2010, f. & cert. ef. 4-1-10

ADMINISTRATIVE RULES

461-115-0690

Verification For SNAP Expedited Service; Time Limits

This rule establishes verification requirements for expedited services in the SNAP program.

(1) An applicant meeting the SNAP program expedited services criteria under OAR 461-135-0575 and determined eligible for SNAP benefits must provide verification of his or her identity either through a collateral contact or documentary evidence before benefits may be issued. Benefits may not be delayed solely because other eligibility factors are not verified. A client must provide the postponed verification within the timeframes established in section (3) of this rule.

(2) A *filing group* (see OAR 461-110-0370) that was receiving SNAP benefits in another state during the same month the *filing group* applies for expedited services in Oregon must verify that the *filing group* will not use SNAP benefits from both the other state and Oregon in the same month. The *filing group* may provide the verification by signing a statement attesting to the following:

(a) The *filing group* did not receive SNAP benefits from the other state for the month in which the *filing group* is applying for SNAP benefits in Oregon; and

(b) If the *filing group* receives SNAP benefits from the other state for a month in which the *filing group* receives SNAP benefits in Oregon, the *filing group* must comply with the following requirements:

(A) The *filing group* may not use the other state's SNAP benefits; and

(B) The *filing group* must report receipt of the other state's SNAP benefits and turn them in to the Department within five days of receipt. Failure to comply with this requirement constitutes an intentional program violation.

(3) A household that does not provide all necessary postponed verification becomes ineligible as follows:

(a) A household applying on or before the 15th of the month becomes ineligible the last day of the month of application.

(b) A household applying after the 15th of the month becomes ineligible the last day of the month following the month of application.

(4) The interview, along with other verification requirements, may be postponed when a *filing group* meeting the expedited services criteria applies for SNAP benefits using the web-based online application process. The interview may be postponed only when the *filing group* meets all of the following criteria:

(a) The group applied using the web-based application.

(b) The group meets the expedited services criteria.

(c) The applicant's identity is verified.

(d) The applicant did not receive SNAP benefits from any state in the current or previous calendar month.

(e) The applicant cannot be contacted for a telephone interview because:

(A) No telephone number was provided; or

(B) The applicant was not available when the local office attempted to contact the applicant for an interview.

(f) The applicant must complete the interview and provide any pending verification information within the timeframes established in section (3) of this rule. When the interview or pending verification information is not provided within the required timeframe, the SNAP program certification ends with no additional notice (see OAR 461-175-0300).

(5) When SNAP benefits under expedited services close or change due to postponed verification, notice is provided in accordance with OAR 461-175-0300.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 5-2010, f. & cert. ef. 4-1-10

461-135-0498

Pandemic-related Supplemental Nutrition Assistance Program; PSNAP

In the Pandemic-related Supplemental Nutrition Assistance Program (PSNAP):

(1) The purpose of this rule is to set forth the policies for determining the activation of, eligibility for, and issuance of benefits under the PSNAP program for children certified eligible to receive free and reduced price school lunch benefits during a pandemic-related school closure. This program may be activated and benefits issued for the period October 1, 2009 through September 30, 2010.

(2) The PSNAP program is activated when:

(a) The school or school district notifies the Department of a school closure lasting a minimum of five consecutive school days due to pandemic-related illness; and

(b) The school identifies each child participating in the free or reduced price school lunch program.

(3) When the PSNAP program has been activated, only households meeting the following requirements may qualify for PSNAP program benefits. The school or school district provides the following items to the Department:

(a) The name of the parent (head of the household);

(b) The address of the household; and

(c) The name and date of birth for each child participating in the free or reduced price school lunch program.

(4) The Department matches the school data with the existing SNAP program files to identify which children are in households already participating in the SNAP or TANF programs. The Department deems these households to have EBT cards and does not send new EBT cards to them.

(5) The Department issues a new EBT card to each household in the school data that is not currently participating in a Department program via an EBT card.

(6) PSNAP program benefits are given to all eligible households for the expected five consecutive days of school closure.

(a) The allotment amount is equal to the value of the school lunch multiplied by the number of lunches that will be missed. The value of the school lunch must be equal to the federal reimbursement rate for the lunch at the free rate.

(b) A household may qualify for a second week of benefits when the school is closed for six or more consecutive school days.

(7) PSNAP program benefits are issued via an EBT account and restricted to the purchase of food only.

(8) PSNAP program benefits are issued to an eligible household within ten business days from the day the Department receives notice of the school closure and the school data. The benefits are issued no later than 45 days following the first day of the school closure.

(9) A household certified to receive PSNAP program benefits receives a written *decision notice* (see OAR 461-001-0000) which includes the reason for the PSNAP program benefits, the amount of the benefits, how the benefits may be used, and contested case hearing rights.

Stat. Auth.: ORS 411.806 - 411.845

Stats. Implemented: ORS 411.806 - 411.845

Hist.: SSP 5-2010, f. & cert. ef. 4-1-10

461-135-0570

Eligible and Ineligible Students; SNAP

In the SNAP program:

(1) For the purposes of this rule and OAR 461-001-0015, higher education includes the following:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(2) An individual 18 years of age or older, but under the age of 50 years, who is enrolled at least half time in higher education is ineligible to receive SNAP program benefits, unless one of the following is true:

(a) The student is:

(A) A paid *employee* (see OAR 461-001-0015) working an average of 20 hours or more per week except as excluded by section (5) of this rule; or

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is participating in a state or federally funded work-study program, is assigned to a work-study position, and will perform work in a work-study job in the current term or semester. The period of eligibility for a student eligible because of this subsection:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

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(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the *filing group* (see OAR 461-110-0370), and the child is:

(A) Under six years of age; or

(B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the employment requirements of sub-section (a) of this section or the work-study requirements of sub-section (b) of this section.

(d) The student is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF *benefit group* (see OAR 461-110-0750).

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes under the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974, 19 U.S.C. 2296.

(i) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(j) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by the student disenrolling), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

(4) A student residing in a dormitory or other living situation with meal plans is ineligible for SNAP program benefits.

(5) The following situations do not earn the student hours toward the 20 hours per week requirement in section (2) of this rule:

(a) Income that is considered educational income under OAR 461-145-0150, including income from work in the following:

(A) An *externship* (see OAR 461-001-0015);

(B) A *graduate assistantship* (see OAR 461-001-0015);

(C) A *graduate fellowship* (see OAR 461-001-0015); or

(D) An *internship* (see OAR 461-001-0015).

(b) Receiving in-kind payments in lieu of actual wages.

[Publications: Publications 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 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 2-2010(Temp), f. & cert. ef. 2-5-10 thru 8-4-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-135-0575

SNAP Expedited Services

In the SNAP program:

(1) An applicant is screened for expedited services except when a *filing group* (see OAR 461-110-0370) applies for SNAP benefits before the end of its current certification. If a *filing group* meets the expedited services criteria and the Department determines the *filing group* is eligible for SNAP benefits, the *filing group* qualifies to receive benefits within seven days following the filing date.

(2) The *filing group* meets expedited services criteria if the *filing group*:

(a) Has countable income less than \$150 a month and *liquid resources* that do not exceed \$100;

(b) Has gross income and *liquid resources* that total less than the total monthly rent, or mortgage, and utilities of the household; or

(c) Is a "destitute household" as described in 7 CFR 273.10(e)(3) (covering migrant and seasonal farmworker households) and has *liquid resources* that do not exceed \$100.

(d) For purposes of this rule only, a *liquid resource* includes cash on hand, a checking or savings account, a savings certificate, and a lump sum payment.

(3) There is no limit to the number of times a *benefit group* (see OAR 461-110-0750) may receive expedited services. However, all eligibility factors from the last expedited issuance must be verified or the *benefit group* must have been certified under normal processing standards since the last

expedited certification before the client is eligible to receive expedited services again.

(4) An eligibility process interview for an expedited services client is conducted in accordance with OAR 461-115-0690.

(5) The application processing timeframe for an expedited services client is determined under OAR 461-115-0210.

(6) Application information for an expedited services client is verified as required under OAR 461-115-0690.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 5-2010, f. & cert. ef. 4-1-10

461-135-0730

Specific Requirements; QMB, SMB, SMF

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.

(b) A client who qualifies for QMB-BAS is not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB DW:

(a) To qualify for the QMB-DW program, an individual must be eligible for Part A of Medicare as a qualified worker with a disability under Section 1818A of the Social Security Act (42 USC 1395i-2a). This is an individual under age 65 who has lost eligibility for Social Security disability benefits because the individual has become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) A QMB-DW client is eligible only for payment of premiums for Part A of Medicare. If the client is eligible for any other medical assistance program the client is not eligible for QMB-DW.

(3) The following requirements apply to QMB SMB:

(a) To qualify for QMB SMB, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.

(b) A client who qualifies for QMB SMB is not eligible to receive the full range of the Department's medical services. QMB SMB benefits are limited to payment of Medicare Part B premiums.

(4) The following requirements apply to QMB-SMF:

(a) To qualify for QMB-SMF, an individual must be receiving Medicare hospital insurance under Part A. This includes an individual who must pay a monthly premium to receive coverage.

(b) A client who is institutionalized (residing in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) is not eligible for QMB-SMF.

(c) A client who qualifies for QMB-SMF is not eligible to receive the full range of the Department's medical services. QMB-SMF benefits are limited to payment for Medicare Part B premiums.

(d) The QMB-SMF program is subject to an enrollment cap based on the federal allocation. If the enrollment in this program exceeds the federal allocation, the program may be closed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

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 35-1992, f. 12-31-92, cert. ef. 1-1-93; 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 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; 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 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2006(Temp), f. & cert. ef. 2-6-06 thru 6-30-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; SSP 19-2008(Temp), f. & cert. ef. 8-8-08 thru 12-28-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

461-135-0832

Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of

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the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse; by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a *person* who acquires an interest in *real or personal property* or an *asset* pursuant to a written or oral assignment of such *real or personal property* or *asset* from a *person* with the legal right to assign it.

(3) "Blind child" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

- (a) Vision of 20/200 or less in the better eye with a corrective lens; or
- (b) A limitation in vision field to an angle of 20 degrees or less; or
- (c) Meeting any other SSI criteria for blindness.

(4) "Bona fide purchaser for value" means any *person* who provides consideration, including money or property, to a seller or transferor of *real property* or *personal property* equal to the fair market value of the *real or personal property* sold or transferred.

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) "Consideration furnished test" means the method by which the ownership of *real or personal property* is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(7) "Convincing evidence" includes, but is not limited to:

- (a) Recorded documents of title.
- (b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.
- (c) Tax statements or returns.
- (d) Records of banking, financial or other similar institutions.
- (e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.
- (f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(8) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(9) "Disabled child" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(10) "Estate" means:

(a) With respect to the collection of payments made for public assistance provided prior to July 18, 1995, or for exclusively state funded public assistance, all *real property*, *personal property*, or other *assets* included within a recipient's estate, or the estate of the recipient's spouse, as such estate is defined by applicable state probate law.

(b) With respect to the collection of payments made for public assistance provided on or after July 18, 1995:

(A) For recipients who die prior to October 1, 2008, all *real property*, *personal property*, or other *assets*, wherever located, in which a recipient had any *legal title* or ownership or beneficial interest at the *time of death*, including *real property*, *personal property*, or other *assets* conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's surviving spouse and any successor-in-interest to the recipient's surviving spouse, through:

- (i) Tenancy by the entirety;
- (ii) *Joint tenancy*;
- (iii) *Tenancy in common*;
- (iv) Not as tenants in common, but with the right of *survivorship*;
- (v) *Life estate*;
- (vi) *Living trust*;
- (vii) Annuity purchased on or after April 1, 2001; or
- (viii) Other similar arrangement.

(B) For recipients who die on or after October 1, 2008, all *real property*, *personal property*, or other *assets*, wherever located, in which a recipient had any *legal title* or ownership or beneficial interest at the *time of death* of the recipient, including *real property*, *personal property*, or other *assets* conveyed by the recipient to, subsequently acquired by, or traceable to, a *person*, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

- (i) Tenancy by the entirety;
- (ii) *Joint tenancy*;
- (iii) *Tenancy in common*;
- (iv) Not as tenants in common, but with the right of *survivorship*;
- (v) *Life estate*;
- (vi) *Living trust*;
- (vii) Annuity purchased on or after April 1, 2001; or
- (viii) Other similar arrangement, such as an interspousal transfer of assets, including one facilitated by a court order, which occurred no earlier than 60 months prior to the first *date of request* established from the recipient's and the recipient's spouse's applications, or at any time thereafter, whether approved, withdrawn, or denied, for the public assistance programs referenced in OAR 461-135-0835(2).

(11) "Heir" means any individual, including the surviving spouse, who is entitled under *intestate succession* to the *real property*, *personal property*, and *assets* of a decedent who died wholly or partially *intestate*.

(12) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(13) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(14) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(15) "Intestate succession" means succession to *real property*, *personal property* or *assets* of a decedent who dies *intestate* or partially *intestate*.

(16) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(17) "Legal title" means legal ownership by a *person*.

(18) "Life estate" means an *interest* in *real or personal property* that terminates upon the death of a measuring life.

(19) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(20) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. Medical Institution does not apply to in-home waived services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(21) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale or other similar documents evidencing ownership or *legal title* held by a *person*.

(22) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(23) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

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(24) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(25) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. Real property includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the real property may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(26) "Recipient of property" means:

(a) Any *survivor*, *heir*, *assign*, devisee under a will, beneficiary of a trust, transferee or other *person* to whom *real property*, *personal property* or other *assets* pass upon the death of the decedent either by law, *intestate succession*, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such *real property*, *personal property*, or *asset*, or proceeds from the sale thereof, through any form of conveyance, that is not a *bona fide purchaser for value*.

(27) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of *real* or *personal property* upon the death of a fellow co-tenant.

(28) "Survivorship" means an interest in *real* or *personal property* that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(29) "Tenancy in common" means ownership of *real* or *personal property* by an individual together with one or more other *persons* which ownership *interest* shall not pass by *survivorship* upon the death of the individual.

(30) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall *time of death* be construed to mean a time after which an *interest* in *real* or *personal property* or other *assets* may:

(a) Pass by *survivorship* or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(31) "Value" means the fair market value. Fair market value is the price at which *real* or *personal property* would change hands between a willing buyer and a willing seller. In the event the *real* or *personal property* was not reported to the Department by the deceased Medicaid recipient, the *value* would be established based on its fair market value at the time of discovery.

Stat. Auth: ORS 410.070, 411.060 & 416.350

Stats. Implemented: ORS 93.268, 410.070, 411.060, 411.694, 411.708, 411.795, 416.310, 416.340 & 416.350

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

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 416. 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.

(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 461-135-0832) of any age, and no surviving *disabled child* (see 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 recipient's spouse for public assistance paid to the recipient's spouse, but only to the extent that the recipient's spouse received property or other assets from the recipient 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 applications of the recipient and the recipient's spouse, 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 recipient's 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 estate of the recipient's spouse.

(D) However, neither claim is enforceable until after the death of the recipient's 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

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of GA category and Title XIX benefits paid at any age. The claim includes 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 & 416.350
Stats. Implemented: ORS 113.085, 115.525, 410.070, 411.060, 411.708, 411.795, 416.310 & 416.350
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-135-1195

Specific Requirements; SFPSS Eligibility

In the SFPSS program:

(1) To be eligible, a client must meet the following requirements:

(a) Be an adult;

(b) Meet all TANF program eligibility requirements (except as provided otherwise in this rule);

(c) Be receiving TANF benefits;

(d) Have an impairment that meets the requirements in OAR 461-125-0260;

(e) File an application for Supplemental Security Income (SSI) disability benefits under the Social Security Act; and

(f) Sign an Interim Assistance Authorization authorizing the Department to recover interim SFPSS program benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or the initial payment after the decision on SSI eligibility. The following provisions are considered part of the Interim Assistance Authorization:

(A) Interim SFPSS program benefits include only those SFPSS program cash benefits paid to the adult, who is applying for SSI, during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim SFPSS program cash benefit.

(C) If the Department does not stop delivery of an SFPSS program benefit issued after the SSI payment is made, the SFPSS program payment is included in the interim assistance reimbursement to the Department.

(2) **Counting earned and unearned income.**

(a) The TANF standards in OAR 461-155-0030 are used to determine eligibility for the SFPSS program.

(b) The SFPSS payment standard (see OAR 461-155-0320) is used to determine the benefit amount for the SFPSS program.

(3) When the only adult in the *filing group* (see OAR 461-110-0330) is applying for SSI, and the child or all children in the *filing group* are receiving an SSI grant, the family does not receive an SFPSS grant. The family remains on TANF (if eligible) and receives a TANF grant.

(4) A client whose impairment no longer meets the criteria in OAR 461-125-0260 is ineligible for SFPSS benefits.

(5) An SFPSS client found by the Social Security Administration (SSA) not to meet disability criteria may continue receiving SFPSS benefits until all SSA administrative appeals are exhausted.

(6) Once a client is approved for SFPSS, the client is no longer subject to OAR 461-120-0340. The client remains exempt from OAR 461-120-0340 as long as the client is eligible for and receiving SFPSS.

Stat. Auth.: ORS 411.060, 411.070, 412.006, 412.009, 412.014 & 412.049
Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.009, 412.014, 412.049 & 412.084
Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-14-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-145-0022

Annuities; OSIPM

In the OSIPM program:

(1) For the purposes of this rule:

(a) "Actuarially sound" means a *commercial annuity* which pays principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within 12 months of the actuarial life expectancy.

(b) For a client, an annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)

(c) The definition of "child" in OAR 461-001-0000 does not apply.

(d) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(e) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity that does not make regular payments for a lifetime or specified number of years is a resource.

(3) When a client applies for medical benefits, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the client must report any annuity owned by the client or a spouse of the client.

(4) By signing the application for assistance, a client and the spouse of a client agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any *commercial annuity* purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR 461-160-0580(2)(c).

(5) If the Department is notified about a *commercial annuity*, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the client.

(6) If a client or a spouse of a client purchases or transfers a commercial annuity prior to January 1, 2006, the following applies:

(a) If the client is in a *nonstandard living arrangement* (see OAR 461-001-0000), the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying or the disqualification period has already been served, the annuity payments are counted as unearned income to the payee.

(b) If the client is in a *standard living arrangement*, the annuity payments are counted as unearned income to the payee.

(7) Sections 8 and 9 of this rule apply to a *commercial annuity* if:

(a) The client is in a *nonstandard living arrangement*, and the client or the spouse of the client purchases an annuity from January 1, 2006 through June 30, 2006; or

(b) The client is in a *standard living arrangement* (see OAR 461-001-0000), and the client or the spouse of a client purchase an annuity on or after January 1, 2006.

(8) A *commercial annuity* covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:

(a) If an unmarried client is an annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(A) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(b) If a spouse of a client is the annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

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(A) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) A child of the spouse; and the client in the event that this child does not survive the spouse.

(c) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:

(A) The annuity is irrevocable.

(B) The annuity must be actuarially sound.

(C) The annuity is issued by a business that is licensed and approved to issue a *commercial annuity* by the state in which the annuity is purchased.

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income to the payee. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(10) This section lists the requirements for a *commercial annuity* purchased by the client or the spouse of the client on or after July 1, 2006, when a client is in a *nonstandard living arrangement*, and the annuity names the client or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income to the payee. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.

(a) The annuity must comply with one of the following paragraphs:

(A) The first remainder beneficiary is the spouse of the client, and in the event that the spouse transfers any of the remainder of the annuity for less than *fair market value* (see OAR 461-001-0000), the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(B) The first remainder beneficiary is the annuitant's child, and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than *fair market value*, the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(C) The first remainder beneficiary is the Department for up to the total amount of medical benefits paid on behalf of the client.

(b) The annuity must be irrevocable and nonassignable.

(c) The annuity must be *actuarially sound*.

(d) The annuity is issued by a business that is licensed and approved to issue a *commercial annuity* by the state in which the annuity is purchased.

(11) If the client is the annuitant and a *commercial annuity* does not meet all of the requirements of section (10) of this rule, or the spouse of the client is the annuitant and a *commercial annuity* does not meet the requirements of subsection (10)(a) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(6) and (7) for calculation of the disqualification period.

(12) Regardless of whether a *commercial annuity* is a disqualifying transfer of assets, if the annuity does not meet all of the requirements of section (10) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

Stat. Auth.: ORS 411.060, 411.070, 411.083 & 411.404

Stats. Implemented: ORS 411.060, 411.070, 411.083 & 411.404

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2010, f. & cert. ef. 4-1-10

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 program, 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, 411.083, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014 & 412.049
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; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10

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461-145-0150

Educational Income

(1) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:

(a) A student at a recognized institution of post-secondary education. Post secondary education is education offered primarily to individuals 18 years of age or older. Admission may — but does not necessarily — require a high school diploma or equivalent.

(b) A student at a school for individuals with disabilities.

(c) A student in a vocational education program.

(d) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.

(2) To determine the amount of educational income to exclude, education expenses listed in the financial aid award letter are used unless one of the following is true:

(a) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.

(b) The student receives child care benefits — ERDC or other child care subsidies. The amount the student actually pays for child care (including the ERDC copay) is excluded as educational income instead of the amount shown in the award letter.

(c) The student states that actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by \$0.20. The product or the amount from the award letter, whichever is greater, is excluded.

(3) The following items are excluded:

(a) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA).

(b) All income from educational loans.

(4) Except as provided in section (5) of this rule, the cost of the following items from remaining educational funds (including non Title IV work study, *externship* (see OAR 461-001-0015), *graduate assistantship* (see 461-001-0015), *graduate fellowship* (see 461-001-0015) wages, and *internship* (see 461-001-0015)) is excluded:

(a) Tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.

(b) In all programs except ERDC — dependent care.

(5) For a participant in the Parents as Scholars (PAS) component of the JOBS program who has been approved for PAS pursuant to OAR 461-190-0199, all remaining educational funds, including those funds intended for room and board, are excluded.

(6) In all programs covered by chapter 461 of the Oregon Administrative Rules, after allowing exclusions, the remaining income is treated as follows:

(a) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by section (3) or (4) of this rule is earned income.

(b) Educational income not covered by subsection (a) of this section is treated as follows:

(A) In all programs except OHP, educational income is prorated over the period it is intended to cover. If the client has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the client has not received the income at the time the determination is made, the prorated income is counted starting in the month the client expects to receive it.

(B) In the OHP program, educational income is counted in the month received.

Stat. Auth.: ORS 411.060, 411.083, 411.404, 411.816, 412.014 & 412.049
Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 411.825, 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 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2010, f. & cert. ef. 4-1-10

461-145-0184

Filipino Veterans Equity Compensation Fund

The Department excludes from income a payment 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.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014 & 412.049
Hist.: SSP 5-2010, f. & cert. ef. 4-1-10

461-145-0320

Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income in the month received and a resource if retained into the following month. The Department counts benefits as paid when the insured individual dies or when the insured individual is eligible for and receives accelerated payments before death, such as when the insured individual has a terminal illness. When the payment is a lump sum due to the death of the insured individual a deduction is allowed, not to exceed \$1,500, for the cost of the deceased individual's last illness and burial if these costs were not otherwise insured.

(2) Burial insurance that has cash surrender value is treated in the same manner that this rule treats life insurance.

(3) The value of a life insurance policy is treated as follows:

(a) All term insurance that has no cash surrender value is excluded.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the cash surrender value of the life insurance policy is excluded.

(c) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), the total exclusion available for life insurance and burial arrangements is limited as provided in OAR 461-145-0040(2)(b).

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) Except as provided in subsection (c) of this section, the total cash surrender value of life insurance policies owned by the client or the client's spouse is excluded if the *total face value* of all policies for the insured individual is less than or equal to \$1,500. If the *total face value* of all policies for the insured individual is more than \$1,500, the entire cash surrender value is counted as a resource to the owner of the policy. The *total face value* does not include dividend additions that increase the death benefit and cash surrender value.

(B) The cash surrender value of a policy acquired through a viatical settlement is excluded. A viatical settlement allows a third party to acquire the life insurance policy from a terminally ill individual at an agreed upon percentage of the life insurance policy face value.

Stat. Auth.: ORS 411.060, 411.083, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.816 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 5-2010, f. & cert. ef. 4-1-10

461-145-0550

Unemployment Compensation Benefit

In all programs covered by chapter 461 of the Oregon Administrative Rules, unemployment compensation benefits are treated as follows:

(1) Retroactive payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Disaster Unemployment Assistance is treated as provided in OAR 461-145-0100.

(3) The \$25 supplemental payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded from *countable* (see OAR 461-001-0000) income.

(4) All payments not covered under sections (1) to (3) of this rule are counted as unearned income.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.070, 411.816, 412.014 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 3-2009(Temp), f. & cert. ef. 3-3-09 thru 8-30-09; SSP 24-2009, f. & cert. ef. 8-31-09; SSP 35-2009(Temp), f. & cert. ef. 11-24-09 thru 5-23-10; SSP 5-2010, f. & cert. ef. 4-1-10

ADMINISTRATIVE RULES

461-150-0060

Prospective or Retrospective Eligibility and Budgeting; ERDC, MAA, MAF, REF, REFM, SNAP, TANF

In the ERDC, MAA, MAF, REF, REFM, SNAP, and TANF programs, the Department determines how and when to use prospective or retrospective *eligibility* (see OAR 461-001-0000) and *budgeting* (see OAR 461-001-0000) as follows:

(1) For the *initial month* (see OAR 461-001-0000):

(a) In the ERDC program, income is budgeted so the anticipated amount is the same for each month, including the *initial month*.

(b) For an MAA, MAF, REF, and TANF case, or a SNAP case in CRS, the Department uses actual income in the *initial month*. Actual income is the income already received in the *initial month* plus all the income that reasonably may be expected to be received within the *initial month*.

(c) For a SNAP program case in SRS, actual income is used in the initial month if that income is not reflective of ongoing monthly income due to a new or terminated source or a significant change in ongoing income. All other income is processed under section (3) of this rule.

(d) In the REFM program:

(A) When a client has moved to Oregon from the client's original resettlement state, see OAR 461-135-0010.

(B) For a client not assumed eligible under paragraph (A) of this subsection and OAR 461-135-0010, the Department uses only the *initial month* for *eligibility* and *budgeting*.

(e) The Department uses prospective *eligibility* and *budgeting* under OAR 461-150-0020 for cases not covered under subsections (a) to (e) of this section, including for a client who leaves a filing group because of *domestic violence* (see OAR 461-001-0000) and enters a *domestic violence shelter* (see OAR 461-001-0000) or *safe home* (see OAR 461-001-0000).

(f) No supplement is issued based on incorrectly anticipated information.

(2) Income is budgeted so that the anticipated amount is the same for each month. The type of income is determined and calculated as follows:

(a) Income that must be annualized is calculated under OAR 461-150-0090 to arrive at a monthly figure.

(b) Educational income (see OAR 461-145-0150) is assigned to the months it is intended to cover, regardless of when it is received. The income is prorated over these months.

(c) Ongoing *stable income* (see OAR 461-001-0000) is anticipated under OAR 461-150-0070.

(d) Ongoing *variable income* (see OAR 461-001-0000) is anticipated under OAR 461-150-0080.

(e) *Periodic income* (see OAR 461-001-0000) is anticipated under OAR 461-140-0100 and 461-140-0110.

(f) *Lump-sum income* (see OAR 461-001-0000) is anticipated under OAR 461-140-0100, 461-140-0200, and 461-140-0123.

(g) In the ERDC program, for temporary income and other situations when the child care need will last two consecutive months or less, the income is anticipated to be received in the months of child care need and calculated under OAR 461-150-0080.

(3) For an *ongoing month* (see OAR 461-001-0000):

(a) For a *benefit group* (see OAR 461-110-0750), the Department uses prospective *eligibility* and *budgeting*. The type of income is determined and calculated under section (2) of this rule.

(b) If the *budgeting* method changes from prospective to retrospective, the Department treats income from a terminated source that was counted prospectively as follows:

(A) If the actual amount received was less than or equal to the anticipated amount, the income is excluded.

(B) If the actual amount received was greater than the anticipated amount, the Department counts the difference between actual and anticipated amounts.

(4) When an individual is added to an ongoing filing and *benefit group*, prospective budgeting is used to determine eligibility.

(5) In the ERDC and SNAP programs, income reported on the Interim Change Report form under OAR 461-170-0011 and 461-170-0102 is used to determine *eligibility* and benefit level. Income for the fifth month of the SNAP program *certification period* (see OAR 461-001-0000) is used to determine the income for the seventh and following months in the *certification period* if the client anticipates it will remain the same throughout the period. If the client anticipates the income will change, the client and the Department jointly estimate the income for the remaining months of the certification period. For a client who had self-employment income annualized, no change is made unless there is a substantial change in the revenue of the business.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816 & 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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; 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 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

461-150-0090

Prospective Budgeting; Annualizing and Prorating Contracted or Self-employment Income

In all programs except the OHP and REFM programs:

(1) Income from self-employment, including contract income while self-employed, is treated in accordance with OAR 461-145-0910 unless the income meets the provisions of section (2) of this rule.

(2) If past contract income is not representative of future income or when a substantial increase or decrease is expected in *countable* (see OAR 461-001-0000) self-employment income (see OAR 461-145-0910) in the next year, costs as allowed under OAR 461-145-0930 and anticipated income are used to determine the *countable* income.

(3) In the ERDC, MAA, MAF, REF, SNAP, and TANF programs, contract income that does not meet the criteria of self-employment income (see OAR 461-145-0910) is treated as follows:

(a) Income received during a less than 12-month period but intended as a full year's income is annualized.

(b) Income received on an hourly or piecework basis or monthly over the term of the contract period is not annualized. It is treated as *stable income* (see OAR 461-001-0000) under OAR 461-150-0070 or *variable income* (see OAR 461-001-0000) under OAR 461-150-0080.

(4) Contract income that is not the annual income of the *financial group* and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014 & 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; 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; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 37-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-155-0700

Special Need; Personal Incidentals and Room and Board Allowances; OSIPM

In the OSIPM program:

(1) In the following circumstances, personal incidentals and room and board allowances may be paid for an individual to reside in a *community based care facility* (see OAR 461-155-0630) to avoid placement in a nursing facility or leave a nursing facility or an acute care hospital, when an individual meets the requirements of one of the following subsections:

(a) Is determined to be eligible based on a disability determination made by the Department (see OAR 461-125-0370).

(A) To receive this payment, the individual must pursue SSI by making application with the Social Security Administration (SSA) and appealing denials until SSA makes a final administrative decision. If SSI is denied at the final SSA administrative level, the individual is no longer eligible for this payment.

(B) The payment is the difference between the *countable* (see OAR 461-001-0000) income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).

(b) Is leaving a nursing facility and limited to a maximum SSI payment of \$30 or to a maximum Veterans benefit payment of \$90. The payment is the difference between the *countable* income of the individual and the OSIPM program adjusted income standard (see OAR 461-155-0250).

(c) Is a *qualified non-citizen* under OAR 461-120-0125 who is not eligible for SSI due to not meeting the requirements to become a naturalized citizen within the SSI time limit.

(A) The individual must pursue naturalization.

(B) The payment is the difference between the *countable* income of the individual and the OSIPM adjusted income standard (see OAR 461-155-0250).

(d) Does not have sufficient income to divert to the *community spouse* (see OAR 461-001-0030) due to the difference between the personal needs allowance related to a nursing facility placement and the personal needs allowance and room and board related to a *community based care facility* placement. The allowance is issued only when the individual or *community spouse* requests or chooses a nursing facility placement rather than a *community based care facility* placement because the *community spouse* needs the resulting higher diversion amount to meet his or her monthly expenses.

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(A) For all individuals, the allowance is the difference between the amount of the individual's income that would be available to divert to the *community spouse* under a nursing facility placement and the amount of the individual's income available under the *community based care facility* placement, using the liability calculation as outlined in OAR 461-160-0620.

(B) For an individual whose income is less than the adjusted OSIPM program standard, the allowance is the amount calculated under paragraph (A) of this subsection plus the difference between the OSIPM program adjusted income standard and the individual's *countable* income.

(2) The payment amount is prorated in the first month for an individual who moves to a *community based care facility* on any day other than the first day of the month.

Stat. Auth.: ORS 411.060, 411.070, 411.704 & 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.704 & 411.706

Hist.: SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

461-165-0100

Issuance Date of Benefit

(1) For all programs except the EA and SNAP programs:

(a) An authorized cash payment check is dated on the first day of the payment period or as soon as practicable thereafter.

(b) Checks and medical cards are mailed so they can be delivered to the client on the first day of each month except in the following cases:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) Cases with no special needs or service coding; these cases receive the \$1.70 OSIP payment in advance for the benefit period, from the date of eligibility to the end of the calendar year.

(D) If the first day of the month falls on Sunday or a holiday, the check is mailed in time for the client to receive it on Saturday or the mail day preceding the holiday.

(E) Checks redirected to the branch office may be released during the last workday preceding a weekend or holiday.

(c) Benefits issued by EBT will be available on the first day of each month, except for the following:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) Benefits held by the branch office.

(2) EA clients must receive their checks, either direct or vendor, in time to meet their emergent needs.

(3) SNAP benefits are available as follows:

(a) SNAP benefits issued by EBT are available in the EBT account on the day of the month corresponding to the last digit of the client's case number except for the following:

(A) The benefits for the initial month of eligibility for a new or reopened case.

(B) The benefits for the seventh month of the certification period for a case in the semi-annual reporting system.

(b) SNAP benefits issued through the SNAP cash-out are available as follows:

(A) Benefits accessed through an EBT account are available on the first day of the month.

(B) Checks are mailed on the first day of the month.

(C) Direct-deposit funds are available on the third working day of the month.

(4) For SNAP changes that could not be made in time to adjust the monthly allotment, a supplement is issued within 10 days of the date the change was reported.

(5) In the OSIPM program, a medical ID card is mailed on the first of each month to clients receiving Title XIX waived services who contribute to their services by paying their excess income into a maintenance trust and agency account. The client's medical card is not held until the payment is received. If payment is not received before the end of the payment month, the Department considers the QMB program for the following month.

Stat. Auth.: ORS 411.060, 411.070, 411.704, 411.706, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.704, 411.706, 411.816, 412.014 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; 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 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 5-2010, f. & cert. ef. 4-1-10

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) 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.

(6) A client who moves from Oregon remains eligible for a restoration of benefits.

(7) Restoration of benefits is limited to the extent provided in OAR 461-180-0130.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014 & 412.049

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

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; SSP 5-2010, f. & cert. ef. 4-1-10

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* (see OAR 461-110-0750) 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 amount of restored benefits is offset against overdue or suspended overpayments.

(f) 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, 411.070, 411.404, 411.816, 412.014 & 412.049

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

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; SSP 5-2010, f. & cert. ef. 4-1-10

461-170-0010

Reporting Changes — Overview

A client is required to report a change in circumstances in accordance with the reporting system in which the client participates, OAR 461-170-0011; and

(1) For each program in which a client participates, the Department determines the appropriate reporting system. The Department's reporting

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systems are Change Reporting System (CRS), Monthly Reporting System (MRS), Simplified Reporting System (SRS), and Transitional Benefit Alternative (TBA). In addition to any required report form, when a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) A client using CRS must report a change according to OAR 461-170-0011.

(b) A client using MRS must report a change in income on the Monthly Change Report form designated by the Department. A Report form is processed according to OAR 461-170-0100, 461-170-0110, and 461-170-0120. Any other changes must be reported according to OAR 461-170-0011.

(c) A client using SRS must report a change according to OAR 461-170-0011 and 461-170-0102. An Interim Change Report form is processed according to OAR 461-170-0011 and 461-170-0101 to 461-170-0104.

(d) A client using TBA is not required to report any change.

(2) A change is considered reported effective the date a client, authorized representative, or ineligible student reports the information to a *branch office* (see OAR 461-001-0000).

(3) A change reported by a client, authorized representative, or ineligible student for one program is considered reported for all programs in which that client participates.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014 & 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; 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 13-1994, f. & cert. ef. 7-1-94; AFS 19-194, f. & cert. ef. 9-1-94; 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; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-170-0011

Changes That Must Be Reported

(1) A change in employment status is considered to occur as follows:

(a) For a new job, the change occurs the first day of the new job.

(b) For a job separation, the change occurs on the last day of employment.

(2) A change in source of income is considered to occur as follows:

(a) For earned income, the change occurs upon the receipt by the client of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.

(b) For unearned income, the change occurs the day the client receives the new or changed payment.

(3) A client must report, orally or in writing, the following changes:

(a) In the BCCM program, a client must report either of the following changes within 10 days of occurrence:

(A) A change in health care coverage.

(B) A change in residence.

(b) In the ERDC program:

(A) A client not participating in SRS in the SNAP program must report the following changes within 10 days of occurrence:

(i) A change in child care provider.

(ii) A change in employment status.

(iii) A change in mailing address or residence.

(iv) A change in membership of the *filing group* (see OAR 461-110-0350).

(v) A change in source of income expected to continue.

(B) A client participating in SRS in the SNAP program must report the following changes by the tenth day of the month following the month of occurrence:

(i) A change in child care provider.

(ii) Loss of employment.

(iii) Monthly income exceeding the SNAP countable income limit.

(iv) A *parent* (see OAR 461-001-0000) of a child or unborn or the spouse of the caretaker moves into the residence.

(C) The ERDC case may continue to follow the reporting requirements in paragraph (3)(b)(B) of this rule without a companion SNAP case in SRS when:

(i) The ERDC case was certified in the fifth or sixth month of the SNAP *certification period* (see OAR 461-001-0000); and

(ii) The SNAP companion case automatically closes because the Interim Change Report (see OAR 461-170-0010) was not received.

(c) In the EXT program, a client must report any of the following changes within 10 days of occurrence:

(A) A change in health care coverage.

(B) A change in name.

(C) A change in pregnancy status of any member of the *filing group* (see OAR 461-110-0330).

(D) A change in residence.

(E) A member in *filing group* is no longer a *dependent child* (see OAR 461-001-0000).

(d) In the SNAP program:

(A) A client assigned to CRS must report any of the following changes within 10 days of occurrence:

(i) A change in earned income of more than \$100.

(ii) A change in unearned income of more than \$50.

(iii) A change in source of income.

(iv) A change in membership of the *filing group* (see OAR 461-110-0370) and any resulting change in income.

(v) A change in residence and the shelter costs in the new residence.

(vi) A change in the legal obligation to pay child support.

(vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.

(viii) Acquisition or change in ownership of a non-excluded vehicle.

(B) A client assigned to SRS must report monthly income exceeding the SNAP countable income limit by the tenth day of the month following the month of occurrence.

(C) A client assigned to TBA is not required to report any changes.

(e) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A client must report all changes that may affect eligibility within 10 days of occurrence, including any of the following changes:

(i) A change in employment status.

(ii) A change in health care coverage.

(iii) A change in membership of the household group (see OAR 461-110-0210).

(iv) A change in marital status.

(v) A change in residence.

(vi) A change in resources.

(vii) A change in source or amount of income.

(B) A client assigned to MRS also must report changes in income in accordance with the rules related to MRS (see OAR 461-170-0010, 461-170-0100, 461-170-0110).

(f) In the MAA, MAF, REF, SAC, SFPSS, and TANF programs, clients assigned to CRS must report any of the following changes within 10 days of occurrence:

(A) Acquisition or change in ownership of a non-excluded vehicle.

(B) A change in earned income more than \$100.

(C) A change in employment status.

(D) A change in membership of the *household group* (see OAR 461-110-0210).

(E) A change in mailing address or residence.

(F) A change in pregnancy status of any member of the *filing group*.

(G) A change in source of income.

(H) A change in unearned income more than \$50.

(I) A change in who pays the shelter costs if the costs will be paid by a non-custodial *parent*.

(J) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(g) In the OHP program, a client must report any of the following changes within 10 days of occurrence:

(A) A change in availability of employer-sponsored health insurance.

(B) A change in health care coverage.

(C) A change in mailing address or residence.

(D) A change in name.

(E) A change in pregnancy status of any member of the *filing group* (see OAR 461-110-0400).

(h) In the REFM program, clients must report the following changes within 10 days of occurrence:

(A) A change in membership of the *household group* (see OAR 461-110-0210).

(B) A change in residence.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.105, 411.404, 411.816, 412.014 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; 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 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert.

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ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; 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 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; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10

461-170-0100

Monthly Reporting System (MRS)

(1) A filing group is not subject to the requirements of the monthly reporting system (MRS) unless it is required to participate by section (2) of this rule.

(2) In the GA, GAM, OSIP, OSIPM, and QMB programs, a filing group not specifically excluded by section (3) of this rule must participate in the MRS if it has varying earned or unearned income that cannot be averaged, converted, or annualized.

(3) The following filing groups are excluded from participating in the MRS:

(a) A filing group in the EA, ERDC, EXT, REFM, SAC, SNAP, TA-DVTS, or TANF programs.

(b) In the GA, GAM, OSIP, OSIPM, and QMB programs, a filing group receiving or deemed to be receiving SSI.

(c) An OHP filing group for its OHP benefits. The group may be in the MRS for other program benefits the group receives.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049 & 414.025
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049 & 414.025
Hist.: AFS 70-1989, f. 11-30-89, cert. ef. 12-1-89; 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 19-1993, f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; 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 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

461-170-0101

Simplified Reporting System (SRS); ERDC, SNAP

In the ERDC and SNAP programs:

(1) OAR 461-170-0101 to 461-170-0104 establish and explain the Simplified Reporting System (SRS).

(2) A client certified to receive SNAP program benefits for less than six months may not participate in SRS.

Stat. Auth.: ORS 411.060, 411.070 & 411.816
Stats. Implemented: ORS 411.060, 411.070 & 411.816
Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

461-170-0120

Monthly Change Report Incomplete or Not Received

If a Department branch office serving a program covered by this chapter of rules does not receive a completed Monthly Change Report by the last day of the payment month, the case is closed effective the end of the *budget month* (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014 & 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014 & 412.049
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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

461-175-0220

Notice Situation; Disqualification

(1) If a *benefit group* (see OAR 461-110-0750) or individual is disqualified for a SNAP voluntary job quit or for failure to apply for or provide an SSN, pursue assets, cooperate in the JOBS, JOBS Plus, or OFSET program, or assist the state's efforts to collect support, the Department sends the following type of notice:

(a) If benefits are reduced or closed because of the disqualification:
(A) A *continuing benefit decision notice* (see OAR 461-001-0000) is used when changes are reported on the Interim Change Report form.

(B) A *timely continuing benefit decision notice* (see OAR 461-001-0000) is used when changes are not reported on the Interim Change Report form.

(b) If benefits are opened without the disqualified individual in the *benefit group* or if the entire *benefit group* is denied assistance, a *basic decision notice* (see OAR 461-001-0000) is used.

(2) For a JOBS, JOBS Plus, or OFSET disqualification, and for a SNAP voluntary job quit by an individual receiving SNAP benefits, the notice includes the following information:

- The client action that resulted in disqualification.
- The length of the minimum disqualification period.
- The reduced benefit amount.
- How the client may end the disqualification after the minimum period.

(3) For a voluntary job quit by an individual applying for SNAP benefits, the notice includes the following information:

- The action that resulted in the disqualification; and
 - The length of the disqualification period.
- (4) For an IPV disqualification:
- A *basic decision notice* is required if an individual in the *benefit group* is disqualified for an IPV as the result of a court order or a final order from an administrative hearing.

(b) A *continuing benefit decision* is required if an individual in the *benefit group* is disqualified for an IPV based on a signed waiver.

(5) For a disqualification due to being a fleeing felon or in violation of parole, probation, or post-prison supervision (under OAR 461-135-0560):

(a) A *basic decision notice* is required if benefits are opened without the disqualified individual in the *benefit group* or if the entire filing group is denied benefits.

(b) A *timely continuing benefit decision notice* is required if an individual in the *benefit group* is disqualified.

(6) The notice situation for a disqualification due to a transfer of assets is covered in OAR 461-175-0310.

Stat. Auth.: 411.060, 411.070, 411.404, 411.816, 412.014 & 412.049
Stats. Implemented: 411.060, 411.070, 411.404, 411.816, 412.014 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; 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 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 20-2003, f. & cert. ef. 8-15-03; 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 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10

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.

(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) 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, 411.070, 411.404, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.111, 411.404, 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 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; SSP 5-2010, f. & cert. ef. 4-1-10

461-180-0050

Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments

This rule explains the effective date for closing or suspending benefits for the entire *benefit group* (see OAR 461-110-0750) and the effective date for ending JOBS support service payments. The effective date is determined as follows:

(1) When prospective eligibility is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

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(2) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(3) When prospective budgeting is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(4) When an absent parent enters an ongoing TANF program household, or another change occurs that ends eligibility based on the incapacity or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 30-day period described in OAR 461-125-0255 ends.

(5) For a pregnant female receiving benefits of the EXT, MAA, MAF, OSIPM, or SAC program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(6) In the OHP program, the effective date for closing benefits is:

(a) The last day of the month in which the *benefit group* becomes ineligible;

(b) The date the program ends; or

(c) For cases not covered by subsection (a) or (b) of this section, the last day of the certification period.

(7) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:

(a) The date the related JOBS activity is scheduled to end.

(b) The date the client no longer meets the requirements of OAR 461-190-0211.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 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 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 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 18-2004, f. & cert. ef. 7-12-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 5-2010, f. & cert. ef. 4-1-10

461-193-0000

Client Rights; New Arrival Employment Services (NAES), Refugee Case Services Project (RCSP)

In the New Arrival Employment Services (NAES) and Refugee Case Services Project (RCSP) programs, a client has, in addition to the rights under OAR 461-105-0010, the rights described in this rule. The project worker must explain these rights to the client both orally and in writing. A client has the right to:

(1) Information about services administered under the program.

(2) Receive a decision on eligibility promptly and no later than the tenth calendar day from the intake date.

(3) Refuse social services unless the service is court ordered or related to an employment plan under OAR 461-193-0042.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

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 24-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 37-1997, 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 5-2010, f. & cert. ef. 4-1-10

461-193-0042

Refugee Project Employment Requirements and Employment Plan; New Arrival Employment Services (NAES), Refugee Case Services Project (RCSP)

In the RCSP program:

(1) Except for a client meeting OAR 461-193-0240, each adult client must participate in the NAES program.

(2) Each NAES program client is required to have an employment plan and must be actively engaged in NAES program employment activities as specified in the individual's employment plan.

(3) The job developer and client develop an individualized employment plan agreed to by the client and the job developer.

(a) The job developer uses proven methods for encouraging the full engagement of the client and the development of the employment plan. These proven methods include, but are not limited to, strength-based case management and motivational interviewing.

(b) The employment plan may be modified whenever circumstances change.

(4) The employment plan:

(a) Is individualized and developed with the client and in cooperation with appropriate partner agencies or other professionals.

(b) Identifies client goals and activities to help the client meet those goals.

(A) Activities promote both family stability and financial independence.

(B) Activities help reduce or eliminate barriers to self-sufficiency, employment, job retention, wage enhancement, and full participation in the NAES program.

(C) For a client with a *disability* (see OAR 461-001-0000), the goal of the employment plan is to promote greater independence. The employment plan may include physical and mental health treatment.

(D) The employment plan includes agreed upon support services needed to enable the client to successfully complete the plan.

(E) The employment plan includes identified accommodations or modifications necessary for the client to successfully complete the employment plan.

(F) Activities are based on information obtained in screenings and evaluations, and are intended to build on client strengths.

(c) A client must inform the job developer of any circumstance that may require a change to the provisions of the employment plan.

(d) A client who disagrees with any provision of an employment plan may seek resolution of the disagreement through the re-engagement process (see OAR 461-193-0960).

(5) The employment plan is complete and binding when the client is informed of its contents, it is signed by the job developer and client, and the client has been offered a copy of the plan.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

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 5-2010, f. & cert. ef. 4-1-10

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

Adm. Order No.: SSP 6-2010(Temp)

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10 thru 8-4-10

Notice Publication Date:

Rules Amended: 461-135-0570

Subject: 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 in response to a recent change in the Food and Nutrition Service interpretation of federal SNAP law to state that an individual 18 years of age or older and under 50 years of age, enrolled at least half time in higher education, and receiving Training Unemployment Insurance (TUI) benefits from the Oregon Employment Department is eligible for SNAP benefits. These amendments were originally made to this rule via a temporary rule effective February 5, 2010. In the interim unrelated changes to the permanent rule became effective on April 1, 2010 and the rule no longer includes the February 5, 2010 temporary changes. These temporary amendments reflect the February 5, 2010 temporary changes so that rule will once again include those amendments.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0570

Eligible and Ineligible Students; SNAP

In the SNAP program:

(1) For the purposes of this rule and OAR 461-001-0015, higher education includes the following:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(2) An individual 18 years of age or older, but under the age of 50 years, who is enrolled at least half time in higher education is ineligible to receive SNAP program benefits, unless one of the following is true:

(a) The student is:

(A) A paid *employee* (see OAR 461-001-0015) working an average of 20 hours or more per week except as excluded by section (5) of this rule; or

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(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is participating in a state or federally funded work-study program, is assigned to a work-study position, and will perform work in a work-study job in the current term or semester. The period of eligibility for a student eligible because of this subsection:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the *filing group* (see OAR 461-110-0370), and the child is:

(A) Under six years of age; or

(B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the employment requirements of sub-section (a) of this section or the work-study requirements of sub-section (b) of this section.

(d) The student is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF *benefit group* (see OAR 461-110-0750).

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes under the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974, 19 U.S.C. 2296.

(i) The student is receiving Oregon Employment Department Training Unemployment Insurance (TUI) benefits.

(j) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(k) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by the student disenrolling), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

(4) A student residing in a dormitory or other living situation with meal plans is ineligible for SNAP program benefits.

(5) The following situations do not earn the student hours toward the 20 hours per week requirement in section (2) of this rule:

(a) Income that is considered educational income under OAR 461-145-0150, including income from work in the following:

(A) An *externship* (see OAR 461-001-0015);

(B) A *graduate assistantship* (see OAR 461-001-0015);

(C) A *graduate fellowship* (see OAR 461-001-0015); or

(D) An *internship* (see OAR 461-001-0015).

(b) Receiving in-kind payments in lieu of actual wages.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060, 411.816 & 411.825

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 2-2010(Temp), f. & cert. ef. 2-5-10 thru 8-4-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 6-2010(Temp), f. & cert. ef. 4-1-10 thru 8-4-10

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

Adm. Order No.: SSP 7-2010(Temp)

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10 thru 6-30-10

Notice Publication Date:

Rules Amended: 461-115-0230, 461-115-0430, 461-170-0011

Subject: These amendments were originally made to this rule via a temporary rule effective January 1, 2010. In the interim unrelated

changes to the permanent rule became effective on April 1, 2010 and the rule no longer includes the January 1, 2010 temporary changes. These temporary amendments reflect the January 1, 2010 temporary changes so that rule will once again include those amendments.

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 461-115-0230 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 461-170-0011 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.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0230

Interviews

(1) In all programs except the BCCM, HKC, MAA, MAF, OHP, and SAC programs, the Department may conduct a required face-to-face interview by telephone or home visit if an authorized representative (see OAR 461-115-0090) cannot be appointed and participating in a face-to-face interview is a hardship (see section (3) of this rule) for the household.

(2) In the SNAP program:

(a) When a household meets the expedited services criteria, an interview may be postponed in accordance with OAR 461-115-0690.

(b) An interview must be scheduled so that the household has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.

(c) A face-to-face interview must be granted at the applicant's request.

(d) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.

(e) An applicant who fails to attend a scheduled interview and subsequently fails to contact the Department not later than 30 days following the date the application was filed is ineligible for benefits.

(f) Each client is interviewed face-to-face prior to initial certification and at least once every 12 months, except under the following circumstances:

(A) When a current hardship condition (see section (3) of this rule) is identified.

(B) The household meets either of the following criteria at recertification:

(i) Each adult member is elderly or meets the SNAP program definition of an individual with a *disability* (see OAR 461-001-0015), and there is no earned income; or

(ii) Each member of the SNAP program *filing group* (see OAR 461-110-0370) is receiving TANF or SFPSS program cash benefits.

(3) For the purposes of this rule, hardship conditions include, but are not limited to:

(a) Care of a household member;

(b) A client's illness;

(c) A commute of more than two hours from the client's residence to the nearest *branch office* (see OAR 461-001-0000);

(d) A conflict between the client's work or training schedule and the business hours of the *branch office*; and

(e) Transportation difficulties due to prolonged severe weather.

Stat. Auth.: ORS 411.060, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816 & 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 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 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01;

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AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10

461-115-0430

Periodic Redeterminations; Not EA, ERDC, EXT, OHP, REF, REFM, SNAP, or TA-DVS

The Department periodically redetermines the eligibility of clients for benefits and assigns a *redetermination date* by which the next determination is required. The Department selects the *redetermination date* based on the client's circumstances and according to the following requirements:

(1) In the BCCM, GA, GAM, and HKC programs, the Department determines eligibility each 12 months.

(2) In the MAA, MAF, and SAC programs, the Department redetermines eligibility at least once every 12 months.

(3) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(4) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for MAA, MAF or OSIPM, a redetermination for QMB is completed with the redetermination of the other program.

(5) In the SFPSS program, the Department redetermines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.

(6) In the TANF program, the Department redetermines eligibility according to the following schedule:

(a) For a client not participating in the JOBS program — at least once every six months.

(b) For a client participating in the JOBS program — at least once every 12 months.

Stat. Auth.: ORS 411.060, 411.070, 411.404 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404 & 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 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 8-1992, f. & cert. ef. 4-1-92; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, 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 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; 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 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10

461-170-0011

Changes That Must Be Reported

(1) A change in employment status is considered to occur as follows:

(a) For a new job, the change occurs the first day of the new job.

(b) For a job separation, the change occurs on the last day of employment.

(2) A change in source of income is considered to occur as follows:

(a) For earned income, the change occurs upon the receipt by the client of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.

(b) For unearned income, the change occurs the day the client receives the new or changed payment.

(3) A client must report, orally or in writing, the following changes:

(a) In the BCCM program, a client must report either of the following changes within 10 days of occurrence:

(A) A change in health care coverage.

(B) A change in residence.

(b) In the ERDC program:

(A) A client not participating in SRS in the SNAP program must report the following changes within 10 days of occurrence:

(i) A change in child care provider.

(ii) A change in employment status.

(iii) A change in mailing address or residence.

(iv) A change in membership of the *filing group* (see OAR 461-110-0350).

(v) A change in source of income expected to continue.

(B) A client participating in SRS in the SNAP program must report the following changes by the tenth day of the month following the month of occurrence:

(i) A change in child care provider.

(ii) Loss of employment.

(iii) Monthly income exceeding the SNAP countable income limit.

(iv) A *parent* (see OAR 461-001-0000) of a child or unborn or the spouse of the caretaker moves into the residence.

(C) The ERDC case may continue to follow the reporting requirements in paragraph (3)(b)(B) of this rule without a companion SNAP case in SRS when:

(i) The ERDC case was certified in the fifth or sixth month of the SNAP *certification period* (see OAR 461-001-0000); and

(ii) The SNAP companion case automatically closes because the Interim Change Report (see OAR 461-170-0010) was not received.

(c) In the EXT program, a client must report any of the following changes within 10 days of occurrence:

(A) A change in health care coverage.

(B) A change in name.

(C) A change in pregnancy status of any member of the *filing group* (see OAR 461-110-0330).

(D) A change in residence.

(E) A member in *filing group* is no longer a *dependent child* (see OAR 461-001-0000).

(d) In the SNAP program:

(A) A client assigned to CRS must report any of the following changes within 10 days of occurrence:

(i) A change in earned income of more than \$100.

(ii) A change in unearned income of more than \$50.

(iii) A change in source of income.

(iv) A change in membership of the *filing group* (see OAR 461-110-0370) and any resulting change in income.

(v) A change in residence and the shelter costs in the new residence.

(vi) A change in the legal obligation to pay child support.

(vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.

(viii) Acquisition or change in ownership of a non-excluded vehicle.

(B) A client assigned to SRS must report monthly income exceeding the SNAP countable income limit by the tenth day of the month following the month of occurrence.

(C) A client assigned to TBA is not required to report any changes.

(e) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A client must report all changes that may affect eligibility within 10 days of occurrence, including any of the following changes:

(i) A change in employment status.

(ii) A change in health care coverage.

(iii) A change in membership of the *household group* (see OAR 461-110-0210).

(iv) A change in marital status.

(v) A change in residence.

(vi) A change in resources.

(vii) A change in source or amount of income.

(B) A client assigned to MRS also must report changes in income in accordance with the rules related to MRS (see OAR 461-170-0010, 461-170-0100, 461-170-0110).

(f) In the MAA, MAF, REF, SAC, SFPSS, and TANF programs, clients assigned to CRS must report any of the following changes within 10 days of occurrence:

(A) Acquisition or change in ownership of a non-excluded vehicle.

(B) A change in earned income more than \$100.

(C) A change in employment status.

(D) A change in membership of the *household group* (see OAR 461-110-0210).

(E) A change in mailing address or residence.

(F) A change in pregnancy status of any member of the *filing group*.

(G) A change in source of income.

(H) A change in unearned income more than \$50.

(I) A change in who pays the shelter costs if the costs will be paid by a non-custodial *parent*.

(J) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(g) In the HKC and OHP programs, a client must report any of the following changes within 10 days of occurrence:

(A) A change in availability of employer-sponsored health insurance.

(B) A change in health care coverage.

(C) A change in mailing address or residence.

(D) A change in name.

(E) A change in pregnancy status of any member of the *filing group* (see OAR 461-110-0400).

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(h) In the REFM program, clients must report the following changes within 10 days of occurrence:

(A) A change in membership of the *household group* (see OAR 461-110-0210).

(B) A change in residence.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.105, 411.404, 411.816, 412.014 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; 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 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; 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 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; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10

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

Adm. Order No.: SSP 8-2010(Temp)

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10 thru 9-28-10

Notice Publication Date:

Rules Amended: 461-135-1175

Subject: OAR 461-135-1175 about the Senior Farm Direct Nutrition Program (SFDNP) is being amended to restate the countable income eligibility requirement for the program, state that the Department processes applications for the program in the order in which the applications are received, and state that the program remains open each year until the funding for the program runs out.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1175

Senior Farm Direct Nutrition Program

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides farm direct checks to low income individuals.

(2) An individual is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has *countable income* (see OAR 461-001-0000) less than 135 percent of the Federal Poverty Level as listed in OAR 461-155-0295.

(b) Receives Medicaid or SNAP benefits.

(c) Is homeless or resides in their own home or rental property.

(d) Is age 60 or older.

(3) SFDNP is funded by a grant from the United States Department of Agriculture (USDA). The Department determines the allotment amount and number of eligible individuals on an annual basis, based on the grant allocation received from the USDA.

(4) The Department may not issue more than one SFDNP allotment per participant, per year.

(5) SFDNP begins June 1 each year and ends on October 31 each year. In order to qualify for the program, the Department must receive the applicant's letter of interest by September 15 of the year in question.

(6) The Department processes applicants' letters of interest in the order in which the letters are received at the Department's central office.

(7) When the grant allocation received from the USDA is expended in its entirety, the Department closes SFDNP for the year in question.

(8) The Department determines the treatment of SFDNP benefits during the eligibility process for other programs in accordance with OAR 461-145-0190.

Stat. Auth.: ORS 409.050, 410.070, 411.060 & 411.070

Stats. Implemented: ORS 410.070, 411.060 & 411.070

Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 11-2009(Temp), f. & cert. ef. 6-1-09 thru 11-27-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 8-2010(Temp), f. & cert. ef. 4-1-10 thru 9-28-10

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

Rule Caption: FCHP Non-contracted Hospital reimbursement rate methodology change (correction to previous filing DMAP 35-2009).

Adm. Order No.: DMAP 4-2010

Filed with Sec. of State: 3-26-2010

Certified to be Effective: 3-26-10

Notice Publication Date: 3-1-2010

Rules Amended: 410-120-1295

Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to clients. Having Temporarily amended 410-120-1295 effective October 1, 2009, DMAP permanently amended this rule to reference the reimbursement methodology changes indicated in HB 3259 (2009 Legislative session), effective for services rendered on or after October 1, 2009. DMAP failed to update the effective date inside the rule text to match the intended effective date of October 1, 2009. Therefore, DMAP filed the temporary rule revision retroactive to October 1, 2009 and is now making the revision permanent.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1295

Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Division of Medical Assistance Programs (DMAP) that does not have a contract with an DMAP-contracted Prepaid Health Plan (PHP) is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the PHP, a Non-Participating Provider, other than a hospital governed by (3) below, must accept from the DMAP-contracted PHP, as payment in full, the amount that the provider would be paid from DMAP if the client was fee-for-service (FFS).

(3) For covered services provided on and after October 1, 2009, the DMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full, the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) Using a Medicare payment methodology the FCHP will reimburse inpatient and outpatient services in all other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, at a rate no less than a percentage of the Medicare reimbursement rate. The percentage of the Medicare reimbursement shall be equal to two percentage points less than the percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to FCHP's, excluding any supplemental payments. Emergency services must be consistent with 1932(b)(2) of the Social Security Act.

(4) The percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to the FCHP are calculated by the Department's actuarial unit. The FCHP Non-Contracted DRG Hospital Reimbursement Rates dated October 1, 2009 are on the Department's Web site at: www.dhs.state.or.us/policy/healthplan/guides/ohp/main.html, archived data is available on request from DMAP.

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package;

(d) The FCHP contract and DMAP Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

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(c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

Stat. Auth.: ORS 409.025, 409.040, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.025, 414.065, 414.705 & 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35-2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 28-2006, f. 6-22-06, cert. ef. 6-23-06; OMAP 42-2006(Temp), f. 12-15-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 2-2007, f. & cert. ef. 4-5-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 28-2009(Temp), f. 9-11-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 35-2009(Temp), f. & cert. ef. 12-4-09 thru 3-25-10; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 4-2010, f. & cert. ef. 3-26-10

Rule Caption: April 1, 2010 technical changes to the January 1, 2009–December 31, 2010 Health Services Commission's Prioritized List of Health Services.

Adm. Order No.: DMAP 5-2010(Temp)

Filed with Sec. of State: 3-26-2010

Certified to be Effective: 4-1-10 thru 9-1-10

Notice Publication Date:

Rules Amended: 410-141-0520

Subject: The Oregon Health Plan Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP temporarily amended 410-141-0520, referencing the January 1, 2010 – December 31, 2011 Health Services Commission's Prioritized List with interim modifications and technical changes effective April 1, 2010, this included application of 2009 national code to the HSC lines and HSC guideline refinements.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520

Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: www.oregon.gov/DHS/healthplan/priorlist/main, or, for a hardcopy contact the Office for Oregon Health Policy and Research. Effective January 1, 2010, this rule incorporates by reference the CMS approved Biennial January 1, 2010–December 31, 2011 Prioritized List, including technical revisions and interim modifications effective April 1, 2010 which includes expanded definitions, practice guidelines and condition treatment pairs funded through line 502. The January 1, 2010–December 31, 2011 Prioritized List includes 678 lines (down from 680). The change in the funding line number from 503 to 502 does not result in a reduction in covered services

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Addictions and Mental Health and approval to bill Medicaid for CD services.

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

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

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-

04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10

Rule Caption: Imposed quantity limits of 34-day supply of drugs in accordance with existing DMAP policies.

Adm. Order No.: DMAP 6-2010(Temp)

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10 thru 6-30-10

Notice Publication Date:

Rules Amended: 410-121-0146

Subject: The Pharmaceutical Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP temporarily amended 410-121-0146 to clarify current policies for pharmacy providers to ensure DMAP OARs are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance or difficulties for clients in obtaining prescription refills.

410-121-0146 Clarifies the current DMAP policy for 34-day and 100-day supply of drugs dispensed and exceptions to both. Drugs dispensed by the DMAP mail order pharmacy contractor, Indian Health mail order pharmacy providers and 340b pharmacy providers and drugs dispensed as Preferred PDL generics and generics in non-PDL classes that cost less than \$10 per month and are maintenance medications can be dispensed up to a 100-day supply, except for those Standard Therapeutic Classes of drugs listed in this rule that can never exceed a 34-day supply no matter what the circumstance.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0146

Dispensing Limitations

(1) The Division of Medical Assistance Programs (DMAP) will reimburse the pharmacy for dispensed medication the lesser of:

(a) The quantity indicated by the prescriber on the prescription; or

(b) The quantity indicated by the DMAP dispensing limitations as outlined in this rule.

(2) The pharmacy may only dispense less than the prescribed quantity when the prescribed quantity exceeds the DMAP dispensing limitations.

(3) Most drugs dispensed cannot exceed a 34-day supply except for those circumstances where DMAP allows drug dispensing of up to a 100-day supply, such as:

(a) DMAP mail order pharmacy contractors;

(b) Indian Health mail order pharmacy providers;

(c) 340b pharmacy providers;

(d) Preferred PDL generics; and

(e) Generics in non-PDL classes that cost less than \$10 per month and are maintenance medications.

(4) The following Standard Therapeutic Classes of drugs (according to First Databank) cannot exceed a 34-day supply under any circumstances, including those listed in (3) above:

(a) Ataractics, Tranquilizers — 07;

(b) Muscle Relaxants — 08;

(c) CNS Stimulants — 10;

(d) Psychostimulants, Antidepressants — 11;

(e) Amphetamine Preps — 12;

(f) Narcotic Analgesics — 40;

(g) Sedative Barbiturate — 46;

(h) Sedative Non-Barbiturate — 47.

(5) After stabilization of a diabetic, the pharmacy should provide a minimum of a one-month supply of insulin per dispensing.

(6) For vaccines available in multiple dose packaging, DMAP will allow a dispensing fee for each multiple dose. When vaccines are adminis-

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tered at the pharmacy, refer to Oregon Administrative Rule (OAR) 410-121-0185.

(7) Splitting prescriptions:

(a) For compounded prescriptions, bill components of the prescription separately. Third party payments for compounded prescriptions must be split and applied equally to each component;

(b) DMAP will consider any other form of prescription splitting as a billing offense and take appropriate action as described in the General Rules (OAR 410 division 120).

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 26-1984, f. & ef. 6-19-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0090; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0210; HR 16-1992, f. & cert. ef. 7-1-92; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; HR 20-1997, f. & cert. ef. 9-12-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 74-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 6-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10

Rule Caption: Exceptions for requirement of adult attendant for child transports.

Adm. Order No.: DMAP 7-2010(Temp)

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10 thru 9-24-10

Notice Publication Date:

Rules Amended: 410-136-0245

Subject: The Medical Transportation Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP temporarily amended OAR 410-136-0245 to clarify that an additional adult attendant is not required for non-emergent medical transportation provider by a DHS employee or DHS volunteer or for secured transports provided under OAR 410-136-0240. This is necessary to ensure child clients maintain access to appropriate transportation services.

Under the previous rule, children may be denied access to appropriate transportation to medical appointments because DHS employees or volunteers, or secured transportation providers, were not authorized to act as required adult attendants. Adult attendants, typically parents, guardians or caregivers, were required to accompany child clients on medical transportation for the child's safety. As the rule was written, DHS employees and volunteers, who are appropriate attendants, were not authorized. Also the previous rule should not apply to secured transportation, which, by definition, includes a licensed and bonded security escort for the client.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-136-0245

Child Transports

(1) The safety and welfare of children is the primary objective in the coordination, scheduling, and transporting of Oregon Health Plan eligible children to medical appointments. This rule defines the requirements for attendants during child transports:

(a) Eligible children under 12 years old must have an attendant while traveling to medical appointments;

(b) The requirements for having an attendant are specific to child transports provided by transportation brokerages.

(2) The parent or legal guardian is responsible for assuring that an attendant is available to accompany the child to and from a medical appointment.

(3) Guidelines for children in the custody of the Oregon State Department of Human Services (DHS) will be established and administered by the Child Welfare and Foster Care Divisions (DHS Child Foster Care). To the extent that their requirements are different from this rule, the DHS Child Foster Care requirements supersede this rule:

(a) DHS Children, Adults, and Families (CAF) Division will administer volunteer driver program guidelines for children under the care and

custody of DHS for rides that are not coordinated by the transportation brokerage;

(b) Volunteer drivers who regularly transport children to medical services are subject to driver safety standards and criminal background checks set forth by CAF;

(c) Children and young adults with special physical or developmental needs must have an attendant, regardless of age;

(d) This rule does not apply to medical transportation that is provided by a local educational agency as part of school transportation;

(e) If a child requires secured transportation, the requirements of OAR 410-136-0240 apply in addition to the requirements of this rule.

(4) An attendant may be the mother, father, stepmother, stepfather, or legal guardian of the child. An attendant may also be a brother, sister, stepbrother, or stepsister of the child, who is at least 18 years or older, and authorized by the parent or legal guardian to be the attendant.

(5) Representatives of the transportation brokerage, or their contracted transportation providers, may require written authorization for the attendant from a child's parent or legal guardian.

(6) Transportation brokerages will not bill the Division of Medical Assistance Programs' (DMAP) additional charges when an attendant is required during transport.

(7) The appropriate attendant must accompany the eligible child from the pick-up location, to the destination, and on the return trip. The attendant must also remain with the child during their appointment. The attendant may not be accompanied by other persons unless they are authorized by the parent or legal guardian to also be in attendance or unless the other person is an eligible child traveling to the same location for a medical appointment.

(8) The transportation brokerage, under an intergovernmental agreement (IGA) with the state, authorizes, schedules, and coordinates medical transportation for eligible OHP+ children. The brokerage will ensure that transportation providers:

(a) Meet the requirements defined in the IGA;

(b) Complete contractually required criminal background and driving record checks for drivers;

(c) Monitor driver completion of required driver safety trainings.

(9) Child safety seats shall be provided and installed by the parent, guardian or adult caregiver for the child, as required by state law. If a parent fails to provide a child safety seat that is in compliance with state law, the provider cannot transport the child.

(10) Attendants are not required for:

(a) Non-emergent ambulance transports, unless an ambulance company provides the ride and bills it through a transportation brokerage as a wheelchair or stretcher trip. See OAR 410-136-0280, Required Documentation. For all other non-emergent ambulance rides, refer to requirements for an attendant under OAR 410-136-0080, Additional Client Transport;

(b) Secured transports provided under OAR 410-136-0240, Secured Transports; or

(c) Transports provided by a DHS employee or DHS volunteer.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: DMAP 42-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 9-24-10

Rule Caption: Maternity Case Management, place of service restrictions removed.

Adm. Order No.: DMAP 8-2010(Temp)

Filed with Sec. of State: 4-13-2010

Certified to be Effective: 4-15-10 thru 10-1-10

Notice Publication Date:

Rules Amended: 410-130-0595

Subject: The Medical-Surgical Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP needs to temporarily and retroactively amend 410-130-0595 to repeal language that restricts the place of service for maternity case management visits to the home setting, unless extenuating circumstances are documented. Removing this language retroactive to July 1, 2009 is necessary to assure appropriate payment for claims submitted since July 1, 2009 and ongoing and to ensure future access to maternity case management visits for clients in counties where such visits cannot be provided in a home setting.

Under the previous rule, pregnant clients may be denied access to appropriate maternity case management visits because some coun-

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ties do not have enough clinical staff available to travel to the home setting to provide these services. As the rule was written, reimbursement was not available for maternity case management services provided in a clinic setting except in limited circumstances.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-130-0595

Maternity Case Management (MCM)

This rule is in effect for services rendered retroactive to July 1, 2009.

(1) Providers may submit claims retroactively for services provided on or after July 1, 2009, if they meet the following criteria:

(a) The provider was appropriately licensed, certified and otherwise met all DMAP requirements for providers at the time services were provided; and

(b) Services were provided less than 12 months prior to the date of first claim submission and were allowable services in accordance with 410-130-0595 and

(c) Documentation regarding provider qualifications and the services that the provider retroactively claims must have been available at the time the services were provided.

(d) DMAP will not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay. (See also 410-120-1280)

(2) The primary purpose of the Maternity Case Management (MCM) program is to optimize pregnancy outcomes, including reducing the incidence of low birth weight babies. MCM services are tailored to the individual client needs. These services are provided face-to-face, unless specifically indicated in this rule, throughout the client's pregnancy.

(3) This program:

(a) Is available to all pregnant clients receiving Medical Assistance Program coverage;

(b) Expands perinatal services to include management of health, economic, social and nutritional factors through the end of pregnancy and a two-month postpartum period;

(c) Must be initiated during the pregnancy and before delivery;

(d) Is an additional set of services over and above medical management of pregnant clients;

(e) Allows billing of intensive nutritional counseling services.

(4) Any time there is a significant change in the health, economic, social, or nutritional factors of the client, the prenatal care provider must be notified.

(5) Only one provider may provide MCM services to the client at a time. The provider must coordinate care to ensure that duplicate claims for MCM services are not submitted to the Division of Medical Assistance Programs (DMAP).

(6) Definitions:

(a) Case Management — An ongoing process to assist and support an individual pregnant client in accessing necessary health, social, economic, nutritional, and other services to meet the goals defined in the Client Service Plan (CSP)(defined below);

(b) Case Management Visit — A face-to-face encounter between a Maternity Case Manager and the client that must include two or more specific training and education topics, address the CSP and provide an ongoing relationship development between the client and the visiting provider.

(c) Client Service Plan (CSP) — A written systematic, client coordinated plan of care which lists goals and actions required to meet the needs of the client as identified in the Initial Assessment (defined below) and includes a client discharge plan/summary;

(d) High Risk Case Management — Intensive level of services provided to a client identified and documented by the Maternity Case Manager or prenatal care provider as being high risk;

(e) High Risk Client — A client who has a current (within the last year) documented alcohol, tobacco or other drug (ATOD) abuse history, or who is 17 or under, or has other conditions identified in the Initial Assessment or during the course of service delivery;

(f) Home/Environmental Assessment — A visit to the client's primary place of residence to assess the health and safety of the client's living conditions;

(g) Initial Assessment — Documented, systematic collection of data with planned interventions as outlined in a CSP to determine current status and identify needs and strengths in physical, psychosocial, behavioral, developmental, educational, mobility, environmental, nutritional, and emotional areas;

(h) Nutritional Counseling — Intensive nutritional counseling for clients who have at least one of the conditions listed under Nutritional Counseling (14)(a)(A-I);

(i) Prenatal/Perinatal care provider — The physician, licensed physician assistant, nurse practitioner, certified nurse midwife, or licensed direct entry midwife providing prenatal or perinatal (including labor and delivery) and/or postnatal services to the client;

(j) Telephone Case Management Visit — A non-face-to-face encounter between a Maternity Case Manager and the client providing identical services of a Case Management Visit (G9012).

(7) Maternity Case Manager Qualifications:

(a) Maternity Case Managers must be currently licensed as a:

(A) Physician;

(B) Physician Assistant;

(C) Nurse Practitioner;

(D) Certified Nurse Midwife;

(E) Direct Entry Midwife;

(F) Social Worker; or

(G) Registered Nurse;

(b) The Maternity Case Manager must be a Division of Medical Assistance Programs (DMAP) enrolled provider or deliver services under an appropriate DMAP enrolled provider. See DMAP General Rules 410-120-1260 for provider enrollment qualifications;

(c) All of the above must have a minimum of two years of related and relevant work experience;

(d) Other paraprofessionals may provide specific services with the exclusion of the Initial Assessment (G9001) while working under the supervision of one of the practitioners listed in (6)(a)(A-G) of this rule;

(e) The Maternity Case Manager must sign off on all services delivered by a paraprofessional;

(f) Specific services not within the recognized scope of practice of the provider of MCM services must be referred to an appropriate discipline.

(8) Nutritional counselor qualifications — Nutritional counselors must be:

(a) A licensed dietician (LD) licensed by the Oregon Board of Examiners of Licensed Dietitians; and

(b) A registered dietician (RD) credentialed by the Commission on Dietetic Registration of the American Dietetic Association (ADA).

(9) Documentation Requirements:

(a) Documentation is required for all MCM services in accordance with DMAP General Rules 410-120-1360; and

(b) A correctly completed DMAP form 2470, 2471, 2472 and 2473 or their equivalents meet minimum documentation requirements for MCM services.

(10) G9001 — Initial Assessment must be performed by a licensed Maternity Case Manager as defined under (6)(a)(A-G) above:

(a) Services include:

(A) Client assessment as outlined in the "Definitions" section of this rule;

(B) Development of a CSP which addresses identified needs;

(C) Making and assisting with referrals as needed to:

(i) A prenatal care provider;

(ii) A dental health provider;

(D) Forwarding the initial assessment and the CSP to the prenatal care provider;

(E) Communicating pertinent information to the prenatal care provider and others participating in the client's medical and social care;

(b) Data sources relied upon may include:

(A) Initial assessment;

(B) Client interviews;

(C) Available records;

(D) Contacts with collateral providers;

(E) Other professionals; and

(F) Other parties on behalf of the client;

(c) The client's record must reflect the date and to whom the initial assessment was sent;

(d) The Initial Assessment (G9001) is billable once per pregnancy per provider and must be performed before providing any other MCM services. Only a Home/Environmental Assessment (G9006) and a Case Management Visit (G9012) may be performed and billed on the same day as an Initial Assessment.

(11) G9002 — Case Management (Full Service) — Includes:

(a) Face-to-face client contacts;

(b) Implementation and monitoring of a CSP;

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(A) The client's records must include a CSP and written updates to the plan;

(B) The CSP includes determining the client's strengths and needs, setting specific goals and utilizing appropriate resources in a cooperative effort between the client and the Maternity Case Manager;

(c) Care coordination as follows:

(A) Contact with Department of Human Services (DHS) case worker, if assigned;

(B) Maintain contact with prenatal care provider to ensure service delivery, share information, and assist with coordination;

(C) Contact with other community resources/agencies to address needs;

(d) Linkage to client services indicated in the CSP:

(A) Make linkages, provide information and assist the client in self-referral;

(B) Provide linkage to labor and delivery services;

(C) Provide linkage to family planning services as needed; (e)

Ongoing nutritional evaluation with basic counseling and referrals to nutritional counseling, as indicated;

(f) Utilization and documentation of the "5 A's" brief intervention protocol for addressing tobacco use (US Public Health Service Clinical Practice Guideline for Treating Tobacco Use and Dependence, 2008). Routinely:

(A) Ask all clients about smoking status;

(B) Advise all smoking clients to quit;

(C) Assess for readiness to try to quit;

(D) Assist all those wanting to quit by referring them to the Quitline and/or other appropriate tobacco cessation counseling and provide motivational information for those not ready to quit;

(E) Arrange follow-up for interventions;

(g) Provide training and education on all mandatory topics - Refer to Table 130-0595-2;

(h) Client advocacy as necessary to facilitate access to benefits or services;

(i) Assist client in achieving the goals in the CSP;

(j) G9002 is billable after the delivery when more than three months of service were provided. Services must be initiated during the prenatal period and carried through the date of delivery;

(k) G9002 is billable once per pregnancy.

(12) G9009 — Case Management (Partial Service):

(a) Can be billed when the CSP has been developed and MCM services were initiated during the prenatal period and partially completed;

(b) Provided MCM services to the client for three months or less.

(13) G9005 — High Risk Case Management (Full Service):

(a) Enhanced level of services which are more intensive and are provided in addition to G9002;

(b) Provided High Risk Case Management services for the client for more than three months after the client was identified as high risk; AND

(c) Provided at least eight Case Management Visits;

(d) G9005 is billable after the delivery and only once per pregnancy;

(e) G9005 can be billed in addition to G9002.

(14) G9010 — High Risk Case Management (Partial Service):

(a) Are the same enhanced level of services provided in G9005 but the client became high risk during the latter part of the pregnancy or intensive high risk MCM services were initiated and partially completed but not carried through to the date of delivery;

(b) Provided high risk case management services for the client for three months or less after the client has been identified as high risk; OR

(c) Provided less than eight Case Management Visits;

(d) G9010 is billable after the delivery and once per pregnancy;

(e) G9010 can be billed in addition to G9002 or G9009.

(15) S9470 — Nutritional Counseling:

(a) Is available for clients who have at least one of the following conditions:

(A) Chronic disease such as diabetes or renal disease;

(B) Hematocrit (Hct) less than 34 or hemoglobin (Hb) less than 11 during the first trimester, or Hct less than 32 or Hb less than 10 during the second or third trimester;

(C) Pre-gravida weight under 100 pounds or over 200 pounds;

(D) Pregnancy weight gain outside the appropriate Women, Infants and Children (WIC) guidelines;

(E) Eating disorder;

(F) Gestational diabetes;

(G) Hyperemesis;

(H) Pregnancy induced hypertension (pre-eclampsia); or

(I) Other identified conditions;

(b) Documentation must include all of the following:

(A) Nutritional assessment;

(B) Nutritional care plan;

(C) Regular client follow-up;

(c) Can be billed in addition to other MCM services;

(d) S9470 is billable only once per pregnancy.

(16) G9006 — Home/Environmental Assessment:

(a) Includes an assessment of the health and safety of the client's living conditions with training and education of all topics as indicated in Table 130-0595-1;

(b) G9006 may be billed only once per pregnancy, except an additional Home/Environmental Assessments may be billed with documentation of problems which necessitate follow-up assessments or when a client moves. Documentation must be submitted with the claim to support the additional Home/Environment Assessment.

(17) G9011 — Telephone Case Management Visit:

(a) A non-face-to-face encounter between a Maternity Case Manager and the client, meeting all requirements of a Case Management Visit (G9012) and when a face-to-face Case Management Visit is not possible or practical;

(b) G9011 is billable in lieu of a Case Management Visit and counted towards the total number of Case Management Visits (see G9012 for limitations).

(18) G9012 — Case Management Visit:

(a) Each Case Management Visit must include:

(A) An evaluation and/or revision of objectives and activities addressed in the CSP; and

(B) At least two training and education topics listed in Table 130-0595-2;

(b) Four Case Management Visits (G9012) may be billed per pregnancy. Telephone Case Management Visits (G9011) are included in this limitation;

(c) Six additional Case Management Visits may be billed if the client is identified as high risk;

(A) These additional visits may not be billed until after delivery;

(B) These additional six visits may only be submitted with or after High Risk Full (G9005) or High Risk Partial (G9010) Case Management has been billed. Telephone Case Management Visits (G9011) are included in this limitation;

(d) Maternity Case Management Visits (G9012) may be provided in the client's home or other site.

[ED. NOTE: Tables & Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 57-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0200 & 461-014-0201; AFS 54-1989(Temp), f. 9-28-89, cert. ef. 10-1-89; AFS 71-1989, f. & cert. ef. 12-1-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0580; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 34-1998, f. & cert. ef. 10-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0100, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 8-2010(Temp), f. 4-13-10, cert. ef. 4-15-10 thru 10-1-10

Rule Caption: Eliminate obstetrics alternative payment methodology and reimburse in accordance with the physician fee schedule.

Adm. Order No.: DMAP 9-2010(Temp)

Filed with Sec. of State: 4-13-2010

Certified to be Effective: 5-1-10 thru 10-26-10

Notice Publication Date:

Rules Amended: 410-147-0365

Subject: The Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend OAR 410-147-0365 to reimburse delivery procedures to target population RHCs according to the physician fee schedule and no longer at the OB APM effective April 1, 2010.

Rules Coordinator: Darlene Nelson—(503) 945-6927

ADMINISTRATIVE RULES

410-147-0365

Rural Health Clinic Obstetrics Care Delivery Procedures Reimbursement

Reimbursement for obstetric delivery procedures by the Division of Medical Assistance Programs to eligible Medicare-certified Independent Rural Health Clinics will be according to the physician fee schedule and outside of the Prospective Payment System.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 18-2005(Temp), f. 3-15-05, cert. ef. 3-18-05 thru 9-1-05; OMAP 26-2005, f. 4-20-05, cert. ef. 6-1-05; OMAP 48-2005(Temp), f. & cert. ef. 9-15-05 thru 2-15-06; OMAP 64-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 20-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 9-2010(Temp), f. 4-13-10, cert. ef. 5-1-10 thru 10-26-10

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Suspension of Water System Operator Certification.

Adm. Order No.: PH 6-2010(Temp)

Filed with Sec. of State: 3-16-2010

Certified to be Effective: 3-16-10 thru 9-10-10

Notice Publication Date:

Rules Adopted: 333-061-0274

Rules Amended: 333-061-0272

Subject: The Department of Human Services, Public Health Division is temporarily adopting and amending rules in chapter 333, division 61 related to public water systems.

The Attorney General's model rules that govern contested case hearings before the Office of Administrative Hearings, OAR 137-003-0501(2), prohibits an agency from adopting procedural rules related to contested case hearings conducted by an administrative law judge. The section of OAR 333-061-0272 that requires the Department to conduct a contested case hearing within 10 days of the request for hearing is a procedural rule related to the conduct of hearings and thus is inconsistent with OAR 137-003-0501(2).

The Department currently has a request for hearing following the issuance of an emergency suspension order and in order to avoid confusion it is necessary to adopt this temporary rule to correct the inconsistency.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-061-0272

Suspension of Certification

(1) The Department may immediately suspend an operator's certificate of competency for violation of any portion of OAR 333-061-0205 to 333-061-0270 if the Department finds that such violation(s) constitute a serious danger to the public health or safety. The Department shall set forth specific reasons for such findings.

(2) An operator has 90 days from the date of notice to the operator to request a hearing. The hearing shall be held as soon as practicable if the request for hearing is received by the Department.

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.450, 448.455 & 448.994

Hist.: OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 6-2010(Temp), f. & cert. ef. 3-16-10 thru 9-10-10

333-061-0274

Applicability

OAR 333-061-0272 applies to any pending hearing request before the agency.

Stat. Auth.: ORS 448.450

Stats. Implemented: ORS 184.430, 448.450 & 448.455

Hist.: PH 6-2010(Temp), f. & cert. ef. 3-16-10 thru 9-10-10

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

Rule Caption: July 28, 2009 Implementation of House Bill 2442, Section 6 (2009) for Persons Providing Services to Individuals with Developmental Disabilities.

Adm. Order No.: SPD 2-2010(Temp)

Filed with Sec. of State: 3-18-2010

Certified to be Effective: 3-18-10 thru 6-30-10

Notice Publication Date:

Rules Amended: 411-300-0155, 411-300-0170, 411-300-0200, 411-305-0115, 411-305-0140, 411-308-0110, 411-308-0130, 411-320-0030, 411-325-0160, 411-328-0670, 411-330-0060, 411-330-0070, 411-335-0030, 411-340-0070, 411-340-0140, 411-340-0160, 411-345-0210, 411-346-0150, 411-346-0220, 411-350-0080, 411-350-0110, 411-355-0050, 411-355-0090, 411-360-0040, 411-360-0090, 411-360-0110, 411-360-0270

Rules Suspended: 411-300-0155(T), 411-300-0170(T), 411-300-0200(T), 411-305-0115(T), 411-305-0140(T), 411-308-0110(T), 411-308-0130(T), 411-320-0030(T), 411-325-0160(T), 411-328-0670(T), 411-330-0060(T), 411-330-0070(T), 411-335-0030(T), 411-340-0070(T), 411-340-0140(T), 411-340-0160(T), 411-345-0210(T), 411-346-0150(T), 411-346-0220(T), 411-350-0080(T), 411-350-0110(T), 411-355-0050(T), 411-355-0090(T), 411-360-0040(T), 411-360-0090(T), 411-360-0110(T), 411-360-0270(T)

Subject: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is temporarily amending various rules relating to services for individuals with developmental disabilities to correctly reflect the July 28, 2009 implementation date of House Bill 2442, Section 6 (2009).

Rules Coordinator: Christina Hartman—(503) 945-6398

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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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.

(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;

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(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10

411-300-0170

Standards for Providers and Behavior Consultants

(1) PROVIDER QUALIFICATIONS.

(a) A provider must:

(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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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.

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(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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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.

(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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

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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 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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

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(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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.

(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;

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(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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;

(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:

(I) 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.

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(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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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.

(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.

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(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

(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.

ADMINISTRATIVE RULES

(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

(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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.

ADMINISTRATIVE RULES

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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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.

(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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.

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(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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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, including 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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;

(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;

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(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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:

ADMINISTRATIVE RULES

- (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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 pro-

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vided 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:

(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 com-

mon 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 ORS 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

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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.

(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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;

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(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 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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, fam-

ily training, occupational therapy, physical therapy, speech and language, dietician, 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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

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(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. Dieticians 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July

28, 2009, or is subject to criminal records checks after July 28, 2009 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 disclosure 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, 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;

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(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 July 28, 2009 or who are subject to a criminal records check after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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) 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:

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(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

(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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) On or after July 28, 2009, 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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.

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(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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, physical 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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;

ADMINISTRATIVE RULES

(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 & 417.345

Stats. Implemented: ORS 417.345, 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10

411-360-0040

License Required

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) Criminal Records Checks.

(a) 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 not complied with Department rules for review of criminal records checks in accordance with OAR 407-007-0200 to 407-007-0370; or

(B) 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.

(b) On or after July 28, 2009, 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 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.

(c) 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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.

ADMINISTRATIVE RULES

(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 within 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) On or after July 28, 2009, 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. of 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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 July 28, 2009, or is subject

to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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 July 28, 2009, or is subject to criminal records checks after July 28, 2009 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;

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(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.

(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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 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;

(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; or

(d) Has a medical or psychiatric problem that interferes with the ability to provide care.

(3) On or after July 28, 2009, the Department may deny, revoke, or refuse to renew an AFH-DD license if the applicant or provider 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.

(4) 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.

(5) 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.

(6) 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.

(7) Conduct of hearing. All hearings shall be conducted pursuant to the applicable provisions or ORS chapter 183.

(8) 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; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10

Department of Justice Chapter 137

Rule Caption: Paternity only services and establishing medical support.

Adm. Order No.: DOJ 8-2010

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 2-1-2010

Rules Amended: 137-055-1070, 137-055-3340

Rules Repealed: 137-055-1070(T), 137-055-3340(T)

Subject: OAR 137-0055-1070 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. The amendment replaces the temporary rule adopted January 4, 2010, which provided the same criteria.

OAR 137-055-3340 is permanently amended to clarify how the program will establish medical support and administer contingent medical provisions in orders. This amendment replaces the temporary rule filed January 12, 2010, and has no substantive changes from the temporary rule.

Rules Coordinator: Vicki Tungate—(503) 946-6086

ADMINISTRATIVE RULES

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.

(6) A parent or alleged parent applying for "establishing paternity only" services as defined in subsection (1)(c) must complete an application for services in substantially the same form as an application under OAR 137-055-1060.

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; DOJ 8-2010, f. & cert. ef. 4-1-10

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, 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; DOJ 8-2010, f. & cert. ef. 4-1-10

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

Rule Caption: Create new provisions for carbon monoxide alarms and detectors as directed by House Bill 3540, 2009 Legislative Assembly.

Adm. Order No.: OSFM 3-2010(Temp)

Filed with Sec. of State: 4-8-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 837-047-0100, 837-047-0110, 837-047-0120, 837-047-0130, 837-047-0140, 837-047-0150, 837-047-0160, 837-047-0170

Subject: The purpose of these rules is to establish minimum standards for the design, inspection, testing, placement and location and maintenance of carbon monoxide alarms and detectors in one and

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two family dwellings, manufactured dwellings, and multifamily housing.

Rules Coordinator: Pat Carroll—(503) 934-8276

837-047-0100

Purpose and Scope

The purpose of these rules is to establish minimum standards for the design, inspection, testing, placement and location and maintenance of carbon monoxide alarms in one and two family dwellings, manufactured dwellings, and multifamily housing.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

837-047-0110

Definitions

“Attached garage” means a garage with a door, ductwork, or ventilation shaft communicating directly with a living space and does not include:

- (1) A carport;
- (2) An open parking garage; or
- (3) An enclosed parking garage ventilated in accordance with Section 404 of the State Mechanical Code.

(4) “Bedroom” means a room designed or intended for sleeping.

(5) “Carbon monoxide alarm” means a device that:

- (a) Detects carbon monoxide;
- (b) Produces a distinctive audible alert when carbon monoxide is detected;

(c) Is listed by Underwriters Laboratories as complying with ANSI/UL 2034 or 2075 or any other nationally recognized testing laboratory or an equivalent organization; and

(6) Operates as a distinct unit, as two or more single station units wired to operate in conjunction with each other or as part of a system that includes carbon monoxide detectors.

(7) For the purposes of these rules, “carbon monoxide detectors that are part of a system that produces a distinctive audible alert and are listed as complying with ANSI/UL 2075 shall be considered carbon monoxide alarms.

(8) “Carbon monoxide source” means:

(a) A heater, fireplace, furnace, appliance or cooking source that uses coal, wood, petroleum products, and other fuels that emit carbon monoxide as a by-product of combustion. Petroleum products include, but are not limited to, kerosene, natural gas, or propane.

(b) An attached garage with a door, ductwork, or ventilation shaft that communicates directly with a living space.

(9) “Landlord” means the owner, lessor, or sublessor of the rental dwelling unit or the building or premises of which it is a part. “Landlord” includes but is not limited to a person who is authorized by the owner, lessor, or sublessor to manage the premises or to enter into a rental agreement.

(10) “Manufactured Dwelling” means a dwelling as defined in ORS 446.

(11) “Multifamily housing” means a building, excluding townhouses, in which three or more residential dwelling units each have space for eating, living, sleeping, and permanent provisions for cooking and sanitation.

(12) “Nationally Recognized Testing Laboratory” means a nationally recognized testing laboratory (NRTL) that is U.S. Occupational Safety and Health Administration (OSHA) accredited to test and certify to American National Standards Institute (ANSI) standards.

(13) “One and two family dwelling” means a residential building that is regulated under the state building code as a one and two family dwelling and includes a townhouse.

(14) “Owner” includes a duly authorized agent or attorney, a purchaser, devisee, fiduciary, lessor or sublessor and/or a person having a vested or contingent interest in the property in question.

(15) “Person” means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

(16) “State Fire Marshal” means the State Fire Marshal appointed under ORS 476.020 and the Chief Deputy State Fire Marshal and Deputy State Fire Marshals appointed by the State Fire Marshal under ORS 476.040.

(17) “Townhouse” means a single-family dwelling unit constructed in a group of three or more attached units in which each extends from the foundation to the roof and at least two sides abut open space.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

837-047-0120

Carbon Monoxide Alarm Requirements

Properly functioning carbon monoxide alarms shall be required when:

(1) A person conveys fee title to a one and two family dwelling or multifamily housing containing a carbon monoxide source on or after April 1, 2011; or

(2) A person transfers possession under a land sale contract of a one and two family dwelling or multifamily housing containing a carbon monoxide source on or after April 1, 2011; or

(3) A person transfers ownership of a manufactured dwelling containing a carbon monoxide source on or after April 1, 2011; or

(4) A landlord enters into a rental agreement for a dwelling unit subject to these rules on or after July 1, 2010.

(2) By April 1, 2011, every rental dwelling unit subject to these rules must contain properly functioning carbon monoxide alarms.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

837-047-0130

Installation and Location of Carbon Monoxide Alarms and Detectors

(1) All carbon monoxide alarms or detectors must be installed in accordance with the manufacturer’s recommended instructions and located in accordance with these rules and applicable building code at the time of construction or alteration of the dwelling.

(2) One and Two Family Dwellings and Manufactured Dwellings: A properly functioning carbon monoxide alarm must be located within each bedroom or within 15 feet outside of each bedroom door. Bedrooms on separate floors in a structure containing two or more stories require separate carbon monoxide alarms.

(3) Multi Family Housing: A properly functioning carbon monoxide alarm must be located within each bedroom or within 15 feet outside of each bedroom door. Bedrooms on separate floors in a structure containing two or more stories require separate carbon monoxide alarms. A carbon monoxide alarm must also be installed in any enclosed common area within the building if the common area is connected by a door, ductwork, or ventilation shaft to:

(a) A room containing a carbon monoxide source; and

(b) A dwelling unit.

(4) EXEMPTIONS:

(a) A carbon monoxide alarm is not required in a dwelling unit if:

(A) The dwelling unit does not contain a carbon monoxide source; and

(B) The dwelling unit is not connected by a door, ductwork, or ventilation shaft to a room containing a carbon monoxide source.

(b) A landlord who rents a space for a manufactured dwelling or who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the manufactured dwelling home or floating home is exempt from these rules.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

837-047-0140

Power Source

Carbon monoxide alarms must be battery operated or receive their primary power source from the building wiring.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

837-047-0150

Testing and Maintenance of Carbon Monoxide Alarms

Carbon monoxide alarms and systems must be maintained and tested according to the manufacturer’s recommended instructions.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

837-047-0160

Rental Dwelling Units Subject to ORS Chapter 90

(1) Effective July 1, 2010, before a landlord transfers possession of a dwelling unit subject to these rules to a tenant, the landlord must:

(a) Install a properly functioning carbon monoxide alarm;

(b) Provide working batteries if a carbon monoxide alarm is battery operated or has a battery operated backup system; and

(c) Provide the new tenant with alarm testing instructions.

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(2) If the landlord receives written notice from the tenant of a deficiency of a carbon monoxide alarm, other than dead batteries, the landlord must repair or replace the alarm.

(3) A tenant must test, at least every six months, and replace batteries as needed in any carbon monoxide alarm provided by the landlord and notify the landlord in writing of any operating deficiencies.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

837-047-0170

Tampering with a Carbon Monoxide Alarm Prohibited

A person may not remove or tamper with a carbon monoxide alarm installed in accordance with these rules. Tampering includes removal of working batteries.

Stat. Auth.: ORS 476.725

Stats. Implemented: ORS 476.725

Hist.: OSFM 3-2010(Temp), f. 4-8-10, cert. ef. 7-1-10 thru 12-28-10

Department of Public Safety Standards and Training Chapter 259

Rule Caption: General updates to Criminal Justice rules as directed by Board or Legislative action.

Adm. Order No.: DPSST 3-2010

Filed with Sec. of State: 4-12-2010

Certified to be Effective: 5-1-10

Notice Publication Date: 3-1-2010

Rules Adopted: 259-008-0017

Rules Amended: 259-008-0025, 259-008-0040, 259-008-0075

Subject: Requires private safety agencies who employ public safety personnel subject to DPSST certification to retain records that are subject to review and inspection by DPSST in a manner consistent with the records retention requirements for the public safety agencies within DPSST jurisdiction.

Adds to current rule the statutory requirement to include training on appropriate use of the medical health database maintained by the Department of State Police within the LEDS system, as enacted by the 2009 Legislative Assembly.

Provides that limited reassignment out of certifiable position, followed by return to certifiable position while continuing employment with same employer, does not re-start the time period within which the public safety professional must become.

Removes inconsistent references to primary elections for consistency with statutory requirement for sheriff's eligibility to occur as provided prior to any sheriff's election.

Rules Coordinator: Marilyn Lorange—(503) 378-2427

259-008-0017

Public Records

(1) A private safety agency that employs a public safety professional subject to the Department's certification requirements must retain all documentation related to a public safety professional's employment, training and certification in a manner, and for the period of time, consistent with the requirements of the Secretary of State's administrative rules relating to records retention by public bodies.

(2) Documentation related to a public safety professional's employment, training and certification includes, but is not limited to:

(a) Any documentation related to an employment investigation, or pending or final disciplinary action related to a public safety professional;

(b) A public safety professional's personnel record, including any documentation related to a personnel investigation or disciplinary action;

(c) A public safety professional's training record;

(d) A public safety professional's payroll records.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10

259-008-0025

Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers must satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion must be completed within

twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual must be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610, subsections (5), (13) and (14), and OAR 259-008-0005, subsections (7), (19), (23), and (24), during the last five (5) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610(9) and (18) and 259-008-0005(14) and (32) for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant must provide proof of successful completion of prior equivalent training.

(C) The applicant must provide documentation of the course content with hour and subject breakdown.

(D) The applicant must obtain a minimum passing score on all written examinations for the course.

(E) The applicant must demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant will only be given one opportunity to challenge a course.

(g) Previously employed police officers, corrections officers and parole and probation officers who are required to attend the Basic Course may not challenge the Basic Course.

(h) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610(5), (13) and (14), and OAR 259-008-0005(7), (19), (23) and (24) over two and one-half (2-1/2) but less than five (5) years must complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(i) Corrections and police officers who have not completed the Basic Course must begin training within 90 days of their initial date of employment.

(A) A police officer must begin training at an academy operated by the Department.

(B) A corrections officer who is employed by Oregon Department of Corrections (hereinafter referred to as DOC) during the period July 1, 2009 through January 1, 2014 must begin DOC Basic Corrections Course (hereinafter referred to as DOC BCC) training provided by DOC as described in section (6) of this rule.

(C) A corrections officer who is not employed by DOC must begin training at an academy operated by the Department.

(D) A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for

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the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(j) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(k) The basic course for police officers must include:

(A) Training on the law, theory, policies and practices related to vehicle pursuit driving;

(B) Vehicle pursuit training exercises, subject to the availability of funding; and

(C) A minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model. A minimum of one hour of this training must be on the appropriate use of the medical health database maintained by the Department of State Police within the Law Enforcement Data System.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2-1/2) and five (5) years, must satisfactorily complete a Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course must also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary. See 259-008-0025(1)(b).

(A) A law enforcement officer who fails to achieve a minimum passing test score after completing a Career Officer Development Course will be given one opportunity to remediate through self-study and re-test within 60 days of the initial date of failure.

(B) A law enforcement officer who fails to achieve a minimum passing test score after re-testing will have been determined to have failed academically and will be required to attend the next available Basic Course.

(C) A law enforcement officer who is scheduled to complete a distance learning COD Course must achieve a minimum passing test score within the timeframe set by the Department. Failure to successfully complete a distance COD Course within the timeframe set by the Department will require an officer to attend the next available COD Course.

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position must satisfactorily complete Supervision training that complies with the requirements outlined in DPSST Form F-21. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred from within a department, or is appointed from an outside department, without having completed the required Supervision training within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete Middle Management training that complies with the requirements outlined in DPSST Form F-22. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a middle management position within a department, or employed from outside a department and appointed to a middle manager position without having completed the required middle management training within the preceding five (5) years.

(5) Specialized Courses:

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. The staff may be avail-

able to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, must be trained on how to investigate and report cases of missing children and adults.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs must be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) The DOC Basic Corrections Course.

Course Requirements

(a) Except as provided in 259-008-0035, all corrections officers hired by the Oregon Department of Corrections (hereinafter referred to as DOC) on or after July 1, 2009, but prior to January 1, 2014, must satisfactorily complete the DOC Basic Corrections Course (hereinafter referred to as DOC BCC), including the field training portion. The DOC BCC and field training portion must be completed within twelve months from the date of employment by a corrections officer.

(b) Prior to attending a DOC BCC, a corrections officer hired by DOC on or after July 1, 2009, but prior to January 1, 2014, must:

(A) Meet the minimum standards for employment as a law enforcement officer contained in OAR 259-008-0010;

(B) Meet the background investigation requirements for a law enforcement officer contained in OAR 259-008-0015; and

(C) Meet the minimum standards for training contained in this section.

(c) The DOC BCC must conform to the content and standard approved by the Board. The DOC BCC must include, but is not limited to:

(A) Minimum training standards for the basic certification of corrections officer employed by DOC. The minimum training developed by DOC must be adopted by the Board and must meet or exceed the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than DOC.

(B) Minimum Course Hours. The DOC BCC must include, at a minimum, the following:

(i) 24 hours in Law;

(ii) 38 hours in Human Behavior,

(iii) 36 hours in Security;

(iv) 82 hours in General Skills.

(v) Administrative time is not included within the hours identified above.

(C) Attendance Standards. Attendance rosters must be kept and copies of these rosters must be submitted to the Department at the conclusion of a student's training, or when requested by the Department. To successfully complete the DOC BCC, a student may not miss more than 10% of the DOC BCC.

(D) Notwithstanding (C) above, successful completion of the DOC BCC requires 100% attendance at the following mandatory classes:

(i) ORPAT

(ii) Defensive Tactics/Reality Based Training

(iii) Firearms

(iv) Medical Escorts/Restraints

(v) Contraband/Searches

(vi) Report Writing

(E) Conduct. An individual attending a DOC BCC is expected to uphold the minimum moral fitness standards for Oregon public safety officers during their training. DOC will document the date, type, and disposition of any student misconduct relating to the minimum standards for correctional officers. These include but are not limited to the following Zero Tolerance Offenses:

(i) Any unlawful act;

(ii) Dishonesty, lying or attempting to conceal violations;

(iii) Cheating;

(iv) Harassment;

(v) Alcohol possession or use at the training venue.

(F) Course Curriculum.

(i) The DOC BCC will be based on the critical and essential job tasks identified in the most current Job Task Analysis for corrections officers provided to DOC by the Department.

(ii) The DOC BCC will incorporate the most current conceptual performance objectives provided to DOC by the Department.

(iii) The DOC BCC will incorporate curriculum updates provided to DOC by the Department, when those updates address the critical and essential job tasks or conceptual performance objectives referenced above.

Testing Requirements

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(G) Academic Testing. Academic testing will consist of written test questions that are valid, create reasonable academic rigor, and require students to demonstrate knowledge and application of the essential tasks identified within the DOC BCC curriculum. DOC must administer examinations and maintain a file of examinations conducted.

(i) Academic Testing Passing Score. Except as provided below, to successfully complete the DOC BCC, students must achieve a minimum score of 75% on each academic test. If a student does not attain a 75% score, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. After remediation, a student will be allowed one opportunity to re-test and achieve a minimum score of 75%.

(ii) Students must attain a score of 100% on all academic test questions on Use of Force topics.

(iii) If a student fails to attain a 100% score on Use of Force topics, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. Remediation must include the student completing the DPSST Use of Force Remediation form to demonstrate understanding of each topic missed.

(H) Skills Testing. Skills testing will consist of evaluations documented by use of Skills Sheets during which students must demonstrate competence and achieve a "pass" score in each skill tested.

(I) Test Security and Integrity.

(i) DOC must develop and strictly enforce measures to ensure the security of test questions and integrity of all testing processes.

(ii) DOC must randomize the order of test questions and must develop a sufficient bank of test questions to ensure that students who fail to achieve a passing score and are remediated are given a randomized test that includes some questions that are different than those in the test the student originally failed.

Instructor Requirements

(J) Instructor Qualifications. All instructors for the DOC BCC must meet or exceed the Instructor Certification standards for instructors at DPSST Basic courses and must be currently certified by the Department in the categories instructed.

Documentation Requirements

(K) Required documentation for the DOC BCC must include, but is not limited to:

(i) Name, DPSST number and employing institution of each student;

(ii) Topics;

(iii) Number of training hours per topic;

(iv) Name, DPSST number, and topics taught for all instructors utilized;

(v) Total hours attended per student;

(vi) Any student absences;

(vii) Any remediation of training;

(viii) Any instructor notes or observations relating to any students' performance during the training; and

(ix) All academic and skills testing for each student.

Certification Requirements

(L) Officer Certification. The applicant must meet the minimum standards for certification as a corrections officer contained in OAR 259-008-0060. DOC must submit the following documents at the time Basic certification is requested:

(i) F-7 (Application for Certification);

(ii) F-6 (Course Roster) for DOC BCC including the number of hours and the final cumulative score;

(iii) F-6 (Course Roster) for DOC Advanced Corrections Course with attached itemized list of classes attended;

(iv) Proof of current First Aid/CPR;

(v) F-11 (Criminal Justice Code of Ethics); and

(vi) FTO Manual Completion Report.

(7) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; 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 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 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007,

f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 14-2008, f. & cert. ef. 10-15-08; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 8-2009(Temp), f. & cert. ef. 9-15-09 thru 3-1-10; DPSST 15-2009, f. & cert. ef. 12-15-09; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10

259-008-0040

Period of Service

(1) A law enforcement officer, telecommunicator, or emergency medical dispatcher who is not certified must complete no less than nine (9) months of service in the field in which they are employed, to be eligible for certification. This requirement does not apply to a department head.

(2) No person may be employed as a police officer, parole and probation officer, telecommunicator, or emergency medical dispatcher for more than 18 months unless that officer, telecommunicator, or emergency medical dispatcher has been certified under the provisions of ORS 181.610 to 181.705 and the certification has neither lapsed nor been revoked.

(3) No person may be employed as a corrections officer for more than one (1) year unless that officer has been certified under the provisions of ORS 181.610 to 181.705 and the certification has neither lapsed nor been revoked.

(4) For purposes of this rule, the Department will count all periods of full-time employment identified in subsection (2) and (3) in the aggregate if:

(a) An individual was reclassified from a certifiable position to a non-certifiable position for a period of less than six months; and

(b) The individual is then returned to a certifiable position in the same discipline, while employed with the same employer.

(5) The Board or its designee, upon the facts contained in an affidavit accompanying the request for an extension, may find good cause for failure to obtain certification within the time period described in section (2) of this rule. If the Board finds that there is good cause for such failure, the Board may extend for up to one year the period that a person may serve as a law enforcement officer, telecommunicator, or emergency medical dispatcher without certification. The grant or denial of such an extension is within the sole discretion of the Board.

(6) The Board, or its designee, may further extend the time period for a law enforcement officer, telecommunicator, or emergency medical dispatcher who has been deployed to full-time active military duty during the time period described in section (2) or (3) of this rule. Conditions for certification upon an officer's return to his/her employer, may include, but are not limited to:

(a) Remediation of Basic course;

(b) Successful completion of Career Officer Development Course;

(c) Demonstrated proficiency of skills and ability;

(d) F-2 (Medical Form).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0020, PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0047, 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; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; DPSST 7-2005, f. & cert. ef. 8-5-05; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10

259-008-0075

Eligibility for Candidacy for Office of Sheriff

(1) A person is not eligible to be a candidate for election or appointment to the office of sheriff unless:

(a) The person is 21 years of age or older;

(b) The person has at least four years experience as a full-time law enforcement officer or at least two years experience as a full-time law enforcement officer with at least two years post-high school education; and

(c) The person has not been convicted of a felony or any other crime that would prevent the person from being certified as a police officer under ORS 181.610 to 181.670.

(2) As used in section (1) of this rule, "two years post-high school education" means four semesters or six quarters of classroom education in a formal course of study undertaken after graduation from high school in any accredited college or university. The term does not include apprenticeship or on-the-job training.

(3) If the person is not certified as a police officer by the Department at the time of accepting appointment or filing as a candidate, a person elected or appointed to the office of sheriff must:

(a) Obtain certification not later than one year after taking office;

(b) File a copy of the certification with the County Clerk or the county official in charge of elections within one year after taking office.

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(4) Prior to attending any Department-approved training course, a person elected or appointed to the office of Sheriff must comply with the minimum standards for employment and training specified in OAR 259-008-0010 and 259-008-0025. This includes, but is not limited to the following categories:

- (a) Citizenship;
- (b) Age;
- (c) Fingerprints;
- (d) Criminal Records;
- (e) Notification of Conviction;
- (f) Moral Fitness (Moral Character);
- (g) Education;
- (h) Physical Examination;

(A) Any written request for a waiver of any physical requirement must be submitted to the Department as described in OAR 259-008-0010(8)(k);

(B) Any request for a waiver of any physical requirement must be approved by a Policy Committee and Board; and

(C) Any expense associated with providing documentation or testimony shall be borne by the person requesting the waiver.

(i) Submitting an Application for Training (DPSST Form F-5) to the Department providing evidence that a minimum of a 12th grade reading and writing level has been attained, as required in OAR 259-008-0010(7)(c);

(j) Submitting a current Medical Examination Report (DPSST Form F-2) completed by a licensed physician; and

(k) Completion of a Basic Course and Field Training Manual, unless a written request for a waiver of this requirement is received and approved by the Department.

(5) Prior to obtaining certification as a police officer, a person elected or appointed to the office of Sheriff must comply with the minimum standards for certification specified in OAR 259-008-0060 which include, but are not limited to:

- (a) Full-time employment;
- (b) Submission of a Criminal Justice Code of Ethics (DPSST Form F 11);

(c) Submission of an Application for Certification (DPSST Form F-7) with all applicable sections of the form completed; and

(d) Valid First Aid and cardiopulmonary resuscitation (CPR) cards.

(6) Any newly appointed public safety professional must submit a Personnel Action Report (DPSST Form F-4) to the Department within ten (10) business days after employment, as provided in OAR 259-008-0020.

(7) For complete information relating to employment, training and certification requirements, refer to the full text of the statutes and rules referenced in subsections (1) through (6) above.

(8) The procedure for determining whether an individual is eligible to be a candidate for election to the office of sheriff is:

(a) A potential candidate for sheriff must submit an Application for Determination of Eligibility to Be Sheriff (DPSST Form F-25) to the Department not sooner than the first of July before the primary election and not later than the 70th day before any election (ORS 249.037);

(b) The Department will file a copy of its determination on an individual's eligibility to be a candidate for election to the office of sheriff with the county clerk or county official in charge of elections not later than the 61st day before the date of an election;

(c) The Department will notify the applicant in writing of the determination and decision concerning the eligibility of the applicant by certified mail, mailed to the applicant and postmarked at not later than the 61st day before the date of an election.

(9) Any candidate seeking election or appointment to the office of sheriff, must submit a criminal history affidavit (DPSST Form F-26), provided by the Department.

(10) If any falsification is made on the application or documents submitted in support of the application, the Department may deny approval, revoke and/or rescind any approval previously given.

(11) The Department will provide a copy of this rule to all persons requesting an evaluation of their eligibility to be a candidate for sheriff.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 206.015

Stats. Implemented: ORS 206.015

Hist.: PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1982, f. & ef. 7-2-82; PS 2-1982, f. & ef. 9-7-82; PS 1-1983, f. & ef. 12-15-83; PS 2-1987, f. & ef. 10-26-87; Renumbered from 259-010-0057, 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 9-2007, f. & cert. ef. 8-15-07; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10

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

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

Adm. Order No.: DMV 7-2010

Filed with Sec. of State: 3-17-2010

Certified to be Effective: 3-17-10

Notice Publication Date: 2-1-2010

Rules Amended: 735-062-0060

Subject: 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 has amended 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 amended 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 needed clarification 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 was 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.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-062-0060

Periodic Check of Driver's Eyesight

(1) All licensed drivers 50 years of age and older must have their eyesight tested by DMV each time a driver applies for renewal of his or her driver license.

(2) For purposes of this rule, a driver's age is the age the person will be on the date of the expiration of the license to be renewed or the person's age at the time of application for renewal, whichever is older. For example, a driver is required to have a vision screening at 48 or 49 years of age if the driver's license will expire on his or her 50th birthday.

(3) The eyesight test must include those items listed in OAR 735-062-0050.

(4) If a person's eyesight meets the eyesight test standard indicated in OAR 735-062-0050, and if the driver complies with all other driver license renewal requirements, DMV will renew the person's license. If the visual acuity of the person's best eye is worse than 20/40 and no worse than 20/70, DMV will restrict the person to daylight driving only, unless, in the written opinion of a licensed vision specialist (ophthalmologist or optometrist), the person's driving should not be restricted to daylight driving only. To obtain unrestricted driving privileges, the person must submit a completed Certificate of Vision form (DMV Form 735-24), that indicates it is the opinion of the vision specialist that the person's driving should not be restricted to daylight driving only.

(5) To allow a person to obtain the written opinion of a licensed vision specialist as provided in section (4) of this rule, DMV will issue upon request, a Temporary Driver Permit, which is valid for 30 days, when DMV's vision screening tests show a person's visual acuity level in the best eye is worse than 20/40 and no worse than 20/70 as follows:

(a) If the person's current driver license is due to expire within 30 days, DMV will issue a Temporary Driver Permit that is valid beginning on the date of expiration of the person's driver license;

(b) If the person's driver license is already expired and has been expired for less than one year, DMV will issue a Temporary Driver Permit that is valid beginning on the date it is issued; and

(c) The Temporary Driver Permit restricts the person's driving privileges to driving during daylight hours only.

(6) Drivers who are temporarily out-of-state and unable to go to a DMV office to have their eyesight tested when required to do so may get their eyesight checked in the state where they are located. Upon request, a vision examination form, Certificate of Vision, DMV Form 735-24, will be

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provided to the person by DMV. The form must be completed by a licensed ophthalmologist or optometrist and be submitted to DMV along with the driver license renewal application.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 807.070, 807.120 & 807.150
Stats. Implemented: ORS 807.120, 807.150 & 807.310
Hist.: MV 13-1985, f. 10-8-85, ef. 1-1-86; MV 15-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0047; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 2-2003(Temp), f. & cert. ef. 3-20-03 thru 9-15-03; DMV 6-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 7-2010, f. & cert. ef. 3-17-10

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

Adm. Order No.: DMV 8-2010

Filed with Sec. of State: 3-17-2010

Certified to be Effective: 3-17-10

Notice Publication Date: 2-1-2010

Rules Amended: 735-063-0000, 735-063-0050, 735-063-0060, 735-063-0070, 735-063-0075

Subject: 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.

Previously the rule did not specify the physical conditions for which a driver may qualify for a Waiver of Physical Disqualification. DMV recently evaluated its program for consistency with current medical practices and federal guidelines and determined that DMV would issue a Waiver of Physical Disqualification for five FMCSA physical disqualifications that have clearly defined standards: loss or impairment of limb; diabetes; seizure disorder; impaired vision; and hearing loss.

DMV amended OAR 735-063-0070 to specify the disqualifying conditions for which a waiver may be issued and to specify that 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.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-063-0000

Definitions

As used in this division the following definitions apply:

(1) "Accident/conviction records" are records used to establish when a Waiver of Physical Disqualification issued by DMV may be denied or suspended. Accident records include, but are not limited to DMV records, police reports, crash reports or other reports from motor carriers. A conviction record is an official record showing a determination of guilt by a court of law upon a plea, verdict, finding, or unvacated bail forfeiture.

(2) "CDL" means commercial driver license.

(3) "CMV" means commercial motor vehicle.

(4) "Disqualifying condition" is a medical condition(s) not meeting FMCSA physical qualification standards as set forth in FMCSR 49 CFR, Sec. 391.41(b).

(5) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(6) "FMCSA" means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

(7) "FMCSR" means the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation, 49 CFR sections 300 to 399.

(8) "Intrastate commerce" is defined in FMCSR Sec. 390.5 and includes any trade, traffic or transportation exclusively within Oregon.

(9) "Medical Determination Officer" is a physician, nurse practitioner or physician assistant, licensed to provide health care services by the State of Oregon, and employed or designated by DMV to make medical determinations of a driver's medical eligibility for driving privileges.

(10) "Medical Specialist" is a person who is licensed as a doctor of medicine, a doctor of osteopathy, an optometrist or an audiologist.

(11) "Physician" is defined in ORS 807.710.

(12) "SPE certificate" is a Skill Performance Evaluation certificate issued by the FMCSA pursuant to FMCSR Sec. 391.49 to a person who demonstrates the ability to safely operate a CMV in spite of limb impairment or loss.

(13) "Waiver of Physical Disqualification" or "waiver" means a waiver issued by the Oregon Department of Transportation to a driver who does not meet certain physical qualifications required for drivers of commercial motor vehicles as set forth in FMCSR sec. 391.41(b). A Waiver of Physical Disqualification only authorizes the holder to operate a commercial motor vehicle in intrastate commerce.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Stats. Implemented: ORS 807.040 & 807.100

Hist.: DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10

735-063-0050

Medical Standards for Drivers of Commercial Motor Vehicles

(1) DMV adopts FMCSR sections 391.41 through 391.49 in effect on October 1, 2008 pertaining to physical qualifications and medical examination of drivers of commercial motor vehicles. Except as provided in section (2) of this rule, to qualify for a Class A, B, or C CDL or commercial driver permit a person must obtain an approved medical certificate meeting the requirements of these federal regulations.

(2) DMV may issue a Class A, B, or C CDL or commercial driver permit to a person who does not meet all physical qualifications set forth in FMCSR Sec. 391.41(b) if the person is issued:

(a) A Waiver of Physical Disqualification for the disqualifying condition, under OAR 735-063-0070;

(b) An exemption for the disqualifying condition by the FMCSA pursuant to 49 USC sections 31136 and 31135, and 49 CFR sections 381.300 to 381.330; or

(c) An SPE certificate for the disqualifying condition issued by the FMCSA pursuant to 49 CFR Sec. 391.49.

(3) DMV will issue a restricted Class A, B or C CDL or commercial driver permit if the waiver, exemption or SPE certificate described in section (2) of this rule indicate any applicable restrictions, conditions or limitations for issuance of a commercial license.

(4) DMV will suspend a Class A, B or C CDL or commercial driver permit if a Waiver of Physical Disqualification is denied, not renewed or is revoked for any reason or for any length of time.

(5) DMV will suspend a Class A, B or C CDL or commercial driver permit if notified that FMCSA has revoked or not renewed the SPE certificate issued to the driver under the provisions of 49 CFR Sec. 391.49.

(6) DMV will suspend a Class A, B or C CDL or commercial driver permit if notified that FMCSA has revoked or not renewed an exemption to physical qualifications issued to a driver under the provisions of 49 U.S.C. sections 31135 and 31136(e) and FMCSR sections 381.300 to 381.330.

(7) DMV will suspend a Class A, B, or C CDL or commercial driver permit if notified by the Medical Determination Officer that the driver no longer meets the physical qualifications outlined in FMCSR Sec. 391.41(b).

(8) A person suspended under section (4), (5), or (6) of this rule may reinstate commercial driving privileges if the person obtains a medical certificate as described in section (1) of this rule or is reissued a waiver by DMV or an exemption or SPE certificate by FMCSA as described in section (2) of this rule.

(9) A person suspended under section (7) of this rule may reinstate commercial driving privileges if the person is determined by the Medical Determination Officer to meet the physical qualifications for a Class A, B or C CDL or commercial driver permit.

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

Stats. Implemented: ORS 807.040, 807.100 & 809.419

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0730; MV 24-1988, f. & cert. ef. 7-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 11-1992, f. & cert. ef. 9-28-92; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0140; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0260, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10

735-063-0060

Approved Medical Certificates

(1) DMV approves the following as medical certificates for use when driving a Class A, B, or C CMV within Oregon:

(a) Any medical certificate that complies with FMCSR sections 391.41 through 391.49. The medical certificate must state that in accordance with these federal regulations the person is qualified; or

(b) An Oregon School Bus Driver's Certificate or Oregon School Bus Driver's Permit, issued by the Oregon Department of Education, as provided in OAR 581-053-0006.

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(2) If indicated on the certificate, the medical certificate described in section (1) of this rule must also be accompanied by a current:

- (a) Waiver of Physical Disqualification issued by DMV;
- (b) SPE certificate issued by the FMCSA; or
- (c) Exemption issued by the FMCSA.

(3) The medical certificate must not be expired.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040

Stats. Implemented: ORS 807.040, 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0750; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0160; DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 735-074-0280, DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10

735-063-0070

Waiver of Physical Disqualification

(1) Possession of a Waiver of Physical Disqualification issued by DMV to the holder of a CDL or commercial driver permit who only operates a CMV in intrastate commerce is subject to the procedures, conditions and requirements set forth in this rule.

(2) DMV may issue or renew a Waiver of Physical Disqualification if the person is otherwise disqualified under FMCSR Sec. 391.41(b) because of one or more of the following disqualifying conditions:

- (a) Loss or impairment of limb;
- (b) Diabetes;
- (c) Seizure disorder;
- (d) Impaired vision; or
- (e) Hearing loss.

(3) Except as provided in Sections (2) and (13) of this rule, DMV will not issue or renew a Waiver of Physical Disqualification to an applicant for or the holder of a CDL or commercial driver permit who does not meet the physical qualification standards set forth in FMCSR Sec. 391.41(b).

(4) To apply for a Waiver of Physical Disqualification, an applicant must do the following:

(a) Submit a completed waiver application form and:

(A) A current FMCSA medical examination report completed by a licensed physician, chiropractic physician, physician assistant or nurse practitioner. The report must show that notwithstanding the disqualifying condition, the applicant meets all other physical qualification standards as set forth in FMCSR sec. 391.41(b);

(B) Current medical information regarding the disqualifying condition from a treating medical specialist specializing in the assessment and treatment of the type of disqualifying condition for which the applicant is requesting a waiver; and

(C) If requested by DMV, a copy of the applicant's out-of-state driver record(s) if the applicant has held a driver license in another jurisdiction during the three year period preceding the date of application.

(b) Provide additional information showing that the disqualifying condition does not impair the person's ability to safely operate a CMV in intrastate commerce, if requested by DMV.

(5) An application for an original waiver or for renewal must be reviewed by the Medical Determination Officer who will make a recommendation to DMV whether to approve or deny the waiver.

(a) Reviews will be conducted using medical waiver guidelines. These are criteria maintained by the Medical Determination Officer and available from DMV.

(b) The Medical Determination Officer may request additional information from DMV or the applicant before making a recommendation.

(6) Records relating to an applicant or the holder of a current waiver may be reviewed at any time by DMV to determine if the person is or remains qualified to hold the waiver and is complying with the restrictions and conditions of the waiver. The review may include a recommendation from the Medical Determination Officer. DMV may use the information from these records or a recommendation from the Medical Determination Officer as a basis for denial of a waiver or for revocation of an existing waiver as specified in OAR 735-063-0075(4). Records include but are not limited to:

- (a) Driving record;
- (b) Accident/conviction record; and
- (c) Medical records.

(7) If DMV has reason to believe the holder of a Waiver of Physical Disqualification is no longer qualified for the waiver, DMV:

(a) May immediately revoke the waiver as specified in OAR 735-063-0075;

(b) May request in writing that the holder submit any information requested by DMV in order for DMV to determine if the holder remains eli-

gible for the waiver. The holder must submit any requested information to DMV within 60 days of the date the written request is mailed. Failure to submit the requested information will result in revocation of the waiver as set forth in OAR 735-063-0075(3). DMV may grant an additional 30 days if:

(A) The person is seriously ill or injured and a physician requests an extension in writing;

(B) The person is temporarily out of state and a written request is received from the person; or

(C) The person can show that the information was requested from another party within the 60 day time period and the delay in submitting the information was caused by the other party.

(8) To be eligible for a Waiver of Physical Disqualification, a driver must:

(a) Submit a completed waiver application and other information as may be required by DMV;

(b) Qualify for commercial driving privileges or have a valid Oregon CDL or commercial driver permit;

(c) Not have driving privileges suspended, revoked, cancelled or withdrawn in Oregon or any other jurisdiction;

(d) Receive a recommendation for waiver approval from the Medical Determination Officer;

(e) Not have a Waiver of Physical Disqualification that is currently denied or revoked as specified in OAR 735-063-0075(1) or 735-063-0075(4).

(9) Any driver issued a waiver must comply with the following conditions:

(a) Notify DMV within 10 days of any change in the driver's physical condition or any other condition pertaining to the need for the waiver, modification of the waiver or revocation of the waiver;

(b) Notify DMV of all crashes, arrests or convictions involving the use of a motor vehicle within 30 days of the crash or within 10 days of the arrest or conviction;

(c) Notify DMV within 10 days of any suspension, cancellation, revocation or withdrawal of driving privileges in a jurisdiction other than Oregon;

(d) Notify DMV within 10 days of changing employers and provide the employer with a copy of the waiver;

(e) Carry a copy of the medical waiver and any listed waiver conditions at all times while operating a CMV and make the waiver and waiver conditions available to enforcement personnel upon request;

(f) Only operate a CMV in Oregon intrastate commerce; and

(g) Comply with all waiver conditions related to the disqualifying condition as noted on the Waiver of Physical Disqualification.

(10) The Oregon CDL or commercial driver permit of a waiver holder must have a "K" restriction limiting the driver to operating a CMV in intrastate commerce.

(a) DMV will notify waiver holders in writing of the requirement to have a CDL or commercial driver permit with a "K" restriction.

(b) Failure of the driver to add the "K" restriction within 60 days of the date of written notification will result in cancellation of the commercial driver license in accordance with ORS 807.010(1) and ORS 809.310(1). DMV is not responsible for any expenses a waiver holder may incur from the acquisition of a replacement license with the "K" restriction.

(11) The waiver is valid for a period not to exceed the expiration date of the driver's medical certificate.

(12) Incomplete waiver applications are invalid after 180 days and DMV will take no action to deny or approve the application. After this period, the person must reapply for a waiver in accordance with all of the requirements of this rule.

(13) DMV will renew a Waiver of Physical Disqualification issued for a sleep disorder or cardiac condition if the waiver was in effect on August 10, 2009 and all other requirements set forth in section (8) of this rule are met.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.040 & 807.150

Hist.: MCTB 4-2000, f. & cert. ef. 6-12-00; Renumbered from 740-100-0140, DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 740-100-0140, DMV 9-2008, f. & cert. ef. 3-21-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10

735-063-0075

Denial or Revocation of an Oregon Waiver of Physical Disqualification

(1) A holder of a Waiver of Physical Disqualification who violates any of the requirements set forth in OAR 735-063-0070(9), in addition to any other actions authorized by law, will be subject to revocation of the waiver

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for up to 180 days upon DMV's determination of the driver's second violation of waiver conditions within the preceding 12 months.

(2) DMV will deny or revoke a Waiver of Physical Disqualification if DMV determines that the applicant or waiver holder does not qualify for the waiver under the requirements set forth in OAR 735-063-0070(8).

(3) DMV will deny or revoke a Waiver of Physical Disqualification if the waiver holder fails to provide information requested under OAR 735-063-0070(7) within the required 60 day time period.

(4) DMV will deny or revoke a Waiver of Physical Disqualification if, as a result of a review conducted under OAR 735-063-0070(6), DMV determines the person no longer qualifies for the waiver.

Stat. Auth.: ORS 184.616, 184.619, 802.010
Stats. Implemented: ORS 807.040, 807.150
Hist.: MCTB 4-2000, f. & cert. ef. 6-12-00; MCTB 4-2001, f. & cert. ef. 11-9-01;
Renumbered from 740-300-0140, DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08;
Renumbered from 740-300-0140, DMV 9-2008, f. & cert. ef. 3-21-08; DMV 4-2009, f. & cert. ef. 2-20-09; DMV 8-2010, f. & cert. ef. 3-17-10

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**Department of Transportation,
Highway Division
Chapter 734**

Rule Caption: Tire requirements for triple trailer combinations.

Adm. Order No.: HWD 2-2010

Filed with Sec. of State: 3-17-2010

Certified to be Effective: 3-17-10

Notice Publication Date: 2-1-2010

Rules Amended: 734-074-0008, 734-074-0020

Subject: 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. A triple trailer combination in Oregon was formerly required to use four tires on each single axle of a triple trailer combination. Advancement in tire technology 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 the revision to these 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 and ODOT concurred.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-074-0008

Definitions

As used in division 74 rules:

(1) "Auxiliary axle" is an axle that qualifies as a booster axle, flip axle or lift axle and when attached to the rear of a trailer shall be included in the measurement of the trailer.

(2) "Booster Axles(s)" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning.

(3) "Converter dolly" means those devices towed behind a vehicle and used to convert a semitrailer to function as a self-supporting trailer.

(4) "Dromedary truck-tractor" means a motor truck designed to carry a load and also pull a semitrailer by using a kingpin to fifth wheel connection. Unless specifically authorized, a dromedary truck-tractor may not tow a stinger steered trailer.

(5) "Flip axle" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length and hauling capacity of the trailer.

(6) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298.

(7) "Idle Reduction System" means an auxiliary power unit or other device or technology that is used to reduce long-duration idling by allowing the main drive engine or auxiliary refrigeration engine to be shut down.

(8) "Lift Axle" means an axle(s) that can be raised from or lowered to the surface of the ground.

(9) "Log-truck" means a motor vehicle designed and used in conjunction with a pole trailer to transport one load of logs where one end of the logs rests upon the log truck and one end of the logs rests upon the pole trailer.

(10) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation.

(11) "Motor Truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers.

(12) "New generation wide base single tire" means a tire that has a nominal section width over 14 inches and a ratio of width to height less than or equal to 55.

(13) "Pole Trailer" means a trailer attached or secured to a vehicle and ordinarily used for transportation of long or irregular loads such as logs capable of generally sustaining themselves as beams between the towing vehicle and the pole trailer.

(14) "Reasonably uniform in length" as used in ORS 818.210, means a variance of not more than eight feet from the longest to shortest self-supporting trailers or semitrailers within the authorized combination of vehicles. It does not include the length of a converter dolly when used to convert a semitrailer to a self-supporting trailer.

(15) "Tandem drive axles" means two or more axles spaced more than 40 inches but not more than 96 inches apart, neither of which can be raised from the surface of the ground, and where no one axle carries less than forty percent (40%) of the tandem axle weight. Each axle of a tandem drive axle shall have four tires or each axle may have two tires if tire width is at least 15 inches and each axle transmits motive power to the road surface. Any weight controls for the tandem axles on a power unit must be designed, installed and used such that the axles always distribute the load so no axle, tandem axle or group of axles exceeds the legal weight limits or bridge formula limits. All axle assemblies of the tandem drive axles (including axles, tires, brakes) must be adequate to carry the weight loading but may not have less than a 20,000 pound rating for each axle.

(16) "Truck-Tractor" means a motor vehicle designed and used primarily for drawing (towing) other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load, or both, as drawn.

(17) "Variable-load suspension axle" means an axle that can vary the amount of weight being transmitted to the surface of the road by adjustments made by the driver. Examples of adjustments available to the driver include, but are not limited to, the use of tool(s), lock and key, pressure regulators with handles or knobs. The term variable load suspension axle does not include use of devices such as height control valves, axles controlled by devices that raise the axle when the vehicle moves backward or pre-set pressure regulators which are not adjustable by the driver.

Stat. Auth.: ORS 184.616, 184.619 & 818.220
Stats. Implemented: ORS 818.200 & 818.220
Hist.: HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 6-2007, f. & cert. ef. 10-17-07; HWD 2-2010, f. & cert. ef. 3-17-10

734-074-0020

Maximum Allowable Weights

(1) The maximum allowable weights for single axles and tandem axles shall not exceed those specified under ORS 818.010(1) and (2).

(2) When the loaded weight of a group of axles, vehicle, or combination of vehicles is 80,000 pounds or less, the maximum allowable weight shall not exceed those specified under ORS 818.010(3).

(3) When a group of axles or gross weight is more than 80,000 pounds, the maximum allowable weights shall not exceed those set forth in Permit Weight **Table 2**, available from the MCTD Over-Dimensional Permit Unit as Form 735-8111 (February 2000). Permit Weight **Table 2**, is by reference made part of Division 74 rules. In no case may gross weight exceed the sum of the permissible axle, tandem axle or group of axle weights, whichever is less.

(4) In no case may any rim or wheel carry more weight than that specified by the manufacturer of the rim or wheel.

(5) All single axles of triple trailer combinations must have either four tires or two new generation wide base single tires, except for the power unit steering axle and lift axles that may have two tires. Tires on each axle must be of the same size and construction unless the vehicle encounters a tire problem and is in route for tire servicing. Use of new generation wide base single tires is allowed provided that the legal weight of the vehicle, axle or tire load rating is not exceeded.

(6) For purposes of Division 74 rules, the axle(s) of a converter dolly or dolly are not included in determining authorized weight unless those axles carry part of the weight of the cargo being transported.

(7) In any triple trailer combination, the first two cargo carrying units, including the power unit, may not weigh more than 80,000 pounds unless equipped with tandem drive axles.

(8) The exception described in ORS 818.030(10) and 818.340(4) is limited to the actual weight of the idle reduction system, not to exceed 400 pounds. In order to qualify for the exception, the operator of the vehicle may be required to prove:

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- (a) By written certification the weight of the auxiliary power unit; and
- (b) By demonstration or certification that the idle reduction technology is fully functional.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619 & 818.220
Stats. Implemented: ORS 818.200 & 818.220
Hist.: 1 OTC 6-1980, f. & ef. 3-27-80; 2HD 6-1983, f. & ef. 2-18-83; HWY 7-1992, f. & cert. ef. 3-27-92; HWY 10-1992, f. & cert. ef. 9-16-92; HWY 1-1993, f. & cert. ef. 3-16-93; HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 6-2007, f. & cert. ef. 10-17-07; HWD 2-2010, f. & cert. ef. 3-17-10

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

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

Adm. Order No.: MCTD 1-2010

Filed with Sec. of State: 3-17-2010

Certified to be Effective: 4-1-2010

Notice Publication Date: 2-1-2010

Rules Amended: 740-100-0010, 740-100-0060, 740-100-0065, 740-100-0070, 740-100-0080, 740-100-0085, 740-100-0090, 740-110-0010

Subject: These amendments cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations and 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 adopting 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.
Rules Coordinator: Lauri Kunze—(503) 986-3171

740-100-0010

Adoption of Federal Safety Regulations

(1) Except as provided in section (4) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in Title 49, Code of Federal Regulations (CFR), Parts 380 (Special Training Requirements), 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards Requirements and Penalties), 385 (Safety Fitness Procedures), 387 (Minimum Levels of Financial Responsibility for Motor Carriers), 390 (Federal Motor Carrier Safety Regulations: General), 391 (Qualification of Drivers), 392 (Driving of Motor Vehicles), 393 (Parts and Accessories Necessary for Safe Operation), 395 (Hours of Service of Drivers), 396 (Inspection, Repair, and Maintenance), 398 (Transportation of Migrant Workers), 399 (Employee Safety and Health Standards), and all amendments thereto in effect April 1, 2010, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) Relating to Part 385:

(A) The provisions of Part 385.1(b), 385.13(b), 385.13(c), 385.13(d)(3), 385.301 through 385.337 and Appendix A to Part 385 do not apply to a motor carrier operating exclusively in intrastate commerce.

(B) With reference to Part 385.13(a), 385.19(c) and 385.19(d), current intrastate safety rating information is available from ODOT only by telephone at (503) 378-6963.

(C) With reference to Part 385.15 and 385.17, requests for administrative review of an intrastate safety rating or requests for a change to a proposed or final intrastate safety rating based on corrective actions must be submitted in writing to the ODOT Motor Carrier Transportation Division, 550 Capitol St. NE, Salem OR 97301-2530.

(D) With reference to Appendix B of Part 385, a final intrastate safety rating will be determined by the Department, and the motor carrier to whom the rating applies will be notified in writing of its intrastate safety rating.

(E) In addition to the violations described in the List of Acute and Critical Violations in Appendix B of Part 385, the Department will include the following violations in a determination of an intrastate or an interstate safety rating:

(i) Financial responsibility requirements in OAR 740-040-0010 (critical) and 740-040-0020 (acute); and

(ii) Intrastate drivers hours-of-service requirements found in OAR 740-100-0010(2)(i) (critical).

(b) The provisions of Part 387 shall apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes.

(c) With reference to Part 390.21, external identification requirements do not apply to vehicles with a gross combination weight rating of 26,000 pounds or less and operated exclusively in intrastate private carriage, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles with a seating capacity of more than 15 passengers including the driver.

(d) The rules in Part 391.11(b)(1) regarding the minimum age for a commercial motor vehicle operator do not apply to a driver engaged in intrastate commerce.

(e) The rules in Part 391 (except Part 391.11(b)(2), English Speaking Driver, Part 391.11(b)(5), Valid Operator's License, and Part 391.15, Disqualification of Drivers) do not apply to a driver who is employed by a private carrier and:

(A) Does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with Title 49, CFR, Part 177.823, and drives a motor vehicle with a gross vehicle or gross combination weight rating of 26,000 pounds or less; or

(B) Operates a passenger vehicle designed to transport fewer than 16 passengers, including the driver.

(f) Notwithstanding Parts 391.41 to 391.49 (Subpart E -- Physical Qualifications and Examinations) the Department may issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Driver and Motor Vehicle Services Division.

(g) With reference to Part 395.1(e), intrastate motor carriers transporting property may drive for a maximum of 12 hours following ten hours off duty;

(h) With reference to Part 395.1(g), intrastate motor carriers transporting property may drive for a maximum of 12 hours following ten hours off duty and may not drive after the 16th hour after coming on duty;

(i) With reference to Part 395.3, motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following ten consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following ten consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week, however, any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week, however, any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.

(j) The provisions of subsections (g) through (i) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. Motor carriers transporting hazardous materials of a type or quantity requiring placarding must comply with Part 395.

(k) The provisions of Parts 396.17 through 396.23 (Periodic Inspection Requirements), are not applicable to operations conducted wholly in intrastate commerce.

(3) The provisions of Part 386.83(a)(1) and Part 386.84(a)(1), related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce, and apply to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.

(4) The intracity operation exemption adopted by the US Department of Transportation found in Part 391.62 is not adopted and prescribed.

(5) Wherever reference is made in Title 49 of the CFR as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety

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Administration," it shall be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.

(6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 825.137, 825.210, 825.232 & 825.252
Stats. Implemented: ORS 825.210, 825.250 & 825.252
Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 4-1979, f. & ef. 9-21-79 (Order No. 79-641); PUC 5-1979, f. & ef. 9-21-79 (Order No. 79-635); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); Part 2, f. & ef. 6-30-80 (Order No. 80-475); PUC 7-1980, f. & ef. 11-6-80 (Order No. 80-845); Renumbered from 860-035-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 12-1982(Temp), f. 12-20-82, ef. 1-1-83 (Order No. 82-872); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 2-1983, f. & ef. 3-1-83 (Order No. 83-117); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 19-1984, f. & ef. 9-10-84 (Order No. 84-713); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 17-1986 (Temp), f. & ef. 12-3-86; (Order No. 86-1239); PUC 2-1987 (Temp), f. & ef. 2-25-87 (Order No. 87-248); PUC 4-1987, f. & ef. 6-9-87 (Order No. 87-509); PUC 16-1987(Temp), f. & ef. 12-11-87 (Order No. 87-1244); PUC 4-1988(Temp), f. & cert. ef. 2-12-88 (Order No. 88-161); PUC 6-1988(Temp), f. & cert. ef. 3-9-88 (Order No. 88-818); PUC 14-1988, f. & cert. ef. 7-22-88 (Order No. 88-245); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 13-1992(Temp), f. & cert. ef. 9-4-92 (Order No. 92-1303); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0010; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCT 2-1997, f. & cert. ef. 5-9-97; MCT 6-1997, f. & cert. ef. 8-26-97; MCT 10-1997, f. & cert. ef. 12-22-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 2-1998, f. & cert. ef. 8-20-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 5-2005(Temp), f. 9-16-05, cert. ef. 10-1-05 thru 3-29-06; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

740-100-0060

Operation of Motor Vehicles, Out-of-Service Conditions Prohibited

(1) No motor carrier shall permit or require any person to operate nor shall any person operate a motor vehicle over the public highways of the State of Oregon unless the vehicle is free from each defect listed in OAR 740-100-0070. (North American Standard Vehicle Out-of-Service Criteria.)

(2) In addition to the requirements of section (1) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle transporting hazardous materials unless the vehicle is free from each defect listed in OAR 740-100-0080. (North American Standard Hazardous Materials Out-of-Service Criteria.)

(3) Except as provided in section (6) of this rule, in addition to the requirements of sections (1), (2) and (4) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0090. (North American Standard Driver Out-of-Service Criteria.)

(4) In addition to the requirements of section (1) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle transporting transuranic waste and highway route controlled quantities of radioactive material as defined in 49 CFR 173.403 unless the vehicle is free from each defect listed in OAR 740-100-0085. (North American Standard Out-of-Service Criteria for Transuranic Waste and Highway Route Controlled Quantities (HRCQ) of Radioactive Material.)

(5) In addition to the requirements of section (1) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle that has been placed out-of-service for administrative violations adopted in OAR 740-100-0065 until the violation(s) are corrected.

(6) No motor carrier engaged in intrastate transportation shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of intrastate hours-of-service limits found in OAR 740-100-0010(2)(g) through (j) or rules regarding an intrastate driver operating with a Waiver of Physical Disqualification issued under OAR 735-063-0070.

(7) Each defect which exists in each applicable standard shall be deemed a separate and distinct violation of this rule.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.210 & 825.252
Hist.: PUC 1-1987(Temp), f. & ef. 1-5-87 (Order No. 87-006); PUC 3-1987, f. & ef. 3-24-87 (Order No. 87-359); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1990, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0028; MCT 2-1997, f. & cert. ef. 5-9-97; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-

07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

740-100-0065

North American Standard Administrative Out-of-Service Criteria

(1) The North American Standard Administrative Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2010, is adopted and incorporated into this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of the North American Standard Administrative Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.210 & 825.252
Hist.: MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

740-100-0070

North American Standard Vehicle Out-of-Service Criteria

(1) The North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2010, is adopted by and incorporated into this rule. Inspection violations identified in the chart may be subject to one or more of the following:

(a) Out-of-Service Condition: When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to likely cause an accident or breakdown, or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle shall be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted only at the direction of an official authority.

(b) Other: Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of the North American Standard Vehicle Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.250 & 825.252
Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-372); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0030; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

740-100-0080

North American Standard Hazardous Material Out-of-Service Criteria

(1) The North American Standard Hazardous Materials Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2010, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of the North American Standard Hazardous Materials Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.250, 825.258 & 825.260

ADMINISTRATIVE RULES

Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-377); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0035; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

740-100-0085

North American Standard Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials

(1) The North American Standard Out-of-Service Criteria Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2010, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of North American Standard Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.250, 825.258 & 825.260
Hist.: MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

740-100-0090

North American Standard Driver Out-of-Service Criteria

(1) The North American Standard Driver Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2010, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to one or both of the following:

(a) Out-of-Service Violation: Drivers with violations under this category shall not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met.

(b) Other: Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier must certify in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Copies of the North American Standard Driver Out-of-Service Criteria are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.250 & 825.252
Hist.: PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0040; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

740-110-0010

Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to 823.061 who causes to be transported a hazardous material shall comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 397 and such portions of Parts 107-178 and 180 as are applicable, and amendments thereto, in effect on April 1, 2010.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 823.061 & 825.258

Stats. Implemented: ORS 825.258

Hist.: Refiled in PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 98, f. 1-18-61, ef. 1-12-61 (Order No. 37620); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 132, f. 3-29-65, ef. 4-1-65 (Order No. 41035); 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 150, f. 11-7-68, ef. 12-1-68 (Order No. 45141); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 5-1980, f. & ef. 10-13-80 (Order No. 80-758); Renumbered from 860-036-0055; PUC 1-1981, f. & ef. 2-9-81; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 6-1982, f. & ef. 5-6-82 (Order No. 82-336); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 7-1986(Temp), f. & ef. 7-25-86 (Order No. 86-736); PUC 13-1986, f. & ef. 10-30-86 (Order No. 86-1106); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 1-1996, f. 2-16-96, cert. ef. 4-1-96; Renumbered from 860-066-0055; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08; MCTD 1-2009, f. 3-20-09, cert. ef. 4-1-09; MCTD 1-2010, f. 3-17-10, cert. ef. 4-1-10

Employment Department Chapter 471

Rule Caption: Economically Distressed Worker Training program rules.

Adm. Order No.: ED 3-2010

Filed with Sec. of State: 4-14-2010

Certified to be Effective: 4-14-10

Notice Publication Date: 12-1-2009

Rules Adopted: 471-030-0220

Subject: This rule governs the administration of the Economically Distressed Worker Training program which provides Unemployment Benefits to unemployed individuals considered to be Economically Distressed (making less than 110% of minimum wage in the base year) during retraining programs.

Rules Coordinator: Courtney Brooks—(503) 947-1250

471-030-0220

Economically Distressed Worker Training

(1) As used in House Bill 3483, Enrolled Oregon 2009 Regular Session, and this rule:

(a) A "high-demand occupation" means one for which there are, or are expected to be reasonable employment opportunities in the area, or opportunities to develop a self-employment enterprise, and which are likely to become full-time endeavors paying at least 110 per cent of the minimum wage established under ORS 653.025.

(b) "High-demand occupations," as defined in section (1) of this rule, will be determined by the Oregon Employment Department Workforce and Economic Research Section. High-demand occupations for an individual will be based upon the labor market of the individual's permanent residence.

(c) "Attendance in economically distressed worker training" means attending training that is the equivalent of full-time status as defined by the training provider, and which begins with the starting date of the economically distressed worker training and ends with satisfactory completion of the training program. The period of time defined in this subsection includes customary academic recesses for holidays and between academic terms but does not include the customary academic summer recess.

(d) "Minimum wage" as used to determine gainful employment or self employment in HB 3483, Section 1, Subsection 1, is the minimum wage in effect at the beginning of the first week claimed under this program.

(e) "Minimum wage" as used to calculate an individual's eligibility for economically distressed worker training in HB 3483, Section 1, Subsection 2 is the highest minimum wage in effect during the individual's base year.

(f) "Minimum wage" as used to apply HB 3483, Section 2, is the minimum wage in effect at the time the work is offered.

(2) Application of Eligibility Criteria.

(a) The Employment Department will make the determination that an individual meets the definition of economically distressed worker for purposes of paying benefits under HB 3483. To determine whether an individ-

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ual was employed in work paying less than 110 per cent of the minimum wage during the individual's entire base year, the individual's total base year wages will be divided by the number of hours the individual worked during the base year. The result will be compared to 110% of the applicable minimum wage, as defined in Section (1)(e) of this rule, to determine the individual's eligibility.

(3) To receive benefits for any week while attending economically distressed worker training, an economically distressed worker who is otherwise eligible for unemployment insurance benefits must:

(a) Submit a written application for approval of economically distressed worker training on forms approved for such purpose by the Director to the Employment Department within 90 days prior to the start of training or school; and

(b) Submit to the Employment Department a timely claim for such week in accordance with procedures established in OAR 471-030-0045(4); and

(c) Attend half or more of the scheduled class days during such week unless the days missed will not prevent satisfactory completion of the approved economically distressed worker training.

(4) Decisions of the Director to approve or disapprove an application for training approval or to discontinue such approval for one or more weeks during economically distressed worker training will be issued in accordance with OAR 471-030-0039.

Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610 & 2009 HB 3483
Hist: ED 8-2009(Temp), f. 10-30-09, cert. ef. 11-1-09 thru 4-30-10; ED 3-2010, f. & cert. ef. 4-14-10

Employment Relations Board
Chapter 115

Rule Caption: Amends rules for procedure for higher education faculty elections.

Adm. Order No.: ERB 1-2010(Temp)

Filed with Sec. of State: 4-13-2010

Certified to be Effective: 4-13-10 thru 10-10-10

Notice Publication Date:

Rules Amended: 115-025-0060

Subject: Deletes section 6 and renumbers subsequent sections of OAR 115-025-0050, to eliminate two-step election procedure for higher education faculty. This conforms agency rules with Senate Bill 989, which was adopted by the Legislature during the 2010 special session. The bill contains an emergency clause and became effective when it was signed by the Governor on March 4, 2010.

Rules Coordinator: Leann G. Wilcox — (503) 378-8610

115-025-0060

Election Procedures

(1) Eligibility to Vote. Public employees eligible to vote in an election will be those employed on the date of the election who were employed on a payroll date agreed upon by the parties or on a date specified by the Board. The Board may include as eligible voters other employees who have reasonable expectations of continued employment including but not limited to seasonal employees or employees on layoff.

(2) List of Eligible Voters. The public employer shall submit an alphabetical list of eligible voters, their names, addresses and job classifications to the Board at least 20 days before the date of the on-site election or 20 days before the date set for the Board to mail out ballots in a mail ballot election unless otherwise expressly agreed by the parties. The Board shall provide each labor organization with a copy of the list of eligible voters.

(3) Disclaimer. A labor organization may request in writing to have its name removed from the ballot disclaiming any representation interest for the employees in the unit. Such disclaimer must be filed not less than ten days before the date of the election in an on-site election or not less than ten days before the date ballots are mailed in a mail ballot election. When a disclaimer is filed and accepted after a consent agreement for an election is signed or after an election is ordered, the Board will not entertain a representation petition filed by the disclaiming organization for the bargaining unit for a period of six months from acceptance of the disclaimer.

(4) Voting. Voting shall be by secret ballot with an opportunity to vote for any one of the candidates on the ballot or for no representation. The election may be conducted on site or by mail. In a mail ballot election, a ballot that is not delivered through the U.S. mail or in person by the voter is void. For purposes of scheduling an election by mail, the date on which ballots are to be returned shall be the date of the election. The choice on the

ballot receiving the majority of valid votes cast shall be adjudged the winner. If there are only two choices on the ballot in an initial election or runoff election and the balloting results in a tie vote, the Board Agent shall certify that no representative has been chosen. These provisions apply to all representation elections.

(5) Runoff Election. In any representation election where there are more than two choices on the ballot and none of the choices receives a majority of the valid votes cast, a runoff election shall be conducted. The ballot in a runoff election shall contain the two choices on the original ballot that received the largest number of votes. Employees eligible to vote in the original election and who are still employees on the date of the runoff election shall be eligible to vote.

(6) Observers. Any party may be represented at the polling place(s) by observers of its own selection except that employer observers cannot be supervisors employed by the employers. Labor organization observers must be eligible voters. The number and the function of the observers shall be determined by the Board Agent conducting the election.

(7) Challenged Ballots. Any party or the Board Agent may challenge, for good cause, the eligibility of any person to participate in the election. Challenges submitted prior to the tally must be in writing, supported by a statement describing the challenge, and provided to the other parties to the election. At the tally, challenges may be made orally. The ballots of challenged persons shall be impounded.

(8) Tally of Ballots. The Board shall notify the parties of the date of the ballot count and advise the parties they are entitled to have a representative present at the count. Upon the conclusion of the ballot count, the Board Agent shall furnish the parties a tally of ballots in person or by mail. The tally shall be deemed furnished to the parties on the date of the ballot count.

(9) Objections to Conduct of Election or Conduct Affecting the Results of the Election. Within ten days after the tally of ballots has been furnished, any party of record may file with the Board an original and one copy of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a clear and concise statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Failure to file timely objections shall be grounds for dismissal of the objections. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be provided to the Board.

(10) Certification of Representative or Results of Election. If no objections are filed within ten days and any challenged ballots are insufficient in number to affect the results of the election, the Board Agent shall issue to the parties a certification of the results of the election, including certification of representative, where appropriate.

(11) Resolution of Objections and Challenged Ballots. When timely objections are filed or where the challenged ballots are sufficient in number to affect the results of the election, the Board Agent shall conduct an investigation and shall, when appropriate, issue a notice of hearing. The dispute will be processed in the manner set forth in OAR 115-035-0060(4). The objecting or challenging party shall bear the burden of proof and of going forward in the hearing. If the Board Agent exercised a challenge because the voter's name was not on the list of eligible voters, the party seeking to have the vote counted shall have the burden of proof and the burden of going forward.

Stat. Auth.: ORS 243.766(7)
Stats. Implemented: ORS 243.686
Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 3-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 4-1998, f. & cert. ef. 1-26-98; ERB 1-2010(Temp), f. & cert. ef. 4-13-10 thru 10-10-10

Mortuary and Cemetery Board
Chapter 830

Rule Caption: Implements legislation by creating "death care consultant" license, updates for licensing and advertising requirements.

Adm. Order No.: MCB 1-2010(Temp)

Filed with Sec. of State: 4-1-2010

Certified to be Effective: 4-1-10 thru 9-27-10

Notice Publication Date:

Rules Adopted: 830-060-0010, 830-060-0020

Rules Amended: 830-011-0000, 830-011-0050, 830-020-0000, 830-020-0020, 830-020-0040, 830-030-0090, 830-040-0000, 830-040-0050

ADMINISTRATIVE RULES

Subject: The temporary rules implement statutory changes in ORS Chapter 692 which require a professional license for a death care consultant. Temporary rules define the scope of practice and terminology; adopts rules and amends existing rules to include death care consultant license where appropriate. The temporary rules extend the application deadline for exam applications for funeral service practitioner and embalmer applicants and revise the license fees to conform to the new death care consultant rules. The temporary rules allow the Board to publish a license directory for all license types in its website. The temporary rules conform to changes in state law by prohibiting discrimination in death care services based on gender or gender identity. The temporary rules prohibit misrepresentation by any licensee in marketing materials.

Rules Coordinator: Michelle Gaines—(971) 673-1502

830-011-0000

Definitions

(1) “At Need”. As used in this chapter, means arrangements entered into after a death has occurred, “at the time of need”.

(2) “Authorizing Agent(s)”. The authorizing agent(s) is (are) the person(s) legally entitled to order the disposition of human remains and cremated remains.

(3) “Burial Vault”. A burial vault is a receptacle designed to protect the casket from the intrusion of outside elements, the weight of the surrounding earth, and the weight of maintenance equipment.

(4) “Certificate of Authority”. A Certificate of Authority is a certificate issued to an individual or corporation who is responsible for the operation of either a cemetery or crematory. If the crematory or cemetery is a corporation, the Certificate of Authority shall be issued to the corporation.

(5) “Cremated Remains”. Cremated remains are the remaining ash and bone fragments after the act of cremation is completed.

(6) “Cremated Remains Container”. As used in this chapter, a cremated remains container means any container in which processed cremated remains can be placed and closed to prevent leakage. At a minimum, this would be a plastic-lined cardboard container.

(7) “Cremation”. Cremation is the technical heating process that reduces human remains to ash and bone fragments.

(8) “Cremation Chamber”. A cremation chamber is the enclosed space in which the cremation process takes place.

(9) “Cremation Container”. A cremation container is the container in which the human remains are placed in the cremation chamber for a cremation. The container shall meet all the requirements of the crematorium.

(10) “Crematory Authority”. The crematory authority is the legal entity or the authorized representative of the legal entity who conducts the cremation.

(11) “Crematory or Crematorium”. A crematory or crematorium is any person, partnership, or corporation with a Certificate of Authority to operate a cremation chamber.

(12) “Death Care Consultant”. As used in this chapter, a “death care consultant” means an individual who provides consultations related to funeral or final disposition arrangements, for payment, to the person or persons who are acting as a funeral service practitioner under ORS chapter 432. For purposes of this definition, the consultations include any conference, information, guidance or advice either at the time of death or when the death is soon to occur.

(13) “Death Care Industry”. As used in this chapter death care industry means the funeral service and final disposition practitioners and facilities.

(14) “Disinfectant Solution”. A disinfectant solution is a chemical agent capable of destroying pathogens or their product when applied with sufficient time and concentration.

(15) “Disposition”. Disposition is burial, entombment, burial at sea or cremation.

(16) “Embalmed”. Human remains shall be considered embalmed when sufficient disinfectant solution or preservative fluid has been injected into the circulatory system and/or applied externally to render it not a hazard to public health.

(17) “Endowment Care Funds”. Endowment care funds are principal amounts deposited from which the revenue on the principal is used for the care and maintenance of a cemetery.

(18) “Final Processing”. Final Processing is the processing of cremated bone fragments to an unidentifiable dimension.

(19) “Grave Liner”. A grave liner is a burial receptacle either in sectional or box form, built and designed to be installed in a grave to assist in preventing the ground from collapsing.

(20) “Holder of a Certificate of Registration”. As used in this chapter a “Holder of a Certificate of Registration” means the same as “Certified Provider” as defined in ORS 97.923(2).

(21) “Holding Room”. A holding room is a suitable room constructed in accordance with OAR 830-040-0020(2), (3), (4), (5), and (6) which licensed funeral establishments use for the care, storage, or holding of human remains prior to effecting disposition. This room shall be of sufficient size to accommodate at least one table for a casketed remains and attendant that may be used by the funeral establishment to care for or repair remains in those facilities which do not offer on premises embalmings. This room would be other than a chapel, viewing or visitation room, office supply room, closet or other room normally open to the public.

(22) “Human Remains”. Human remains means a dead human body.

(23) “Identification Viewing”. Identification viewing means viewing the remains for the purpose of identifying the remains, regardless of whether the remains have been washed or otherwise prepared.

(24) “Identifying Metal Disc”. An identifying metal disc is a metal disc, approximately one inch in diameter with a number assigned by the State Registrar’s office, each with a different number, for the purpose of accompanying dead human remains through the disposition process and to serve as a means of permanent identification of those remains.

(25) “Intern Apprentice”. An intern apprentice is any student enrolled in an accredited funeral service education program who is serving his/her three-month internship under the supervision of a combination-licensed funeral service practitioner/embalmer at a participating funeral establishment.

(26) “Licensed Facility”. A licensed facility is any licensed business governed by ORS Chapter 692, either cemetery, crematory, immediate disposition company or funeral establishment.

(27) “Licensee”. Licensee means any individual or facility licensed under ORS Chapter 692 and any preneed salesperson registered under ORS 97.931.

(28) “Minimum Preparation of Human Remains”. As used in this rule minimum preparation of human remains means the human remains are completely washed as defined in this section.

(29) “Offensive Treatment of Human Remains”. As used in this rule and in ORS Chapter 692, offensive treatment of human remains is treatment offensive to the generally accepted standards of the community.

(30) “Prearrangement”. As used in this chapter, means sales or agreements for undelivered goods or services to be delivered at an unspecified date in the future, entered into before a death has occurred, i.e., “before the time of need”. Prearrangements by this definition do not include the sale of interment rights purchased before a death when the property is developed.

(31) “Preneed Funds”. Preneed funds are specified amounts paid for goods and/or services that are sold in advance of need but not delivered.

(32) “Preneed salesperson”. As used in these rules, “preneed salesperson” means an individual registered under ORS 97.931 and employed by a certified provider to engage in the sale of prearrangement or preconstruction sales contracts on behalf of the certified provider.

(33) “Preparation Room”. As used in these rules, preparation room means the same as embalming facility as used in ORS Chapter 692.

(34) “Principal”. Principal means those persons who have controlling authority over the licensed facility, including but not limited to:

(a) Managers or other persons who have decision-making authority and whose primary duties include control over the operation of the licensed facility;

(b) Officers or directors who have some degree of responsibility for the operation of the licensed facility;

(c) Stock holders or corporations who own or control ten percent or more of the licensed facility by owning or controlling ten percent or more of the voting stock; and

(d) Partners.

(35) “Processed Cremated Remains”. As used in this chapter, processed cremated remains are the result of pulverization, where the residual from the cremation process is cleaned leaving bone fragments reduced to unidentifiable dimensions.

(36) “Public Viewing”. Public viewing means the human remains have, at minimum, been washed, as defined in this section, and the remains are placed in a viewing room, church, chapel or other suitable place for viewing of the remains.

(37) “Receptacle”. As used in this chapter, a receptacle means a rigid container for human remains.

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(38) "Refrigeration Unit". As used in this chapter, a refrigeration unit is one used in licensed facilities to store dead human remains that meet commercial standards.

(39) "Registration". As used in this chapter, registration may refer to the registration of a cemetery that does not fall under the category of "Operating Cemetery" as defined in ORS 692.010(7) or it may refer to the "registration" of preneed salespersons. Registration of non-operating cemeteries, and preneed salespersons is required for compliance with Oregon Laws.

(40) "Sanitary Condition". Sanitary means clean from dirt, foreign particles, blood stains, offensive odors, insects, etc.

(41) "Sealed Casket". A sealed casket is one that is designed by a manufacturer to be sealed prior to final disposition.

(42) "Solicitation". Solicitation is defined as actively endeavoring to obtain business or clientele through means such as telephone or personal contact.

(43) "Visitation". Visitation means a specific time and place to gather where the human remains are present, except for graveside service.

(44) "Washed". A human remains shall be considered washed and brought to a sanitary condition when the entire surface of the human remains has been bathed with a disinfectant solution and the mouth, nose, and other body orifices have been washed and when necessary packed with cotton saturated with a disinfectant solution.

Stat. Auth.: ORS 128.414 & 692.320

Stats. Implemented: ORS 692.320 & 128.414

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89; Renumbered from 830-030-0010(1)(a) - (k) & 830-030-0020; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-011-0050

Background Investigation Required Prior to Oregon Licensure

(1) All applicants for individual or facility licenses, and principals of licensed facilities must submit to a background investigation. The background investigation may include, but not be limited to, information solicited from the Law Enforcement Data Systems, Corporations Commissions, Department of Motor Vehicles, other State agencies, personal references, former employers, credit checks, and when applicable, information solicited from the Secretary of State's Office, Division of Audits on endowment care, prearrangement and preconstruction sales funds. If the principal is a corporation, the Board may perform background investigations on the principals of that corporation. The Board may require the applicant or licensee to furnish any information necessary to perform a background investigation.

(2) The Board may deny, suspend or refuse to issue or renew a license or certificate when conditions exist in relation to any principal of a licensed facility which constitute grounds for refusing to issue or renew a license or certificate or for suspension of a license.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.025

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-020-0000

Applications and Examinations for Funeral Service Practitioner and Embalmer Licenses

(1) All applications for funeral service practitioner and embalmer licenses by examination, accompanied by the examination fee prescribed by ORS Chapter 692, must be received in the office of the Board at least 14 days before the examination is held, or be postmarked before midnight of that date.

(2) The examinations for a funeral service practitioner, and embalmer shall be given at least twice each year:

(a) Applicants for a funeral service practitioner license shall be required to successfully complete a written examination and receive a score of not less than 75 percent, based on the total number of questions;

(b) Applicants for an embalmer's license shall be required to successfully complete a written examination that will include two sections, funeral service arts and funeral service sciences, and must receive an average score of at least 75 percent on the sections with not less than 70 percent on either of these two sections; and

(c) If the Board deems it necessary, the applicant for an embalmer's license may also be required to pass an examination testing his qualifications as to the practical application of his knowledge.

(3) Upon successful completion of the funeral service practitioner's examination, an appropriate license for the current year will be issued to the

examinee after fulfilling the apprenticeship and upon payment of the annual license fee prescribed by ORS Chapter 692. An applicant for an embalmer's license may be examined by the Board after first providing evidence of graduation from a funeral service program accredited by the American Board of Funeral Service Education, but shall not receive an embalmer's license until he has fulfilled his apprenticeship and paid the required fee as prescribed in ORS Chapter 692.

(4) If an applicant for a funeral service practitioner's, or embalmer's license fails to satisfactorily complete the examination, he may retake the examination the next time it is given upon payment of the full examination fee. Such fee must be received in the office of the Board at least 14 days before the examination is given.

(5) The examination fee shall not be returned to an examinee once he takes the examination.

(6) Test results will be mailed to examinees within 30 days after completion of the examination. Exams are not reviewable by examinee, pursuant to the Public Records Act, ORS Chapter 192.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.045, 692.070, 692.105, 692.130, 692.140 & 692.320

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0100; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-020-0020

Funeral Service Practitioner and Embalmer Licenses; Military Leave

(1) Funeral service practitioners and embalmers shall be licensed only after compliance with ORS Chapter 692, and rules adopted thereunder. Licenses for funeral service practitioner and embalmer will not be issued or renewed unless assessed civil penalties have been paid.

(2) A license issued pursuant to ORS Chapter 692 shall not be transferable.

(3) The Board shall publish, on its internet website, a list of the Board's licensees.

(4) A person licensed under ORS Chapter 692 shall not be required to renew his/her individual funeral service practitioner or embalmer license while in active military service unless the person is required by that branch of the military service to maintain an active license from the state in which he/she is licensed in order to perform those services for that branch of the service. Such person shall notify the Board in writing of the date he/she will begin active military duty. The Board will not require this person to pay renewal licensing fees until completion of military duty. After release from active duty under honorable conditions, this person shall notify the Board in writing within 60 days of such discharge and shall be restored to former status. No fees will be requested until the following renewal period.

Stat. Auth.: ORS 692.320

Stats. Implemented: ORS 692.190

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0105; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-020-0040

License, Certificate and Registration Fees

(1) Initial application fees:

(a) Funeral establishment, immediate disposition company, crematory or cemetery that performs more than five interments per year — \$150 (includes first principal) plus \$50 for each additional principal;

(b) Cemetery that performs five or fewer interments annually — \$100 (includes first principal) plus \$50 for each additional principal;

(c) Change of principal — \$50 per licensed facility;

(d) Apprentice funeral service practitioner or apprentice embalmer — \$50;

(e) Reciprocal funeral service practitioner or reciprocal embalmer — \$160;

(f) Intern Apprentice — \$25;

(g) Preneed Salesperson — \$150;

(h) Certificate of Removal Registration — \$30;

(i) Funeral Service Practitioner — \$80 per year;

(j) Embalmer — \$80 per year;

(k) Death Care Consultant — \$80 per year.

(2) Renewal application fees:

(a) Funeral establishment or immediate disposition company — \$350 per year, payable biennially;

(b) Crematory — \$100 per year plus \$2 per cremation performed during the two calendar years preceding the year in which the current license expires, payable biennially;

(c) Cemetery — \$4 per interment performed during the two calendar years preceding the year in which the current license expires up to a maximum of 150 interments or \$600 per year, payable biennially; (Cemeteries

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with ten or fewer interments biennially are not required to pay a renewal fee in accordance with ORS 692.275.)

- (d) Funeral service practitioner — \$80 per year, payable biennially;
- (e) Embalmer — \$80 per year, payable biennially;
- (f) Combination funeral service practitioner/embalmer — \$160 per year, payable biennially;
- (g) Apprentice funeral service practitioner — \$25 per year, payable annually;
- (h) Apprentice embalmer — \$25 per year, payable annually;
- (i) Preneed salesperson — \$25 per year, payable biennially.
- (j) Death care consultant — \$80 per year, payable biennially;
- (3) Exam fees:
 - (a) Funeral service practitioner exam — \$100;
 - (b) Embalmer exam (written or practical) — \$130 to \$400 (depending on the cost to the Board).
 - (c) Death care consultant exam — \$100
- (4) License, certificate and registration reissue fees:
 - (a) Transfer of apprenticeship, replacement license, name change or manager change — \$25;
 - (b) Licensed facility location change — \$250.
- (5) Reinstatement of lapsed license, certificate or registration — \$50 each.

(6) Funeral service practitioners, embalmers, and preneed salespersons shall renew their licenses on even numbered years. Funeral establishments, immediate disposition companies, cemeteries, and crematoriums shall renew on odd numbered years.

(7) Fees paid under this section are not refundable or transferable.

Stat. Auth.: ORS 692.160, 692.320 & 97.931

Stats. Implemented: ORS 692.160 & 97.931

Hist.: SMB 1-1984, f. & ef. 10-22-84; MCB 1-1985(Temp), f. & ef. 7-3-85; MCB 2-1985(Temp), f. & ef. 11-5-85; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0110; MCB 2-1989(Temp), f. 10-2-89, cert. ef. 11-1-89; MCB 3-1989, f. 12-4-89, cert. ef. 12-1-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 3-1993, f. 10-28-93, cert. ef. 11-1-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2004, f. 9-30-04, cert. ef. 11-1-04; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-030-0090

Standards of Practice

Every licensee or agent of a licensed facility of the Oregon State Mortuary and Cemetery Board (Board) shall abide by the accepted standards of the Death Care Industry and the minimum standards, including but not limited to the following standards of practice set forth by the Board. Violations of the following may be cause for Board action.

- (1) Required conduct related to safety and integrity:
 - (a) Compliance with Oregon Revised Statutes relating to death care;
 - (b) Compliance with Oregon Public Health Laws;
 - (c) Compliance with FTC Funeral Rule;
 - (d) Implementation and/or follow through of agreed upon arrangements as designated by the responsible party;
 - (e) Assign persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties;
 - (f) Maintain supervision of apprentices and unlicensed persons to whom tasks are assigned;
 - (g) Report through proper channels facts known regarding the incompetent, unethical, unsafe or illegal practices of any death care industry licensee;
 - (h) Respect the dignity and rights of clients, regardless of social or economic status, age, race, religion, sex, sexual preference, national origin, or disability; and
 - (i) Respect the dignity of dead human remains by appropriate handling, including but not limited to, refrigerating, embalming, dressing, cremating, and burial.
- (2) Conduct unacceptable under the Board's "Standards of Practice."
 - (a) Conduct generally:
 - (A) Abusing a corpse, as defined in ORS 166.085 and 166.087;
 - (B) Abusing a client. The definition of abuse includes but is not limited to causing physical or emotional discomfort or intimidating, threatening or harassing a client;
 - (C) Engaging in unacceptable behavior towards or in the presence of a client such as using derogatory names or gestures or profane language;
 - (D) Failing to report actual or suspected incidents of client or corpse abuse through the proper channels in the work place and to the appropriate state agencies;
 - (E) Using the death care industry practitioner/client relationship to exploit the client by gaining property or items of value from the client for personal gain beyond the compensation for services;

(F) Aiding, abetting, or assisting any individual to violate or circumvent any law, rule or regulation intended to guide the conduct of the death care industry;

(G) Failing to conduct death care services for the living or the deceased without discrimination on the basis of age, race, religion, gender, gender identity, sexual preference, national origin, nature of health problems or disability.

(b) Conduct related to communication and record keeping:

(A) Inaccurate record keeping in client record as required in OAR 830-040-0000;

(B) Falsifying a client's funeral service, cemetery or crematory records; including but not limited to, filling in someone else's omissions, signing someone else's name, recording services and/or merchandise not provided, fabricating data;

(C) Altering a funeral service, cemetery or crematory record; including but not limited to, changing words/letters/numbers from the original document to mislead the reader of the record;

(D) Destroying any document pertaining to a death care service as it pertains to statutory requirements; and

(E) Directing another person to falsify, alter or destroy any death care document.

(c) Conduct related to licensure violations:

(A) Practicing without an appropriate, Oregon license/certificate or registration;

(B) Allowing another person to use one's license, certificate or registration;

(C) Using another's license, certificate or registration;

(D) Using fraud, misrepresentation, or deceit during the application process for licensure, certification or registration or while taking the licensure exam;

(E) Impersonating any applicant or acting as a proxy for the applicant in any Board examination; and

(F) Disclosing the contents of the licensure examination or soliciting, accepting or compiling information regarding the contents of the examination, before, during or after its administration.

(d) Conduct related to the licensee's relationship with the Board:

(A) Failing to provide the Board with requested documents within the Board's jurisdiction; and

(B) Failing to cooperate or answer truthfully and completely inquiries regarding matters within the Board's jurisdiction.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.320

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0170; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-040-0000

General Principles

(1) Every licensee operating under ORS Chapter 692 shall be responsible for complying with the provisions of ORS Chapter 692 and rules adopted thereunder, and any other law pertaining to the duties and responsibilities of the funeral service practitioner or the operation or licensing of funeral establishments, immediate disposition companies, cemeteries and crematoriums.

(2) No licensed facility shall be advertised or operated without the appropriate license or certification or be held out under any name which could be termed misleading.

(3) When a person, firm, partnership or corporation applies to the Board for a funeral establishment license, immediate disposition company license, or certificate of authority to operate a cemetery or crematorium, the name shall contain the identification of the activity, business or profession of funeral, immediate disposition, cemetery or crematory service as set forth in ORS Chapter 692 and the rules adopted thereto. This identified name shall be the registered name with the Board and shall also be utilized as the advertised name of the funeral, immediate disposition company, cemetery or crematory establishment.

(4) Applications for all licensed facilities shall specify the names of all principals. If the principal is a corporation, the application shall include the names of all principals of that corporation.

(5) When there is a change in any principal of the licensed facility, the licensee shall provide the Board with the name of the new principal(s) on a form provided by the Board within 30 days of the change. If the new principal is a corporation, the licensee shall provide the names of the principals of that corporation to the Board on a form provided by the Board.

(6) All licensees, licensed facilities and funeral service practitioners shall keep a detailed, accurate, and permanent record of all transactions that

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are performed for the care and preparation and final disposition of human remains. The record shall set forth as a minimum:

(a) Name of decedent and the identifying metal disc number provided by Vital Statistics;

(b) Date of death;

(c) Name of purchaser of professional services and relationship;

(d) Name of place wherein remains are to be interred or cremated (in cemetery records the exact location of the interment of remains by crypt, niche, or by grave, lot and plot);

(e) The name of the funeral service practitioner or cemetery or crematory personnel responsible for making the arrangements;

(f) The name of the embalmer responsible for embalming (does not apply to cemetery or crematorium records); and

(g) Written documentation of permission to embalm or cremate a human remains is required from the person who has the right to control disposition of the remains pursuant to ORS 97.130(1) and (2). The record of such authorization shall be made to include as a minimum: The name of the authorizing individual and relationship to the deceased, date and time contacted, phone number and name of the licensee or funeral home representative acquiring the authorization (does not apply to cemetery or crematorium records).

(7) In the case of cremation, the licensee responsible for making the cremation arrangements shall require the person making the cremation arrangements to provide the licensee with a signed statement specifying the action taken regarding delivery of the cremated remains. A copy of this statement shall be retained by the responsible licensee and be made a part of the permanent record.

(8) If cremated remains are not retained by the licensee accepting initial responsibility, the licensee shall upon delivery of such cremated remains to another individual, obtain a signed receipt from that individual. The receipt shall state the name of the individual receiving the cremated remains, the name of the deceased, and the date of delivery of such cremated remains. The individual receiving the cremated remains shall sign the receipt. The licensee or the licensee's representative releasing the cremated remains shall also sign the receipt and a copy of that receipt shall remain a part of the permanent record.

(9) No licensee or operator of a licensed facility or a licensee's agent shall:

(a) Fail to preserve permanent records for inspection by the Board; or

(b) Alter, cancel or obliterate entries in permanent records for the purpose of falsifying any record required by this chapter to be made, maintained or preserved.

(10) After human remains are released to the cemetery authority, they shall be placed in their designated grave, crypt or vault within 24 hours after taking possession of the remains unless exigent circumstances exist. After human remains are released to the crematory authority, those remains shall be cremated and processed within 48 hours unless exigent circumstances exist. In such exigent circumstances, the cemetery/crematory authority shall notify both the funeral service practitioner responsible for the arrangements and the office of the Board. The funeral service practitioner responsible for the arrangements for that deceased shall notify the family of such exigent circumstances.

(11) No licensee shall pay, cause to be paid or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, any commission, bonus, rebate or other thing of value in consideration for recommending or causing a human remains to be taken to any specific funeral establishment.

(12) When the Board issues to any person a certificate of authority to operate, license or certificate of apprenticeship the licensee shall post the certificate in a conspicuous location for public viewing. Individual licenses will be available for inspection upon request.

(13) Every cemetery authority and crematory authority shall keep the Board's office informed of the location of their permanent records. These records shall be made available for random inspections by the Board at any reasonable time.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.025 & 692.160

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0200; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-040-0050

Advertising

(1) Each licensed facility advertising through any media (including but not limited to telephone books, newspapers, direct mail, bill boards,

etc.) shall include either the licensed facility's registered name, or its assumed business name and physical address as it appears on the Board's records. All printed materials and letterhead shall include the physical address of the facility.

(2) No person, firm or corporation shall advertise, promote, or market at need or preneed funeral arrangements without first having received a license from the Board.

(3) No cemetery or cremation facility, or person, firm or corporation shall advertise, promote, or market at need or preneed cemetery or cremation plans without first having received either a certificate of authority to operate that cemetery or crematorium.

(4) No person, firm or corporation shall advertise, promote, or market at need or preneed immediate disposition arrangements without having first registered with the Board.

(5) Any advertisement or marketing materials which intentionally conceals or misstates a material fact shall be considered misrepresentation.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.160

Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0220; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-060-0010

Initial Applications, Background, Examination, License Renewal

(1) Any individual who practices as a death care consultant must be licensed under this chapter.

(a) This chapter does not apply to persons who provide general information on funeral or final disposition arrangements via education classes or workshops, publications (printed or electronic materials) or speaking engagements or to persons who practice law under ORS Chapter 9.160.

(b) The Board shall not take action against an individual for practicing without a death care consultant license based on conduct that occurs before the Board distributes the results of the first death care consultant examination administered by the Board if the individual had submitted a license application before the exam and the individual pays the appropriate fees and sits for the first death care consultant examination administered by the Board.

(2) Application Requirements:

(a) Applicants for licensure as a "death care consultant" must apply on the most current application form available at the time the applicant submits the application. Applicants may obtain the most current application via the Board's website, at the Board's office, or request the Board send the application by mail.

(b) Applicants must pay all appropriate fees established by the Board under OAR 830-020-0040.

(c) All applicants for death care consultant licensure are, prior to licensure, required to successfully complete a written examination established by the Board, and receive a score of not less than 75 percent, based on the total number of questions.

(3) Examinations:

(a) All applications for death care consultant examination, accompanied by the examination fee established under OAR 830-020-0040, must be received in the office of the Board at least 14 days before the examination is held, or be postmarked before midnight of that date.

(b) The examination fee will not be returned to an applicant/examinee once the examination begins.

(c) If an applicant for a death care consultant's license fails to successfully complete the examination, that person may retake the examination the next time it is given upon payment of the full examination fee. The examination fee must be received in the office of the Board at least 14 days before the examination is given.

(d) The examinations for death care consultants shall be given at least twice each year.

(e) Examination results will be distributed within 30 days after the examination.

(f) Examination questions and answers are not reviewable by examinee pursuant to the Public Records Act, ORS Chapter 162.

(4) Renewing Licenses, Lapsed Licenses

(a) All death care consultant licenses issued will expire two years from the date of licensure unless renewed as provided in this section.

(b) It is the responsibility of the death care consultant to keep the Board's office advised, in writing, of any address changes within 30 days of the change.

(c) At least sixty (60) days prior to the expiration of the death care consultant's two-year license, the Board will mail to each licensed death care consultant a form stating that the renewal fee is due and payable. The renewal notice will be mailed to the most current address filed with the

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Board by the death care consultant. If the renewal form is not returned and the renewal fee is not paid by the renewal date the license will lapse.

(d) Upon lapse of a death care consultant license, the Board will send notice of the lapse to the most current address filed with the Board by the death care consultant.

(e) The Board may reinstate a lapsed license if the death care consultant applies for reinstatement on a form provided by the Board not later than the 90th day after the lapse and pays the renewal fee as well as the reinstatement fee established in OAR 830-020-0040.

Stat. Auth.: ORS 692.143, 692.320 & 2009 SB 796
Stats. Implemented: ORS 692.025, 692.143, 692.160 & 692.170
Hist.: MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

830-060-0020

Death Care Consultant Scope of Practice, Records, Price List, General

(1) A death care consultant may provide information or advice on matters related to funeral or final disposition arrangements including those matters subject to State or Federal regulatory requirements.

(2) Death care consultants may not provide any direct physical assistance with, or supervision of, the handling of the remains unless the individual also holds the proper license or licenses under this chapter and ORS 692.

(3) Death care consultants shall maintain legible permanent records of all transactions or contracts for services provided including, at a minimum, the following information:

(a) The name, address and telephone number of the person acting as the funeral service practitioner

(b) The name, address and telephone number of the person having the right to control final disposition of the remains pursuant to ORS 97.130

(c) The date or dates the consultation services are provided

(d) The physical location or locations the consultation services are provided

(4) Death care consultants shall maintain a general price list of all consultation services offered for sale. The death care consultant must give the general price list to any consumer, for their retention, before entering into discussions about consultation services. The general price list must contain, at a minimum, the following information:

(a) The death care consultant's name and, if applicable, their business name as registered with the Secretary of State Corporation Division

(b) The effective date of the price list

(c) The consultation services offered with their prices

(d) On the first page of the price list, in prominent type, the death care consultant's license number must be printed in the following format: "Oregon Mortuary and Cemetery Board License No. DC-____".

(5) A death care consultant may practice under any lawful business title not otherwise protected by law, as long as they indicate proper licensure on the general price list.

Stat. Auth.: ORS 692.143, 692.320 & 2009 SB 796
Stats. Implemented: ORS 692.025, 692.143, 692.160 & 692.170
Hist.: MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10

Office of Private Health Partnerships Chapter 442

Rule Caption: Adopt new rules for the Healthy KidsConnect program.

Adm. Order No.: OPHP 2-2010(Temp)

Filed with Sec. of State: 3-23-2010

Certified to be Effective: 3-23-10 thru 9-18-10

Notice Publication Date:

Rules Adopted: 442-010-0010, 442-010-0020, 442-010-0030, 442-010-0040, 442-010-0050, 442-010-0060, 442-010-0070, 442-010-0080, 442-010-0090, 442-010-0100, 442-010-0110, 442-010-0120, 442-010-0130, 442-010-0140, 442-010-0150, 442-010-0160, 442-010-0170, 442-010-0180, 442-010-0190

Subject: The Office of Private Health partnerships is establishing administrative rules for the Health Kids Connect program. Rules include: Purpose and Statutory Authority, Definitions, Carrier and Plan Selections, Member Eligibility, Premium Rates, Premium Assistance Levels, Enrollment in Health KidsConnect (HKC), Member Billing, Member Payments, Carrier Payments, Member Refunds, Enrollment in Healthy KidsConnect Employer Sponsored Insurance (HK ESI), Vendor Set-up/State Accounting System, Employer Verification (HK ESI), Subsidy Payment (ESI), Cobra/Portability,

Adding Family Members, Member Reporting, HKC or HK ESI Plan Termination. These rules 442-010-0010 through 442-010-0190 apply to all Healthy KidsConnect and Healthy Kids Employer Sponsored Insurance plans issued on or after February 1, 2010.

Rules Coordinator: Margaret Moran—(503) 378-5664

442-010-0010

Purpose and Statutory Authority

(1) OAR 442-010-0010 to 442-010-0190 are adopted to carry out the purpose of ORS 414.841 to 414.864, establishing within the Office of Private Health Partnerships (OPHP) private insurance subsidies for children who are Oregon residents and whose families earn from zero up to and including 200 percent federal poverty level (FPL). Two program options are available:

(a) A Healthy Kids Employer Sponsored Insurance (HK ESI) option for children in families who earn from zero up to and including 200 percent of the federal poverty level; and

(b) A Healthy KidsConnect (HKC) option for children in families who are over 200 up to and including 300 percent federal poverty level (FPL).

(2) OAR 442-010-0010 to 442-010-0190 are adopted pursuant to the general authority of the Oregon Health Authority under ORS 414.858 and the specific authority in ORS 414.841 to 414.864.

Stat. Auth.: ORS 414.826
Stats. Implemented: ORS 414.826
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0020

Definitions

(1) "Appeal" means a review of an Office employee's unfavorable decision or action (ref. 442-005-0320).

(2) "Benchmark" means a specific minimum level of health insurance benefits that qualify for premium assistance. The benchmark is:

(a) Established by the Office in agreement with the Health Insurance Reform Advisory Committee; and

(b) Sent to and approved by the federal government.

(3) "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.

(4) "Citizen" for the purpose of HKC and HK ESI means:

(a) 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), or

(b) A baby born in the United States to a HKC member.

(5) "Contracted carrier" means a carrier hired by OPHP (see OAR 442-010-0030 "Carrier and Plan Selection" to take part in the Healthy Kids program.

(6) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. The Oregon Health Authority adopts these guidelines no later than May 1 each year.

(7) "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.

(8) HKC means Healthy KidsConnect, the private market health insurance available to eligible members over 200% Federal Poverty Level.

(9) HKC refers to the benefit plans offered through Healthy Kids private option. The benefit plans must:

(a) Meet or exceed the requirements for a federal standard benchmark described in ORS 735.733;

(b) Be comparable to the health services provided to children receiving Oregon Health Plan Plus medical assistance, including mental health, vision, pharmacy, and dental services;

(c) Not exclude or delay coverage for preexisting conditions;

(d) Limit the family's cost sharing to no more than 5 percent of the family's annual income if they are eligible for premium assistance;

(e) Qualify for federal financial participation.

(10) "Member" means a child enrolled in HKC or a HK ESI plan or the child's parent or adult representative.

(11) "Member share" means the portion of the health insurance premium a family pays.

(12) "Misrepresentation" means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

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(13) "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).

(14) "Overpayment" means any subsidy payment paid to, received by, or on behalf of the member that exceeds the amount for which the member is eligible. Overpayment also includes any civil penalty assessed by the OPHP or the Office of Payment and Recovery (OPAR).

(15) "Premium" means the amount charged for health insurance.

(16) "Subsidy" means the amount OPHP pays on behalf of the member to offset monthly premium costs. Subsidy is also known as "premium assistance".

(a) HKC subsidies are paid directly to the HKC carriers; and

(b) HKC ESI subsidies are paid by reimbursing the member's portion of the premium.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0030

Carrier and Plan Selection

OPHP selects health insurance carriers to offer Healthy KidsConnect benefit plans through a competitive bidding process. The process includes releasing a request for proposal (RFP). Selection criteria may include, but is not limited to:

- (1) Administrative & Online Services;
- (2) Case, Disease, Utilization & Pharmacy Management;
- (3) Member Access & Provider Network Capacity;
- (4) Information Services & Reporting;
- (5) References; and
- (6) Premium rates.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0040

Member Eligibility

The Department of Human Services (DHS) determines whether children are eligible for HKC or HK ESI based on family size, income and other criteria.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0050

HKC Premium Rates

Families up to and including 300% FPL, with more than one child pay discounted premium rates based on the number of eligible children in the family. Families over 300% FPL are not eligible for discounted rates and must pay the full cost per child. Premium Assistance Levels

(1) HK ESI Premium assistance is on a sliding scale based on household income and federal poverty level. Members:

(a) Zero through 200 percent of the federal poverty level will receive 100 percent premium assistance;

(b) Over 200 through 250 percent of the federal poverty level will receive about 90 percent premium assistance; and

(c) Over 250 through 300 percent of the federal poverty level will receive about 85 percent premium assistance; and

(d) Over 300 percent of the federal poverty level will receive no premium assistance.

(e) Eligible American Indian/Alaskan Native children over 200% FPL through 300% FPL will receive 100 percent premium assistance. Families also pay no coinsurance or copayments.

(2) HKC, HKC is an option for families with or without ESI. Premium assistance is on a sliding scale based on household income and federal poverty level. Members:

(a) Zero through 200 percent of the federal poverty level are not eligible for HKC;

(b) Over 200 through 250 percent of the federal poverty level will receive 85 percent premium assistance;

(c) Over 250 through 300 percent of the federal poverty level will receive about 80 percent premium assistance; and

(d) Over 300 percent of the federal poverty level will receive no premium assistance.

(3) Subsidy levels will be reevaluated once each year at redetermination except when:

(a) Changes are a result of administrative error.

(b) The family circumstances change and DHS redetermines eligibility or

(c) An audit identifies an error that changes the subsidy level.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0060

Enrollment In HKC

(1) An applicant must enroll in a Healthy KidsConnect plan within the program's timeframes to remain eligible for the subsidy.

(2) A family may choose to enroll approved children into HKC or HK ESI.

(3) No family member may be enrolled in OHP or FHIAP or any of the Healthy Kids insurance options at the same time.

(3) Members have at least 45 days to enroll in a plan after they are determined eligible. If the member does not enroll in a plan within the established timeframe,

(4) DHS will close the eligibility case file. OPHP may request that DHS extend the enrollment timeframe.

(5) Children approved for HKC must select a plan by the 23rd of the month or the last business day before the 23rd of the month for insurance to be effective the 1st of the following month.

(6) Members over 300% FPL must enroll by the next full open enrollment period. If members do not enroll by the end of the next full open enrollment period, they will have to reapply through DHS.

(7) Members may not change carriers during their eligibility period unless they have a qualifying event that changes their insurance needs. This means the member must stay with the same carrier until they are re-determined eligible by DHS, wait for the next open enrollment, move out of the carrier service area, lose their job, or similar situation.

(8) If a carrier elects to discontinue participation in HKC, members served by that carrier will have to select another HKC carrier. The member must enroll with new the carrier within 120 days. If the member does not enroll within 120 days, the case will be closed and the member must reapply through DHS.

(9) Families are not required to enroll all their children in health insurance but those who receive a state subsidy must choose the same carrier's plan and the same type of subsidy (not split between HKC and HK ESI).

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0070

Member Billing — HKC

Subsidies are available for members who choose HKC and are over 200 up to and including 300 percent of the federal poverty level. OPHP will bill members for their share of the monthly premium.

(1) OPHP will pay the first full months premium to the carrier for new subsidized members only.

(2) If a subsidized member terminates and then reapplies for coverage, the member will be responsible for their share of the first month's premium.

(3) Beginning the second month, after initial enrollment, OPHP will not pay the carrier until the member's portion is received.

(4) OPHP mails bills to members at least one month before the carrier due date to ensure timely payment.

(5) Members must pay their share of the premiums by the monthly billing due date.

(6) OPHP will mail a reminder to members with unpaid balances greater than \$3.00.

(7) OPHP may cancel subsidies and insurance coverage if the member payment is not received by the due date.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0080

Member Payments — HKC

(1) OPHP will process member payments at least once each business day.

(2) OPHP will notify members of payments returned by the bank for non-sufficient funds (NSF):

(a) OPHP considers NSF checks the same as non-payment.

(b) Members must replace funds by the premium due date or within 10 calendar days of the notification letter date if the account is past due.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

ADMINISTRATIVE RULES

442-010-0090

Carrier Payments — HKC

OPHP will only pay the carrier once the member's share of the premium is received except for the first time account set up.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0100

Carrier Refunds — HKC

(1) OPHP will resolve member overpayments by requesting a refund from the carrier. OPHP will not request refunds for overpayments older than 3 months, resulting from member misrepresentation or NSF checks.

(2) OPHP will request carrier refunds within 30 days of overpayment determination.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0110

Member Refunds — HKC

(1) Member refunds:

(a) Will be processed at least once weekly;

(b) Will not be processed for amounts under \$25.00 unless it is the final payment on a closed account.

(c) Will not be paid by OPHP including the first month's premium and monthly subsidy amounts.

(d) Will be sent to members for their portion of any overpaid premium.

(e) Will be processed once the carrier refund has been received, if applicable.

(f) For premium not yet sent to the carrier will be paid within one calendar week of the approved refund request. If an additional refund is due from the carrier also, the refunds can be processed separately as long as both refunds are over \$25.00.

(2) Current members billed incorrectly may request a refund if the amount exceeds \$25.00, otherwise a credit will be applied to future premiums.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0120

Enrollment in Healthy Kids — Employer Sponsored Insurance

(1) Subsidies are available to members who choose to enroll in their employer sponsored insurance plan.

(2) Subsidies will only be paid to children enrolled in an ESI plan that meets federal benefit and cost sharing standards.

(3) Families have at least 45 days to enroll in their employer plan. If the family does not enroll in a approved plan within the established timeframe, DHS will close the eligibility case file. OPHP may request that DHS extend the enrollment timeframe.

(4) OPHP will subsidize premiums for the full eligibility approval month no matter what day in the months the eligibility decision was made. Premiums and subsidies will not be prorated.

(5) Once enrolled, if a member loses their ESI coverage due to loss of employment, or the employer discontinues the ESI plan, HK will subsidize a COBRA, portability or HKC plan.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0130

Vendor Set-up/State Accounting System — Group Market

Subsidy payments may be payable to:

(1) The member or member's employed spouse from whose pay check the premium is being deducted.

(2) Parents or adult representative of member children.

(3) Carriers.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0140

Employer Verification — HK ESI

(1) Employer contribution changes — members must report plan changes in circumstances to OPHP per 442-010-0.

(2) Subsidy changes — OPHP will request a new employer verification form annually or if the payroll deduction amount changes. OPHP will

continue to subsidize the member at the established rate until new rates are received. Adjustments will be made when changes are approved.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0150

Subsidy Payments — ESI

(1) OPHP will subsidize the member's monthly insurance premium minus the employer's contribution, if there is one.

(2) OPHP will reimburse the eligible members' portion of the premium in the ESI plan using submitted payment verification. Verification can include, but is not limited to payroll records, paycheck stubs, employer letters, carrier invoices, receipts, and cancelled check copies.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0160

COBRA/Portability

OPHP will continue to pay subsidies to eligible HK ESI members. Eligible members who lose their insurance coverage may choose COBRA, Portability, or HKC.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0170

Adding Family Members

(1) Families may add members to their HKC or HK ESI enrollment at any time throughout the 12-month eligibility period as long as the family member meets the DHS eligibility requirements.

(2) Premium rates and the member's portion of the premium may change as a result of adding new family members.

(3) DHS will recalculate the member FPL based on family circumstance changes. If the new FPL results in a better subsidy or direct coverage (OHP) the change is effective immediately. If the new FPL results in less or no subsidy, no change will be made until the end of the 12-month eligibility period.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0180

Member Reporting

(1) Members must report changes in circumstance to OPHP or DHS within 10 calendar days of the change by phone or in writing. Changes may include:

(a) Name;

(b) Employer;

(c) Family size including pregnancy, birth or death of a child or a child moves out of state;

(d) Home or mailing address, even if temporarily away (more than 30 days):

(e) Loss of health insurance;

(f) New or additional health insurance including ESI;

(g) Any family member becomes ineligible for their health insurance and;

(h) Employer contribution amount for OPHP members receiving subsidy in the group market;

(2) Failure to report any of the above changes may result in termination from the program, subsidy suspension, loss of insurance coverage or an overpayment.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

442-010-0190

HKC or HK ESI Plan Termination

(1) Termination may occur when:

(a) Payment is not received by the due date.

(b) The member is no longer a resident of Oregon;

(c) The member loses their HK ESI and fails to notify OPHP;

(d) The member is determined to be ineligible at redetermination or any time during the subsidy year as determined by DHS.

(e) Any member is enrolled in a OHP or FHIAP and HKC or HKC ESI at the same time and fails to timely terminate from one program after being notified by OPHP that they must do so.

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(f) An HK ESI member fails to provide monthly verification of coverage, premiums, and employer contribution within 30 days from the date OPHP requests documentation.

(g) The member fails to pay an overpayment amount as per OAR 442-005-0280.

(h) The member commits fraud.

(i) Projected program costs exceed the funding available to cover subsidy payments for those enrolled

(2) If OPHP terminates a subsidized member for non-payment of premium, the member must wait 2 months to re-enroll in a HKC plan. HKC members over 300% must wait at least 6 months to re-enroll. These members can only re-enroll during an open enrollment period.

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10

Oregon Business Development Department Chapter 123

Rule Caption: These rules cover the Brownfields Redevelopment Loan Fund and have been revised for clarity.

Adm. Order No.: OBDD 7-2010

Filed with Sec. of State: 3-30-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 3-1-2010

Rules Adopted: 123-135-0065

Rules Amended: 123-135-0000, 123-135-0010, 123-135-0020, 123-135-0030, 123-135-0040, 123-135-0050, 123-135-0080, 123-135-0087, 123-135-0090, 123-135-0100, 123-135-0110

Rules Repealed: 123-135-0060, 123-135-0070

Subject: These rules have been revised due to the 2009 Legislative session through HB 2152 which changed the name of the department. Definitions have been removed and others have been revised. Two sections have been repealed and a new section relating to application considerations and processing has been added. Loan agreement conditions have been revised to state that applicants may be responsible for closing costs associated with the loan as well as noting that the maximum term of the loan shall not exceed 20 years. Grant contract conditions have been revised to remove unnecessary language and add additional language. Other sections have been revised for clarity.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-135-0000

Purpose

The purpose of these rules is to implement the Brownfields Redevelopment Fund created in 1997 through Chapter 738 Oregon Laws 1997 and amended by Chapter 96 Oregon Laws 2001. The purpose of the Brownfields Redevelopment Fund is to enhance the availability of resources through program development, grant proposals and other appropriate methods necessary to determine and facilitate the funding of environmental actions on properties that are brownfields.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0010

Policy

It is the policy of the Oregon Business Development Department to promote sustainability and assist rural or distressed communities with local development priorities. Facilitating environmental cleanup consistent with a polluter-pays principle and the redevelopment of brownfields furthers this policy. The benefits of redeveloping brownfields include: promoting economic development; enabling efficient land use; minimizing the construction of new service infrastructure; facilitating the resolution of environmental justice issues; and protecting environmental and human health.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0020

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division, the following terms shall have the following meaning unless otherwise indicated:

(1) "Bridge Loan" means a loan that will be repaid in full at the end of a short-term, twelve (12) to twenty four (24) months in length as determined at time of award or upon request within one year of award, following loan closing;

(2) "Brownfield" means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1);

(3) "Capacity Building" involves conducting necessary studies that support the evaluation of a site or sites and incorporates cleanup activities for a site or sites with or without an identified redevelopment use but within zoning parameters to meet the buildable lands needs of a municipality;

(4) "Collateral" means property subject to a security interest or security agreement as defined in ORS 79.1050;

(5) "Contribution" means cash, a reduction in land sale price, a donation of real property or personal services of value; or some other like act that offsets the benefit of receiving sums from the Fund that are conveyed to a recipient or site owner who is a potentially responsible party for a release of a hazardous substance or is potentially liable for the cost of cleanup at the site according to ORS 465.255;

(6) "Environmental Action" means activities undertaken to:

(a) Determine if a release has occurred, if the release, or potential release, poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal action; or

(d) Conduct a remedial action or removal action at a site.

(7) "Environmental Insurance" means a specific form of casualty insurance based on industry custom standards. Policies such as, but not limited to, cleanup cost caps, secured creditor on impaired property, or pollution legal liability are examples of environmental insurance;

(8) "Environmental Justice" means community based issues, concerns, or problems resulting from the disparate effects caused by the placement and/or proximity of facilities that negatively impact minority or low-income populations;

(9) "Environmental Service Professional" means an entity that has the necessary experience, capacity, expertise, or is otherwise certified to conduct environmental actions;

(10) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel. Facility has the meaning given in ORS 465.200;

(11) "Fund" means the Brownfields Redevelopment Fund;

(12) "Hazardous Substance" has the meaning given in ORS 465.200;

(13) "Institutional Controls" has the meaning given in ORS 465.315 and OAR 340-122-0115(32);

(14) "Municipality" means an Oregon city, county, the Port of Portland created by ORS 778.010, a county service district organized under ORS Chapter 451, a district as defined in 198.010, a tribal council of a federally recognized Indian tribe in Oregon, an airport district organized under ORS 838, or any other municipal corporation or quasi-municipal corporation.

(15) "Non-Profit" means an organization certified under sections 501(c)(2) through (4) and (6) through (8) and (10) of the Internal Revenue Code;

(16) "Person" means any individual, association of individuals, company, joint venture, partnership, or corporation;

(17) "Project" and "Project Description" means the resulting combination of the site, the proposed activities to be performed, the proposed or likely redevelopment use, and any other information stated in the Fund application;

(18) "Prospective Purchaser Program" refers to ORS 465.327 and associated administrative rules;

(19) "Release" (as in release of a hazardous substance) has the meaning given in ORS 465.200;

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(20) "Scope of Work" means a detailed plan to perform in part or in whole an environmental action. Scopes of work shall be drafted by an environmental service professional;

(21) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(22) "Site Characterization" means determining and delineating the boundaries of the plume(s) of contamination and/or determining the status of the contamination such as whether it is migrating or crossing from one media to another, such as from soil to water, at the site. This review provides a level of detail comparable to a "preliminary assessment" (PA) as described in OAR 340-122-0072 and may be comparable to a "Phase II Environmental Site Assessment" under ASTM Standard E 1903;

(23) "Site Investigation" means a historic use investigation of the site involving, but not limited to, the analysis of aerial photos, public and private records, personal interviews, and other documents and data sources to determine the likelihood of a release of a hazardous substance at the site or facility. This review provides a level of detail comparable to a "Phase I" review under ASTM Standards E1527 and 1528 and is often a desktop review without any sampling;

(24) "Site Sampling" means systematically obtaining and analyzing representative samples from the site of relevant media such as soil and water to determine the presence of and/or the concentration of the contamination and/or identify the specific substances or compounds comprising the contamination. Sampling is a critical component of the "preliminary assessment" (PA) conducted under OAR 340-122-0072 or the ASTM "Phase II" under E-1903;

(25) "Term Loan" means a loan to be paid over a period of years, usually ten (10) to fifteen (15), with a rate of interest;

(26) "Voluntary Cleanup Program" relates to ORS 465.325 and associated administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 3-2007(Temp), f. & cert. ef. 8-10-07 thru 2-5-08; Administrative correction 2-22-08; EDD 18-2008, f. & cert. ef. 6-4-08; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0030

Applicant Eligibility

(1) Any person, non-profit, or municipality is eligible to make application to the Department for assistance from the Fund as long as they are not subject to exclusion by ORS 285A.188(3)(a).

(2) Eligibility under OAR 123-135-0030 shall also be determined based on the status of compliance with enforcement actions against the applicant by the Oregon Department of Environmental Quality.

(3) If the applicant is not the land owner and the site is owned by a person that is excluded by OAR 123-135-0030(1), the application will not be accepted unless the applicant provides documentation adequately demonstrating how the funded activities will facilitate a transfer in ownership of the site to a person not subject to the exclusion.

(4) An applicant who is a responsible party for a release of a hazardous substance or is liable for the cost of cleanup at the project site according to ORS 465.255, must provide some form of contribution to the project to be eligible.

(5) An applicant that makes willful misrepresentations regarding applicant eligibility on a Fund application may be subject to the remedies described in OAR 123-135-0090.

(6) Applicant must have the authority and ability to enter into a contract with the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0040

Project Eligibility

(1) Projects may contain non-residential underground storage tanks. Superfund sites on the National Priorities List are not eligible. Reimbursable project activities include, but are not limited to:

- (a) Site investigation;
- (b) Site sampling;
- (c) Site characterization;
- (d) Review, compilation and analysis of study data into a report;
- (e) Feasibility studies;
- (f) Plans for remedial action or removal;
- (g) Conducting of a remedial action or removal at a site; or

(h) Regulatory oversight fees.

(2) Projects on sites that contain or are proposed to contain only privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s) are not eligible for Fund assistance unless substantial public benefit can be demonstrated.

(3) Projects on sites that contain or are proposed to contain mixed use development such as a structure or structures that contain combined commercial and residential uses are eligible if:

(a) A written endorsement for the project from the local jurisdiction is included with the application;

(b) The project will provide a substantial public benefit; or

(c) The project is part of a downtown or mixed use center redevelopment.

(4) The Department will determine if a project will have substantial public benefit.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 8-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0050

Application Requirements

(1) Applications that include capacity building, site sampling and/or site characterization must discuss in their project description how the funded activities will contribute or lead to cleanup and/or redevelopment of the site.

(2) Applications that include a site characterization must discuss in the project description how the funded activities will contribute or lead to a remediation plan or a No Further Action Determination by the Oregon Department of Environmental Quality.

(3) Applications that include a remedial or removal action or plan must identify the proposed redevelopment use in the project description and must provide documentation that demonstrates how the proposed redevelopment use is attainable.

(4) Applications that include a remedial or removal action or plan must discuss in the application how the plan or action will comply with state cleanup law and will contribute to the proposed redevelopment. The Department may ask the applicant to provide documentation that demonstrates how compliance or how progress towards the proposed redevelopment will be achieved.

(5) Applications that include a remedial or removal action but do not identify a redevelopment use as described in OAR 123-135-0050(4) are eligible if the project is for capacity building. Written endorsement for the capacity building project must be obtained from the local jurisdiction and be included in the application if the applicant is not a municipality.

(6) The sum of funding requested in the Fund application must be consistent with the scope and scale of work in the project description compared with an industry custom standard. If the amount requested is inconsistent with the scope and scale of work in the project description, the Department may work with the Applicant and Oregon Department of Environmental Quality to adjust the amount of the award or the scope and scale of work in the project description.

(7) If OAR 123-135-0030(4) or (5) applies, the necessary information regarding property transfer and/or contribution must also be included in the application.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0065

Application Considerations and Processing

(1) Applications may be submitted to the Department at any time. The Department shall not process an incomplete Fund application. Applications are complete when all relevant requirements of this Division are met.

(2) The Department can waive application requirements in order to make an application completion determination if it is demonstrated that such a waiver would serve to further the goals and objectives of the Fund and would not violate any statutory requirements.

(3) The Department may request additional information about the project that is not listed in this division if necessary to facilitate application processing.

(4) When evaluating an application, the Department shall consider the following:

ADMINISTRATIVE RULES

(a) The extent to which real or perceived contamination prevents the property from being fully utilized;

(b) The need for providing public assistance, after considering the difficulty of obtaining financing from other sources or of obtaining financing at reasonable rates and terms;

(c) The degree to which redevelopment of the property provides opportunity for achieving protection of human health or the environment by reducing or eliminating the contamination of the property and for contributing to the economic health and diversity of the area;

(d) The probability of the success of the intended use or the degree to which redevelopment of the property provides a public purpose following remediation of the property;

(e) Compliance with the land use plan of the local government with jurisdiction over the property;

(f) Endorsement from the local government with jurisdiction over the property

(5) In the event of a shortage of funds, priority will be given to projects that provide significant economic benefit such as the creation of manufacturing or traded sector jobs and the Department may, at its discretion, consider other factors that demonstrate substantial public benefit.

(6) No more than sixty percent (60%) of the total amount of the Fund in any biennium shall be awarded to persons who are liable with respect to the site under ORS 465.255. The sixty percent (60%) limitation will be calculated at the beginning of each biennium and will be applied to the total, non-obligated, funds available in the Fund. Only awards to recipients that caused or contributed to the contamination at a site shall be included in the sixty percent (60%) calculation.

(7) Department approval of an application may contain conditions which will become part of the funding agreement.

(8) The Department will conduct a financial review on complete applications in accordance with prudent lending practices. Conditions of an loan award such as requiring collateral or other security; requiring a co-signer or guarantor; or obtaining an environmental insurance policy may be required in order to provide additional securities to mitigate credit deficiencies.

(9) The Department may request additional information from the applicant to facilitate a funding decision.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0080

Loan Agreement Conditions

(1) Loans do not require match. Applicants may be responsible for closing costs associated with the loan including but not limited to document preparation, review of documentation for legal sufficiency, title, escrow, recording or filing fees.

(2) The Department shall set the interest rate for municipal and non-municipal loan recipients at the time of award based on subsidy need, credit risk, and other appropriate considerations.

(3) Interest accrual, repayment and disbursement schedules, and other necessary conditions shall be stated in the loan agreement.

(4) Bridge loans shall have a maximum term of one (1) year from the beginning of loan disbursement unless the loan recipient requests an extension

(a) Upon receipt of a request for extension, the maximum term of the extension shall not exceed one (1) additional year. If a bridge loan is not repaid within the approved period, a rate of interest may be applied from the date of first disbursement.

(b) A bridge loan recipient may be converted to a term loan. If a loan is converted, a rate of interest shall be applied from the date of first disbursement.

(5) The Department will set terms of repayment with consideration to the applicant's ability to repay, credit worthiness, economic benefit of the project, and use of proceeds as defined in the project. The maximum term of a loan shall not exceed 20 years from the date of loan closing.

(6) A term loan may convert to a bridge loan with the approval of the Department as long as the maximum bridge loan term of two (2) years has not passed from the date of loan closing.

(7) If the project includes other funding in the form of loan(s) obtained from a financial institution, the Department may subordinate the Fund loan to the financial institution loan(s) if appropriate.

(8) The Department has the discretion to establish loan terms that differ from those enumerated in OAR chapter 123, division 135 as long as it furthers the goals and objectives of the program.

(9) For loan funded projects, the total loan amount shall not exceed the final total project cost.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0087

Grant Contract Conditions

(1) Municipal and eligible non-profit organization applicants may be eligible for grants. Determination of grant eligibility will be made by the Department at the time of award and may be based on subsidy need, credit risk, economic benefit, and other appropriate considerations. The Department has the discretion to impose conditions on the grant. Conditions shall be part of the grant contract, and if appropriate, the Department may require the recipient to demonstrate or document how the conditions have or will be met before funds are disbursed in whole or in part.

(2) All grant awards require some level of match. The level of match required will be determined based upon the liability considerations associated with the applicant and may have some portion waived if the applicant acquired the property according to ORS 465.327.

(3) For municipal and qualifying non-profit organization grant recipients, acceptable grant match includes cash, in-kind services, or other contributions of measurable value.

(4) For municipal and qualifying non-profit organization grant recipients that are not potentially liable for having caused or contributed to the release of contamination at the site and for which the project is located in or benefits a designated economically distressed community, the grant match is ten percent (10%) of the total award.

(5) For municipal and qualifying non-profit organization grant recipients that are not potentially liable for having caused or contributed to the release of contamination at the site and for which the project is not located in or does not benefit a designated economically distressed community, the grant match is twenty percent (20%) of the total award.

(6) Municipal and qualifying non-profit organization applicants that are potentially liable because the applicant's conduct lead to or contributed to the release of contamination at the site receiving the environmental action are subject to a one to one (1:1) or 100% of award match requirement. Match must be in cash.

(7) Grant awards cannot exceed the final total project cost less the required match with a maximum award of \$60,000. For grant funded projects with a match ratio of one to one (1:1), the final grant award shall not exceed fifty percent (50%) of the total final project cost or a maximum award of \$60,000.

(8) If the environmental action at the site was funded with a condition requiring repayment of the grant the grant award must be repaid with any net profits generated from the resale of the site if that sale occurs within five (5) years after the completion of the environmental action. The repayment amount is the lesser of either the net profits or the amount of the grant award. Net profits equal the resale price less the sum of the purchase price and the required match for the project. In the case of properties resold by a county after property tax foreclosure, net profits equal the sum of the outstanding property tax, required match, and eligible expenses incurred by the County prior to award that are related to conducting environmental actions on the property.

(9) The Department shall make available technical assistance grants to municipalities for capacity building. Technical assistance grants may not exceed \$25,000 per municipality. Technical assistance grants shall not be subject to financial review. Technical assistance grants shall require a 10% match which may include case, in-kind services or other contributions of measurable value.

(10) Notwithstanding applicant and project eligibility, the amount of a grant award shall be based on the availability of grant funds at the time of the award. The grant capacity of the Fund is determined by the Department based on a percentage of biennial allocations. The Department has the discretion to make grant awards less than the amount requested in the application if it is necessary to ensure grant capacity until the next allocation to the Fund by the Commission.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

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123-135-0090

Remedies

(1) If, at any time, it is discovered that the applicant or the project violates the applicant eligibility exclusions in OAR 123-135-0030 or the project eligibility exclusions in 123-135-0040. The Department may seek legal remedies against applicants that fail to comply with the requirements governing the fund. Remedies will not be imposed by the Department until the applicant has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted.

(2) One or more of the following remedies may be imposed by the Department:

- (a) Bar a recipient from applying for future Fund assistance;
- (b) Revoke an existing Fund award;
- (c) Withhold unexpended Fund funds;
- (d) Require return of unexpended funds;
- (e) Demand immediate repayment of expended funds at a market based rate of interest; or

(f) Withhold other state funds.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0100

Subsidies and Waivers

(1) The Department has the discretion to waive interest charges or provide interest rate subsidies in the form of rate reductions and may grant any other form of waiver or subsidy within its authority. The Department shall utilize its discretion to make available interest charge waivers or provide interest rate subsidies following financial evaluation of the complete application taking into consideration the relationship between the project and the needs of the local community; the availability and or leveraging of other sources of funding in the project; and after determining whether the incentive will result in a substantial public benefit.

(2) The department shall waive interest for all bridge loans. The department shall set an interest rate for a bridge loan at the time of application approval in the event the bridge loan becomes a term loan or is not repaid within the allowed time period.

(3) Applicants may request consideration for incentives in the Fund application. The Department shall rule on all incentive requests made in the Fund application at the time of application approval.

(4) Determination of whether or not a project will result in a substantial public benefit will be made on a case-by-case basis by the Department.

(5) The Department may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

123-135-0110

Consultation with Department of Environmental Quality

(1) In accordance with ORS 285A.188(4), the Department shall consult with the Department of Environmental Quality prior to the decision to approve an application. The Department shall provide the Department of Environmental Quality with information about the applicant, property, project description, environmental service professional, and funding amount requested.

(2) The Department of Environmental Quality shall verify within a reasonable period of time whether the applicant is ineligible for funding assistance in accordance with ORS 285A.188(3)(a).

(3) Any recommendations or relevant comments from the Department of Environmental Quality that are submitted to the Department within a reasonable period of time shall be included as part of the application for consideration.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

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Rule Caption: These rules cover the Coalitions Brownfields Clean Up Fund and have been revised for clarity.

Adm. Order No.: OBDD 8-2010

Filed with Sec. of State: 3-30-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 3-1-2010

Rules Amended: 123-140-0010, 123-140-0020, 123-140-0030, 123-140-0050

Subject: These rules have been revised due to the 2009 Legislative session through HB 2152 which changed the name of the department. Definitions have been removed and others revised. Other division have minor housekeeping changes.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-140-0010

Purpose, Scope, and Incorporated Documents

(1) As provided in Oregon Revised Statutes (ORS) 285A.190, the Oregon Business Development Department shall administer the federally funded revolving fund to provide cleanup financing to eligible publicly and privately owned brownfields as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (P.L. 107-118).

(2) Oregon Coalition Brownfields Cleanup Fund Program is funded through a cooperative agreement (BF-97080301, and as amended from time to time) between the U.S. Environmental Protection Agency and Department and includes any program income generated as a result of Department loans to Recipients as provided for in ORS 285A.192. The primary objectives of the Program are to:

(a) Remove or abate environmental health risks at sites not yet addressed by the private market;

(b) Provide resource assistance to rural, distressed, or affected communities allowing them to build quality, livable communities and neighborhoods; and

(c) Employ a problem-solving philosophy of coordination through state and local partnerships.

Stat. Auth.: ORS 285A.190, 285A.192 & 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10

123-140-0020

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) "Applicant" means any public or private entity that is eligible under OAR 123, division 140 to receive an OBCF loan or grant and that has control over or access to a brownfields site, except those entities that may potentially be liable under CERCLA, or are currently suspended or debarred from receiving federal funding, or are otherwise declared ineligible.

(2) "Brownfields" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(3) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code 9601) as amended by the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118), and any subsequent amendments.

(4) "Fund" means the Oregon Coalition Brownfields Cleanup Fund.

(5) "Non-profit Organization" means as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999 except those non-profit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995.

(6) "Program" means the Oregon Coalition Brownfields Cleanup Fund Program

(7) "Project" means under this division those remedial and/or removal action activities identified in the Contract for which the Recipient may expend, obligate or commit funds to address cleanup of a brownfields.

(8) "Recipient" means an Applicant that has been awarded an OBCF grant or loan for a Project.

(9) "Remedial and/or Removal Actions" means those eligible cost activities listed in the Program Guidelines and Application Handbook.

(10) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(11) "USEPA" means the Environmental Protection Agency of the United States federal government.

Stat. Auth.: ORS 285A.190, 285A.192 & 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10

ADMINISTRATIVE RULES

123-140-0030

Eligible Applicants and Activities

(1) Eligible loan applicants are any public, private, or Non-Profit organization with control over or access to a brownfields site, except those entities which are potentially liable under CERCLA, or which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(2) Eligible grant applicants are any public or Non-Profit organization that owns a brownfields at the time the grant is awarded, except those entities which are potentially liable under CERCLA, which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(3) Eligible and ineligible activities are defined in CERCLA and in USEPA's Revolving Loan Fund Administrative Manual (October 2004), as well as subsequent revisions or editions of such guidelines.

Stat. Auth.: ORS 285A.190, 285A.192 & 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10

123-140-0050

Program Rights and Remedies

(1) The Department may exercise certain rights and remedies in the event the Recipient fails to comply with Contract provisions and, if allowed under the Contract, the Recipient fails to correct the deficiency within a reasonable time after the Recipient is notified of the deficiency. The circumstances that may warrant the Department's exercise of rights or remedies include, but are not limited to the following:

(a) None of the Project activities have begun within nine months after an OBCF award;

(b) Any third party agreement relating to the Project is not legally binding within six months of the OBCF award;

(c) Federal or State statutory or regulatory requirements have not been met;

(d) There is a significant deviation from the Contract;

(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; or

(f) A Recipient defaults on loan payments, which may otherwise be made from any source of revenue at the Recipient's disposal, including but not limited to General Fund revenues if the Recipient is a public entity borrower.

(2) The Department may exercise one or more of the following rights and remedies if the Recipient fails to comply with Contract provisions and the Recipient fails to correct the deficiency within a reasonable time after Recipient is notified of the deficiency:

(a) Bar a Recipient from applying for or receiving future Department assistance;

(b) Revoke an existing Department award;

(c) Withhold unexpended Department funds;

(d) Require immediate return of unexpended Department funds;

(e) Require repayment of expended Department funds;

(f) Withhold other state funds otherwise due to the Recipient, such as state-shared revenues; or,

(g) Other remedies that may be incorporated into the Contract.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the Contract.

(4) The Recipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the Contract. Nothing in this rule shall restrict the Department's right to enforce independently the terms of any contract or to recover any sums that may become due as a result of a breach of such Contract.

Stat. Auth.: ORS 285A.190, 285A.192 & 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10

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Rule Caption: The Operation of the Oregon Business Development Loan Fund have been revised due to legislation in the 2010 Special Session.

Adm. Order No.: OBDD 9-2010(Temp)

Filed with Sec. of State: 4-12-2010

Certified to be Effective: 4-12-10 thru 10-9-10

Notice Publication Date:

Rules Amended: 123-017-0008, 123-017-0010, 123-017-0015, 123-017-0025, 123-017-0030, 123-017-0035

Subject: These rules have been revised due to legislation in the 2010 Special Session through SB 1017. Loan approval authorization for the Director of the agency has increased from \$100,000 to \$250,000. Loan approval for loans over \$250,000 is delegated to the Finance Committee.

Fund financing for OBDF, not including the Oregon Targeted Development Account, may exceed 40 percent of the amount of the eligible project costs when two or more Financial Institutions have denied financing. Financing denial must meet certain eligibility requirements. Interest rates for loans approved shall be made at a fixed rate of not less than five percentage points over the prevailing prime rate. Terms for loans made to OBDF shall be for a maximum of 5 year, with maximum amortization of 20 years. The Finance Committee may extend the terms with additional terms and conditions.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-017-0008

Delegation

(1) Authority for the day-to-day operation of the fund, including approval of loans and projects, and amendments thereto, is delegated to the Finance Committee.

(2) The commission shall review and evaluate the operation of the fund with such frequency as it may from time to time determine, and may order any changes that it considers necessary or desirable.

(3) The commission shall retain final authority over policies and administrative procedures governing the operation of the fund.

(4) The Director or designee is authorized to execute any document reasonably necessary or convenient to close any loan approved by the Finance Committee or, in the case of loans of \$250,000 or less, by the Director.

(5) When applicable, the references to the Finance Committee shall include the Director, acting in regard to loans for business development projects of \$250,000 or less pursuant to ORS 285B.080(3).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.050 - 285B.098

Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-017-0010

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) "Applicant" means any county, municipality, person or any combination of counties, municipalities or persons applying for a loan from the Oregon Business Development Fund under ORS 285B.050 to 285B.098.

(2) "Business Development Project" means the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is used or is suitable for use by an economic enterprise and that will result in or will aid, promote or facilitate, development of one or more of the following activities:

(a) Manufacturing or other industrial production;

(b) Agricultural development or food processing;

(c) Aquacultural development or seafood processing;

(d) Development or improved utilization of natural resources;

(e) Convention facilities and trade centers;

(f) Destination facilities other than retail or food service businesses;

(g) Transportation or freight facilities; and

(h) Other activities that represent new technology or type of economic enterprise that the Finance Committee determines are needed to diversify the economic base of an area but not including:

(A) Construction of office buildings, including corporate headquarters; and

(B) Retail businesses, shopping centers or food service facilities;

(C) An office area or facility providing an internal support function to, and serving as an integral part of, a business development project shall not be considered an office building under paragraph (2)(h)(A) of this section.

(3) "Fund" or "OBDF" means the Oregon Business Development Fund as defined and set forth in ORS 285B.050–285B.098.

ADMINISTRATIVE RULES

(4) "Local Development Group" means any public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

(5) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(6) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.

(7) "Emerging Small Business" means any business as defined in ORS 200.005.

(8) "Convention center" means a facility for the holding of meetings, conferences, conventions, trade shows or similar gatherings. Sleeping accommodations may be included but at least one-third of the OBDF proceeds must be used for public meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee, in its sole discretion, may approve financing for projects consisting solely or primarily of sleeping accommodations if the applicant sufficiently demonstrates that existing sleeping accommodations are inadequate for existing facility meeting space.

(9) "Destination facility" means a project which has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible.

(10) "County" means any county or federally recognized Oregon Indian tribe.

Stat. Auth.: ORS 285A.110
Stats. Implemented: ORS 285B.050 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-017-0015

Eligibility

(1) Eligible projects are business development projects as defined in OAR 123-017-0010(2). If the department is unable to obtain a sufficient number of approvable applications to meet the requirements of ORS 285B.059(5), it may, notwithstanding the limitations imposed by 285B.050(2)(g)(B), make loans to service and retail businesses operated by emerging small businesses which are located in or draw their workforces from within distressed areas as determined by the department, when such projects provide compelling economic development benefits. The amount of loans the department may make to service and retail businesses under (1) of this section shall be limited to the amount calculated under the method described in 285B.059(5).

(2) Eligible purposes are the financing of land, buildings, fixture, equipment and machinery, research and development, and the provision of working capital.

(3) Eligible applicants are defined in OAR 123-017-0010(1).

(4) The relocation of a facility from one labor market area to another, if not accompanied by an expansion of the applicant's business or employment, is an eligible activity if:

(a) The relocation is caused by forces beyond the control of the applicant; or

(b) The relocation is necessary for the continued operation of the business; or

(c) There is no resulting loss of employment at the former site of the business.

(5) Relending of funds shall not be an eligible activity, except that the funds may be used for the local injection share of an SBA 503 or 504 Certified Development Company transaction.

(6) In cases where an otherwise eligible company or project has an insignificant (less than 25 percent) ineligible portion, the entire project may be determined eligible for a loan from the fund.

(7) Other than as specified in section (6) and (10) of this rule, Fund financing will be limited to 40 percent of the amount of the eligible costs, except that Fund financing may equal up to 50 percent of eligible costs when the application is submitted through a Financial Institution.

(8) Tourist facilities shall not be eligible unless:

(a) The project can be qualified as a convention center; or

(b) The project can be qualified as a destination attraction with significant regional economic impact.

(9) Refinancing of existing debt, including existing trade payables and delinquent taxes, shall not be eligible unless the applicant demonstrates to the satisfaction of the Finance Committee that:

(a) The applicant contributes significantly to a target population or to a geographical area targeted by the Oregon Business Development Fund;

(b) The applicant requires refinancing to remain viable. Assessment of viability will be made at the sole discretion of the Finance Committee;

(c) Lenders agree to extend due dates, provide additional financing or provide other favorable terms to the applicant; and

(d) The applicant meets all other requirements set forth in statute and administrative rule, including demonstrating to the satisfaction of the Finance Committee that the project is feasible and a reasonable risk, has a reasonable prospect of repayment and can provide good and sufficient collateral.

(10) Except for the Oregon Targeted Development Account, Fund financing may exceed 40 percent of the amount of the eligible project costs and/or may be approved without a commitment from a commercial or private lender, or a local development group, to participate in the financing of the project, if

(a) Two or more Financial Institutions have denied a financing request for the project by the borrower. Such denied financing request must:

(A) Be for a loan for an eligible Fund loan purpose; and

(B) Be evidenced by a written denial from the Financial Institution specifying the reason(s) for the denial. Denial for reasons such as an incomplete application, failure to provide requested information, or the requested loan is for a purpose for which or on terms under which the Financial Institution does not make loans is not acceptable as a denial of financing; and

(b) The applicant certifies that there is no other available financing for the project with documentation as required by the Finance Committee.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059, 285B.080(3) & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-017-0025

Application Procedure

(1) It is the policy of the Finance Committee to strive for and encourage, throughout the application process:

(a) Maximum participation by financial institutions and local development groups; and

(b) A minimum administrative burden on the applicant and on the local government.

(2) Any applicant may submit an application to the department on a form approved by the department, together with an application fee.

(3) If the amount of the loan being sought from the Fund is \$250,000 or less, the Director may in the Director's sole discretion approve or deny the loan request or forward it to the Finance Committee for the Committee's consideration.

(4) If the amount of the loan being sought from the fund exceeds \$250,000 the department shall make a recommendation to the Finance Committee, which may in its sole discretion approve or deny the loan request.

(5) If a loan request is approved, the department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee or the Director may have conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the Director for loans of \$250,000 or less.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.053 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

ADMINISTRATIVE RULES

123-017-0030

Loan Conditions

(1) The Director (for loan requests of \$250,000 or less) or the Finance Committee may approve a loan request if it finds that:

(a) Fund participation in any financing shall not exceed 40 percent of the total amount of the eligible project costs, except that Fund financing may be up to 50 percent when an application is submitted through a Financial institution or Fund financing may exceed 40 percent when two or more Financial Institutions have denied financing as outlined in OAR 123-017-0015 (10).

(b) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, and the loan has reasonable prospect of repayment.

(c) The applicant can provide good and sufficient collateral for the loan, as determined by the Commission. The commission's security interest may be subordinated to the security interest of other lenders participating in the project. The security interest of loans from the Oregon Targeted Development Account will not be subordinated to the security interest of other lenders, unless the Finance Committee or the Director finds there is an abundance of collateral and/or company or guarantor financial strength. The Business Development Commission may make loans in distressed areas, as defined by the department, without regard to the requirements for security and collateral under ORS 285B.059 and 285B.062 that are otherwise applicable. Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(d) Monies in the Oregon Business Development Fund are or will be available for the proposed business development project.

(e) There is a need for the proposed business development project.

(f) The applicant's financial resources are adequate to ensure success of the project.

(g) The applicant has not received or entered into a contract or contracts exceeding \$700,000 with the commission, under authority of ORS 285B.050-285B.098, for the previous 365 days.

(2) The Finance Committee may, in its sole discretion, permit the assumption of an outstanding Oregon Business Development Fund Loan, if the assuming obligor satisfies the Finance Committee or the Director as to its willingness and ability to perform all obligations of the original borrower related to the loan, including but not limited to the obligation to repay the loan in accordance with its terms, and if the State's collateral position is not diminished. Oregon Business Development Fund loans are not, however, necessarily or automatically assumable. A complete application, application fee and supporting documentation are required to initiate review of the request.

(3) The applicant agrees to abide by all laws and regulations applicable to the applicant's project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. 5-25-83; EDD 1-1984, f. & cert. 1-5-84; EDD 10-1988, f. & cert. 3-18-88; EDD 37-1988, f. & cert. 12-15-88; EDD 9-1989(Temp), f. & cert. 11-3-89; EDD 5-1990, f. & cert. 3-5-90; EDD 8-1996(Temp), f. & cert. 8-13-96; EDD 4-1997, f. & cert. 3-25-97; EDD 9-1997(Temp), f. & cert. 10-7-97; EDD 8-1998, f. & cert. 5-22-98; EDD 11-1999, f. & cert. 10-11-99; EDD 6-2001, f. & cert. 10-9-01; EDD 5-2005, f. & cert. 5-11-05; EDD 6-2007(Temp), f. & cert. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. 8-1-08; EDD 22-2009, f. 11-30-09, cert. 12-1-09; OBDD 9-2010(Temp), f. & cert. 4-12-10 thru 10-9-10

123-017-0035

Loan Agreement

If the Finance Committee approves the business development project, the Finance Committee or the Director, on behalf of the state, and the borrower may enter into a loan contract of not more than \$700,000, secured by good and sufficient collateral (except as noted in OAR 123-017-0030(1)(c)), as determined by the Finance Committee, that shall set forth, among other matters:

(1) A plan for repayment by the borrower to the Oregon Business Development Fund moneys borrowed from the Fund used for the business development project with interest charged on those moneys at the fixed rate of one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable maturity. Loans made from the Oregon Targeted Development Account shall be made at a fixed interest rate of four percentage points less than the prevailing prime rate. Loans made under the conditions of OAR 123-0017-0015 (10) shall be made at a fixed interest rate of not less than five percentage points over the prevailing prime rate. The rate shall not be less than four percent. For the purposes of this section, the prevailing interest rate shall be the weekly average interest rate as set forth in the most recent Federal Reserve

Statistical Release H.15(519) that the department has received at the time the loan is approved. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for the business development project and interest thereon no later than one year after the date of the loan contract or at such other time as the Finance Committee may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the Finance Committee or the Director;

(c) Shall provide for such evidence of debt assurance of, and security for, repayment of the loan as is considered necessary by the Finance Committee;

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less. The term of the Fund loan will normally be matched to, and not exceed twice that of the commercial or private lender participating in the project. Loans from the Oregon Targeted Development Account shall be for a maximum term of 5 years, with a maximum amortization of 15 years. The term of the loan from the Oregon Targeted Development Account may be extended by the Finance Committee, with any additional terms and conditions, including interest rate, that it may determine. The payment schedule shall include repayment of interest that accrues during any period of delay in repayment authorized by subsection (a) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest. Loans made under the terms of OAR 123-017-0015(10) shall be for a maximum term of 5 years, with a maximum amortization of 20 years. The term of loans made as a result of OAR 123-017-0015(10) may be extended by the Finance Committee, with any additional terms and conditions, including interest rate, that it may determine.

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the department for bringing the loan current have not been made, the department may declare the loan in default, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection;

(f) May allow for other forms of payment on loans than scheduled principal and interest payments, as determined by the Finance Committee, or Director in the case of loans of \$250,000 or less.

(2) Provisions satisfactory to the department for field engineering and inspection, the department to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the Oregon Business Development Fund for use in the business development project.

(4) Such further provisions as the Finance Committee considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(5) That the borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the leased premises and payable during the term of the lease;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Finance Committee. Such insurance shall include but shall not be limited to: fire and hazard insurance, liability insurance and flood insurance (if applicable); and

(d) Out-of-pocket costs associated with the loan closing which may include but are not limited to filing and recording fees, title insurance and appraisals, and attorney fees.

(6) That the borrower will provide to the department on an annual basis, within 120 days of the end of its fiscal year, the same type of financial statements as required by the participating bank. The Finance Committee or the department may require additional financial information.

(7) The Finance Committee, or Director for loans under \$250,000, may require an assignment of life insurance on active principals in borrow-

(8) The Department, at its sole discretion, may require the execution of a Commitment Letter and receipt of a non-refundable Commitment Fee to secure resources necessary to fund the loan. The Commitment Fee will be applied at closing to the loan fee. If the loan does not close, the Commitment Fee will not be refunded.

ADMINISTRATIVE RULES

(9) In the case of loans of more than \$100,000 that are funded by proceeds from the Oregon Lottery, that the borrower shall make a good faith effort to hire and retain low-income individuals who have received job training assistance from publicly funded job training providers and enter into a first-source hiring agreement with a publicly funded job training provider.

(10) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, adequate access for handicapped persons must be provided. This provision applies only to firms that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(11) If a project involves building construction, expansion, rehabilitation or modification, a loan from the fund shall be permanent and not interim financing.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.062 & 285B.092
Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

Rule Caption: These rules revise the Entrepreneurial Development Loan Fund due to legislation in the 2010 Special Session.

Adm. Order No.: OBDD 10-2010(Temp)

Filed with Sec. of State: 4-12-2010

Certified to be Effective: 4-12-10 thru 10-9-10

Notice Publication Date:

Rules Amended: 123-019-0000, 123-019-0010, 123-019-0020, 123-019-0030, 123-019-0040, 123-019-0050, 123-019-0060, 123-019-0070, 123-019-0080, 123-019-0090, 123-019-0100

Subject: These rules are revised to comply with SB 1017 resulting from the 2010 Special Legislative Session. Eligibility requirements calling for total revenues in the 12 calendar months immediately preceding the date of application to the Fund have been increased to \$500,000 or less. The requirement that applicants must not have been operating for more than 36 months as of the date of the application has been eliminated. Language has been changed to state that the applicant will provide good and sufficient collateral for the loan and the collateral coverage ratio should be at least 1:1.

Some definitions have been removed and others updated. Statutes references have been updated to reflect current law.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-019-0000

Purpose

The purpose of these rules is to provide procedures, standards and criteria for the making of loans from the Oregon Entrepreneurial Development Loan Fund for applications received by the Business Development Department.

Stat. Auth.: Ch. 765, OL 1993
Stats. Implemented: ORS 285B.740 - 285B.758, Ch. 765, OL 1993
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0010

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) "Applicant" means any individual, association of individuals, joint venture, partnership or corporation, person or any combination of persons applying for a loan from the Oregon Entrepreneurial Development Fund.

(2) "Certified Entity" means any entity certified by the Director of the Business Development Department under OAR 123-019-0100.

(3) "Equity" means cash, real and personal property owned or controlled by an applicant and committed to use in the project for which a loan from the fund is being sought. Property other than cash will be conservatively valued by the department.

(4) "Fund" or "EDLF" means the Oregon Entrepreneurial Development Fund as defined and set forth in Section 13, Chapter 688, Oregon Laws 1991.

(5) "Loan Committee" means any loan committee selected by the Director from the Finance Committee or otherwise appointed by the Director. The Loan Committee shall consist of at least three members, and the Director shall select one of its members to be chair. The Loan Committee shall meet at the call of the chair. Two members of the Loan Committee shall constitute a quorum to transact the business of the Loan Committee.

(6) "Project" means the acquisition, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is or will be used or is suitable for use by an economic enterprise, but not including:

(a) A loan for the construction of residential housing;

(b) A loan for the purchase of property that will not be used for the business operation of the applicant;

(c) A loan for the refinancing of an existing loan.

(7) "Severely Disabled Individuals" means individuals certified as severely disabled by the Vocational Rehabilitation Division of the Department of Human Resources or the Commission for the Blind.

(8) "Small Business Development Center" or "SBDC" means any small business development center described in the Small Business Training Assistance Act of 1983.

(9) "Small Business Management Program" means any of the following:

(a) A Going Into Business class;

(b) A Greenhouse program;

(c) A Small Business Management Program;

(d) Any series of classes/seminars/workshops/counseling sessions similar to a Going Into Business, Greenhouse or Small Business Management Program;

(e) Any series of classes/seminars/workshops/counseling sessions that meet the approval of a Small Business Development Center or Certified Entity Director.

Stat. Auth.: ORS 285.035
Stats. Implemented: Ch. 688, OL 1991 & Ch. 765, OL 1993
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 8-1995, f. & cert. ef. 10-26-95; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0020

Eligibility

(1) To be eligible for a loan from the fund, each applicant must meet at least one of the criteria in this section:

(a) The applicant must have had total revenues of \$500,000 or less in the 12 calendar months immediately preceding the date application is made to the Fund;

(b) At least 50 percent of the applicant business or proposed business must be owned by an individual or individuals classified as Severely Disabled.

(2) The applicant may not be effectively owned or controlled by another business entity or other person that, either by itself or when combined with the applicant, is not eligible for a loan under this rule. Ownership of 50 percent or more of the applicant would constitute, or a subsidiary which sells a majority of its goods or services to the parent may constitute, effective ownership or control. The Director may, however, make this determination based on the facts of an individual case.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.740 - 285B.758
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0030

Application Procedure

(1) Each Applicant shall certify to SBDC or other Certified Entity and the Department that it is an eligible Applicant for the Fund under OAR 123-019-0020(1) and shall specify which of the criteria outlined in OAR 123-019-0020(1) it meets.

(2) The SBDC or Certified Entity may enroll the Applicant in an appropriate Small Business Management Program. Each Applicant shall have completed a Small Business Management Program or shall be enrolled in a Small business management program operated by an SBDC or Certified Entity prior to Department action on such Applicant's loan

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request. Each Applicant shall certify to the Department they are enrolled in a Small Business Management Program.

(3) Each Applicant must complete a business plan prior to applying for a loan from the Fund. Such business plan shall use the standard format set forth in Your Business Plan by Dennis J. Sargent or other such format as may be acceptable to the SBDC or Certified Entity and the Department.

(4) The business plan must be reviewed by the Director of the SBDC or Certified Entity, or their designee, where the Applicant is enrolled in a Small Business Management Program or where the Applicant is receiving assistance with the preparation of the business plan. Review of the business plan by the SBDC or Certified Entity does not imply any judgment by the SBDC or Certified Entity as to the accuracy or validity of the plan.

(5) Upon completion and review of the business plan as provided in sections (3) and (4) of this rule, the business plan, together with a credit application on the form provided by the Department, shall be forwarded to the Department for consideration. The credit application shall contain a detailed list of the proposed uses of the proceeds of the loan being sought from the Fund.

(6) The Department may require such additional information from an Applicant as the Department determines is necessary for a thorough review and analysis of the application.

(7) Upon completion of its review the Department shall forward the application to the Director, with a recommendation for action. The Department may submit the application to the Loan Committee for its recommendation. The Director may:

- (a) Approve the application; or
- (b) Deny the application; or
- (c) Return the application to the Applicant for further information.

(8) If a loan request is approved, the department shall prepare such documents as are necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Director may have conditioned his or her approval of the loan.

(9) A Borrower may apply for and the Director may approve subsequent loans from the Fund. No borrower may receive more than an aggregate amount of \$40,000 in loan proceeds from the fund.

(10) The Department may notify the SBDC or Certified Entity if any Borrower with which the SBDC or Certified Entity has worked becomes delinquent in its payment or otherwise acts in such a manner as to jeopardize the repayment of the loan.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.240 - 285B.758, Ch. 688, OL 1991, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 8-1995, f. & cert. ef. 10-26-95; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0040

Loan Conditions

The Director may approve a loan request if the Director finds that:

(1) The applicant and the project are eligible for a loan from the fund according to the criteria for a loan from the fund according to the criteria set forth in OAR 123-019-0020 and 123-019-0030.

(2) The applicant has available, and has irrevocably committed to the project, Equity funds in the form of cash or property in an amount equal to or greater than 20 percent of the amount of the loan from the fund.

(3) The proposed project is feasible and a reasonable risk from practical and economic standpoints, and the loan has a reasonable prospect of repayment from cash flow and collateral.

(4) The applicant will provide good and sufficient collateral for the loan. The collateral coverage ratio for the loan should be at least 1:1 ratio applying the following advance rates:

(a) Real property will generally be valued for collateral purposes at 70 percent of the tax assessed value or 80 percent of appraised value;

(b) New construction will generally be valued for collateral purposes at 80 percent of cost;

(c) Existing machinery will generally be valued for collateral purposes at 40 percent of depreciated book value;

(d) Newly acquired machinery will generally be valued for collateral purposes at 80 percent of acquisition cost.

(5) Applicants should be aware that the collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value. The department may, in its sole discretion, assign a value of more or less than the above percentages.

(6) Monies in the fund are or will be available for the proposed project.

(7) The applicant's financial resources and management capability appear adequate to assure success of the project.

(8) The initial amount borrowed from the fund by any borrower does not exceed \$25,000 and the total amount borrowed does not exceed \$40,000.

(9) The Director may, in his or her sole discretion, permit the assumption of an outstanding EDLF loan, if the assuming obligor satisfies the Director as to its willingness and ability to service the loan, and if the State's collateral position is not diminished. The Director may require the obligor to meet all eligibility requirements set out in OAR 123-019-0020 and 123-019-0030. EDLF loans are not necessarily or automatically assumable.

(10) The applicant agrees to abide by all laws and regulations applicable to the applicant's project and will receive all applicable federal, state and local permits and licenses before the disbursement of any proceeds from the fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0050

Loan Agreement

If the Director approves the loan, the Director, on behalf of the state, and the borrower may enter into a loan contract of not more than \$40,000, secured by Collateral, which shall set forth, among other matters:

(1) A plan for repayment by the Borrower to the Fund of monies borrowed from the Fund used for the Project with interest charged on those monies at a fixed rate of two percentage points (2%) more than the prevailing bank prime interest rate. For the purposes of this section, the prevailing bank prime interest rate shall be the rate set forth in the most recent Federal Reserve Statistical Release H.15(519) which the Department has received at the time the loan is approved. Notwithstanding the foregoing, the interest shall not exceed 18 percent per annum. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the Applicant of monies used for the Project and interest thereon no later than six months after the date of the loan contract or at such other time as the Director may provide;

(b) May provide for reasonable extension of the time for making any repayment, not to exceed six months, in emergency or hardship circumstances if approved by the Director.

(c) Shall provide for such evidence of debt, assurance of and security for, repayment of the loan as is considered necessary by the Director;

(d) Shall set forth a schedule of payments and the period of the loan which shall not exceed the usable life of the Project or five years from the date of the contract, whichever is less. The payment schedule shall include payment of interest which accrues during any period of delay in repayment authorized by subsection (b) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department shall declare the loan in default, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection. The Department shall inform the borrower and the Director of each default and action taken in connection therewith. The Director may in his or her sole discretion waive or delay such assignment.

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the Project;

(3) That the liability of the state under the contract is contingent upon the availability of monies in the Fund for use in the Project;

(4) Such further provisions as the Director considers necessary to insure expenditure of the funds for the purposes set forth in the approved application;

(5) That the Department may institute appropriate action or suit to prevent use of the facilities of a Project financed by the Fund if the Borrower is delinquent in the repayment of any monies due the Fund;

(6) That the Borrower is responsible for payment of:

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(a) All of the expenses of the operation and maintenance of the Project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the business or the Project;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Department. Such insurance shall include but shall not be limited to: Fire and hazard insurance, liability insurance, worker's compensation and unemployment insurance, flood insurance; and

(d) All out-of-pocket costs associated with the loan closing including but not limited to filing recording fees, title insurance and appraisals.

(7) That the Borrower will provide to the Department on a quarterly basis, within 45 days of the end of each fiscal quarter, financial statements prepared in accordance with generally accepted accounting principles. In addition, copies of federal tax returns may be required to be submitted annually. The Department may require additional financial information or more frequent financial statements;

(8) In the case of a loan made to an association, corporation or partnership, each partner and each owner of 20 percent or more of the corporation or association will provide a personal guaranty for the payment of all interest and repayment of principal amount of the loan unless the Director in his or her sole discretion, expressly waives such requirement;

(9) The Department may, in its sole discretion, disburse the proceeds of an approved loan in such amounts and at such times as the Department feels necessary to ensure that loan proceeds are used for the stated purposes and to preserve the integrity of the Fund. If the Department in its sole discretion determines that the financial condition of the Borrower has deteriorated since the eligibility and application process was commenced, the Department shall be under no obligation to disburse any loan fund.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0060

Appeals, Monitoring, Amendments and Modifications

(1) If the Director denies a loan request, the Director shall inform the Applicant in writing of the reasons for such denial.

(2) A denied Applicant has the right to appeal in writing the Director's denial, whereupon the Department shall schedule an appeal hearing in front of the Director, the Director's designee or the Loan Committee, as the Department may decide. The Applicant may appear in person at the appeal hearing, and may introduce whatever books, documents and data it regards as necessary to support the appeal.

(3) An Applicant whose appeal has been denied must submit a new credit application to be eligible for consideration of a new loan request. This requirement may be waived by the Director, in his or her sole discretion.

(4) All loans shall be monitored by, and all loan repayments shall be made to, the Department or its assignee.

(5) It is the responsibility of the borrower to ensure that its payment arrives in the Department by the due date.

(6) Any request for modification or amendment to any loan condition shall be made in writing to the Department and approved by the Director. The Director may refer a request for modification or amendment to the Loan Committee for recommendation.

(7) If the Director consents to any requested modification or amendment, the borrower shall be responsible for all costs of modifying or amending any loan documents, filings, recordings or financing statements.

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS 285A.075, 285B.740 - 285B.758, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0070

Confidential Records

(1) Upon written request and within a reasonable time, the Director or his designee shall provide nonexempt loan program records for inspection in accordance with ORS Chapter 192.

(2) The person requesting inspection of the records may be charged in advance the Department's cost for locating, compiling, copying, and mailing the records. Such costs shall include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies, and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department in its sole discretion may determine.

(3) Except as otherwise provided in ORS Chapter 192, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports obtained in confidence from creditors, employers, customers, suppliers, and others which bear on the Applicant's character, finances, management ability, and reliability and which were obtained from persons or firms not required by law to submit them;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for Applicants, or analysis of such data;

(c) Interdepartmental advisory memoranda prior to a loan decision;

(d) Formulas, plans, designs and related information which constitute trade secrets under ORS Chapter 192;

(e) Personal financial statements;

(f) Financial statements of Applicants;

(g) Customer lists;

(h) Information of an Applicant pertaining to litigation to which the Applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the Applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded and nothing in this section shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to an Applicant's plan to address specific markets and Applicant's strategy regarding specific competitors.

Stat. Auth.: ORS 192.410-192.505, ORS 285A.075

Stats. Implemented: ORS 192.410 - 192.505, 285A.075, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0080

Restrictions

(1) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, access for handicapped persons must be provided in accordance with ORS 447.210 to 447.280. This provision applies only to firms which deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(2) Borrowers receiving assistance from the EDLF are required to make a good faith effort to hire low income people who are trained by publicly-funded job training providers. Borrowers may also be required to enter into a First Source Hiring Agreement as defined in OAR 123-070-0300 through 123-070-0370.

Stat. Auth.: ORS 285A.075, 447.210-447.280

Stats. Implemented: ORS 285A.075, 447.210 - 447.280, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0090

Payment of Monies for Project

(1) The Director shall be the sole judge of the suitability and eligibility of a Project for financing from the Fund, and approval of such financing shall be in the sole discretion of the Director.

(2) If the Director approves a loan for a Project, the Department shall pay monies for the Project from the Fund, in accordance with the terms of the loan contract as prescribed by the Director.

(3) If the Director determines that a loan should be made, the Director shall also determine the amount of the loan and authorize the disbursement of the funds. The Director may authorize the Department to disburse the funds and execute such documents as may be necessary to conclude the transaction.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075, 285B.740 - 285B.758, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

123-019-0100

Certification of Entities for Business Plan Review

(1) In addition to SBDCs, the Director may certify an entity for review of business plans, if the Director finds in his or her sole discretion that the entity possesses:

(a) Experience in providing financial counseling to businesses;

(b) Experience in operating a micro lending program.

(2) The Director may establish time periods for certification and review in his or her sole discretion.

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Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758
Stats. Implemented: ORS 285B.740 - 285B.758, Ch. 688, OL 1991 & Ch. 765, OL 1993
Hist.: EDD 8-1995, f. & cert. ef. 10-26-95; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10

Oregon Criminal Justice Commission
Chapter 213

Rule Caption: Amends Oregon Sentencing Guidelines to implement SB 570 (2009).

Adm. Order No.: CJC 1-2010(Temp)

Filed with Sec. of State: 4-15-2010

Certified to be Effective: 4-15-10 thru 10-11-10

Notice Publication Date:

Rules Amended: 213-008-0002

Subject: Under ORS 137.667(2), the Oregon Criminal Justice Commission (the Commission) may adopt changes to the Oregon Sentencing Guidelines. SB 570 (2009) was effective January 1, 2010. That bill contains a directive to the Commission, requiring the Commission to “adopt rules that establish disproportionate impact as an aggravating factor that a court may consider as a substantial and compelling reason to impose an upward departure from a presumptive sentence under the rules of the commission.” Section 7, SB 570 (2009). The bill also defines the term “disproportionate impact.” Id. These temporary rules are needed to implement this legislative directive.

Rules Coordinator: Craig Prins—(503) 378-4830

213-008-0002

Departure Factors

(1) Subject to the provisions of sections (2) and (3) of this rule, the following nonexclusive list of mitigating and aggravating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(a) Mitigating factors:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The defendant acted under duress or compulsion (not sufficient as a complete defense).

(C) The defendant’s mental capacity was diminished (excluding diminished capacity due to voluntary drug or alcohol abuse).

(D) The offense was principally accomplished by another and the defendant exhibited extreme caution or concern for the victim.

(E) The offender played a minor or passive role in the crime.

(F) The offender cooperated with the state with respect to the current crime of conviction or any other criminal conduct by the offender or other person. The offender’s refusal to cooperate with the state shall not be considered an aggravating factor.

(G) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(H) The offender’s criminal history indicates that the offender lived conviction-free within the community for a significant period of time preceding his or her current crime of conviction.

(I) The offender is amenable to treatment and an appropriate treatment program is available to which the offender can be admitted within a reasonable period of time; the treatment program is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and the probation sentence will serve community safety interests by promoting offender reformation.

(b) Aggravating factors:

(A) Deliberate cruelty to victim.

(B) The offender knew or had reason to know of the victim’s particular vulnerability, such as the extreme youth, age, disability or ill health of victim, which increased the harm or threat of harm caused by the criminal conduct.

(C) Threat of or actual violence toward a witness or victim.

(D) Persistent involvement in similar offenses or repetitive assaults. This factor may be cited when consecutive sentences are imposed only if the persistent involvement in similar offenses or repetitive assaults is unrelated to the current offense.

(E) Use of a weapon in the commission of the offense.

(F) The offense involved a violation of public trust or professional responsibility.

(G) The offense involved multiple victims or incidents. This factor may not be cited when it is captured in a consecutive sentence.

(H) The crime was part of an organized criminal operation.

(I) The offense resulted in a permanent injury to the victim.

(J) The degree of harm or loss attributed to the current crime of conviction was significantly greater than typical for such an offense.

(K) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim.

(L) Disproportionate impact (for Theft I under ORS 164.055, and Aggravated Theft I under ORS 164.057).

(2) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the Crime Seriousness Scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(3) Any aspect of the current crime of conviction which serves as a necessary element of a statutory mandatory sentence may not be used as an aggravating factor if that aspect is also used to impose the mandatory sentence.

(4) As used in this rule, “disproportionate impact” means:

(a) The offender caused damage to property during the commission of the theft and the cost to restore the damaged property to the condition the property was in immediately before the theft is more than three times the value of the property that was the subject of the theft; or

(b) The theft of the property creates a hazard to public health or safety or the environment.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669 & SB 570 (2009)

Hist.: SSG 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSG 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSG 2-1989, f. 10-17-89, cert. ef. 11-1-89; SSG 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-008-0002; CJC 1-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10

Oregon Department of Education
Chapter 581

Rule Caption: Changes list of health care professionals who may train school personnel on administration of medication.

Adm. Order No.: ODE 4-2010

Filed with Sec. of State: 3-18-2010

Certified to be Effective: 3-18-10

Notice Publication Date: 1-1-2010

Rules Amended: 581-021-0037

Subject: The rule currently only allows school nurses, physicians and pharmacists to train school personnel on the administration of medication to students. The amendments allows all licensed nurses to provide the training.

Rules Coordinator: Diane Roth—(503) 947-5791

581-021-0037

Administration of Prescription and Nonprescription Medication to Students

(1) As used in this rule, definitions of terms shall be as follows:

(a) “Age appropriate guidelines” means the student must be able to demonstrate the ability, developmentally and behaviorally, to self medicate with permission from a parent or guardian, building administrator and in the case of a prescription medication a physician.

(b) “Designated staff” means the school staff person who is designated by the building level school administrator, either the principal or head teacher, to administer nonprescription or prescription medication pursuant to district policy and procedure;

(c)(A) “Instruction from physician, physician assistant or nurse practitioner” means a written instruction for the administration of a prescription medication to a student which shall include:

(i) Name of student;

(ii) Name of medication;

(iii) Dosage;

(iv) Route;

(v) Frequency of administration; and

(vi) Other special instruction, if any.

(B) The prescription medication label prepared by a pharmacist at the direction of a physician, physician assistant or nurse practitioner will meet the requirements for a written instruction if it contains the information listed in (i) through (vi) of this paragraph;

(d) “Instruction from the student’s parent or guardian” means a written instruction for the administration of a nonprescription medication to a student which shall include:

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- (A) Name of student;
- (B) Name of medication;
- (C) Dosage;
- (D) Route;
- (E) Frequency of administration;
- (F) Other special instructions; and
- (G) Signature of parent or guardian.

(e) "Nonprescription medication" means only commercially prepared, nonalcohol-based medication to be taken at school that is necessary for the child to remain in school. This shall be limited to eyes, nose and cough drops, cough suppressants, analgesics, decongestants, antihistamines, topical antibiotics, anti-inflammatories and antacids that do not require written or oral instructions from a physician. Nonprescription medication does not include dietary food supplements;

(f) "Physician" means:

(A) A doctor of medicine or osteopathy or a physician assistant licensed to practice by the Board of Medical Examiners for the State of Oregon;

(B) A nurse practitioner with prescriptive authority licensed by the Oregon State Board of Nursing;

(C) A dentist licensed by the Board of Dentistry for the State of Oregon;

(D) An optometrist licensed by the Board of Optometry for the State of Oregon; or

(E) A naturopathic physician licensed by the Board of Naturopathy for the State of Oregon;

(g) "Prescription medication" means any noninjectable drug, chemical compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by a student under the written direction of a physician. Prescription medication does not include dietary food supplements;

(h) "Qualified trainer" means a person who is familiar with the delivery of health services in a school setting and who is:

(A) A Registered Nurse licensed by the Oregon State Board of Nursing;

(B) A physician; or

(C) A pharmacist licensed by the State Board of Pharmacy for the State of Oregon.

(i) "Student self-medication" means students must be able to administer medication to him or herself without requiring a trained school staff member to assist in the administration of the medication;

(j) "Training" means yearly instruction provided by qualified trainers to designated school staff on the administration of prescription and nonprescription medications, based on requirements set out in guidelines approved by the Department of Education, including discussion of applicable district policies, procedures and materials;

(2) Each school district shall adopt policies and procedures that provide for:

(a) The administration of prescription and nonprescription medication to students by trained school personnel; and

(b) Student self-medication including age appropriate guidelines.

(3) Policies and procedures shall:

(a) Include a process to designate, train and supervise appropriate staff;

(b) Permit designated staff to administer prescription medication under the written permission from the student's parent or guardian and instruction from a physician, physician assistant or nurse practitioner if, because of its prescribed frequency, the medication must be given during school hours;

(c) Permit designated staff to administer nonprescription medication under the written permission and instruction from the student's parent or guardian; and

(d) Permit student self-medication.

(4) Policies and procedures related to administration of prescription and nonprescription medication and student self-medication must discuss:

(a) Safe storage, handling, monitoring supply and disposing of medications;

(b) Record keeping and reporting of medication administration, including errors in administration;

(c) Emergency medical response for life threatening side effects and allergic reactions; and

(d) Student confidentiality.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.870

Hist.: ODE 3-1998(Temp), f. & cert. ef. 2-27-98 thru 8-25-98; ODE 6-1998, f. & cert. ef. 4-23-98; ODE 10-1999, f. & cert. ef. 2-12-99; ODE 8-2005, f. & cert. ef. 3-23-05; ODE 17-2009, f. & cert. ef. 12-10-09; ODE 4-2010, f. & cert. ef. 3-18-10

Rule Caption: Specifies requirements for development of Oregon Statewide Assessment for public school students.

Adm. Order No.: ODE 5-2010

Filed with Sec. of State: 3-18-2010

Certified to be Effective: 3-18-10

Notice Publication Date: 10-1-2009

Rules Adopted: 581-022-0620

Subject: State law requires the Oregon Department of Education to develop a statewide assessment system for use by all public school students. The rule specifies:

(1) Which assessments are considered to be part of this assessment system;

(2) Directs the department to translate an assessment into other languages;

(3) Directs the department to maintain advisory groups for purposes of assessment development.

Rules Coordinator: Diane Roth—(503) 947-5791

581-022-0620

Test Development

(1) Definitions. As used in this rule:

(a) "Assessment item" means test items, stimuli, graphics, reading passages, writing prompts, answer keys, and scoring rubrics developed for use on an Oregon Statewide Assessment.

(b) "Oregon statewide assessment" means:

(A) The English Language Proficiency Assessment (ELPA);

(B) The Oregon Assessment of Knowledge and Skills (OAKS) in:

(i) Reading/Literature;

(ii) Mathematics;

(iii) Science;

(iv) Social Sciences which may include history, geography, economics and civics;

(v) Writing Performance; and

(C) The OAKS Extended Assessment in:

(i) Reading/Literature;

(ii) Mathematics;

(iii) Science;

(iv) Writing Performance.

(2) ODE shall provide translated OAKS assessments as practicable for languages which are the language of origin for at least 9 percent of Oregon's student population for grades K-12 within 3 years after the school year in which the language first exceeds the 9 percent threshold.

(3) ODE shall maintain advisory groups to advise ODE on the development of assessment items and policies relating to the Oregon statewide assessment system. These advisory groups shall include Oregon educators and other persons. At a minimum, ODE shall maintain the following advisory groups:

(a) A National Technical Assessment Committee consisting of state and national experts to provide recommendations regarding:

(A) Test design for the Oregon statewide assessments;

(B) Best practices in assessment and accountability;

(C) National trends in assessment and accountability; and

(D) Federal compliance with assessment and accountability laws, rules, and regulations.

(b) A separate Content and Assessment Panel for each Oregon statewide assessment. Each Content and Assessment Panel consists of educators and other persons from throughout the state and provides recommendations regarding:

(A) The quality, appropriateness, and accuracy of assessment items; and

(B) The alignment of assessment items to the academic content standards adopted by the State Board of Education.

(c) A Sensitivity Panel consisting of educators and other persons representing diverse perspectives from throughout the state to:

(A) Develop sensitivity criteria to ensure that assessment items are free of bias and stereotyping and are accessible to all Oregon students; and

(B) Review OAKS and ELPA assessment items for compliance with the sensitivity criteria developed under Section 3(e)(A) of this rule.

Stat. Auth.: ORS 326.051 & 329.075

Stats. Implemented: ORS 329.045, 329.075 & 329.485

Hist.: ODE 5-2010, f. & cert. ef. 3-18-10

ADMINISTRATIVE RULES

Oregon Health Licensing Agency Chapter 331

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

Adm. Order No.: HLA 3-2010

Filed with Sec. of State: 3-31-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 2-1-2010

Rules Adopted: 331-565-0050, 331-565-0095

Rules Amended: 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, 331-565-0080, 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

Rules Repealed: 331-520-0060, 331-560-0050, 331-565-0075

Subject: General amendments to Oregon Administrative Rules, chapter 331, division 505–590 to align current industry, agency and statewide rulemaking standards and principals. Streamline definitions in all chapters to adhere to rulemaking and industry standards.

Amendment 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 facility standards.

Adopts Event Facility License for permanent color technicians and tattoo artists to grant professionals 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. Set standards for operating an Event Facility License and fee requirements.

Adopts 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 artists due to duplication with the temporary practitioner permit. Set standards for operating a Temporary Practitioner Permit and fee requirements.

Amends civil penalty schedule to align with other agency programs, Amend safety and infection control standards related to procedures, preparation and aftercare of permanent color and tattoo services, including revised requirements for covering tattoos.

In October 2008, the agency standardized all continuing education requirements aligning them with the two-year license cycle; permanent color and tattoo continuing education requirements were inadvertently omitted. Amend continuing education for permanent color and tattoo artists from 15 hours for three years to 10 hours for two years.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-505-0000

Definitions

The definitions of terms used in ORS 690.350 to 690.430 and 690.992 and the rules of OAR chapter 331, divisions 500 through 590, are:

(1) “Advisory Council” means, pursuant to ORS 690.425, the entity that advises the agency in matters relating to the practice of electrology, permanent coloring and tattooing in accordance with 690.430. The agency director controls the regulatory operations and has decision-making authority on all substantive matters.

(2) “Affidavit of Licensure” means an original document verifying licensing history and status, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The document is issued and signed by the regulatory authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice. Refer to OAR 331-030-0040.

(3) “Agency” means the Oregon Health Licensing Agency. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(4) “Antiseptic” means product used to stop or inhibit the growth of bacteria.

(5) “Authorizations” as defined in OAR 331-010-0000.

(6) “Booth” means, as it pertains to event facility permits, is a 10 feet by 10 feet or 100 square feet of floor space.

(7) “Clean” means the absence of soil and dirt by washing, sweeping, clearing away, or any other appropriate method rendering a sanitary condition.

(8) “Director” means the individual who is responsible for the performance of the agency under ORS 676.610. The director appoints all the subordinate officers and employees to carry out the duties of the agency.

(9) “Enclosed storage area” means separate room, closet, cupboard or cabinet.

(10) “Equivalent” means comparable but not identical, covering the same subject matter.

(11) “Facility” means an establishment in which a licensee(s) performs electrolysis, permanent coloring or tattooing, or any combination thereof.

(12) “High-level disinfectant” means a chemical agent, which has demonstrated tuberculocidal activity and is registered with the Environmental Protection Agency.

(13) “Linens” means cloths or towels used for such things as draping or protecting table.

(14) “Low-level disinfectant” means a chemical agent, which has demonstrated bactericidal, germicidal, fungicidal and limited virucidal activity and is registered with Environmental Protection Agency.

(15) “Official transcript” means an original document certified by the career school indicating hours and types of course work, examinations and scores that the student has completed, which has been mailed by USPS or other recognized mail service provider directly to the agency by the career school in a sealed envelope, or authorized transcript transmitted directly to the agency in a manner approved by the agency.

(16) “Operatory” means isolated area where treatment or services are provided.

(17) “Part-time experience” means engaging in practice for a period of at least 24 weeks or 1,000 hours during a 12 month time period.

(18) “Place of business” means the physical location where services are performed or will be performed.

(19) “Premises” means the entire building or structure within which services are performed.

(20) “Protective gloves” means gloves made of vinyl, latex or “Nitrile”.

(21) “Public view” means open to view and easy for the public to see, located in the operatory/treatment area, or waiting/lobby area at the place of business.

(22) “Reactivate” means to change an expired license to an active license.

(23) “Reciprocity” means that an applicant, holding an active certificate or license in another state, meets the qualifications and requirements for licensure based on satisfactory completion of education, training, and/or work experience determined equivalent to Oregon standards, and further that the applicant has demonstrated competency by satisfactory completion of a national or state written and/or practical examination recognized or approved by the agency.

(24) “Renew” means to extend a current license for two years beyond expiration or to bring an expired license to current, active status.

(25) “Sharps” means any object that can penetrate the skin, including but not limited to needles, scalpel blades, lancets, glass tubes, or other

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instruments that could be broken during handling, and syringes that have been removed from their original sterile containers.

(26) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal. The container must be labeled with the "Biohazard" symbol.

(27) "Single Use" means products or items that are disposed of after each use, including but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings.

(28) "Sterilization" means destruction of all forms of microbiotic life, including spores.

(29) "Suspend" refers to two distinct meanings defined by statute: ORS 690.385 pertaining to voluntary license expiration, and ORS 676.612 pertaining to disciplinary action.

(30) "Work experience" means employment consisting of a 40-hour work week for a minimum of 50 consecutive weeks during a 12 month period or a cumulative total of 2,000 clock hours within a 24 month period.

Stat. Auth.: ORS 676.615 & 690.405(9)

Stats. Implemented: ORS 676.615 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0020; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 10-2008, f. 9-15-08 & cert. ef. 10-1-08; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-505-0010

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency are as follows:

(a) Application:

(A) Practitioner license — Permanent color and tattoo: \$100.

(B) Practitioner license — Electrology: \$50.

(C) Practitioner license by reciprocity — Permanent color and tattoo: \$150.

(D) Practitioner license by reciprocity — Electrology: \$150.

(E) Temporary practitioner permit — Permanent color and tattoo: \$50.

(F) Facility license — Permanent color and tattoo: \$150.

(G) Facility license — Electrology: \$100.

(H) Event facility permit: \$100.

(I) Temporary facility license: \$100.

(J) Demonstration permit: \$100.

(b) Examination:

(A) Permanent color and tattoo — Oregon laws & rules: \$50.

(B) Permanent color and tattoo — Written: \$50.

(C) Permanent color and tattoo — Skills assessment: \$100.

(D) Electrology — Oregon laws & rules: \$50.

(E) Electrology — Written: \$50.

(F) Electrology — Practical: \$100.

(c) Original issuance of authorization to practice:

(A) Practitioner license — Permanent color and tattoo (including by reciprocity): \$125.

(B) Practitioner license — Electrology (including by reciprocity): \$50.

(C) Facility license — Permanent color and tattoo: \$125.

(D) Facility license — Electrology: \$100.

(d) Permits:

(A) Temporary facility: \$50.

(B) Temporary practitioner — Permanent color and tattoo: \$20.

(C) Demonstration: \$50.

(D) Event facility:

(i) Up to 100 booths (as defined in OAR 331-505-0000): \$725.

(ii) 101 to 200 booths: \$1450.

(iii) 201 to 300 booths: \$2175.

(iv) 301 to 400 booths: \$2900.

(v) 401 to 500 booths: \$3625.

(e) Renewal of authorization to practice:

(A) Practitioner license — Permanent color and tattoo: \$100.

(B) Practitioner license — Electrology: \$38.

(C) Facility license — Permanent color and tattoo: \$100.

(D) Facility license — Electrology: \$100.

(f) Other administrative fees:

(A) Delinquent (late) renewal of license: \$50 for each year in expired status up to two years.

(B) Replacement of license, including name change: \$25.

(C) Duplicate license document: \$25 per copy with maximum of three.

(D) Affidavit of licensure: \$50.

(E) 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 & 690.415

Stats. Implemented: ORS 676.605, 676.615 & 690.415

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; OHD 14-1998, f. 12-9-98, cert. ef. 12-15-98; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0155; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 8-2004(Temp), f. & cert. ef. 8-20-04 thru 2-16-05; HLO 9-2004, f. 10-25-04, cert. ef. 11-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07; HLA 10-2008, f. 9-15-08 & cert. ef. 10-1-08; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-510-0000

Electrology Definitions

In addition to definitions listed in OAR 331-505-0000, the following terms are specific to divisions 510 through 545.

(1) "*Instruments*" means devices, tools and implements used in the practice of electrolysis, which includes but is not limited to needles, probes, forceps, hemostases, or tweezers.

(2) "*Modality*" means manner of mode in which electricity is used to produce a therapeutic effect (i.e. electrolysis, thermolysis, the blend).

(3) "*Needle*" means the conductor as referred to in ORS 690.350 also called wires or probes.

Stat. Auth.: ORS 676.615 & 690.405(9)

Stats. Implemented: ORS 676.615 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0020; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-515-0000

Approval of Schools

The agency must recognize a school of electrolysis that has met the following requirements:

(1) The facility has been approved and registered by the Department of Education, Private Career Schools, and meets provisions of ORS 345 and rules adopted by the Department for licensure as a career school;

(2) A curriculum/course of study has been submitted to the agency which has been approved as meeting the curriculum objectives outlined under OAR 333-515-0010;

(3) An initial inspection has been conducted by the Department of Education and agency and the facility satisfactorily passed requirements for compliance with instruction and sanitary rules.

Stat. Auth.: ORS 690.410

Stats. Implemented: ORS 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0025; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-515-0010

Approved Course of Study

To be approved by the agency, a course of study must include, at least 600 hours of training instruction. The course must include at least 235 hours of theory and at least 365 hours of practical experience in the following areas:

(1) Laws and rules: 15 hours of training in theory.

(2) Bacteriology: 20 hours of training in theory.

(3) Infection control and sterilization: 20 hours of training in theory and 15 hours of practical training.

(4) Anatomy and physiology: 20 hours of training in theory.

(5) Endocrinology: 20 hours of training in theory.

(6) Structure, dynamics and diseases of skin and hair: 30 hours of training in theory.

(7) Circulatory and nervous system: 20 hours of training in theory.

(8) Electricity: 15 hours of training in theory.

(9) Electrolysis (galvanic): 20 hours of training in theory and 115 hours of practical training.

(10) Thermolysis: 20 hours of training in theory and 115 hours of practical training.

(11) Combinations of electrolysis and thermolysis (blend): 20 hours of training in theory and 110 hours of practical training.

(12) Draping and positioning: 5 hours of training in theory and 5 hours of practical training.

(13) Professional ethics and business practices: 10 hours of training in theory and 5 hours of practical training.

Stat. Auth.: ORS 690.405 & 690.410

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Stats. Implemented: ORS 690.405 & 690.410
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0030; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-515-0020

Equivalent Course of Study; Experience Equivalency Standards

An applicant is not required to comply with the training requirements under OAR 331-515-0010 if the agency determines training and/or work experience obtained is equivalent to minimum requirements based on documentation of two years full-time or four years part-time work experience in the field of electrolysis.

Stat. Auth.: ORS 690.365, 690.405 & 690.410
Stats. Implemented: ORS 690.365, 690.405 & 690.410
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0045 & 333-305-0050; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-515-0030

Application for Licensure

(1) Individuals applying for licensure to practice electrology must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the application, examination and license fees.

(3) Applicants must be at least 18 years of age, and must provide documentation confirming date of birth, such as a copy of the birth certificate, driver's license, passport or school/military/governmental record.

(4) Applicants must have completed four years of standard high school education or the equivalent. Acceptable documentation includes, but is not limited to: high school diploma, letter from school or military records verifying completion, GED passing scores, completion of an educational course or program in a post-secondary educational institution, or other agency approved documentation.

(5) The completed application must include submission of satisfactory evidence of equivalency as required by the agency pursuant to OAR 331-515-0020, or by one of the following pathways for licensure:

(a) **OFFICIAL TRANSCRIPT:** The document must be mailed directly to the agency from a licensed or accredited school or an equivalent institution recognized by the agency, showing completion of the prescribed course of study, listed in OAR 331-515-0010 or its equivalent approved by the agency, and must be issued by:

(A) A school of electrolysis licensed by the Department of Education, Private Career Schools, under ORS 345;

(B) A licensed or accredited school of electrolysis located in another state where the practice of electrolysis is unregulated; or

(C) An institution recognized by the agency, such as a medical facility or other county, state, or federal agency or entity, where training and education is provided by means of a standardized course of study, adhering to prescribed curriculum objectives and criteria.

(D) The transcript must be mailed or transmitted directly to the agency or delivered in person in a sealed envelope by an authorized courier.

(b) **OUT OF STATE LICENSURE:** An applicant who holds a current electrolysis license issued from another city, county, or state which meet or exceeds Oregon standards must provide an Affidavit of Licensure as defined in OAR 331-030-0040 to the agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(A) The form must indicate whether the applicant satisfactorily passed a national or state prepared written and practical examination.

(B) Additional documentation may be required substantiating completion of equivalent training requirements listed in OAR 331-515-0010 and 331-515-0020.

Stat. Auth.: ORS 690.365 & 690.405
Stats. Implemented: ORS 690.365 & 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0035; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-520-0000

Examination Authorization

(1) The agency will conduct examinations for licensure. Applicants will not be approved for an examination until all documentation and fee requirements have been completed.

(2) The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants and schools in advance whenever possible.

(3) The agency will mail notice to each applicant approved for the practical examination by U.S. Postal Service, at least 15 calendar days prior to the examination. Notification will not be given by any other means.

(4) Applicants must provide approved identification, listed under OAR 331-030-0000 at the time of the examination.

Stat. Auth.: ORS 690.370 & 690.405
Stats. Implemented: ORS 690.370 & 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0075 & 333-305-0080; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-520-0010

Examination for Electrologist License

(1) The examination for an electrolysis license must consist of two sections: a written examination and a practical examination. Applicants must take all sections of both parts of the examination on the first attempt.

(2) The written examination consists of 200 multiple-choice questions. Questions must cover subjects required in an approved course of study in accordance with OAR 331-515-0010.

(3) The practical examination will consist of an actual demonstration of hair removal on a model provided by the applicant. Information on the practical examination procedures will be mailed to applicants with the examination notice. Refer to OAR 331-520-0000.

(4) Graded criteria must include model preparation, safety, sterilization and infection control, technique, use of instruments, and aftercare.

(5) The examination must be closed book without aid from or availability of written material.

(6) The examination is administered in English only, unless an agency approved testing contractor or vendor provides the examination in language(s) other than English. Examination candidates may be electronically monitored during the course of testing.

(7) The written and practical sections of the examination will be scored individually, not added or averaged together.

(8) A passing score of at least 75 percent on each section of the examination is required before a license will be issued.

(9) Applicants failing to successfully complete the examination process and attain licensure within two years from the date of the initial application or the most recent examination attempt, whichever is later, must be required to:

(a) Reapply for examination according to OAR 331-515-0030;

(b) Pay the appropriate fees; and

(c) Retake examination.

Stat. Auth.: ORS 690.370, 690.405 & 690.430
Stats. Implemented: ORS 690.370, 690.405 & 690.430
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0065; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-520-0030

Special Examination Accommodations

(1) Applicants who have a learning, psychological, physical, or other disability, which requires an accommodation to the regular testing environment may request a special examination.

(2) Requests for accommodation must be made on forms provided by the agency and must contain supporting documentation completed by a licensed professional holding appropriate credentials qualified to certify that the applicant's disabling condition requires the requested test accommodation.

(3) A "Request for Accommodation" form must be submitted to the agency at least 30 calendar days in advance of the scheduled examination date to make appropriate arrangements contingent upon the type of accommodation requested.

(4) All special examinations are conducted at the agency. If the agency is unable to accommodate the disability on-site, special arrangements will be arranged for an adequate test site.

Stat. Auth.: ORS 690.370 & 690.405
Stats. Implemented: ORS 690.370 & 690.405
Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

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331-520-0040

Examination Conduct; Disqualification

(1) Examinations are conducted in a designated area with restricted access. Authorization must be provided by the agency before bringing any material or electronic equipment or devices into the examination. Receiving or attempting to receive assistance during the examination, including assistance from other individuals, from notes books or devices or taking unauthorized items into the examination area must invalidate the examination and result in forfeiture of the examination and fees.

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

(a) Directly or indirectly giving, receiving, soliciting, attempting to give, receive or solicit aid during the examination process;

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

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

(d) Exhibiting behavior which impedes the normal progress of the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination fees. The applicant will be required to reapply, submit additional examination fees and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification. Reexamination will be conducted at the agency.

Stat. Auth.: ORS 690.410

Stats. Implemented: ORS 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0090; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-520-0070

Retake of Examination Sections; Additional Training

(1) Failed examinations may be retaken at a date and time determined by the agency. Retaking a failed examination requires registration and payment of the examination fees

(2) Applicants who fail to pass any section of the examination after three attempts (initial examination plus two retakes) are required to complete an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-515-0010 before they may attempt any subsequent retakes of the examination. Additional instruction must be obtained through an Oregon career school licensed under ORS 345.010 to 345.450.

(3) Prior to an applicant's fourth examination attempt, an official transcript must be received from an Oregon licensed career school which verifies that the applicant has satisfactorily completed the additional hours of instruction.

(4) Applicants failing to successfully complete the examination process to obtain a license within two years from the date of their most recent examination attempt will be required to:

(a) Reapply for examination according to OAR 331-515-0030;

(b) Pay the application, examination and original license fees; and

(c) Retake all examination sections qualified for, regardless of a previously passing score and completion and verification of an additional 100 hours of instruction in theory, outlined in OAR 331-515-0010 which is obtained through an Oregon career school licensed under ORS 345.

(5) Review of any examinations is prohibited.

Stat. Auth.: ORS 690.370 & 690.405

Stats. Implemented: ORS 690.370 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0105 & 333-305-0110; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-525-0020

Display of License

(1) Authorizations as defined in OAR 331-010-0000 are subject to the requirements of OAR 331-030-0020.

(2) The following must be posted in public view:

(a) Facility licenses.

(b) Practitioner licenses. The practitioner's address printed on the certificate may be blocked from public view.

(c) Demonstration and temporary permits or authorizations.

(d) The most recent inspection certificate.

Stat. Auth.: ORS 676.615 & 690.380

Stats. Implemented: ORS 676.615 & 690.380

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0140; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-525-0035

Facility License Issuance and Renewal; Cooperation in Inspections

Beginning on October 1, 2004, all facilities must be licensed to provide electrolysis services prior to operating electrology facilities.

(1) The agency will issue a facility license to qualified persons, as provided in OAR 331-030-0010, if the applicant:

(a) Is at least 18 years of age, if the applicant is a natural person, as required in ORS 690.365. If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a facility license, and submits with facility application a current copy of the ABN filing;

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to ORS 648.005 through 648.990.

(c) Applies on a form prescribed by the agency and pays the required application and license fees;

(d) Complies with all applicable rules and regulations;

(e) Certifies that application information is correct; and

(f) Meets the specifications for building, fire and plumbing codes as specified in OAR 565-535-0000 and complies with exit and fire standards established by the Building Codes Agency and Office of the State Fire Marshal.

(2) Facility license applicant must provide a map or direction to the business premises if the facility is located in a rural or isolated area, and submit a copy of the spore test results from applicant's autoclave, or submit a signed attestation requesting an exemption under OAR 331-540-0020 based on exclusive use of prepackaged sterile electrology equipment, including needles.

(3) A facility license holder must comply with the provisions of OAR 331-030-0010 regarding issuance and renewal of a facility license.

(4) Each facility license holder must:

(a) Allow the agency's enforcement officer to inspect the facility when it is open for business;

(b) Ensure employees cooperate with agency enforcement officers and refrain from impeding an inspection in any way;

(c) Contact the agency in writing to make arrangements for an inspection if the agency has been unable to perform an annual inspection because the facility was closed.

Stat. Auth.: ORS 676.615, 690.360(6) & 690.405(12)

Stats. Implemented: ORS 676.615, 690.360(6) & 690.405(12)

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-525-0038

Facility Located in Residence

A facility located in a residence must comply with the provisions of OAR 331-525-0035 in addition to:

(1) Have an identifying house number or a sign, which is easily visible from the street and indicates the location of the facility;

(2) Be equipped with the structures, accommodations, and equipment which the agency requires for all facilities;

(3) Have an entry that is separate from the entry to the living area of the home. The living area of the home must be separated from the facility by solid walls extending from floor to ceiling, with any connecting doors kept closed while the facility is in actual operation.

(4) Licensed electrologists operating in their residence prior to July 1, 2004, will not be subject to the requirements listed in subsection (3) of this rule, until such time as a change in the business location is made.

Stat. Auth.: ORS 676.615, 690.360(6) & 690.405(12)

Stats. Implemented: ORS 676.615, 690.360(6) & 690.405(12)

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-525-0040

Practicing at Location Other Than Named Place(s) of Business

(1) Licensees must not practice at any location other than the place of business listed with the agency. However, licensees may provide services outside the premises of a licensed facility on persons residing in a health care facility or persons confined to their residence through medical disability or restriction.

(2) All licensees who perform services at locations listed in this rule or at more than one business location must carry their license with them and post it while working.

Stat. Auth.: ORS 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0185; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

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331-525-0055

Facility License Requirements

(1) The facility license is issued to a designated owner or legal entity for the specific physical location where business is conducted. The license is not transferable from person-to-person or from business-to-business.

(2) A facility owner or license holder must meet the requirements of a new facility and submit a new facility application and required fees when any of the following conditions exist:

(a) A facility is purchased from the current or previous owner, partnership or corporation;

(b) There is a change in the legal ownership, partnership or holding of a facility regulated under ORS 690 and OAR 331, such as a partner or co-owner being added or removed from the existing facility license. This includes a change in the ownership status due to death or divorce of facility owner or a spouse listed as a co-owner on the agency's records;

(c) An existing facility moves or relocates to a new physical address.

(3) Facility license holders who close a business regulated under ORS Chapter 690 and OAR chapter 331 must inform the agency in writing within 30 calendar days of the closure of the facility and before reopening the facility while the license is still current.

Stat. Auth.: ORS 690.405

Stats. Implemented: ORS 690.405

Hist: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-525-0060

Demonstration Permit

(1) Demonstration permit is an authorization pursuant to ORS 690.405 to practice on a limited basis for a maximum of 30 consecutive calendar days.

(2) A person not licensed under ORS 690.365, who intends to demonstrate, teach or perform electrolysis services temporarily for educational purposes, where services are not performed upon the public, not for specific compensation for electrology services, must first obtain a demonstration permit from the agency.

(3) To be granted a demonstration permit, a person must meet the following requirements:

(a) Submit an application on a form prescribed by the agency;

(b) Provide satisfactory evidence of holding a valid license in their state or country;

(c) Describes the purpose for which the permit is sought; and

(d) Pay the required application and permit fees.

(4) The demonstration permit must specify the period during which the person is permitted to demonstrate, teach or perform services.

Stat. Auth.: ORS 676.615 & 690.405

Stats. Implemented: ORS 676.615 & 690.405

Hist: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-525-0065

Temporary Facility Permit

(1) Temporary facility permit is an authorization pursuant to ORS 690.405 to operate a single facility on a limited basis, not to exceed 30 consecutive calendar days, at settings such as fairs, carnivals or bazaars.

(2) A person who intends to operate a facility on a limited basis away from a primary licensed facility must first obtain a temporary facility permit from the agency.

(3) To be granted a temporary facility permit, a person must meet the following requirements:

(a) Be 18 years of age or older, if the applicant is a natural person. If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Apply on forms prescribed by the agency and provide the required information and application fees.

(4) A temporary facility must:

(a) Receive the permit and post the authorization in public view before opening for business;

(b) Comply with the rules of the agency concerning health, safety and infection control;

(c) Comply with the applicable health and safety laws and rules of the agency and any other state agencies;

(d) Pay the required permit fees.

(5) The temporary facility permit shall specify the period during which the permit is valid.

Stat. Auth.: ORS 676.615 & 690.405

Stats. Implemented: ORS 676.615 & 690.405

Hist: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-530-0000

Continuing Education for License Renewal

To maintain licensure in the field in which they are licensed to practice, electrologists must comply with the following continuing education requirements:

(1) Complete 15 clock hours of satisfactory continuing education courses either as one unit or combination of units, every two years.

(2) Satisfactory continuing education courses must fit into the approved curriculum objectives listed in ORS 690.410 and the courses of study outlined in OAR 331-515-0010 and must be obtained by:

(a) Participation or attendance at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, association or completion and certification by an approved national home study organization; or

(b) Self-study, participation, or attendance not covered in this rule may comprise up to eight hours of the total requirement. Self-study may include continuing education obtained by means of the following:

(A) Correspondence courses;

(B) Review of publications, textbooks, printed material, or audio cassette(s);

(C) Viewing of films, videos, or slides; or

(c) Attendance at meetings of the Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists may be credited for a maximum of three hours per meeting, totaling no more than four hours per two year period.

(3) Licensees must report compliance with the continuing education requirement through attestation on the license renewal document. Licensees must be subject to the provisions of OAR 331-530-0020 pertaining to periodic audit of continuing education.

(4) Continuing education requirements apply whether the applicant renewing a license is living or working within Oregon or outside of the state, if Oregon licensure is maintained.

(5) Hours of continuing education, in excess of the requirement for renewal every two years, will not be carried forward.

(6) Continuing education is required for renewal, every two years, even if the license has been inactive or suspended during that period.

(7) To ensure adequate evidence of attainment of required continuing education is available for audit or investigation by the agency, records of attendance must be maintained by licensees for two years following the two-year continuing education cycle and renewal of the electrologist license.

(8) Licensees failing to obtain 15 clock hours of continuing education every two years must reapply and qualify according to the requirements of OAR 331-515-0030 and successfully pass a written and practical examination.

Stat. Auth.: ORS 676.605, 676.615 & 690.385

Stats. Implemented: ORS 676.605, 676.615 & 690.385

Hist: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0125 & 333-305-0130; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04, Renumbered from 331-530-0010; HLA 10-2008, f. 9-15-08 & cert. ef. 10-1-08; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-530-0020

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Oregon Health Licensing Agency will audit a select percentage of licenses determined by the Council to verify compliance with continuing education requirements.

(2) Practitioners notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-530-0000.

(3) Documentation of attendance at a program or course provided by the sponsor must include:

(a) Name of sponsoring institution/association or organization;

(b) Title of presentation and description of content;

(c) Name of instructor or presenter;

(d) Date of attendance and duration in hours;

(e) Course agenda;

(f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) Documentation substantiating completion of continuing education through self-study, must show a direct relation to the subjects outlined in OAR 331-515-0010, be submitted on forms provided by the agency and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

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(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audio-recorded material, including date of publication, publisher, and ISBN issued.

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

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

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

Stat. Auth.: ORS 676.605, 676.615, 690.385 & 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.385 & 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0000

Compliance with all Applicable Regulations

(1) Electrologists must observe all applicable state regulations pertaining to public health and safety. Compliance with state building, fire, plumbing, and electrical regulations is required.

(2) In addition, when an employee/employer relationship exists, practitioners must comply with ORS 654 the Oregon Safe Employment Act.

(3) Electrologist must observe and adhere to all Oregon Occupational Safety & Health Codes (OR-OSHA), OAR 437, 29 CFR 1910.1030 Bloodborne Pathogens.

(4) Every electrologist must have a written Exposure Control Plan. All procedures developed for the facility's exposure control plan must be in compliance with OSHA state and federal regulations and with current Centers for Disease Control (CDC) standard for public service workers.

(5) Only authorized equipment or products may be utilized, and in addition, must only be used in a manner approved by manufacturers and appropriate regulatory agencies.

Stat. Auth.: ORS 654, 676.605, 676.615, 690.390 & 690.405

Stats. Implemented: ORS 654, 676.605, 676.615, 690.390 & 690.405

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0010

Electrologist Practice Standards: Restrictions

(1) Electrologists may provide clients with written information on electrolysis procedures, the purpose for asking specific questions regarding the client's general health, and that any recommendation for medical attention is not to be construed as a medical referral or diagnosis of a physical disease or ailment.

(2) Licensees must keep an individual record of each client. That record must include: name and address of client; type of treatment required/requested; type of hair or skin; date and duration of each treatment; special instructions or notations relating to the treatment precautions or needs, including but not limited to allergies and pacemakers, and name and telephone of referring doctor, if applicable.

(3) Electrologists are prohibited from performing services under the following conditions or circumstances (for blood borne diseases only, refer to OAR 331-535-0020):

(a) Licensee or client has a disease or condition which has been diagnosed by a physician to be in a communicable or transmittable form during treatment;

(b) Licensee determines by direct observation or communication with client, that client has or may have a suspected communicable disease or condition;

(c) Licensee knows or should have reasonably known from the state of his/her own physical condition, a communicable disease or condition may exist; or

(d) Treatment in areas with high propensity towards bacterial colonization, such as nostrils and ear canals.

(4) Electrologists must first obtain written authorization from a physician when any of the following exists:

(a) Request for hair removal from moles or birthmarks;

(b) Removal of eyelashes;

(c) Clients with diabetes; or

(d) Clients with heart problems or pacemaker.

Stat. Auth.: ORS 690.390

Stats. Implemented: ORS 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0245; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0020

Communicable and Blood Borne Diseases

A licensee providing service or working in a facility while diagnosed with having acquired an immunodeficiency virus and related immunodeficiency conditions or Hepatitis viruses (B, C and/or D) must observe and follow all current Centers for Disease Control (CDC) standards for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment. This includes practitioners or employees providing services to clients who have been diagnosed with having an immunodeficiency virus, related conditions or the Hepatitis viruses (B, C and/or D).

NOTE: It is the position of the agency that human immunodeficiency virus (HIV) is the cause of acquired immunodeficiency syndrome (AIDS) and related immunodeficiency conditions. This virus, as well as Hepatitis B virus (HBV), Hepatitis C virus (HCV) and Hepatitis virus (HVD) may be transmitted by sharp instruments contaminated by blood or other body fluids, if standard precautions are not followed. As the carriers of these viruses may have no symptoms, the most prudent course to follow is to treat body fluids from all persons with the same high standards of caution and to rigorously follow established safety and infection control practices as required by the law and rules of the agency. There is no published evidence to support casual transmission of HIV, by sneezing or touching, even in close household settings involving AIDS patients and family members caring for them at home. Because HIV is not spread by casual means and because of the inadequacies of the HIV antibody test, there is no reason for the agency to require blood tests prior to certification and/or licensure. Good hand washing after glove removal and between each client is imperative and the most important procedure for prevention of all infections, including HIV. Uniform body fluid precautions are ample to prevent transmission of HIV, HBV, HCV and/or HDV in a facility setting.

Stat. Auth.: ORS 676.605, 676.615 & 690.390

Stats. Implemented: ORS 676.605, 676.615 & 690.390

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0030

Handwashing/Protective Gloves; Handling Disposable Materials

(1) **HAND WASHING:** Electrologists must observe and adhere to the following hand washing standards when serving clients:

(a) Hands must be washed before and after treatment of each client, and before putting on gloves and immediately after gloves are removed;

(b) Thorough hand washing must be by use of soap and water or other alternative hand washing product, such as jell, aerosol spray, foam, or pre-packaged hand wipes, immediately before and after serving each client as needed. Use of bar soap is prohibited.

(2) **PROTECTIVE GLOVES:** Electrologists must observe and adhere to the following protective glove standards when serving clients:

(a) A new pair of disposable gloves must be worn during the treatment of each client;

(b) Hands must be washed in accordance with the hand washing standards stated in this rule before putting on gloves and immediately after gloves are removed;

(c) If an electrologist uses low-powered gloves, the excess exterior powder must be removed to prevent powder contact with the client's skin during treatment;

(d) When a treatment session is interrupted:

(A) A protective covering must be used over the gloved hand/hands; or

(B) Gloves must be removed and discarded.

(e) When gloves are removed during a treatment session, hands must be washed and a fresh pair of gloves used;

(f) Gloves must be worn during the procedures of mechanical pre-cleaning, cleaning, rinsing, and drying of needles/probes and forceps/tweezers;

(g) Torn or perforated gloves must be removed immediately, and hands must be washed after gloves are removed.

(3) **DISPOSABLE MATERIALS:** Electrologists must observe and adhere to the following disposable material standards when serving clients:

(a) All waste materials related to treatment must be disposed of in a covered container after each client service;

(b) Disposable materials in contact with blood and/or body fluids must be placed in a sealable plastic bag, separate from sealable trash or garbage liners, and then disposed of in a covered container;

(c) Disposable sharp objects in contact with blood and/or body fluids must be disposed of in an appropriate sharps container as defined in OAR 331-505-0000;

(d) Electrologists must have both sealable plastic bags and sealable rigid containers available at the facility.

(4) The client's skin must be cleansed by applying an antiseptic or antibacterial solution prior to and following treatment.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405

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Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0210, 333-305-0215 & 333-305-0235; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0040

Linens

- (1) Clean linens must be used for each client.
- (2) A common towel is prohibited.
- (3) Air blowers can be substituted for hand towels.
- (4) Clean linens, tissues or single-use paper products must be stored in a clean, storage area until needed for immediate use.
- (5) Used linens must be disposed of or stored in a closed or covered container until laundered.
- (6) Used linens must be laundered either by a regular commercial laundering or by a noncommercial laundering process which includes use of commercial laundry detergent manufactured for the specific purpose of cleaning clothes, linens or other washable fabric, and immersion in hot water during the wash and rinse cycle.

Stat. Auth.: ORS 690.390

Stats. Implemented: ORS 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0220; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0050

Required Equipment

- (1) All facilities must have a treatment area or operatory that is separate, private, or screened from the entrance, waiting area, and/or other treatment areas.
 - (2) Facilities must be kept clean and orderly, and equipment must be maintained in good repair
 - (3) All surfaces (counters, tables, equipment, client chairs or recliners) in treatment and sterilization areas must be made of smooth, non-absorbent and non-porous material.
 - (4) All floors and walls must be easily cleanable. Concrete blocks or other masonry used in wall construction must be covered or made smooth and sealed for a washable surface.
 - (5) A high-level disinfectant or bleach solution, used according to the manufacturer's instructions, must be used to disinfect surfaces contaminated by blood or bodily fluids.
 - (6) Pets and other animals are not permitted in a facility or business premises at any time. The prohibition does not apply to fish in an aquarium and service animals that are trained to perform tasks for people with disabilities as referenced in the Americans with Disabilities Act.
 - (7) Electrologists must maintain at the place of business an adequate supply of approved disinfecting or sterilizing equipment, tools/implements, articles and materials for usage requirements and volume of business. The following equipment must be maintained at the place of business:
 - (a) A Federal Communications Commission (FCC) approved epilator;
 - (b) Sufficient supply of needles and tweezers to supply sterile instruments for each client treated;
 - (c) A treatment light;
 - (d) Choice of hemostat, forceps, or tweezers to transfer sterilized instruments;
 - (e) Protective gloves;
 - (f) Sealable plastic bags and sharps container.
- Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405(9)
Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405(9)
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165, 333-305-0175, 333-305-0180 & 333-305-0190; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0060

Water Supply Requirements and Standards

- (1) The quality and construction of facility water supplies must meet the requirements of ORS Chapter 448 and the State Plumbing Code, OAR 918, division 750.
- (2) Facility water supplies must have a minimum of 20 pounds pressure per square inch in accordance with the State Plumbing code.
- (3) All facilities must have easy and adequate supply of both hot and cold running water and wash basins on the facility premises or as part of surrounding premises or adjacent to the facility but separate from a public restroom.
- (4) Waste from toilets or lavatories must be discharged directly into a public sewer or by a method meeting the requirements of ORS 454.

(5) Hand washing accommodations must be provided in work areas where employees are exposed to hazardous materials, which will have a harmful effect on or be absorbed through the skin if the contamination is not removed.

(6) Washing accommodations must be maintained in a clean and sanitary condition.

Stat. Auth.: ORS 448, 454, 676.605, 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 448, 454, 676.605, 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0070

Compliance with Indoor Clean Air Act

Any public place in a facility is subject to the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875.

Stat. Auth.: ORS 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 433.835 - 433.875, 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0170; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-535-0080

Waste Receptacles

- (1) All waste material related to treatment must be deposited in a covered container following service for each client.
 - (2) Waste disposed of in receptacles located in reception and/or restroom areas is limited to materials, which are not practice-related or used in the performance of any client services. Waste receptacles located in these areas are exempt from the covered container requirements listed in subsection (1) of this rule.
 - (3) Outer surface of waste disposal containers must be kept clean.
- Stat. Auth.: ORS 676.615, 690.390 & 690.405(9)
Stats. Implemented: ORS 676.615, 690.390 & 690.405(9)
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0240; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-540-0000

Cleaning Requirements and Standards

- (1) All items in direct contact with the client's skin that do not require disinfecting must be clean.
 - (2) All items in direct contact with the client's skin that cannot be cleaned or disinfected must be disposed of in a covered waste receptacle immediately after use.
 - (3) All substances used in the practice of electrolysis must be dispensed from containers in a manner to prevent contamination of the unused portion.
 - (4) All disinfecting solutions and/or agents must be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.
 - (5) The agency must authorize the use of disinfecting agents provided those agents meet the criteria set forth in OAR 331-505-0000
- Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405
Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405
Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-540-0010

Instrument Cleaning; Sterilization Standards

- (1) Prior to sterilizing, instruments must be brushed and/or swabbed to remove foreign material or debris, rinsed and then cleaned by one of the following approved methods:
 - (a) Immersing in detergent and water in an ultra sonic unit that operates at 40 to 60 hertz, followed by a thorough rinsing and wiping; or
 - (b) Submerging and soaking in a protein dissolving detergent/enzyme cleaner, followed by a thorough rinsing and wiping.
- (2) Instruments or other equipment which are "heat-sensitive" must be disinfected by complete immersion of the object(s) or portion(s) thereof to be disinfected, in a high-level disinfectant which has demonstrated tuberculocidal activity, and used according to the manufacturer's instructions.
- (3) The removable tip of an epilator needle or probe holder must be removed after each treatment, cleaned and then soaked for in a commercial sporicide solution according to manufacturers' instructions.
- (4) Cleaned instruments used in the practice of electrolysis must be placed in sterile bags or containers with color strip indicators, sterilized by exposure to one cycle of an approved sterilizer listed in OAR 331-540-0020.

ADMINISTRATIVE RULES

Stat.: Auth. ORS 676.605, 676.615, 690.390 & 690.405
Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0200 & 333-305-0205; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-540-0020

Approved Sterilization Modes

(1) Electrologists must sterilize instruments used in the practice of electrology by means of an approved sterilizing device registered and listed with the U.S. Food and Drug Administration, used, cleaned and maintained in accordance with the manufacturer's instructions. Approved sterilizing devices include an autoclave (steam or chemical) or dry heat unit.

(2) In lieu of sterilization methods listed in (1) above, a licensee may use single-use, prepackaged, sterilized equipment, obtained from commercial suppliers or manufacturers.

(3) Sterilizing devices must be tested during each sterilizing cycle by means of a commercial test mechanism, such as but not limited to color strip indicators to measure temperature control and general functioning of the equipment.

(4) Sterilizing devices must be tested at least quarterly for functionality and thorough sterilization by using a commercial biological monitoring (spore) system to assure all microorganisms, including spores, have been destroyed.

(5) Biological test results must be on laboratory letterhead and must contain the test date, and the name, model and serial number of the unit tested. Biological test results must be retained for a two-year period and must be available for inspection at all times.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405
Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0195; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-540-0030

Clean Instruments; Products Storage

(1) Before use, disposable products that come in contact with the areas to be treated must be stored in clean containers that can be closed between treatments.

(2) Clean, sterilized re-usable instruments that come in contact with the areas to be treated, must be individually stored in clean, sterilized containers to maintain effective sterilization of the instrument until removed from the container.

(3) Clean, sterilized re-usable transfer instruments must be stored in a clean, dry, sterilized container.

(4) Chemicals must be stored in labeled, closed containers in an enclosed storage area.

Stat. Auth.: ORS 690.390
Stats. Implemented: ORS 690.390
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0225 & 333-305-0230; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-545-0000

Investigative Authority

The Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of electrolysis, permanent coloring or tattooing, pursuant to ORS 676.608 and 676.618, and may take appropriate disciplinary action in accordance with the provisions of 676.612 and 690.407.

Stat. Auth.: ORS 676.608, 676.618 & 690.407
Stats. Implemented: ORS 676.608, 676.618 & 690.407
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0255; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-545-0020

Schedule of Penalties for Licensing Violations; Violation of Standards

The agency has adopted the following presumptive penalty schedule for the first and second violations of the following laws and rules. The following schedule applies except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For subsequent violations the provisions of 331-020-0060 applies.

(1) Operating or purporting to operate an electrology facility without first obtaining a current valid facility license is a violation of ORS 690.355 and OAR 331-030-0020 and may incur a penalty of \$500 per violation

(2) Practicing or purporting to practice or using the title electrologist without first obtaining a current, valid practitioner license is a violation of ORS 690.355 and OAR 331-030-0020 and may incur a penalty of \$2,500 per violation.

(3) Allowing an unlicensed person to practice is a violation of ORS 676.612 and OAR 331-580-0000 and may incur a penalty of \$500.

(4) Practicing or holding one's self out as available to practice, or using the title electrologist, with an expired or suspended license is a violation of ORS 676.612, 690.355, OAR 331-030-0010 and/or 331-030-0020 and may incur a penalty of \$500.

(5) Failing to post a current, valid license issued by the agency in public view is a violation of ORS 690.038 and OAR 331-525-0020 and may incur a penalty of \$100.

(6) Failing to provide appropriate photographic identification upon request by the agency is a violation of ORS 676.612 and OAR 331-030-0020 and may incur a penalty of \$500.

(7) Failing to submit changes of required licensing information within the time frame set in rule is a violation of OAR 331-010-0040 and may incur a penalty of \$100.

(8) Practicing at location other than places of business designated to the agency, except as permitted by rule is a violation of OAR 331-525-0040 and may incur a penalty of \$200.

(9) Materially altering a license is a violation of ORS 690.360 and may incur a penalty of \$1500.

(10) Failing to allow the Agency to inspect the premises when the facility is open or obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual to impede the inspection progress is a violation of ORS 676.612, OAR 331-020-0070 and/or 331-525-0035 and may incur a penalty of \$1500.

(11) Failing to meet a facility or practice standards adopted by the agency is a violation of OAR 331-535-0000, 331-535-0010, ORS 676.612 and 690.390 and may incur a penalty of \$500 and may result in suspension or revocation.

(12) Failing to provide a private or separate treatment area for clients is a violation of OAR 331-535-0050 and may incur a penalty of \$300.

(13) Except as provided by rule, allowing animals in the facility is a violation of OAR 331-535-0050 and may incur a penalty of \$300.

(14) Failing to have the required equipment or have approved test indicators at facility is a violation of ORS 690.390 and OAR 331-535-0050 and may incur a penalty of \$500 and may result in suspension or revocation.

(15) Failing to use approved test indicators, commercial test mechanism, or maintain biological test results as required to ensure proper sterilization is a violation of OAR 331-540-0020 and may incur a penalty of \$500.

(16) Failing to sterilize instruments using an approved mode or to use single-use, prepackaged, sterilized equipment is a violation of ORS 690.390 and OAR 331-540-0020 and may incur a penalty of \$1,000.

(17) Failing to meet sterilization standards is a violation of ORS 690.390 and OAR 331-540-0010 and may incur a penalty of \$1,000.

(18) Failing to clean instruments prior to sterilization is a violation of ORS 690.390 and OAR 331-540-0010 and may incur a penalty of \$1,000.

(19) Failing to wash hands before and after treatment or to wear protective gloves is a violation of OAR 331-535-0030 and may incur a penalty of \$500.

(20) Failing to prepare treatment area on a client in accordance with agency standards is a violation of OAR 331-535-0030 and may incur a penalty of \$500.

(21) Failing to meet cleanliness and/or storage standards for linens is a violation of 331-535-0040 and may incur a penalty of \$500.

(22) Failing to meet storage requirements for instruments, products or chemicals is a violation of 331-540-0030 and may incur a penalty of \$500.

(23) Failing to dispose of materials contaminated with blood or bodily fluids in a sealable container or appropriate sharps container is a violation of OAR 331-535-0030 and may incur a penalty of \$1,000.

(24) Failing to have required covered waste receptacles is a violation of ORS 690.390 and OAR 331-535-0080 and may incur a penalty of \$300.

(25) Performing a prohibited service is a violation of ORS 676.612 and OAR 331-535-0010 and may result in one or more of the following:

(a) A penalty of \$1000;

(b) Suspension or revocation of license, permit, or registration.

(26) Failing to have and maintain client case history records is a violation of ORS 690.390 and OAR 331-535-0010 and may incur a penalty of \$500.

Stat. Auth.: ORS 676.605, 676.615 & 690.407
Stats. Implemented: ORS 676.605, 676.615 & 690.407
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0265; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

ADMINISTRATIVE RULES

331-550-0000

Permanent Coloring and Tattooing Definitions

In addition to definitions listed in OAR 331-505-0000, the following terms apply as used in OAR 331, divisions 550 through 590.

(1) "Direct supervision" means the teacher is present and actively involved in direct oversight and training of students who are completing the training requirements of OAR 331-555-0010.

(2) "Instruments" means devices, tools and implements used in permanent coloring and tattooing services.

(3) "Needle" means the implement used to insert dyes or pigments into the dermis of the skin during permanent coloring or tattooing procedures.

(4) "Repigmentation" means recoloration of the skin:

(a) After dermabrasion, chemical peels, removal or resolution of birthmarks, vitiligo or other skin conditions which result in the loss of melanin to the skin;

(b) Scarring caused by surgical procedures, such as face lifts, mole or wart removal, cauterization, etc.;

(c) Burn grafts and other skin irregularities caused by burns or photo damage;

(d) Mastectomy, i.e. recreation of an areola or nipple; or

(e) Blotchy pigmentation requiring camouflage.

(5) "Theory" means all forms of relevant study, which do not involve the application of permanent makeup or tattoos on human skin. Theory may include but is not limited to review of videos or written matter, attendance at lectures, or application of tattoos or permanent makeup on materials other than human skin.

Stat. Auth.: ORS 676.615 & 690.405(9)

Stats. Implemented: ORS 676.615 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0020; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-555-0010

Approved Course of Study

(1) To be approved by the Oregon Health Licensing Agency, a course of study must include at least 360 hours of instruction. The course must include at least 210 hours of theory and at least 150 hours of practical work.

(2) Practical work must include a minimum of 50 completed procedures, for the purposes of determining qualification for licensure under this rule. Completed procedure means a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing, and the client is released from service, as follows:

(a) Figurative tattooing includes outlining and shading, use of different size/configuration of needles, a new design on a live human being;

(b) Cosmetic tattooing includes eyeliner, eyebrows, lip liner, full lip color, repigmentation or camouflage but does not include beauty marks.

(3) All practical applications performed during training in the subject areas listed in subsection (4) of this rule are counted toward meeting the minimum 150 hours of practical tattooing experience.

(4) A course of study must include, but is not limited to, the following areas:

(a) Needles and needle bars which means the metal or plastic device used to attach the needle to a tattoo machine: 20 hours of theory;

(b) Tattoo machines and equivalent equipment: 20 hours of theory;

(c) Equipment/Supplies: 20 hours of theory;

(d) Safety, Infection Control and Sterilization: 40 hours of theory;

(e) Basic color theory and pigments: 10 hours of theory;

(f) Design, art and placement: 10 hours of theory;

(g) Skin: 20 hours of theory;

(h) Client services 20 hours of theory;

(i) Business operations, including exposure control plan and federal regulations: 40 hours of theory;

(j) Oregon Laws and Rules: 10 hours of theory training.

(5) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed on the general public.

(6) Training must meet minimum objectives listed in OAR 331-555-0010 and must be conducted under the direct supervision and authority of an Oregon licensed permanent coloring technician and tattoo artist, registered as a teacher by the Department of Education, Private Career Schools.

(7) A registered teacher must provide direct supervision of practical training on a one-to-one student/teacher ratio as defined in OAR 331-550-0000 for students performing practical training while the student is working on the general public. The Department of Education, Private Career

Schools may waive the one-to-one student/teacher ratio in certain circumstances.

(8) Arrangements for the time, place and cost of education and training must be arranged between the applicant and the school providing the training.

Stat. Auth.: ORS 690.405 & 690.410

Stats. Implemented: ORS 690.405 & 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0030; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04, Renumbered from 331-555-0020; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-555-0030

Experience Equivalency Standards

An applicant is not required to comply with the training requirements under OAR 331-515-0010 if the agency determines training and/or work experience obtained is equivalent to minimum requirements based on documentation of two years full-time or four years part-time work experience in the field of permanent coloring or tattooing.

Stat. Auth.: ORS 690.365, 690.405 & 690.410

Stats. Implemented: ORS 690.365, 690.405 & 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0045 & 333-305-0050; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-555-0040

Application Requirements

(1) Individuals applying for licensure to practice permanent coloring or tattooing must meet the requirements of OAR 331 division 30, in addition to the provisions of this rule.

(2) Applicants must submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the application, examination and license fees.

(3) Applicants must be at least 18 years of age, and must provide documentation, confirming date of birth, such as a copy of the birth certificate, driver's license, passport or school/military/governmental record.

(4) Applicants must have completed four years of standard high school education or the equivalent. Acceptable documentation includes, but is not limited to: high school diploma, letter from school or military records verifying completion, GED passing scores, completion of an educational course or program in a post-secondary educational institution, or other agency approved documentation.

(5) The completed application must include submission of satisfactory evidence of required training under OAR 331-555-0010 by one of the following education and training pathways for licensure:

(a) **OFFICIAL TRANSCRIPT:** The document must be mailed directly to the agency from a licensed or accredited school or an equivalent institution recognized by the agency, showing completion of the prescribed course of study, listed in OAR 331-555-0010 or its equivalent, approved by the agency, and must be issued by:

(A) A school of tattooing licensed by the Department of Education, Private Career Schools, under ORS 345;

(B) A licensed or accredited school of tattooing located in another state where the practice is unregulated;

(C) An institution recognized by the agency, such as a medical facility or other county, state, or federal agency or entity, where training and education is provided by means of a standardized course of study, adhering to prescribed curriculum objectives and criteria.

(D) The transcript must be mailed or transmitted directly to the agency or delivered in a sealed envelope by an authorized courier.

(b) **OUT OF STATE LICENSURE:** Applicants who hold a current permanent color or tattoo license issued from another city, county, or state which meet or exceeds Oregon standards must provide an Affidavit of Licensure as defined in OAR 331-030-0040 to the agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(c) **EXPERIENCE EQUIVALENCY:** All other permanent color or tattoo professionals working in a city, county, state or country where the practice of permanent coloring and tattooing is unregulated, must provide documentation in the form of tax returns, authenticated by the federal Internal Revenue Service, verifying that the tax returns have been filed. Personal tax returns must substantiate that the individual acquired work experience through two years of active full-time practice in the field of permanent coloring or tattooing. The agency may request additional information to substantiate qualifications if the tax returns do not adequately verify the applicant has been practicing permanent color or tattooing in an unregulated state.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 690.365 & 690.405
Stats. Implemented: ORS 690.365 & 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0035; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-560-0000

Examination Authorization

(1) The Oregon Health Licensing Agency will conduct examinations for licensure. A schedule of examination dates and times is available at the agency upon request. Applicants will not be eligible for an examination until all documentation and fee requirements have been completed.

(2) The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants and schools in advance whenever possible.

(3) Applicants must provide approved identification listed under OAR 331-030-0000 at the time of the examination.

Stat. Auth.: ORS 690.370 & 690.405
Stats. Implemented: ORS 690.370 & 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0075 & 333-305-0080; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-560-0010

Examination for Licensure

(1) Applicants for licensure must satisfactorily pass the written examination(s) that tests the applicant's knowledge of:

- Basic principles of safety, infection control and sterilization;
- Oregon laws and rules (including licensure requirements and regulations);
- Chemical use and storage;
- Diseases/disorders (skin, HIV, Hepatitis B, C and D viruses, communicable/transmittable);
- Equipment, supplies, tools and implements;
- Practice standards;
- Facility standards;
- Definitions.

(2) The examination consists of two sections as follows:

- 100 written multiple choice questions not to exceed one hour in duration; and
- 50 written skill assessment questions not to exceed one hour in duration.

(3) Examination candidates must achieve a 75 percent or higher score on each section to pass the written examination.

(4) The examination is administered in English only, unless an agency approved testing contractor or vendor provides the examination in language(s) other than English. Examination candidates may be electronically monitored during the course of testing.

(5) Applicants failing to successfully complete the application process and attain licensure within two years from the date of the initial application are required to:

- Reapply according to OAR 331-555-0040;
- Pay the appropriate fees; and
- Completion and verification of an additional 100 hours of instruction in theory, outlined in OAR 331-555-0010(3) which is obtained through an Oregon career school licensed under ORS 345.

Stat. Auth.: ORS 690.405 & 690.410(3)(b)
Stats. Implemented: ORS 690.405 & 690.410(3)(b)
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0070; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-560-0020

Special Examination Accommodations

(1) Applicants who have a learning, psychological, physical, or other disability, which requires an accommodation to the regular testing environment may request a special examination.

(2) Requests for accommodation must be made on forms provided by the agency and must contain supporting documentation completed by a licensed professional holding appropriate credentials qualified to certify that the applicant's disabling condition requires the requested test accommodation.

(3) A "Request for Accommodation" form must be submitted to the agency in advance of the scheduled examination date to make appropriate arrangements contingent upon the type of accommodation requested.

(4) All special examinations are conducted at the agency. If the agency is unable to accommodate the disability on-site special arrangements will be arranged for an adequate test site.

Stat. Auth.: ORS 690.370 & 690.405

Stats. Implemented: ORS 690.370 & 690.405
Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-560-0030

Examination Conduct; Disqualification

(1) Examinations are conducted in a designated area with restricted access. Authorization must be provided by the agency before bringing any material or electronic equipment or devices into the examination. Receiving or attempting to receive assistance during the examination, including assistance from other individuals, notes, books, devices, or taking unauthorized items into the examination area will invalidate the examination and result in forfeiture of the examination and fees.

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

- Directly or indirectly giving, receiving, soliciting, attempting to give, receive or solicit aid during the examination process;
- Removing or attempting to remove any examination-related information, notes or materials from the examination site;
- Failing to follow directions relative to the conduct of the examination; and
- Exhibiting behavior that impedes the normal progress of the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination fees. The applicant will be required to reapply, submit additional examination fees and request in writing to schedule another examination. Reexamination will be scheduled at a date, time and place determined by the Director following the date of disqualification. Reexamination will be conducted at the agency.

Stat. Auth.: ORS 690.410
Stats. Implemented: ORS 690.410
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0090; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-560-0060

Retake of Examination Sections; Additional Training

(1) Failed examinations may be retaken at a date and time determined by the agency. Retaking a failed examination requires registration and payment of the examination fees.

(2) Applicants who fail to pass any section of the written examination after three attempts (initial examination plus two retakes) are required to complete an additional 100 hours of instruction in theory, focused on the approved curriculum outlined in OAR 331-555-0010(3) before they may attempt any subsequent retakes of the examination. Additional instruction must be obtained through an Oregon career school licensed under ORS 345.010 to 345.450.

(3) Prior to an applicant's fourth examination attempt, an official transcript must be received from an Oregon licensed career school which verifies that the applicant has satisfactorily completed the additional required hours of instruction.

(4) Applicants failing to successfully complete the examination process to obtain a license within two years from the date of their most recent examination attempt will be required to:

- Reapply for examination according to OAR 331-555-0040;
- Pay the application, examination and original license fees; and
- Retake all examination sections qualified for, regardless of a previously passing score and completion and verification of an additional 100 hours of instruction in theory, as outlined in OAR 331-555-0010(3) and obtained through an Oregon career school licensed under ORS Chapter 345.

(5) Review of any examinations is prohibited.

Stat. Auth.: ORS 690.370 & 690.405
Stats. Implemented: ORS 690.370 & 690.405
Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0105 & 333-305-0110; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0000

License Issuance; Renewal

(1) Licensees are subject to the provisions of OAR 331 division 30, regarding issuance and renewal of a license, and to the provisions of 331-030-0020 regarding the authorization to practice, identification, and the requirements for issuance of a replacement or duplicate authorization.

(2) Renewal payments received by the agency, or postmarked, after the expiration date but within three years of expiration, will be assessed delinquency (late) fees in addition to the renewal fee.

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(3) Failure to meet continuing education requirements listed in OAR 331-570-0000 will require reapplication, submission of an application fee, examination fees and license fee, and successfully passing all sections of the examination before a license will be reissued.

(4) Failure to renew or reactivate a license within three years from the date of expiration will require the following before a license will be reissued:

- (a) Reapply according to OAR 331-555-0040;
- (b) Pay the appropriate fees; and
- (c) Completion and verification of an additional 100 hours of instruction in theory, as outlined in OAR 331-555-0010(3) and is obtained through an Oregon career school licensed under ORS Chapter 345.

Stat. Auth.: ORS 690.385 & 690.405

Stats. Implemented: ORS 690.385 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0115; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 10-2008, f. 9-15-08 & cert. ef. 10-1-08; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0020

Facility License Issuance and Renewal; Cooperation in Inspections

All facilities must be licensed to provide permanent color and tattoo services prior to operating permanent color and tattoo facilities.

(1) The agency will issue a facility license to a qualified person, as provided in OAR 331-030-0010, if the applicant:

(a) Is at least 18 years of age, if the applicant is a natural person, as required in ORS 690.365(2). If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a certificate of identification, and submits with certificate of identification application a current copy of the ABN filing.

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to ORS 648.005 through 648.990.

(c) Applies on a form and with the information prescribed by the agency and pays the required application and license fees;

(d) Complies with all applicable rules and regulations;

(e) Certifies that application information is correct; and

(f) Meets the specifications for building, fire and plumbing codes as specified in OAR 331-580-0000 and complies with exit and fire standards established by the Building Codes Agency and Office of the State Fire Marshal.

(2) Facility license applicant must provide a map or direction to the business premises if the facility is located in a rural or isolated area.

(3) Facility must submit a copy of the spore test results from applicant's autoclave, or submit a signed attestation requesting an exemption under OAR 331-585-0020 based on the exclusive use of prepackaged sterile tattooing equipment, including needles.

(4) A facility license holder must comply with the provisions of OAR 331-030-0010 regarding issuance and renewal of a facility license.

(5) Each facility license holder must:

(a) Allow the agency's enforcement officer to inspect the facility when it is open for business;

(b) Ensure employees cooperate with agency enforcement officers and refrain from impeding an inspection in any way;

(c) Contact the agency in writing to make arrangements for an inspection if the agency has been unable to perform an annual inspection because the facility was closed.

Stat. Auth.: ORS 676.615, 690.360 & 690.405

Stats. Implemented: ORS 676.615, 690.360 & 690.405

Hist.: HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0062; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0025

Facility Located in Residence

A facility located in a residence must comply with the provisions of OAR 331-565-0020 in addition to the following criteria:

(1) Have an identifying house number or a sign, which is easily visible from the street and indicates the location of the facility;

(2) Be equipped with the structures, accommodations, and equipment which the agency requires for all facilities; and

(3) Have an entry that is separate from the entry to the living area of the home. The living area of the home must be separated from the facility by solid walls extending from floor to ceiling, with any connecting doors kept closed while the facility is in actual operation.

Stat. Auth.: ORS 676.615, 690.360 & 690.405

Stats. Implemented: ORS 690.390 & 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0030

Facility License Requirements

(1) The facility license is issued to a designated owner or legal entity for the specific physical location where business is conducted. The license is not transferable from person-to-person or from business-to-business.

(2) A facility owner or license holder must meet the requirements of a new facility and submit a new facility application and required fees when any of the following conditions exist:

(a) A facility is purchased from the current or previous owner, partnership or corporation;

(b) There is a change in the legal ownership, partnership or holding of a facility regulated under ORS Chapter 690 and OAR chapter 331, such as a partner or co-owner being added or removed from the existing facility license. This includes a change in the ownership status due to death or divorce of facility owner or a spouse listed as a co-owner on the agency's records.

(c) An existing facility moves or relocates to a new physical address.

(3) Facility license holders who close a business regulated under ORS Chapter 690 and OAR chapter 331 must inform the agency in writing within 30 calendar days of the closure of the facility and before reopening the facility while the license is still current.

Stat. Auth.: ORS 676.615, 690.360 & 690.405

Stats. Implemented: ORS 676.615, 690.360 & 690.405

Hist.: HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0062; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0040

Display of License

(1) Authorizations as defined in OAR 331-010-0000 are subject to the requirements of OAR 331-030-0020.

(2) The following must be posted in public view:

(a) Facility licenses.

(b) Practitioner licenses. The practitioner's address printed on the certificate may be blocked from public view.

(c) Temporary permits.

(d) The most recent inspection certificate.

Stat. Auth.: ORS 690.380

Stats. Implemented: ORS 690.380

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0140; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0050

Replacement Authorizations

(1) The agency will issue a replacement authorization provided the request is made in writing, certifying the original authorization has been lost or destroyed and the appropriate fee is enclosed.

(2) The posting of a reproduction of any authorization is prohibited unless the agency issued and marked it "Duplicate."

(3) The posting of a pocket identification card in lieu of a authorization is prohibited.

Stat. Auth.: ORS 690.405 & 690.415

Stats. Implemented: ORS 690.405 & 690.415

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0145; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0060

Practicing at Location Other Than Named Place(s) of Business

(1) Licensees are prohibited from practicing at any location other than a place of business listed with the agency. However, licensees may provide services outside the premises of a licensed facility on persons residing in a health care facility or persons confined to their residence through medical disability or restriction.

(2) All licensees who perform services at locations listed in this rule or at more than one business location must carry their license with them and post it while working.

(3) Licensees working in a mobile facility in accordance with OAR 331-565-0085 must comply with provisions of this rule.

Stat. Auth.: ORS 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0185; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

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331-565-0080

Temporary Facility Permit

(1) Temporary facility permit is an authorization pursuant to ORS 690.405 to operate a single facility on a limited basis, not to exceed 15 consecutive calendar days, at settings such as fairs, carnivals or bazaars.

(2) A temporary facility permit is not an event facility permit which is comprised of individual booths where permanent color and tattoo services are provided.

(3) A person who intends to operate a facility on a limited basis away from a primary licensed facility must first obtain a temporary facility permit from the agency.

(4) To be granted a temporary facility permit, a person must meet the following requirements:

(a) Be 18 years of age or older, if the applicant is a natural person. If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(b) Apply on forms prescribed by the agency and provide the required information and application fees.

(5) A temporary facility must:

(a) Receive the permit and post the authorization in public view before opening for business;

(b) Comply with the rules of the agency concerning health, safety and infection control;

(c) Comply with the applicable health and safety laws and rules of the agency and any other state agencies;

(d) Pay the required permit fees.

(6) The temporary facility permit must specify the period during which the permit is valid.

Stat. Auth.: ORS 676.615 & 690.405

Stats. Implemented: ORS 676.615 & 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0085

Mobile Facility License

(1) Mobile facility license means an authorization issued under ORS 690.380 to operate a facility outside of or away from a permanent physical location within an approved enclosed transportable vehicle, such as recreational vehicles or trailers, which has the ability to transport the business operation to multiple locations in the State of Oregon during specific approved periods of time.

(2) A mobile facility license holder is subject to and must comply with all requirements of OAR 331, divisions 565, 575, 580 and 585, unless otherwise specified in subsection (6) of this rule.

(3) To be granted a mobile facility license, a person must submit a mobile facility application to the agency, on an approved form prescribed by the agency, pay the required application and license fees, and meet requirements of OAR 331-565-0020. Applicants must provide satisfactory evidence of the following information:

(a) The make, model, year and license plate number of the vehicle that will be designated as the mobile facility;

(b) A permanent mailing address for the mobile facility license applicant or license holder;

(4) A mobile facility license holder must comply with the following requirements:

(a) Submit written notification to the agency on a prescribed Mobile Facility Service Location form for each new physical location where services will be provided. The notification form must be received by the agency 24 hours before services are performed at the new physical location;

(b) The Mobile Facility Service Location form will be provided by the agency and may be submitted by regular United States Postal Service or by electronic mail or in person at the office;

(c) The mobile facility must remain stationary while services are being provided to clients;

(d) The mobile facility may not operate at any physical location for more than 15 consecutive days in one calendar month.

(5) To be eligible to renew a mobile facility license, the license holder must comply with provision of OAR 331-565-0020 and 331-030-0010, and must submit to the agency a minimum of one physical location change on a Mobile Facility Service Location form during the previous year where services were provided.

(6) The mobile facility license is not subject to the provisions of OAR 331-565-0030(1)(c) or 331-565-0060(1).

Stat. Auth.: ORS 676.615, 690.360, 690.380, 690.410, 690.415

Stats. Implemented: ORS 676.605, 676.615 & 690.380

Hist.: HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0090

Temporary Practitioner Permit

(1) Temporary practitioner permit is an authorization pursuant to ORS 690.365 to perform permanent color and tattoo services on a limited basis, not to exceed 15 consecutive calendar days. For the purpose of this rule licensed facility means a permanent color or tattoo facility which holds a current valid facility license, mobile facility license, temporary facility permit or event facility permit.

(2) All applications must be received 15 days before permanent color and tattoo services are provided.

(3) A temporary practitioner permit can be reactivated up to four times in a 12 month period from the date the agency processes the initial application. Applicants must reapply every 12 months and meet the qualifications of subsection 9 or 10 of this rule.

(4) All requests to reactivate must be received 15 days before permanent color and tattoo services are provided unless otherwise approved by the agency.

(5) A temporary practitioner must be attached to an authorized or licensed facility.

(6) A temporary practitioner must notify the agency within 24 hours before services are performed at a new licensed facility during a 15 day active period, unless otherwise approved by the agency.

(7) The applicant and the authorized facility may be held responsible for failure to comply with regulations set forth by ORS 676.612, 690.390, OAR 331, divisions 565, 575, 580 and 585.

(8) To be granted a temporary practitioner permit an applicant must submit an application to the agency, on a form approved by the agency, meet the requirements of OAR 331-030-0000, and pay the required fees. The following information must be provided at the time of application:

(a) Dates when permanent color and tattoo services will be provided;

(b) Name, address, phone number and license number of the licensed facility where permanent color and tattoo services will be provided.

(9) To be granted a temporary practitioner permit an applicant must provide satisfactory evidence of meeting requirements, which includes qualifying criteria listed in one of the following pathways:

(a) Non Credentialed: Applicant must provide satisfactory evidence of successful completion of the following training and experience:

(A) Basic First Aid;

(B) Blood borne pathogens; and

(C) Six months of training or experience, within the last two years, in performing tattoo or permanent color services, including but not limited to notarized letter from employer, or transcript from an educational institution or agency;

(b) Out of State Licensure: Applicant meets the requirements set forth in OAR 331-555-0040.

(10) For the purpose of this rule training includes attendance or participation at an instructional program presented, recognized, or under the sponsorship of any permanently organized institution, agency, or professional organization or association recognized by the agency.

(11) All applicants must be 18 years of age or older.

Stat. Auth.: ORS 676.605, 676.606, 676.615, 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, 676.615, 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

Hist.: HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-565-0095

Event Facility Permit

(1) Event facility permit means authorization issued under ORS 690.380 to operate a facility for specific approved period of time not to exceed 15 consecutive calendar days, for convention, educational, demonstration and exhibition purposes. Event facilities are made up of individual booths as defined in OAR 331-505-0000 where tattoo and permanent color services will be provided.

(2) Be 18 years of age or older, if the applicant is a natural person. If the applicant is an entity other than a natural person, the entity must be formed and operated in accordance with Oregon law;

(3) An event facility permit holder is subject to and must comply with all requirements of OAR 331, divisions 565, 575, 580 and 585, unless otherwise in this rule.

(a) A representative of the event facility must be available at all times when services are being provided.

(b) The event facility must be inspected by the agency prior to the performance of any permanent color or tattoo services.

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(c) The applicant may be held responsible for unlicensed activity and the actions of licensees who do not comply with regulations.

(4) To be granted an event facility permit an individual must submit application to the agency, on an approved form prescribed by the agency, pay the required application and permit fees, and meet requirements of OAR 331-030-0000 and 331-565-0020. Applicants must submit the following:

- (a) Application and application fee 30 days before the event;
 - (b) Permit fee 10 days before the start of the event;
 - (c) A list which includes Oregon licensed practitioners and temporary practitioner permit holders providing permanent color and tattoo services 10 days before the start of the event; and
 - (d) Diagram of the venue layout which includes but is not limited to water supply sources, booths where permanent color and tattoo services are provided, vendors, restrooms, exits and square footage for the entire venue 10 days before the start of the event.
- (5) The event facility must post the following in public view:
- (a) All licenses and permits in accordance with OAR 331-565-0040;
 - (b) All inspection certificates provided by the agency; and
 - (c) Each booth must post agency approved signage, other agency rules pertaining to public safety, and indicate no person under the age of 18 may receive tattoo and permanent color services.

(6) A minimum of fifty (50) square feet of floor space is required for each service area where tattoo and permanent color services are provided.

Stat. Auth.: ORS 676.605, 676.606, 676.615, 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, 676.615, 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

Hist.: HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-570-0000

Continuing Education for License Renewal

To maintain licensure all permanent color technicians and tattoo artists must comply with the following continuing education requirements:

(1) Complete 10 clock hours of satisfactory continuing education, either as one unit or combination of units, every two years.

(2) Satisfactory continuing education courses must fit into the approved course of study outlined in OAR 331-555-0010, and must be obtained as follows:

(a) Participation or attendance at an instructional program presented, recognized, or under the auspices of any permanently organized institution, agency, or completion and certification by an approved national home study organization; or

(b) Self-study, participation, or attendance not covered in this rule may comprise up to eight hours of the total requirement. Self-study may include continuing education obtained by means of the following:

- (A) Correspondence courses;
- (B) Review of publications, textbooks, printed material, or audio cassette(s);
- (C) Viewing of films, videos, or slides;

(c) Attendance at meetings of the Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists may be credited for a maximum of three hours per meeting, totaling no more than six hours per three year reporting period.

(3) Licensees must report compliance with the continuing education requirement through attestation on the license renewal document. Licensees will be subject to the provisions of OAR 331-570-0020 pertaining to periodic audit of continuing education.

(4) Continuing education requirements apply whether the applicant renewing a license is living or working within Oregon or outside of the state as long as Oregon licensure is maintained.

(5) Hours of continuing education, in excess of the requirement for renewal every two years, will not be carried forward.

(6) Continuing education is required for renewal, every two years, even if the license has been inactive or suspended during that period.

(7) To ensure adequate evidence of attainment of required continuing education is available for audit or investigation by the agency, records of attendance must be maintained for two years following the two-year continuing education cycle and renewal of the permanent coloring and tattooing license.

(8) Licensees failing to obtain 10 clock hours of continuing education every two years must reapply and qualify according to the requirements of OAR 331-555-0040 and successfully pass a written examination.

Stat. Auth.: ORS 676.605, 676.615 & 690.385

Stats. Implemented: ORS 676.605, 676.615 & 690.385

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0125 & 333-305-0130; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04, Renumbered from 331-570-0010; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-570-0020

Continuing Education: Audit, Required Documentation and Sanctions

(1) The Oregon Health Licensing Agency will audit a select percentage of licenses determined by the Council to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 331-570-0000.

(3) Documentation of attendance at a program or course provided by the sponsor must include:

- (a) Name of sponsoring institution/association or organization;
- (b) Title of presentation and description of content;
- (c) Name of instructor or presenter;
- (d) Date of attendance and duration in hours;
- (e) Course agenda;

(f) Official transcript, diploma, certificate, statement or affidavit from the sponsor, attesting to attendance.

(4) Documentation substantiating the completion of continuing education through self-study must show a direct relation to subjects outlined in OAR 331-555-0010, be submitted on forms provided by the agency and include the following:

(a) Name of sponsor or source, type of study, description of content, date of completion and duration in clock hours;

(b) Name of approved correspondence courses or national home study issues;

(c) Name of publications, textbooks, printed material or audiocassettes, including date of publication, publisher, and ISBN issued.

(d) Name of films, videos, or slides, including date of production, name of sponsor or producer and catalog number.

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

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

Stat. Auth.: ORS 676.615 & 690.405

Stats. Implemented: ORS 676.615 & 690.405

Hist.: HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-575-0000

Required Equipment; Articles and Materials

(1) Permanent color technicians and tattoo artists must provide and maintain at the place of business an adequate supply of disinfecting or sterilizing equipment, tools/implements, and other necessary materials for his/her own practice needs, taking into account volume of business.

(2) The following equipment must be maintained at the place of business:

(a) Tattoo machine or hand pieces, of non-porous material which can be sanitized;

(b) Stainless steel or carbon needles and needle bars;

(c) Tubes, stainless steel, brass, or lexan which can be sterilized;

(d) Stencils, plastic acetate or single use disposable carbon paper;

(e) Sterilization bags with color strip indicator;

(f) Protective disposable gloves;

(g) Single use or disposable plastic tubes, razors or straight razor;

(h) Single use towels, tissues or paper products;

(i) Sharps container;

(j) Commercially purchased inks, dyes and pigments.

(2) Approved equipment for cleaning and sterilizing instruments must be maintained at the place of business.

Stat. Auth.: ORS 690.390

Stats. Implemented: ORS 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0190; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-575-0010

Practice Standards, Client Records and Prohibitions

(1) Licensees must keep an individual record of each client. That record must include the name, date of birth and address of the client, and

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the date and duration of each service, type of service, special instructions, and medical history or client conditions, including but not limited to:

- (a) Diabetes;
- (b) Client sensitivities;
- (c) Cold sores and fever blisters;
- (d) Epilepsy;
- (e) Heart conditions, including pacemakers and hypertension;
- (f) Hemophilia;
- (g) Hepatitis;
- (h) Use of blood thinners;
- (i) Moles or freckles at the site of service;
- (j) Psoriasis or eczema;
- (k) Pregnancy or breast-feeding/nursing;
- (l) Scarring (keloid);
- (m) Other medical or skin conditions.

(2) Licensees may obtain advice from physicians regarding medical information needed to safeguard client and technician or artist.

(3) Records must be kept for a minimum of two years.

(4) Pre-service information in written form must be given to client to advise of possible reactions, permanency of the permanent color or tattoo, side effects and potential complications of the tattooing process. Aftercare instructions must be given to the client both verbally and in writing after every service.

(5) Before and after photographs must be taken for medical tattooing procedures, and records maintained.

(6) Inks, dyes, or pigments must be purchased from a commercial supplier or manufacturer. Products banned or restricted by the Food and Drug Administration must not be used.

(7) Tattooing is prohibited:

(a) On a person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;

(b) On persons who show signs of intravenous drug use;

(c) On persons with sunburn or other skin diseases or disorders such as open lesions, rashes, wounds, puncture marks in areas of treatment;

(d) On persons under 18 years of age, regardless of parental or legal guardian consent, except when authorized or prescribed by a physician's statement exclusively for medical repigmentation as defined in OAR 331-550-0000.

(8) Proof of age must be documented in the client's record by one of the following:

(a) Copy of current government issued photographic identification listed under OAR 331-030-0000 and

(b) Documentation of the number and type of photographic identification as listed under OAR 331-030-0000 and date of birth.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0150; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-575-0020

Permanent Color and Tattoo Procedures; Preparation and Aftercare

(1) During preparation, performance of service, and aftercare phases all substances must be dispensed from containers in a manner to prevent contamination of the unused portion (refer to OAR 331-585-0000). Use of spray bottle to apply liquid to skin is acceptable. Single use tubes or containers and applicators must be discarded following tattoo service.

(2) The client's skin must be cleansed, excluding the areas surrounding the eyes, by washing with a Food and Drug Administration (FDA) germicidal solution applied with a clean single-use paper product before placing the design on the client's skin or beginning tattooing work.

(3) If the area is to be shaved, the licensee must use a single use disposable safety razor or sterilized straight-edged razor, and then rewash client's skin.

(4) Substances applied to client's skin to transfer design from stencil or paper must be single use. Paper stencils and skin scribes must be single-use and disposed of immediately following service.

(5) Body pencils used during a tattoo service must have the tip removed, the body and tip of pen disinfected, and the tip sharpened to remove exposed edge after use on a client and prior to use on another client.

(6) The plastic or acetate stencil used to transfer the design to the client's skin must be thoroughly cleansed and rinsed in an Environmental Protection Agency (EPA) approved high-level disinfectant according to the manufacturers instructions and then dried with a clean single-use paper product.

(7) Individual portions of inks, dyes, or pigments in clean single-use containers must be used for each client. Any remaining unused dye or pigments must be discarded immediately following service.

(8) Excess ink, dye, or pigment applied to the client's skin must be removed with clean single-use paper product obtained from a self-dispensing container.

(9) Use of styptic pencils or alum solids to check any blood flow is prohibited.

(10) Upon completion of a permanent color or tattoo service, the following aftercare procedures are required:

(a) The skin must be cleansed, excluding the area surrounding the eyes, with a clean single-use paper product saturated with an (FDA) approved germicidal solution.;

(b) A clean covering must be placed over designs and adhered to the skin; and

(c) An absorbent material must be incorporated into the covering to prevent the spread of bodily fluids and cross contamination.

(11) Aftercare must consist of both verbal and written instructions concerning proper care of the tattooed skin. Instructions must specify:

(a) Care following service;

(b) Possible side affects; and

(c) Restrictions.

Stat. Auth.: ORS 676.605, 676.615 & 690.390

Stats. Implemented: ORS 676.605, 676.615 & 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0252; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-575-0030

Handwashing/Protective Gloves; Handling Disposable Materials

(1) **HAND WASHING:** Permanent color technicians and tattoo artists must observe and adhere to the following hand washing standards when serving clients:

(a) Hands must be washed before and after treatment of each client and before putting on gloves and immediately after gloves are removed;

(b) Thorough hand washing must be by use of soap and water or other alternative hand washing product, such as jell, aerosol spray, foam, or pre-packaged hand wipes, immediately before and after serving each client as needed. Use of bar soap is prohibited;

(2) **PROTECTIVE GLOVES:** Permanent color technicians and tattoo artists must observe and adhere to the following protective glove standards when serving clients:

(a) A new pair of disposable gloves must be worn during the treatment of each client;

(b) Hands must be washed in accordance with the hand washing standards stated in this rule before putting on gloves and immediately after gloves are removed;

(c) If a practitioner uses low-powdered gloves, the excess exterior powder must be removed to prevent powder contact with the client's skin during treatment;

(d) When a treatment session is interrupted:

(A) A protective covering must be used over the gloved hand/ hands; or

(B) Gloves must be removed and discarded.

(e) When gloves are removed during a treatment session, hands must be washed and a fresh pair of gloves used;

(f) Torn or perforated gloves must be removed immediately, and hands must be washed after gloves are removed.

(3) **DISPOSABLE MATERIALS:** Permanent color technicians and tattoo artists must observe and adhere to the following disposable material standards when serving clients:

(a) All waste materials related to treatment must be disposed of in a covered container after each client service;

(b) Disposable materials in contact with blood and/or body fluids must be placed in a sealable plastic bag, separate from sealable trash or garbage liners, and then disposed of in a covered container;

(c) Disposable sharp objects in contact with blood and/or body fluids must be disposed of in an appropriate "sharps container" as defined in OAR 331-505-0000;

(d) Permanent color technicians or tattoo artists must have both sealable plastic bags and sealable rigid containers available at the facility.

(4) The client's skin must be cleansed by applying an antiseptic or antibacterial solution prior to and following treatment.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered

ADMINISTRATIVE RULES

from 333-305-0210, 333-305-0215 & 333-305-0235; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-575-0050

Linens

- (1) Clean linens must be used for each client.
- (2) A common towel is prohibited.
- (3) Air blowers can be substituted for hand towels.
- (4) Clean linens, tissues or single-use paper products must be stored in a clean, enclosed storage area until needed for immediate use.
- (5) Used linens must be disposed of or stored in a closed or covered container until laundered.
- (6) Used linens must be laundered either by a regular commercial laundering or by a noncommercial laundering process which includes use of commercial laundry detergent manufactured for the specific purpose of cleaning clothes, linens or other washable fabric, and immersion in hot water during the wash/rinse operation.

Stat. Auth.: ORS 690.390

Stats. Implemented: ORS 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0220; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-580-0000

Compliance with all Applicable Regulations

- (1) Licensees and facility owners must observe all applicable state regulations pertaining to public health and safety. Compliance with building, state fire, plumbing, and electrical regulations is required.
- (2) In addition, when an employee/employer relationship exists, practitioners shall comply with ORS 654 and the Oregon Safe Employment Act.
- (3) Permanent color technicians and tattoo artists must observe and adhere with all Oregon Occupational Safety & Health Codes (OR-OSHA), OAR 437 and 29 CFR 1910.1030 Bloodborne Pathogens.
- (4) Every permanent color and tattoo facility must have a written Exposure Control Plan. All procedures developed for the facility's exposure control plan must be in compliance with OSHA state and federal regulations and with current Centers for Disease Control (CDC) standards for public service workers.

- (5) Only authorized equipment or products may be utilized, and in addition, must only be used in a manner approved by manufacturers and appropriate regulatory agencies.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 654, 676.605, 676.615 & 690.390

Stats. Implemented: ORS 654, 676.605, 676.615 & 690.390

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-580-0010

Criteria for Facilities

- (1) All facilities must have a treatment area/operator that is separate, private, or screened from the entrance, waiting area, and/or other treatment areas.
- (2) Facilities must be kept clean and orderly, and equipment must be maintained in good repair.
- (3) All surfaces (counters, tables, equipment, client chairs or recliners) in treatment and sterilization areas must be made of smooth, non-absorbent and non-porous material.
- (4) All floors and walls must be easily cleanable. Floors and walls in the treatment area must be made of smooth, non-absorbent and non-porous material. Concrete blocks or other masonry used in wall construction must be covered or made smooth and sealed for a washable surface.
- (5) A high-level disinfectant or bleach solution, used according to the manufacturer's instructions, must be used to disinfect surfaces contaminated by blood or bodily fluids.
- (6) Pets and other animals are not permitted in a facility or business premises at any time. The prohibition does not apply to fish in an aquarium and service animals that are trained to perform tasks for people with disabilities as referenced in the Americans with Disabilities Act.
- (7) Tattoo services provided in beauty facilities must be separated by a permanent, solid barrier from hair design and nail technology services in such a manner as to prevent contact with irritants including but not limited to hair spray and nail dust.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165, 333-305-0175 & 333-305-0180; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-580-0020

Water Supply Requirements and Standards

- (1) The quality and construction of facility water supplies must meet the requirements of ORS Chapter 448, the State Plumbing Code, OAR 437 and 918, division 750.

- (2) Facility water supplies must have a minimum of 20 pounds pressure per square inch in accordance with the State Plumbing code.

- (3) All facilities must have immediate access to an adequate supply of both hot and cold running water and wash basins on the facility premises or as part of surrounding premises or adjacent to the facility. Sinks located in the restroom do not qualify as a water source for the facility premises.

- (4) Waste from toilets or lavatories discharged directly into a public sewer or by a method meeting the requirements of ORS 454.

- (5) Hand washing accommodations must be provided in work areas where employees are exposed to hazardous materials, which may have a harmful effect on or be absorbed through the skin.

- (6) Washing accommodations must be maintained in a clean and sanitary condition.

Stat. Auth.: ORS 448, 654, 676.605, 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 448, 654, 676.605, 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0165; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-580-0030

Compliance with Indoor Clean Air Act

- Any public place in a facility is subject to the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875.

Stat. Auth.: ORS 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 433.835 - 433.875, 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0170; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-585-0000

Cleaning Requirements and Standards

- (1) All items that come in direct contact with the client's skin that do not require disinfecting must be clean.

- (2) All items that come in direct contact with the client's skin that cannot be cleaned or disinfected must be disposed of in a covered waste receptacle immediately after use.

- (3) All substances used in the practice of permanent color technicians and tattoo artists must be dispensed from containers in a manner to prevent contamination of the unused portion.

- (4) All disinfecting solutions and/or agents must be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times the facility is open for business.

- (5) Disinfecting agents must meet the criteria set forth in OAR 331-505-0000 to be authorized by the agency for use in a facility.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-585-0010

Instrument Cleaning; Sterilization Standards

- (1) Prior to sterilizing, instruments must be brushed and/or swabbed to remove foreign material or debris, rinsed and then cleaned by one of the following approved methods:

- (a) Immersing in detergent and water in an ultra sonic unit that operates at 40 to 60 hertz, followed by a thorough rinsing and wiping; or

- (b) Submerging and soaking in a protein dissolving detergent/enzyme cleaner, followed by a thorough rinsing and wiping.

- (2) Instruments or other equipment which are "heat-sensitive" must be disinfected by complete immersion of the object(s) or portion(s) thereof to be disinfected, in a high-level disinfectant which has demonstrated tuberculocidal activity, and used according to the manufacturer's instructions.

- (3) Cleaned instruments used in the practice of permanent coloring and tattooing must be placed in sterile bags or containers with color strip indicators, sterilized by exposure to one cycle of an approved sterilizer listed in OAR 331-585-0020, and handled with sterile transfer equipment during placement into sterile bags or containers.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0200 & 333-305-0205; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

ADMINISTRATIVE RULES

331-585-0020

Approved Sterilization Modes

(1) Licensees must sterilize instruments used in the practice of permanent coloring or tattooing by means of an approved sterilizing device registered and listed with the U.S. Food and Drug Administration, used, cleaned and maintained in accordance with the manufacturer's instructions. Approved sterilizing devices include an autoclave (steam or chemical) or dry heat unit.

(2) In lieu of sterilization methods listed in (1) above, a licensee may use single-use, prepackaged, sterilized equipment, obtained from commercial suppliers or manufacturers.

(3) Sterilizing devices must be tested during each sterilizing cycle by means of a commercial test mechanism, such as but not limited to color strip indicators to measure temperature control and general functioning of the equipment.

(4) Sterilizing devices must be tested at least quarterly for functionality and thorough sterilization by using a commercial biological monitoring (spore) system to assure all microorganisms, including spores, have been destroyed.

(5) Biological test results must be on laboratory letterhead and must contain the test date, and the name, model and serial number of the unit tested. Biological test results must be retained for a two-year period and must be available for inspection at all times.

Stat. Auth.: ORS 676.605, 676.615, 690.390 & 690.405

Stats. Implemented: ORS 676.605, 676.615, 690.390 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0195; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-585-0030

Clean Instruments; Products Storage

(1) Before use, disposable products that come in contact with the areas to be treated must be stored in clean containers that can be closed between treatments.

(2) Clean, sterilized re-usable instruments that come in contact with the areas to be treated, must be stored in clean, sterilized sealed bags or containers to maintain effective sterilization of the instrument until removed from the container.

(3) Clean, sterilized re-usable transfer instruments must be stored in a clean, dry, sterilized container.

(4) Chemicals must be stored in labeled, closed containers in an enclosed storage area.

Stat. Auth.: ORS 690.390

Stats. Implemented: ORS 690.390

Stat. Auth.: ORS 690.390

Stats. Implemented: ORS 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0225 & 333-305-0230; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-585-0040

Waste Receptacles

(1) All waste material related to treatment must be deposited in a covered container following service for each client.

(2) Waste disposed in receptacles located in reception and/or restroom areas is limited to materials which are not practice-related or used in the performance of any client services. Waste receptacles located in these areas are exempt from the covered container requirement listed in subsection (1) of this rule.

(3) Outer surface of waste disposal containers must be kept clean.

Stat. Auth.: ORS 690.390

Stats. Implemented: ORS 690.390

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0240; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-590-0000

Investigative Authority

The Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of electrolysis, permanent coloring or tattooing, pursuant to ORS 676.608 and 676.618, and may take appropriate disciplinary action in accordance with the provisions of 676.612 and 690.407.

Stat. Auth.: ORS 676.608, 676.618, 690.405 & 690.407

Stats. Implemented: ORS 676.608, 676.618, 690.405 & 690.407

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0255; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

331-590-0020

Schedule of Penalties for Licensing Violations; Violation of Standards

The Oregon Health Licensing Agency has adopted the following presumptive penalty schedule for the first and second violations of the following laws and rules. The following schedule applies except as the agency otherwise determines in consideration of the factors referenced in OAR 331-020-0060. For subsequent violations the provisions of 331-020-0060 applies.

(1) Operating or purporting to operate a permanent color or tattoo facility without first obtaining a current valid facility license is a violation of ORS 690.355 and OAR 331-030-0020 and may incur a penalty of \$500 per violation

(2) Practicing or purporting to practice or using the title permanent color technician or tattoo artist without first obtaining a current, valid practitioner license is a violation of ORS 690.355 and OAR 331-030-0020 and may incur a penalty of \$2,500 per violation.

(3) Allowing an unlicensed person to practice is a violation of ORS 676.612 and OAR 331-580-0000 and may incur a penalty of \$500.

(4) Practicing or holding one's self out as available to practice, or using the title permanent color technician or tattoo artist with an expired or suspended practitioner or facility license is a violation of ORS 676.612 or 690.355 and may incur a penalty of \$500.

(5) Failing to post a current, valid license issued by the agency in public view is a violation of OAR 331-565-0040 and may incur a penalty of \$100.

(6) Failing to provide appropriate photographic identification upon request by the agency is a violation of ORS 676.612 and OAR 332-030-0020 and may incur a penalty of \$500.

(7) Failing to submit changes of required licensing information within time frame set in rule is a violation of OAR 331-010-0040 and may incur a penalty of \$100.

(8) Practicing at location other than places of businesses designated to the agency, except as permitted by rule is a violation of OAR 331-565-0060 and may incur a penalty of \$200.

(9) Materially altering a license is a violation of ORS 690.360 and may incur a penalty of \$1500.

(10) Failing to allow the agency to inspect the premises when the facility is open, obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual to impede the inspection progress is a violation of ORS 676.612, OAR 331-020-0070 and/or 331-565-0020 and may incur a penalty of \$1500.

(11) Failing to meet a facility or practice standards adopted by the agency is a violation of ORS 676.612, 690.390 and OAR 331-580-0000 and may incur a penalty of \$500 and may result in suspension or revocation.

(12) Failing to provide a private or separate treatment area for clients is a violation of OAR 331-580-0010 and may incur a penalty of \$300.

(13) Except as provided by rule, allowing animals in the facility is a violation of OAR 331-580-0010 and may incur a penalty of \$300.

(14) Failing to have the required equipment or approved test indicators at facility is a violation of ORS 690.390 and OAR 331-575-0000 and may incur a penalty of \$500 and may result in suspension or revocation.

(15) Failing to use approved test indicators, commercial test mechanism, or maintain biological test results as required to ensure proper sterilization is a violation of ORS 690.390 and OAR 331-585-0020 and may incur a penalty of \$500.

(16) Failing to sterilize instruments using an approved mode or to use single-use, prepackaged, sterilized equipment is a violation of ORS 690.390, OAR 331-585-0020 and may incur a penalty of \$1,000.

(17) Failing to meet sterilization standards is a violation of ORS 690.390 and OAR 331-585-0010 and may incur a penalty of \$1,000.

(18) Failing to clean instruments prior to sterilization is a violation of OAR 331-585-0010 and may incur a penalty of \$1,000.

(19) Failing to wash hands before and after service or to wear protective gloves is a violation of OAR 331-575-0030 and may incur a penalty of \$500.

(20) Failing to prepare treatment area on a client in accordance with agency standards is a violation of OAR 331-575-0030 and may incur a penalty of \$500.

(21) Failing to meet cleanliness or storage standards for linens is a violation of OAR 331-575-0050 and may incur a penalty of \$500.

(22) Failing to meet storage requirements for instruments, products or chemicals is a violation of OAR 331-585-0030 and may incur a penalty of \$500.

ADMINISTRATIVE RULES

(23) Failing to dispose of materials contaminated with blood or bodily fluids in a sealable container or appropriate sharps container, is a violation of OAR 331-575-0030 and may incur a penalty of \$1,000.

(24) Failing to have required covered waste receptacles is a violation of ORS 690.390 and OAR 331-585-0040 and may incur a penalty of \$300.

(25) Performing a prohibited service is a violation of ORS 676.612 and OAR 331-575-0010 and may result in one or both of the following:

(a) A penalty of \$1000

(b) Suspension or revocation of license, permit, or registration.

(26) Failing to have and maintain client records is a violation of ORS 690.390 and OAR 331-575-0010 and may incur a penalty of \$500.

(27) Operating or purporting to operate a permanent color or tattoo event facility without first obtaining a current valid event facility permit is a violation of ORS 690.380 and OAR 331-565-0090 and may incur a penalty of \$5000 per violation.

Stat. Auth.: ORS 676.605, 676.615 & 690.407

Stats. Implemented: ORS 676.605, 676.615 & 690.407

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0265; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10

Oregon Health Licensing Agency, Board of Cosmetology Chapter 817

Rule Caption: Increase Board of Cosmetology fees.

Adm. Order No.: BOC 1-2010

Filed with Sec. of State: 3-31-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 11-1-2009

Rules Amended: 817-040-0003

Rules Repealed: 817-040-0003(T)

Subject: The Oregon Health Licensing Agency (OHLA) completed a comprehensive cost allocation analysis in 2008 that evaluated expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each program. The analysis showed an increase in fees to the Board of Cosmetology was necessary to meet revenue shortfalls. The agency postponed the fee increase in October 2008 to allow stakeholders time to implement the fee increase for graduates entering the cosmetology industry. The fee increase was implemented through temporary rulemaking on July 1, 2009, which expired on December 25, 2009. During that time the agency and the board began the administrative rulemaking process where comments were taken and considered. Based on public comment to decrease overall certification fees for recent graduates and an increase business authorizations the agency/board re-filed proposed rules with the Secretary of State to allow for further public comment regarding the amended fees. Permanent rules were scheduled to become effective on December 15, 2009, but the requirements set forth by the 2009 Legislature directed the agency to first report to the Interim Joint Committee on Ways and Means. Therefore, in order to continue the current fees and meet the requirements of the legislature, the agency filed temporary rules effective December 26, 2009.

Further consideration by OHLA and Department of Administrative Services of the fees and the cost allocation showed that continued review and foresight of the overall agency budget and the Board of Cosmetology budget was necessary before decreasing the cost to new applicants and increasing the cost to business owners. It was determined that an extensive review of all costs and fees including all OHLA programs and renewal cycles would be done before fees could be further changed. Therefore adopting the temporary administrative rules put in place on December 26, 2009, with the inclusion of the agency wide late fee of \$50 per year for up to two years as permanent administrative rules is necessary.

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) Delinquency fee: \$50 for each year in expired status up to two years.

(B) Replacement of certificate, license or registration, including name change: \$25.

(C) Duplicate certificate, license or registration document: \$25 per copy with maximum of three.

(D) Affidavit of licensure: \$50.

(E) 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; BOC 1-2010, f. 3-31-10, cert. ef. 4-1-10

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

Rule Caption: Decrease fees for application, initial license cost and renewal cost to reduce barriers for licensure.

Adm. Order No.: DEM 1-2010(Temp)

Filed with Sec. of State: 3-31-2010

Certified to be Effective: 4-1-10 thru 9-13-10

Notice Publication Date:

Rules Amended: 332-020-0020

Subject: The Oregon Health Licensing Agency and Board of Direct Entry Midwifery is filing temporary rules to decrease cost and reduce barriers to licensure for unlicensed midwives. This also includes going from a two-year license cycle to a one-year cycle. The agency

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is synchronizing the delinquency fee to align it with other agency programs. The fee changes are as follows:

- Application Current Fee: \$500.
- Application New Fee: \$150.
- License Current Fee: \$1900 for two years.
- License New Fee: \$630 for one year.

Rules Coordinator: Samantha Patnode—(503) 373-1917

332-020-0020

Fees

(1) Applicants and licensees are subject to the 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) License: \$150.
- (B) License by reciprocity: \$750.
- (b) Examination — Oregon laws & rules: \$50.
- (c) Original issuance of license (including by reciprocity): \$630 for one year.

(d) Renewal of license: \$630 for one year.

(e) Other administrative fees:

(A) Delinquency fee: \$50 for each year in expired status up to two years.

(B) Replacement of license, including name change: \$25.

(C) Duplicate license document: \$25 per copy with maximum of three.

(D) Affidavit of licensure: \$50.

(E) 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, 687.435 & 687.485

Stats. Implemented: ORS 676.605, 676.615, 687.435 & 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1997(Temp), f. 7-22-97, cert. ef. 7-23-97; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 1-2008, f. 9-15-08, cert. ef. 10-1-08; DEM 1-2010(Temp), f. 3-31-10, cert. ef. 4-1-10 thru 9-13-10

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Adopt temporary modifications to Health Insurance Program rules impacted by Senate Bill 897.

Adm. Order No.: PERS 1-2010(Temp)

Filed with Sec. of State: 4-5-2010

Certified to be Effective: 4-5-10 thru 9-27-10

Notice Publication Date:

Rules Amended: 459-035-0000, 459-035-0001, 459-035-0020, 459-035-0030, 459-035-0040

Subject: Senate Bill 897, which became effective on February 8, 2010, allows OPSRP Pension Program retired members, their spouses, and eligible dependents to participate in the PERS Health Insurance Program. The proposed rule modifications are necessary to include ORS Chapter 238A in that program's rules.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-035-0000

Policy and Goals

(1) The health insurance plans of the Public Employees Retirement System (PERS) are established and shall be administered as provided in ORS 238.410, 238.415, 238.420 and 238A.050. The Public Employees Retirement Board (Board) may enter into one or more contracts with health insurance carriers licensed to do business in the State of Oregon, or certified in another state that is operating under the laws of that state, to obtain health insurance coverage for eligible retirees, and their spouses or dependents.

(2) Benefits shall be provided under the Board's health insurance programs for eligible persons through retiree contributions and any other available funding to cover the Board's costs of health care coverage and administration under insurance contract between the Board and insurance carriers.

Stat. Auth.: ORS 238.410, ORS 238.650 & 238A.450

Stats. Implemented: ORS 238.410, 238.415, 238.420 & 238A.050

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 1-2010(Temp), f. & cert. ef. 4-5-10 thru 9-27-10

459-035-0001

Definitions

The words and phrases used in this division have the same meaning given them in ORS Chapters 238 and 238A. Additional terms are defined as follows unless the context requires otherwise.

(1) "Board" means the Public Employees Retirement Board as established in ORS 238.630.

(2) "Carrier" has the same meaning as provided in ORS 238.410(1)(a).

(3) "Competitive Negotiations" means the procurement method whereby proposals are requested from a number of sources and the Request for Proposals is publicized.

(4) "Creditable Service" has the same meaning as provided in ORS 238.005(5).

(5) "Dependent" means a PERS member's or retiree's dependent child who has never married. For the purpose of this rule a "child" is defined as follows:

(a) A natural child.

(b) A legally adopted child, or a child placed in the home pending adoption.

(c) A step-child who resides in the household of the stepparent who is an eligible retired member.

(d) A grandchild, provided that at the time of birth, at least one of the grandchild's parents was covered under a PERS-sponsored health insurance plan as a dependent child of the PERS member or retiree and resides in the household of the member or retiree.

(6) "Dependent Domestic Partner of a PERS Retiree" means a person who has a relationship with a PERS retiree that has the characteristics described below. To qualify as a "dependent domestic partner of a PERS retiree," the person and the PERS retiree must:

(a) Share a close personal relationship and be responsible for each other's common welfare, including but not limited to having joint financial responsibilities;

(b) Be each other's sole domestic partner;

(c) Not be married to anyone, nor have had another domestic partner within the previous 12 months;

(d) Not be related by blood so closely as to bar marriage in the State of Oregon;

(e) Have jointly shared the same regular and permanent residence for at least 12 months immediately preceding the effective date of coverage with the intent to continue doing so indefinitely; and

(f) Have the PERS retiree providing over one-half of the financial support for the person and qualify as a dependent of the PERS retiree as determined under section 105(b) of the Internal Revenue Code, 26 USC 105(b).

(7) "Eligible Person" means a person who is eligible for coverage under a PERS-sponsored health insurance plan. The conditions for such eligibility are set forth in OAR 459-035-0020.

(8) "Eligible Retired Member" means an eligible person who is eligible for payments toward the cost of the Medicare Companion Plan from RHIA. The conditions for such eligibility are set forth in OAR 459-035-0030.

(9) "Eligible Retired State Employee" means an eligible person who is eligible for non-Medicare insurance premium payments from the RHIPA. Conditions for such eligibility are set forth in OAR 459-035-0040.

(10) "Fund" has the same meaning as the Public Employees Retirement Fund in ORS 238.660.

(11) "Health Insurance" means insurance for health care, as that term is defined in ORS 238.410(1)(c).

(12) "Medicare" means the federal health care insurance plan established under Title XVIII of the Social Security Act as amended.

(13) "Medicare Companion Plan" means a PERS-sponsored health insurance plan for eligible persons who are eligible for and enrolled in Medicare.

(14) "Non-Competitive Negotiation" means procurement through solicitation of a proposal from only one source.

(15) "PEBB" means the Public Employees' Benefit Board established under ORS 243.061.

(16) "PERS" has the same meaning as the Public Employees Retirement System in ORS 238.600.

(17) "PERS Member" has the same meaning as "member" provided in ORS 238.005(12) and 238A.005(10).

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(18) "Plan Year" means a 12-month period beginning January 1 and ending December 31.

(19) "Qualifying Service" means:

(a) Creditable service, as defined in ORS 238.005(5), plus any periods of employment with an employer participating in PERS that are required of the employee before becoming a PERS member; or

(b) Periods of employment in a qualifying position, as that term is defined in ORS 238A.005(14).

(20) "Retiree" means a PERS member who is receiving a service or disability retirement allowance or benefit under PERS or who received a lump sum payment under ORS 238.305(3), 238.315, or 238A.195, or payment(s) under ORS 238A.400, or a person who is receiving retirement pay or pension calculated under ORS 1.314 to 1.380 (1989 Edition).

(21) "RHIA" means the Retirement Health Insurance Account established under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

(22) "RHIPA" means the Retiree Health Insurance Premium Account established under ORS 238.415 to help defray the cost of PERS-sponsored health plans other than the Medicare Companion Plan.

(23) "Small Purchase Procedures" (informal bidding) means the relatively simple and informal procurement methods whereby price and rate quotations are obtained from at least three sources and selection is made on the basis of cost and other applicable criteria.

(24) "SRHIA" means the Standard Retiree Health Insurance account established to administer employee and the employer contributions to the PERS sponsored health insurance program.

(25) "Staff" means the employees of the Public Employees Retirement System.

(26) "Third Party Administrator" means the individual or organization that the Board contracts with to provide administrative services as specified in the contract.

Stat. Auth.: ORS 238.410, 238.650 & 238A.450
Stats. Implemented: ORS 238.410, 238.415, 238.420 & 238A.050
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 17-2005, f. & cert. ef. 10-3-05; PERS 1-2010(Temp), f. & cert. ef. 4-5-10 thru 9-27-10

459-035-0020

Eligibility, General

This rule describes the eligibility requirements for a person to be eligible to participate in a PERS-sponsored health insurance plan. An "eligible person" includes a retiree, a spouse, a dependent, a dependent domestic partner, and a surviving spouse or dependent. Each category of "eligible person" is defined as follows:

(1) A retiree as defined in OAR 459-035-0001(20).

(2) A spouse means the spouse of an eligible retiree.

(3) A dependent means a dependent child as defined in OAR 459-035-0001(5) who satisfies one of the following requirements:

(a) The child is less than 19 years of age;

(b) The child is less than 24 years of age, and is regularly enrolled and attending school; e.g. an academic, trade or vocational school; or

(c) The child is 19 years of age or more and has either been continuously dependent upon the retiree since childhood due to disability or physical handicap, or has been covered under a health care insurance plan as the retiree's dependent for at least 24 consecutive months immediately before enrollment in a PERS sponsored health insurance plan. In either case, the following additional requirements must also be satisfied:

(A) The child is not able to achieve self-support through his or her work due to a developmental disability, mental retardation or physical handicap as verified by a physician and accepted by the carrier; and

(B) The incapacity is continuous and began before the date the child would otherwise have ceased to be an eligible dependent.

(4) A dependent domestic partner of a PERS retiree as defined in OAR 459-035-0001(6).

(5) A surviving spouse or dependent means:

(a) The surviving spouse or dependent of a deceased retired PERS member; or

(b) The surviving spouse or dependent of a deceased PERS member who was not retired but who was eligible to retire at the time of death; or

(c) The surviving spouse or dependent of a deceased retiree who was receiving a retirement payment or benefit, or a pension calculated under ORS 1.314 to 1.380 (1989 Edition), provided that the surviving spouse or dependent was covered under a PERS sponsored health insurance plan at the time of the retiree's death.

(6) In no event shall an eligible person as defined in this rule be entitled to coverage under more than one PERS-sponsored health insurance plan other than a medical and a dental plan.

(7) In no event shall an eligible person as defined in this rule be entitled to coverage as both a retiree and a spouse, dependent, or dependent domestic partner.

Stat. Auth.: ORS 238.410, 238.650 & 238A.450
Stats. Implemented: ORS 238.410, 238.415, 238.420 & 238A.050
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 1-2010(Temp), f. & cert. ef. 4-5-10 thru 9-27-10

459-035-0030

Eligibility, Retirement Health Insurance Account

This rule describes the requirements for an "eligible retired member" participating in a PERS-sponsored Medicare Companion Plan to be eligible for contributions from the RHIA toward the cost of premiums for that plan. The amount of the contribution is defined in OAR 459-035-0060. An "eligible retired member" must be a Tier One or Tier Two member and includes the following:

(1) A retiree who is enrolled in Parts A and B of Medicare and who:

(a) Is retired, is receiving a PERS service or disability retirement allowance and had eight or more years of qualifying service as defined in OAR 459-035-0001(19)(a) at the time of retirement; or

(b) Is receiving a PERS disability retirement allowance computed as if he or she had eight years or more of creditable service as defined in ORS 238.005(5).

(2) A surviving spouse or dependent of a deceased eligible retired member as described in section (1) of this rule, who is enrolled in Parts A and B of Medicare, and who:

(a) Is receiving a retirement allowance or benefit from PERS; or

(b) Was covered under the retired member's PERS-sponsored health insurance plan and the deceased retired member retired before May 1, 1991.

(3) An eligible surviving spouse or dependent receiving benefits under the 15-year certain optional form of benefit payment (ORS 238.305 Option 4) will be entitled to contributions from the RHIA only until the remainder of the 180 monthly benefit payments are paid, unless he or she meets the requirements in subsection (2)(b) this rule.

(4) If both an eligible surviving spouse and an eligible surviving dependent are receiving benefits at the same time under the 15-year certain optional form of benefit payment (ORS 238.305 Option 4), only the eligible surviving spouse shall be entitled to contributions from the RHIA unless the surviving spouse, in writing, waives the contribution in favor of the eligible surviving dependent.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.420
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 1-2010(Temp), f. & cert. ef. 4-5-10 thru 9-27-10

459-035-0040

Eligibility, Retiree Health Insurance Premium Account

This rule describes the eligibility requirements for an "eligible retired state employee" participating in a PERS-sponsored health insurance plan, exclusive of dental coverage, to be eligible for a contribution from the RHIPA toward the cost of premiums for that health insurance plan. The amount of the contribution is established in OAR 459-035-0050. An "eligible retired state employee" must be a Tier One or Tier Two member and includes the following:

(1) A retiree who was a state employee at the time of retirement and who is not eligible for Medicare, and who:

(a) Is receiving a PERS service or disability retirement allowance or benefit, and had 8 or more years of qualifying service as defined in OAR 459-035-0001(19)(a) at the time of retirement; or

(b) Is receiving a PERS disability retirement allowance computed as if the member had eight or more years of creditable service as defined in ORS 238.005(5), and has attained the earliest service retirement age under ORS 238.280.

(2) A surviving spouse or dependent of a deceased eligible retired state employee, as described in section (1) of this rule, who is not eligible for Medicare, and who:

(a) Is receiving a retirement allowance or benefit from PERS; or

(b) Was covered under the eligible retired state employee's PERS-sponsored health insurance plan, and the eligible retired state employee retired on or after September 29, 1991.

(3) An eligible surviving spouse or dependent receiving benefits under the 15-year certain optional form of benefit payment (ORS 238.305 Option 4) will be entitled to contributions the RHIPA only until the remainder of the 180 monthly benefit payments are paid, unless he or she meets the requirement of subsection (2)(b) of this rule.

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(4) If both an eligible surviving spouse and an eligible surviving dependent are receiving benefits at the same time under the 15-year certain optional form of benefit payment (ORS 238.305 Option 4), only the eligible surviving spouse shall be entitled to contributions from the RHIPA unless the surviving spouse, in writing, waives the contribution in favor of the eligible surviving dependent.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.415
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 1-2010(Temp), f. & cert. ef. 4-5-10 thru 9-27-10

Oregon Qualified Tuition Savings Board Chapter 173

Rule Caption: Update rules that relate to Oregon's 529 college savings program.

Adm. Order No.: QTSB 1-2010(Temp)

Filed with Sec. of State: 3-25-2010

Certified to be Effective: 3-25-10 thru 9-15-10

Notice Publication Date:

Rules Adopted: 173-001-0020, 173-005-0005, 173-016-0010

Rules Amended: 173-001-0005, 173-001-0010, 173-001-0015, 173-005-0000, 173-006-0000, 173-006-0005, 173-007-0000, 173-007-0005, 173-008-0000, 173-008-0005, 173-008-0010, 173-009-0000, 173-009-0005, 173-009-0010, 173-009-0015, 173-010-0000, 173-010-0025, 173-011-0000, 173-012-0000, 173-012-0005, 173-014-0000, 173-014-0005, 173-014-0010, 173-015-0010

Subject: The rules being adopted and amended are the rules of the Oregon 529 College Savings Board regarding notice of proposed rulemaking and model rules of procedure; administration; eligibility; change in account ownership or designated beneficiary; opening and account, application, participation agreement; contributions; distributions; termination of account; fees; investment policies; confidentiality; and other miscellaneous matters.

Rules Coordinator: Michael J. Parker—(503) 378-4329

173-001-0005

Model Rules of Procedure

The Model Rules of Procedure under the Administrative Procedure Act, as promulgated by the Attorney General of the State of Oregon, effective January 1, 2008, are adopted as the rules of procedure for administrative rulemaking and other administrative law functions of the board.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Oregon Qualified Tuition Savings Board.]

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & SB 756 (1999)

Hist.: QTSB 1-2000, f. 8-14-00, cert. ef. 8-15-00; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-001-0010

ADR Related Model Rules

The Attorney General's ADR Related Model Rules, effective January 1, 2008, as set forth in OAR 137, Divisions 1 through 5, are adopted by the Board as its rules for collaborative dispute resolution.

Stat. Auth.: ORS 183.502(3)

Stats. Implemented: ORS 183.502(3) & SB 756 (1999) (348.841 - 348.873)

Hist.: QTSB 3-2000, f. & cert. ef. 10-25-00; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-001-0015

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule

408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters; or

(c) Mediation in which the only parties are public bodies; or

(d) Mediation involving two or more public bodies and a private party if the laws, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

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(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Board determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: QTSB 2-2001, f. 8-9-01, cert. ef. 8-10-01; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-001-0020

Policies and Procedures of the Office of the Treasurer

The policies and procedures of the Office of the State Treasurer in regard to personal services contracting and purchasing goods and services, to the extent not inconsistent with the Act or OAR chapter 173, are adopted as the policies and procedures of the board.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-005-0000

Definitions

All terms used in OAR chapter 173 are as defined in the Act. In addition, as used in OAR chapter 173, unless the context indicates otherwise:

(1) "Act" means ORS 348.841 to 348.873, as amended from time to time.

(2) "Business day" means any weekday on which the New York Stock Exchange (NYSE) is open.

(3) "Participation agreement" means the agreement setting forth the terms and conditions governing an account and participation in the applicable plan.

(4) "Code" means the Internal Revenue Code and any regulations, rulings, announcements or other guidance issued thereunder.

(5) "Executive Director" means the Executive Director of the Oregon 529 College Savings Network.

(6) "Person" means a "person" as defined in Section 7701(a)1 of the Code, including an individual, trust, estate, partnership, association, company or corporation, and in addition, the State of Oregon or a State of Oregon local government or an agency or instrumentality of either.

(7) "Plan" means a plan that is established by the board under the Oregon 529 College Savings Network, pursuant to its authority under the Act.

(8) "In writing", "written requests", "written instructions" or similar terms used to refer to communications regarding an account include emails or transactions conducted online or electronically as permitted by the board.

(9) "Plan manager" means a third party entity serving as the administrator, marketing agent and/or investment manager of a plan. References in OAR chapter 173 to "plan manager" mean the plan manager of the plan under which an account was opened.

(10) "UGMA/UTMA" means the Uniform Gifts to Minors Act, the Uniform Transfer to Minors Act or a substantially similar act of Oregon or another state, as applicable.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-005-0005

Executive Director

The Executive Director is responsible for the day to day operations of the network and for carrying out such duties and responsibilities as assigned by the board.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.853(2)

Hist.: QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-006-0000

Account Owner

Any person, including a custodian under UGMA/UTMA, who is legally able to contract under applicable state law and who meets federal

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and state legal requirements governing the network, is eligible to establish an account.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.841 & 348.873
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; Administrative correction 11-10-03; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-006-0005

Designated Beneficiary

(1) There are no restrictions on the age of a designated beneficiary nor any required relationship between the account owner and the designated beneficiary of an account.

(2) At any one time there shall be only one account owner and one designated beneficiary per account.

(3) Except as described in OAR 173-006-0005(4) below, there is no limit on the number of accounts that may be opened for one designated beneficiary by different account owners.

(4) Unless the board directs otherwise, if an account is established by an account owner for a designated beneficiary in a plan when an account already exists in that plan or in another plan under the network having that same designated beneficiary and same account owner, then the subsequently established account will be closed and the current market value of the account, along with any fee that has been paid with respect to that account, will be returned to the account owner as soon as administratively reasonable following discovery of such subsequently established account.

(5) An account owner may also be the designated beneficiary of an account.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.857(4)
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-007-0000

Change of Account Ownership

(1) An account owner may designate a successor account owner who shall become the new account owner upon the death, resignation or legal incompetence of the original account owner. This designation may be made by an account owner in the application or at any time thereafter by submitting to the appropriate plan a written designation of a successor account owner containing the information required by the appropriate plan. A designation of a successor account owner shall not be effective until registered in the records of the plan. In the event a successor account owner is not designated by an account owner, the successor account owner shall be determined by the appropriate plan.

(2) If a change in the ownership of an account is required by a court order by a court of competent jurisdiction directing such change of ownership or by an affidavit or declaration that meets the requirements of the appropriate plan for transfer of ownership upon death without a court order, such change of account ownership shall not be effective until the appropriate plan receives the court order or affidavit or declaration requiring such change, and the change of account ownership is registered in the records of the appropriate plan, unless otherwise required by law.

(3) An account owner may change ownership of the account to another eligible person by executing such forms or following such procedures as required by the appropriate plan.

(4) An account owner who is a custodian under UGMA/UTMA may only transfer ownership of the account in accordance with the requirements, if any, of UGMA/UTMA and the plan under which the account was opened.

(5) The ownership of an account whose account owner is a custodian under UGMA/UTMA shall be transferred to the designated beneficiary or the designated beneficiary's estate, as required by UGMA/UTMA, upon submission by the custodian and/or designated beneficiary of any documentation required by the board.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.853(2)
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-007-0005

Change of Designated Beneficiary

An account owner (other than an account owner who is a custodian under UGMA/UTMA) may change the designated beneficiary of the account as permitted under Section 529 of the Code and OAR chapter 173. A change of designated beneficiary shall not be effective until the appropriate plan receives a written request containing the information required by

the appropriate plan and such change is registered in the records of the appropriate plan.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.867(1) & 348.853(2)
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-008-0000

Opening an Account

(1) To open an account, an applicant must submit to the appropriate plan a completed application, and either make an initial contribution as provided in OAR 173-009-0000 or select a method of contribution permitted by the plan.

(2) An applicant must select from the investment options offered by a plan in which contributions to his/her/its account will be invested. After an account has been opened, the account owner may change the investment options selected for the account only as permitted by section 529 of the Code.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.857(1), 348.860(1) & 348.853(2)
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-008-0005

Refusal to Open an Account

The Board may refuse to open an account for reasons that may include but are not necessarily limited to the following:

(1) The applicant is not an eligible account owner.

(2) The applicant has not provided all of the information required by the application.

(3) The total account balance of all accounts in the network for the same designated beneficiary is (or would be when taking into account a contribution being made) greater than the maximum limit established by the board pursuant to OAR 173-009-0015. The network shall accept contributions for accounts for that designated beneficiary (including contributions establishing new accounts), in the order of their receipt until the maximum account balance limit for that designated beneficiary has been reached.

(4) Entering into a participation agreement between the board and the applicant violates any federal securities or state "blue sky" laws or any other federal or state law.

(5) It is determined that an account having the same account owner and designated beneficiary already exists in a plan under the network.

(6) The Board determines that, for any other reason, it would be advisable to limit the number of accounts in the network or the plan under which the account is being opened.

(7) The board reserves the right to refuse applications that it determines to be an abuse of the network or a plan.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.841(2), 348.857(4) & 348.853(2)
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-008-0010

Participation Agreement

(1) An account owner must enter into a participation agreement for each account by completing and signing an application, which incorporates the participation agreement by reference or requires that the account owner acknowledge having received and read the current participation agreement. The participation agreement sets forth terms and conditions under which the account owner participates in a plan. The participation agreement may be amended by the board at any time and from time to time.

(2) Any correspondence with the plan shall be sent to the address indicated in the participant agreement or related plan disclosure materials.(3) The plan manager may take action on behalf of and receive materials on behalf of the plan it manages.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.853(2)
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; Administrative correction 4-15-03; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-009-0000

Contributions Generally

(1) The minimum initial contribution that must be made to an account at the time the account is opened will be specified by the appropriate plan, except that the minimum initial contribution requirement for a plan may be

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waived if the account owner agrees to participate in an automatic investment plan or other similar regular periodic contribution plan for that account in accordance with the participation agreement governing the account or may be waived on such terms as specified by the appropriate plan. The board may at any time without notice change the minimum contribution amounts.

(2) The board reserves the right to refuse contributions that it determines to be an abuse of the network or a plan.

(3) Subsequent contributions made to an account will be in accordance with the plan's participation agreement governing the account.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.857(2) & 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-009-0005

Cash Contributions Only

Contributions to an account shall be made in cash only. Cash includes checks, money orders, electronic funds transfers, whether through payroll deduction, an automatic contribution plan or otherwise, and such other methods as the board determines and as permitted under applicable law. Cash does not include securities, property or debit or credit card charges.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.841 - 348.873

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-009-0010

Rollover Contributions

(1) Any person who is an account owner under another qualified tuition program may rollover, subject to section 529 of the Code and the terms of such other qualified tuition program, all or part of the funds from an account in such other qualified tuition program to an account in a plan.

(2) The board also may permit a rollover contribution from a Coverdell education savings account described by Section 530 of the Code, a qualified U.S. savings bond described by Section 135 of the Code, or such other account(s) as may be permitted from time to time under section 529 of the Code.

(3) In order to set up a new account in which to deposit a rollover contribution from an account in another qualified tuition program, a Coverdell education savings account, a qualified U.S. savings bond, or such other account(s) as may be permitted from time to time under section 529 of the Code, an applicant must, in addition to complying with the requirements of OAR 173-008, submit to the appropriate plan such information as the board may from time to time require, including the amount of the rollover contribution which is attributable to earnings on such contribution. In the case of a rollover contribution made directly from another qualified tuition program, information regarding the earnings portion of the contribution may be provided directly by the distributing qualified tuition program.

(4) The entire amount of a rollover contribution from an account in another qualified tuition program, a Coverdell education savings account, a qualified U.S. savings bond, or such other account(s) as may be permitted from time to time under section 529 of the Code is counted for purposes of calculating the total account balance of all accounts for a designated beneficiary. If such rollover contribution causes the total account balance of all accounts in the network for a designated beneficiary to exceed the maximum limit established by the board pursuant to OAR 173-009-0015, the excess funds, or if required by the appropriate plan, the entire rollover contribution, shall be returned.

(5) A rollover contribution from another qualified tuition program, a Coverdell education savings account, a qualified U.S. savings bond, or such other account(s) as may be permitted from time to time under section 529 of the Code may be made only as permitted from time to time under section 529 of the Code. Any rollover contribution made that is not permitted under section 529 of the Code shall be returned.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-009-0015

Maximum Contribution Limit

Additional contributions to an account for a designated beneficiary are prohibited when the total account balance for all accounts for that designated beneficiary under the network exceeds the amount established by the Board as required by and in accordance with section 529(b)(6) of the Code.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.857(4) & 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-010-0000

Distribution Request

(1) Only the account owner may request a distribution of funds (whether for a qualified withdrawal, a nonqualified withdrawal, or otherwise) from his/her/its account by submitting to the appropriate plan a completed distribution request form (or following such other procedures as are permitted under the appropriate plan) and such other information as from time to time is required by such plan.

(2) A distribution from an account shall be subject to any applicable state and federal taxes.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.870(1) & 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-010-0025

Rollover Distribution

Rollovers and transfers within the network will be permitted only to the extent permitted by section 529 of the Code.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.867(2) & 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-011-0000

Termination of an Account

The account owner may terminate an account at any time. The board may terminate an account in accordance with the provisions of the participation agreement or in accordance with the Act or OAR chapter 173. If the board determines that an account owner or a designated beneficiary has provided false or misleading information to the board or a higher education institution with respect to an account or has acted in a manner that adversely affects the integrity of the network or a plan, the board may terminate the account. The remaining account balance will be distributed to the account owner, and the contributions and earnings thereon may be subject to federal and any applicable state income tax.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.841(9), 348.870(3) & 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-012-0000

Board Administration Fees

The board may charge each plan in the network a fee based on assets of the plan in order to pay for the board's administrative expenses. This fee shall be collected from a plan and paid to the board on a monthly or quarterly basis. The board may from time to time review and adjust this fee.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.857(6) & 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-012-0005

Other Fees

The plan manager for each plan may charge such fees as are agreed to between the plan manager and the board, which fees may be payable by the account owners or from the assets of the plan.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.857(6) & 348.853(2)

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-014-0000

Investment Policies

The Board shall establish the investment policies for each plan in the network. These policies shall be reviewed, and may be modified, from time to time as the Board, in its sole discretion, determines. Any change to a plan's investment policy shall apply prospectively.

Stat. Auth.: ORS 348.853(2)

Stats. Implemented: ORS 348.841 - 348.873

Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

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173-014-0005

Reassignment of Accounts under the Age-Based and Years-to-College Investment Options

Reassignment of an account under any age-based or years-to-college investment options shall occur at a time and in a manner determined by the board and the appropriate plan manager.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.841 - 348.873
Hist.: QTSB 1-2001, f. & cert. ef. 1-2-01 ; QTSB 2-2002(Temp), f. & cert. ef. 8-15-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-014-0010

Investment Direction

Investment direction by the account owner or designated beneficiary of an account is prohibited unless otherwise permitted by section 529.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.841 - 348.873
Hist.: QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-015-0010

Confidentiality

Individual account information, including, but not limited to, names, addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, shall be maintained as confidential, and may be disclosed only as needed to administer the network consistent with the Act, the Code and Oregon tax laws or unless the person providing the information or who is the subject of the information executes and delivers to the appropriate plan its written consent to disclosure. This consent shall be in form and substance satisfactory to the board.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.853(2)
Hist.: QTSB 1-2002(Temp), f. & cert. ef. 6-14-02 thru 12-6-02; QTSB 3-2002, f. & cert. ef. 10-29-02; QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

173-016-0010

Waivers

The executive director may waive non statutory requirements of OAR chapter 173 if such a waiver would serve the best interests of the network and the board and would not violate Section 529 of the Code.

Stat. Auth.: ORS 348.853(2)
Stats. Implemented: ORS 348.841 - 348.873
Hist.: QTSB 1-2010(Temp), f. & cert. ef. 3-25-10 thru 9-15-10

Oregon State Lottery
Chapter 177

Rule Caption: Repeals rule regarding performance bond requirement no longer required by statute.

Adm. Order No.: LOTT 5-2010

Filed with Sec. of State: 3-18-2010

Certified to be Effective: 3-21-10

Notice Publication Date: 3-1-2010

Rules Repealed: 177-036-0200, 177-036-0200(T)

Subject: The Oregon Lottery has repealed this administrative rule to permit the Lottery to allow other forms of performance security to be posted as authorized by ORS 461.430, such as cash or irrevocable letters of credit.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

Rule Caption: Authorizes new game for the Oregon Lottery®, and Mega Millions®.

Adm. Order No.: LOTT 6-2010

Filed with Sec. of State: 3-18-2010

Certified to be Effective: 3-21-10

Notice Publication Date: 3-1-2010

Rules Adopted: 177-098-0000, 177-098-0010, 177-098-0020, 177-098-0030, 177-098-0040, 177-098-0050, 177-098-0060, 177-098-0070, 177-098-0080, 177-098-0090, 177-098-0100, 177-098-0110

Rules Amended: 177-010-0003, 177-046-0110, 177-070-0005

Subject: The Oregon State Lottery adopted and mended the above referenced administrative rules to authorize a new game for the

Oregon Lottery®, Mega Millions®, and provide the rules for how it is played.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-010-0003

Definitions

(1) **“Business day”** means the period beginning at 5 a.m. of a calendar day and ending at 4:59 a.m. on the morning of the next calendar day.

(2) **“Business week”** means the period beginning at 5 a.m. on a Sunday and ending at 4:59 a.m. the following Sunday morning.

(3) **“Business year”** means the period beginning at 5 a.m. on the Sunday immediately following the last Saturday in June, and ending at the end of the business day of the last Saturday of the following June.

(4) **“Commissioner”** has that definition as defined in ORS 461.010(2).

(5) **“Director”** has that definition as defined in ORS 461.010(3).

(6) **“Drawing coordinator”** means the Lottery employee designated by the Assistant Director for Security, subject to the approval of the Director, to develop and implement procedures for conducting drawings.

(7) **“Immediate family”** and **“family member”** mean a natural person’s spouse, child, brother, sister, or parent by blood or adoption.

(8) **“Lottery”** or **“State Lottery”** has that definition as defined in ORS 461.010(1).

(9) **“Lottery Commission”** or **“Commission”** has that definition as defined in ORS 461.010(4).

(10) **“Lottery contract”** means any contract entered into by the Lottery for the purchase, lease, or sale of goods or services.

(11) **“Lottery contractor”** or **“contractor”** has that definition as defined in ORS 461.010(9).

(12) **“Lottery game”** or **“game”** has that definition as defined in ORS 461.010(5).

(13) **“Lottery game retailer”** or **“retailer”** has that definition as defined in ORS 461.010(7).

(14) **“Lottery Headquarters”** means the Debbs Potts Oregon State Lottery Commission building located at 500 Airport Road, Salem, Oregon.

(15) **“Lottery Kiosk”** means a location, other than Lottery Headquarters, where Lottery tickets or shares are sold directly to the public by Lottery employees.

(16) **“Lottery sales location”** means a Lottery kiosk, Lottery Headquarters, or sales by the Lottery through electronic means.

(17) **“Lottery vendor”** or **“vendor”** has that definition as defined in ORS 461.010(8).

(18) **“Person”** has that definition as defined in ORS 461.010(6).

(19) **“Prize”** means any award of economic value, monetary or otherwise, that may be distributed to a Lottery player for submitting a valid claim based on a winning Lottery ticket or share.

(20) **“Retailer contract”** means any written contract entered into by the Lottery with a retailer for selling Lottery tickets or shares to the public.

(21) **“Share”** means an opportunity to win a prize in a Lottery game that does not use certificates or tokens, such as in Video LotterySM games.

(22) **“Ticket”** means a certificate or token of the opportunity to win a prize in a Lottery game.

(23) **“Traditional lottery games”** means the following lottery games offered by the Oregon State Lottery:

- (a) Scratch-itsSM;
- (b) Lottery Raffle Game;
- (c) MegabucksSM;
- (d) Pick 4SM;
- (e) Lucky LinesSM;
- (f) Powerball®;
- (g) Sports ActionSM;
- (h) ScoreboardSM;
- (i) Win for LifeSM;
- (j) Keno;
- (k) Mega Millions®, and

(l) Any other Lottery game designated by the Oregon State Lottery Commission as a Traditional Lottery game.

(24) **“Unclaimed prize”** means any prize offered in a Lottery game which has not been submitted to the Lottery for validation and prize payment within the specified prize claim period and for which the Lottery has data or evidence that the ticket or share was sold or distributed to the public.

(25) **“Video LotterySM game retailer”** or **“Video LotterySM retailer”** has that definition as defined in ORS 461.217.

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(26) **“Video LotterySM game terminal”** means a type of video device for the playing of Video LotterySM games which is in a console that contains a game platform with a video display and a random number generator, is connected to and monitored by a central system, and accepts cash payments to permit a person to play the Video LotterySM games offered on the terminal for the opportunity to win a prize. Unless the context or a specially applicable definition indicates otherwise, any reference to a “Video LotterySM terminal”, “video lottery terminal”, or “video terminal” in OAR chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a “Video LotterySM game terminal” as defined in this section. Video LotterySM Game Terminal does not include any device determined by the Oregon State Lottery Commission not to be a Video LotterySM game terminal.

(27) **“Winner claim form”** means a form provided by the Lottery to a player for the purpose of claiming a prize.

Stat. Auth.: ORS 461 & OR Const. Art. XV, § 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.215, 461.217, 461.220 & 461.250
Hist.: LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 3-2008, f. 6-30-08, cert. ef. 7-1-08; LOTT 7-2008, f. 10-31-08, cert. ef. 11-1-08; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-046-0110

Payment of Prizes

(1) **General:** All winning Lottery tickets or shares may be presented to the Oregon State Lottery for payment. Winning tickets or shares for prizes of \$600 or less may also be presented for payment to the appropriate Lottery retailer specified in the applicable game rule.

(2) **Mailing Address:** Winners who mail a winning Lottery ticket or share to the Lottery must sign the Lottery ticket or share in the designated area on the ticket or share, write the claimant’s mailing address in the place indicated on the ticket or share, and mail it to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended.

(3) **Lottery Headquarters Address:** Winners who present a claim in person at the Lottery may do so by bringing the winning Lottery ticket or share to the Lottery Headquarters, Player Services, 500 Airport Road SE, Salem, Oregon 97301 during Lottery business hours.

(4) **Retailer Validation and Payment of Prizes of \$600 or Less:** To determine whether a Lottery ticket or share presented for payment entitles the holder to a prize, a retailer must validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on each Lottery ticket or share into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due.

(a) **Retailer Payment:** A retailer is authorized to pay a prize of \$600 or less and shall pay that prize in cash or check, or any combination thereof.

(b) **Lottery Payment:** If a retailer’s prize payment check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the prize is authorized, the retailer has not paid the prize, and it is unlikely that the retailer will pay the prize, the Lottery may then issue a check to the player in the amount of the prize due less any applicable tax withholding.

(c) **Retailer Sanction:** A retailer that pays a prize with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) **Lottery Validation and Prize Payment:** Upon validation of a winning Lottery ticket or share presented to the Lottery for payment, the Director may pay the amount of the prize to the player less any applicable tax withholding. If the ticket or share is determined to be invalid, or a non-winning ticket or share, or the claim is invalid, the Director shall deny the claim and inform the player.

(a) **Lottery Prize Payment of \$600 or Less:** Payment may be made by check, cash card, or in cash, or any combination thereof.

(A) **Lottery Headquarters:** Cash prize payments made at Lottery Headquarters are limited to \$50 per person per day. Any prize payment balance remaining above \$50 shall be paid by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(B) **Lottery Kiosk:** Cash prize payments made at a Lottery kiosk are limited to \$100 per transaction. Any prize payment balance remaining above \$100 shall be paid by cash card.

(C) **Prizes by Mail:** A winning ticket may be submitted to the Lottery by mail. If mailed, the player must sign the ticket in the designated area on the ticket, write the player’s mailing address in the place indicated on the

ticket, and mail it to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended.

(b) **Lottery Prize Payment of Prizes Greater than \$600:** A player must claim a Lottery prize of more than \$600 by:

(A) **Claiming in Person:** Bringing the ticket to the Lottery Headquarters, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and presenting the ticket or share to the Lottery; or

(B) **Claiming by Mail:** Signing the ticket in the designated area on the ticket, writing the player’s mailing address on the ticket in the place indicated on the ticket, completing a winner claim form, and mailing it together with the winning ticket to the Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended. The winner claim form may be obtained from any Lottery retailer offering traditional games, from a Lottery kiosk, or from the Lottery Headquarters at the addresses listed above.

(c) **High Tier Prize Payments:** The Lottery will pay a winning ticket or share by check, or subject to OAR 177-010-0050, may pay the prize in merchandise if the prize is merchandise.

(6) **Claiming Lottery Tickets or Shares Jointly:** If more than one name appears in the designated area on a Lottery ticket or share, or if a Lottery ticket or share is owned by two or more persons, the prize must be claimed in accordance with the following:

(a) **General:** All persons claiming ownership of the winning Lottery ticket or share must complete and sign the Lottery’s request and release form. Each of the persons signing the form must indicate each person’s proportionate share of the prize. Each person must receive at least \$1.00. At least one of the persons claiming ownership of the ticket or share must sign the ticket or share. That person’s signature must also appear on the request and release form. If a winning ticket or share is mailed to the Lottery Headquarters with multiple signatures on it, the Director will mail the request and release form to the claimants.

(b) **Deceased Signatories:** A deceased signatory who dies before signing the request and release form will be presumed to have an ownership interest equal to that of the other signatories. In the event there is a deceased signatory, the Director may withhold payment for 60 days from the date of validation to allow co-owners the opportunity to seek a declaratory ruling from a court.

(c) **Relinquishment of Interest:** When a person who has signed a Lottery ticket or share wishes to relinquish the person’s ownership interest in the Lottery ticket or share, that person must sign the Lottery’s release of ownership form relinquishing the person’s ownership interest. In no event will a person be permitted to relinquish ownership interest once it is determined that the person owes money for child support or other legal attachment has taken place. Once the Lottery receives the release of ownership form, it is irrevocable.

(d) **Issuance of Prize Checks to Multiple Owners:** If a validated winning Lottery ticket or share is claimed by multiple owners who are sharing a single prize, the Director will issue to each person claiming a share of the prize amount, a check for the portion of the prize amount claimed by each multiple owner, the total not to exceed the total prize amount. No cash payments will be made to multiple owners. However, the Director reserves the right to issue a single prize check to an individual whose name appears on the ticket or share instead of multiple prize checks to the owners of the ticket or share if the value of each individual prize check would be less than \$50 or if the number of persons claiming a share of the prize exceeds 100 people. The Lottery shall pay multiple winners of a Lottery prize only at the Lottery Headquarters in Salem. Lottery retailers are not authorized to pay multiple winners who share a single prize.

(e) **Payment to Multiple Owners at Lottery Kiosk:** Notwithstanding subsection (6)(d) of this rule, the Lottery may pay multiple winners of a single Lottery prize at a Lottery kiosk if the total amount of the prize is \$600 or less. Payment shall be made as set forth in paragraph (5)(a)(B) of this rule.

(f) **Conflicting Information or Discrepancies:** If there is conflicting information or discrepancies between the names on a winning Lottery ticket or share and the names on a claim form, the Lottery may withhold prize payment until the owners resolve the conflicting information. Discrepancies include, but are not limited to: Names or addresses scratched out or erased, or unreadable or altered names or addresses.

(g) **Investigations:** At the discretion of the Director, the Lottery may conduct an investigation to aid in the determination of the rightful owners prior to payment of any prize.

(h) **Determinations:** The Director’s decisions regarding the determination of a winning Lottery ticket or share, or the determination of the

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rightful owner or owners of a prize, or of any other dispute or matter arising from payment or awarding of prizes are final and binding on all parties.

(7) Payment of Prizes Donated Anonymously to Non-Profit Groups and Others:

(a) **General:** The Director may pay a prize according to written anonymous instructions received with a winning Lottery ticket or share. The recipient must be a natural person or a non-profit group as described in Section 501(c)(3) of the Internal Revenue Code.

(b) **Adult Recipient:** If the intended recipient is a natural person of majority, the Director will contact the person and make payment to the person in accordance with the anonymous written instructions.

(c) **Minor Recipient:** If the intended donation benefits a natural person who is a minor, the Director will make payment in accordance with the Oregon Uniform Transfers to Minors Act, Oregon Revised Statutes (ORS) 126.805 to 126.886.

(d) **Non-Profit Group as Recipient:** If the intended recipient qualifies as a non-profit group as described in Section 501(c)(3) of the Internal Revenue Code, the Director will make payment only as follows:

(A) **Identification of Recipient:** The Director will attempt to identify and contact the intended recipient. The intended recipient shall designate in writing an agent, (a natural person) to act on its behalf and to receive the prize payment on behalf of the recipient. The Director shall confirm both the written authorization and the agent. An intended recipient is encouraged to select a bonded agent.

(B) **Appearance:** The agent shall appear in person at the Lottery Headquarters in Salem to claim the prize payment on behalf of the intended recipient. The Director may confirm to the Director's satisfaction that the agent is authorized to accept the donation in the agent's own name on behalf of the intended recipient.

(C) **Signature and Payment:** Subsequent to receipt of acceptable identification, along with a completed claim form from the agent, and the Director's review and approval, the agent, in the presence of a duly authorized Lottery official, shall sign the agent's own name on the winning Lottery ticket or share in the place indicated on the ticket or share and immediately return it to the Lottery. The Director shall then make payment to the agent less any applicable tax withholding.

(D) **Identification of Donor:** If the Director can reasonably identify the donor, the Director shall not make payment as specified above, but shall instead contact the donor and notify the donor to retrieve the Lottery ticket or share upon presenting acceptable proof of identification. The donor may retrieve the winning ticket or share in person at the Lottery Headquarters in Salem upon the presentation of acceptable proof of identification. The prize, less any applicable tax withholding, will be paid to the donor upon validation of the winning ticket or share.

(e) **Win for Life Prize:** If the winning Lottery ticket received is a Win for Life top prize of \$1,000 a week for life, the prize paid will be the lump sum guaranteed five year payment under the Win for Life game rules.

(f) **Forfeiture of Unclaimed Prize:** In the event that the Director is unable to locate the intended recipient or the anonymous donor, the winning Lottery ticket or share shall be retained until the end of the prize claim period. After the end of the prize claim period, the ticket or share shall constitute an unclaimed prize as described in OAR 177-010-0085 and shall be forfeited to the public purpose.

(g) **Discharge of Lottery from Liability:** The State of Oregon, its agents, officers, employees, and representatives, including but not limited to, the Oregon Lottery, its Director, agents, officers, employees, and representatives, are discharged of all liability upon payment of an anonymously donated prize in accordance with this rule and any applicable game rules to the extent that they do not conflict with this rule. The Lottery is not responsible in any way for the fulfillment or completion of the agreement between the intended recipient and the agent. The Lottery's decisions regarding the determination that a Lottery ticket or share donated anonymously is, or is not, a winning ticket or share or any question or dispute arising from the payment of such a prize is final and binding on all parties. In the event a question or issue arises regarding payment of a prize donated anonymously, the Director may withhold payment until the question or issue is resolved. The Lottery, the intended recipient or custodian, if the intended recipient is a minor, or the designated agent if the intended recipient is a non-profit group, may petition a court of competent jurisdiction for judicial resolution of the matter.

(8) **Social Security Numbers:** Each United States resident who is to receive a payment of winnings greater than \$600 shall furnish to the Lottery the information required on the Internal Revenue Service Form W-2G (or any other form required by the IRS,) including but not limited to the winner's name, address, and social security number. This disclosure is manda-

tory and the authority for such disclosure is 42 USC 405(c)(2)(C), 26 CFR 31.3402(q)-1(e), and ORS 461.715(1)(a). A winner's social security number will be used for the purpose of identifying child support obligors and submitting required documents to state and federal tax authorities.

(9) **Payment Decisions:** The Director shall make the final decision on whether any prize is paid or any annual prize payment is made. All prizes shall be paid within a reasonable time after they are validated, unless the Director delays a prize payment. The Director may, at any time, delay any prize payment in order to review the validity of a prize claim, or review a change of circumstances relative to the prize awarded, the payee, or the claim, or review any other relevant matter that may come to the Director's attention. Except as set forth in OAR 177-098-0060, for any prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. Any delayed annual payment will be brought up to date immediately when payment is authorized by the Director.

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

Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08; LOTT 7-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-070-0005

Definitions

For the purposes of division 70, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) **"Drawing"** means the procedure whereby the Lottery selects the winning combination in accordance with the rules of the game.

(2) **"Draw game"** means a lottery game, other than Video LotterySM games, in which through a Draw game terminal, the player or the Draw game terminal selects a combination of numbers, events or symbols, the player selects the type of game and amount of play, and the drawing date(s), or the player purchases a Lottery Raffle ticket. Draw games are those Lottery games specified in OAR 177-010-0003(20)(b) through (k) and any other Lottery game designated by the Lottery Commission as a Draw game. Unless the context or a specially applicable definition indicates otherwise, any reference to an "On Line game" in OAR chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a "Draw game" as defined in this section.

(3) **"Draw game retailer"** means a person or business authorized by the Lottery to sell Draw game tickets.

(4) **"Draw game terminal (DGT)"** means the computer hardware by which:

(a) A Draw game retailer or player enters the combination of numbers, events, or symbols selected by the player, or

(b) A combination of numbers, events, or symbols is randomly selected for the player, or

(c) A Lottery Raffle ticket is issued; and

(d) Draw game tickets are generated and claims are validated.

(5) **"Draw game ticket"** means a computer-generated ticket issued by a Draw game terminal to a player as a receipt for the combination a player or the terminal has selected, or a Lottery Raffle ticket. This ticket is the only acceptable evidence of the combination of numbers, events, or symbols selected, or of the unique sequential numbers on a Lottery Raffle game ticket.

(6) **"Play slip"** means a card used in selecting and marking a player's game plays which may then be inserted into a terminal's play slip reader.

(7) **"Validation"** means the process of determining whether a Draw game ticket presented for payment is a winning ticket.

(8) **"Winning combination"** means the one or more numbers or symbols randomly selected by the Lottery in a drawing.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 3-1992, f. & cert. ef. 4-27-92; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0000

Purpose

These rules establish the requirements for playing Mega Millions,[®] a lotto game operated through a Cross-Selling Agreement for the selling of the Mega Millions[®] Game by the Multi-State Lottery Association (hereinafter referred to as "MUSL"), of which the Oregon State Lottery is a member.

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Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0010

Definitions

The following definitions apply unless the context requires a different meaning:

(1) **“Drawing”** means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

(2) **“Draw game terminal”** or **“Terminal”** has the meaning set forth in OAR 177-070-0005(4).

(3) **“Finance & Audit Committee”** means the committee established by the Multi-State Lottery Association Agreement.

(4) **“Game board”** or **“Boards”** means that area of the play slip which contains two sets of numbered squares to be marked by the player, the first set containing fifty-six squares, numbered one through fifty-six and the second set containing forty-six squares, numbered one through forty-six.

(5) **“Game ticket”** or **“Ticket”** means a ticket produced by a terminal which contains the caption Mega Millions®, one or more lettered game plays followed by the drawing date, the price of the ticket, whether or not the player has purchased the Megaplier® option, the number of draws, the drawing dates if more than one drawing was purchased, a six digit retailer number, and a serial number that is compatible with the Lottery’s central computer system.

(6) **“Jackpot”** means the top prize of the Mega Millions® game. The annuity Jackpot Prize is an amount that would be paid in twenty-six annual installments.

(7) **“Mega Millions® Finance Committee”** means a committee of the Mega Millions® Lotteries which determines the Jackpot Prize amount and the cash value option rate.

(8) **“Mega Millions® Lottery or Lotteries”** means those lotteries which have joined under the Mega Millions® Lottery Agreement and through a Cross-Selling Agreement with MUSL, to operate and sell the Mega Millions® game.

(9) **“Megaplier®”** means Mega Millions® game feature, known as **“Megaplier®”**, by which a player, for an additional wager of \$1 per play, can increase the guaranteed prize amount or pari-mutuel prize amount, as applicable, excluding the Jackpot Prize by a factor of two, three, or four times depending upon the multiplier number that is drawn prior to the Mega Millions® game drawing.

(10) **“MUSL”** means the Multi-State Lottery Association.

(11) **“MUSL Board”** means the governing body of MUSL which is comprised of the chief executive officer of each Party Lottery.

(12) **“Participating Lottery”** or **“Selling Lottery”** means a state lottery or lottery of a political subdivision or entity which is participating in selling the Mega Millions® game and which may be a member of either group.

(13) **“Party Lottery”** means a state lottery or lottery of a political subdivision or entity which has joined the MUSL and, in the context of these Product Group Rules, which has joined in selling the games offered by the MUSL Mega Millions® Product Group.

(14) **“Play”** means the six numbers, the first five from a field of fifty-six numbers and the last one from a field of forty-six numbers, that appear on a ticket as a single lettered selection and are to be played by a player in the game.

(15) **“Play slip”** means a card used in marking a player’s game plays and containing one or more boards.

(16) **“Product Group”** means the group of lotteries which has joined together to offer the Mega Millions® lottery game product pursuant to the terms of its Cross-Selling Agreement with the Mega Millions® Lotteries, the Multi-State Lottery Agreement and the Group’s own rules.

(17) **“Quick Pick”** means the random selection by the computer system of two-digit numbers that appear on a ticket and are played by a player in the game.

(18) **“Retailer”** means a person or entity authorized by a Party Lottery to sell lottery tickets.

(19) **“Set Prize”** means all other prizes except the Jackpot Prize that are advertised to be paid by a single lump sum payment and, except in instances outlined in these rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(20) **“Winning numbers”** means the six numbers, the first five from a field of fifty-six numbers and the last one from a field of forty-six numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

177-098-0020

Game Description

(1) **General Information:** Mega Millions® is a five out of fifty-six plus one out of forty-six lottery game, drawn on the day(s), time(s) and location(s) as determined by the Mega Millions® Lotteries, and which pays the Jackpot Prize, at the election of the player made in accordance with these rules or by a default election made in accordance with these rules, either on an annual pari-mutuel basis or as a cash value option using a rate determined by the Mega Millions® Finance Committee on a pari-mutuel basis. Except as provided in these rules, all other prizes are paid as a single lump sum payment.

(2) **Selection of Numbers:** To play the Mega Millions® game, a player shall select five different numbers, from one through fifty-six and one additional number from one through forty-six (the Mega ball), for input into a terminal. The Mega ball may be the same as one of the first five numbers selected by the player, as long as it is from one through forty-six.

(3) **Purchase of Tickets:** Tickets can be purchased for one dollar (U.S. \$1.00), either from a terminal operated by a retailer (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal).

(a) If purchased from a retailer, the retailer will issue a ticket, via the terminal, containing the player’s selected set or sets of numbers, each of which constitutes a game play. The player may select a set of five numbers from one to fifty-six and one additional number from one through forty-six by:

(A) Marking six numbered squares in any one game board on a play slip and submitting the play slip to the retailer; or

(B) Requesting “Quick Pick” from the retailer.

(b) Tickets can be purchased from a player-activated terminal by use of a touch screen or by inserting a play slip into the machine.

(c) A player may purchase tickets for future consecutive drawings up to the maximum permitted by the Lottery.

(4) **Player Responsibility:** It is the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. A ticket may not be voided or canceled by returning the ticket to the retailer or to the Lottery, including tickets that are printed in error. No ticket may be returned to the Lottery for credit. The placing of plays is done at the player’s own risk through the Lottery retailer, who when entering the play or plays is acting on behalf of the player.

(5) **Determination of Winning Numbers:** The winning numbers for the Mega Millions® game shall be determined at a drawing conducted under the supervision of the Mega Millions® Lotteries and the MUSL Board. Winning numbers shall be selected at random with the aid of mechanical drawing equipment or a random number generator. The Lottery Director shall designate a Drawing Manager who shall review and randomly observe the Mega Millions® game drawings conducted.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0030

Prize Claims

A ticket, subject to the validation requirements set forth in these rules and OAR 177-070-0035, is the only proof of a game play or plays and the submission of a winning ticket to the Lottery or an authorized retailer as required by these rules is the sole method of claiming a prize or prizes. A play slip or a copy of a ticket has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected. A terminal produced paper receipt has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0040

Prize Pool

(1) **Prize Pool:** The prize pool for all prize categories shall consist of up to fifty-one percent of each drawing period’s sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the prize reserve accounts are funded to the amounts set by the Product Group. The prize pool may be higher or lower than fifty-one percent based upon the number of winners at each prize level, as well as the funding required to meet a guaranteed Annuity Jackpot Prize as may be required by OAR 177-098-0060. Any amount remaining in the prize

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pool at the end of the Mega Millions® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with the law of the state or jurisdiction.

(2) **Prize Reserve Accounts:** An amount up to one percent of a Party Lottery's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, shall be added to a Party Lottery's Jackpot Prize Pool contribution and placed in trust in one or more prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the prize reserve account(s) is below the amounts designated by the Product Group. The Product Group, with approval of the Finance & Audit Committee, may establish a maximum balance for the prize reserve account(s). The Product Group may determine to expend all or a portion of the funds in the accounts for the payment of prizes or special prizes in the game; subject to the approval of the Finance and Audit Committee. The shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries. Any amount remaining in a prize reserve account at the end of the Mega Millions® game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the Product Group in accordance with the law of the state or jurisdiction.

(3) **Expected Prize Payout Percentages:** The Jackpot Prize shall be determined on a pari-mutuel basis. Except as provided in these rules and except for winning prizes sold by the California Lottery, all other prizes awarded shall be paid as set cash prizes with the following expected prize payout percentages, which does not include an additional amount held in prize reserves:

| Prize Pool Percentages | | |
|--|---------------|--------------------|
| Number of Matches per Play | Prize | Allocated to Prize |
| All 5 of first set plus one of second set (Mega ball) | Jackpot Prize | 63.60% |
| All 5 of first set and None of second set (no Mega ball) | \$250,000 | 12.80% |
| Any four of first set plus One of second set (Mega ball) | \$10,000 | 2.90% |
| Any four of first set and None of second set (no Mega Ball) | \$150 | 1.96% |
| Any three of first set plus one of second set (Mega Ball) | \$150 | 2.18% |
| Any two of first set plus one of second set (Mega Ball) | \$10 | 2.38% |
| Any three of first set and none of second set (no Mega Ball) | \$7 | 4.58% |
| Any one of first set plus one of second set (Mega Ball) | \$3 | 4.26% |
| None of first set and one of second set (Mega Ball only) | \$2 | 5.34% |

(a) **Division of Jackpot Prize Among Winners:** The Jackpot Prize amount shall be divided equally by the number of game tickets winning the Jackpot Prize.

(b) **Set Prizes:** The prize pool percentage allocated to the set prizes (the single lump sum prizes of \$250,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(c) **Liability Cap:** Should total prize liability for all lotteries selling the Mega Millions® game (exclusive of Jackpot Prize carry forward) exceed 300 percent of draw sales or 50 percent of draw sales plus \$50,000,000 (fifty million dollars), whichever is less, (both hereinafter referred to as the "Liability Cap"), prize levels two through five (\$250,000, \$10,000, \$150, and \$150 set prize levels) shall be paid on a pari-mutuel basis, provided, however, that in no event shall the pari-mutuel prize be greater than the official advertised prize. The amount to be used for the allocation of such pari-mutuel prizes (prize levels two through five) shall be the liability cap less the amount paid for the Jackpot Prize and the prizes paid for levels six through nine (\$10, \$7, \$3 and \$2 set prize levels). To fund their portion of the Liability Cap, the Party Lotteries may utilize:

(A) The amount allocated to the set prizes in levels two through nine and carried forward from previous draws, if any, and

(B) An amount from the prize reserve account described in section (2) of this rule.

(d) **Prize Payments when Liability Cap Met:** In the event the Liability Cap is met, the amount to fund the Jackpot Prize together with the amounts to fund the prize levels six through nine shall be first paid from the Liability Cap amount. The balance of the Liability Cap, after deducting the Jackpot Prize and payment for set prize levels six through nine (hereinafter referred to as the "Liability Cap Balance"), shall be applied to the second through fifth level set prize payments on a pari-mutuel basis in accordance with the following formula:

(A) Prize Level two (normally \$250,000) shall be an amount equal to 64.53% of the Liability Cap Balance divided by the number of winning game tickets in Prize Level two;

(B) Prize Level three (normally \$10,000) shall be an amount equal to 14.63% of the Liability Cap Balance divided by the number of winning game tickets in Prize Level three; and

(C) Prize Levels four and five (normally \$150) shall be an amount equal to 20.84% of the Liability Cap Balance divided by the number of combined winning game tickets in Prize Levels four and five.

(4) **Advertised Jackpot Prize Annuity Amount:** Except as required by OAR 177-098-0060 the official advertised Jackpot Prize annuity amount is subject to change based on sales forecasts and/or actual sales. Additionally, this prize amount may be rounded up to the next highest affordable multiple of one million dollars, at the discretion of the Party Lotteries.

(5) **Changes to Prize Categories:** The number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the Mega Millions® Lotteries, for promotional purposes. Such change shall be announced by the Lottery prior to the drawing to which the change applies.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0050

Probability of Winning

General: The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in Mega Millions®. All prize winning tickets sold by the California Lottery are paid on a pari-mutuel basis. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0060

Prize Payment

(1) **Selection of Payment Type:** Jackpot Prizes shall be paid, at the election of the player made no later than 60 days after validation of the prize, with either a per winner annuity or single lump sum payment. If the payment election is not made by the player within 60 days after validation, then the prize shall be paid as an annuity prize. The election to take the single lump sum payment may be made at the time of validation of the prize claim or within 60 days thereafter. An election made after validation is final and cannot be revoked, withdrawn, or otherwise changed.

(2) **Share of the Jackpot Prize:** Shares of the Jackpot Prize shall be determined by dividing the amount available in the Jackpot Prize pool equally among all winners of the Jackpot Prize. The portion of the prize money allocated from the current Mega Millions® prize pool for the Jackpot Prize, plus any previous portions of prize money allocated to the Jackpot Prize category in which no matching tickets were sold and monies from a reserve needed to fund a guaranteed Jackpot Prize will be divided equally among all Jackpot Prize winners in all participating lotteries.

(3) **Lump Sum Payment:** Jackpot Prize winner(s) who elect a lump sum payment (cash value option) shall be paid their share(s) in a single lump sum payment. The lump sum payment amount shall be determined by the Product Group. The lump sum payment shall be paid upon completion of all internal validation procedures. Prize payments may be rounded down to the nearest \$1,000.

(4) **Initial and Annual Annuitized Payments:** The annuity Jackpot Prize amount will be paid in twenty-six annual installments. The initial payment shall be paid upon completion of all internal validation procedures. The subsequent twenty-five payments shall be paid annually to coincide with the month of the Federal auction date at which the bonds were purchased to fund the annuity. All such payments shall be made within seven days of the anniversary of the annual auction date. All annuitized prizes shall be paid annually in twenty-six payments with the initial payment being made in cash, to be followed by twenty-five payments funded by the annuity. Prize payments may be rounded down to the nearest \$1,000.

(5) **Minimum Jackpot Prizes and Increases:** If the sales support a Jackpot Prize that is at least \$12 million, as an annuity, lower than the advertised annuity prize amount, then the resulting annuity prize amount to be paid will be the highest fully funded million plus \$12 million, as an annuity, or the advertised Jackpot Prize, whichever is lower. In no event, however, as may be required by a Mega Millions® Lottery law or rule, shall the Jackpot Prize paid be less than the official advertised annuity prize

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amount of the immediately prior drawing. When there is only one winning Mega Millions® ticket for the annuity prize, no Jackpot Prize paid in twenty-six annual installments shall be less than \$12 million.

(6) **Roll Over of Jackpot Prize:** If in any Mega Millions® drawing there are no Mega Millions® plays which qualify for the Jackpot Prize category, the portion of the prize fund allocated to such Jackpot Prize category shall remain in the Jackpot Prize category and be added to the amount allocated for the Jackpot Prize category in the next consecutive Mega Millions® drawing.

(7) **Funding the Annuity:** Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Party Lottery on a schedule approved by the Product Group. If individual shares of the cash held to fund an annuity is less than \$250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Jackpot Prize pool. All annuitized prizes shall be paid annually in twenty-six payments with the initial payment being made in cash, to be followed by twenty-five payments funded by the annuity. Prize payments may be rounded down to the nearest one thousand dollars. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL.

(8) **Lack of Available Funds:** If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the Party Lotteries or other lotteries participating in the Mega Millions® Game. A Party Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

(9) **Death of Winner:** In the event of the death of a lottery winner sold by a Party Lottery during the annuity payment period, the MUSL Finance & Audit Committee, in its sole discretion excepting a discretionary review by the Product Group, upon the petition of the estate of the lottery winner (the "Estate") to the lottery of the jurisdiction in which the deceased lottery winner purchased the winning ticket, and subject to federal, state, district or territorial applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If such a determination is made, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Finance & Audit Committee or the Product Group.

(10) **Low-Tier Cash Prize Payments:** All low-tier cash prizes (all prizes except the Jackpot Prize) shall be paid in cash through the Party Lottery which sold the winning ticket(s). A Party Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(11) **Rounding of Prize Payments:** Annuitized payments of the Jackpot Prize or a share of the Jackpot Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Jackpot Prize win shall be added to the first payment to the winner or winners. Prizes other than the Jackpot Prize which, under these rules, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

(12) **Roll Over of Jackpot Prize:** If the Jackpot Prize is not won in a drawing, the prize money allocated for the Jackpot Prize shall roll over and be added to the Jackpot Prize pool for the following drawing.

(13) **One Prize per Board:** The holder of a winning ticket may win only one prize per board in connection with the winning numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category.

(14) **Claim Expires in One Year:** Claims for all prize categories, including the Jackpot Prize, shall be submitted within one year after the date of the drawing in accordance with these rules and OAR 177-070-0025(3).

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0070

Ticket Validation

(1) **Validation Requirements:** To be a valid ticket and eligible to receive a prize, a Mega Millions® ticket shall satisfy all the requirements established by Lottery for validation of winning Mega Millions® tickets sold through Lottery's central computer system and any other validation

requirements adopted by the Product Group, the MUSL Board and any other requirements published as the Confidential MUSL Minimum Game Security Standards. The Lottery and MUSL shall not be responsible for tickets which are altered in any manner. When a winning Mega Millions® ticket is submitted to the Lottery for validation along with the Lottery's completed claim form, and the Lottery has initiated the validation procedures, the Lottery retains possession of the winning ticket and claim form.

(2) **Mega Millions® Ticket Required:** Under no circumstances will a claim be paid for either the Jackpot Prize or a lower tier set prize without an official Mega Millions® ticket matching all game play, serial number and other validation data residing in Lottery's gaming system computer and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming such prize.

(3) **Additional Validation Requirements:** In addition to the validation requirements set forth in section (1) of this rule, in order to be deemed a valid, winning Mega Millions® ticket, all of the following conditions must be met:

(a) The validation data must be present in its entirety and must correspond, using the computer validation file, to the number selections printed on the ticket for the drawing date(s) printed on the ticket;

(b) The ticket must be intact;

(c) The ticket must not be mutilated, altered, reconstituted, or tampered with in any manner;

(d) The ticket must not be counterfeit or an exact duplicate of another winning ticket;

(e) The ticket must have been issued by a Lottery retailer authorized to sell Mega Millions® tickets on official paper stock of the Lottery;

(f) The ticket must not have been stolen, to the knowledge of the Lottery;

(g) The ticket must be submitted for payment in accordance with these rules.

(h) The ticket data must have been recorded on the Lottery's central computer system prior to the drawing and the ticket data must match this computer record in every respect. In the event of a contradiction between information as printed on the ticket and as accepted by the Lottery's central computer, the wager accepted by the Lottery's central computer shall be the valid wager;

(i) The player or computer number selections, validation data and the drawing date(s) of an apparent winning ticket must appear on the official file of winning tickets, and a ticket with that exact data must not have been previously paid;

(j) The ticket must not be misregistered, defectively printed, or printed or produced in error to an extent that it cannot be validated by the Lottery;

(k) The ticket must pass validation tests using a minimum of three of the five validation methods as defined in the Mega Millions® Finance and Operations Procedures, Section 15. In addition, the ticket must pass all other confidential security checks of the Lottery;

(l) In submitting a Mega Millions® ticket for validation, the claimant agrees to abide by applicable laws, all rules and regulations, instructions, conditions and final decisions of the Director of the Party Lottery that issued the ticket;

(m) There must not be any other breach of these Mega Millions® Rules in relation to the ticket, which, in the opinion of the Director of the Party Lottery that issued the ticket, justifies invalidation; and

(n) The ticket must be submitted to the Party Lottery that issued it.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0080

Ticket Responsibility

(1) **General:** Until such time as a signature is placed in the area designated for signature, a Mega Millions® ticket is owned by the bearer of the ticket. MUSL, the Product Group, and the Lottery are not responsible for lost or stolen tickets.

(2) **Reporting Errors:** Winners are determined by the numbers drawn and certified by the independent auditor responsible for auditing the Mega Millions® draw. Neither the Lottery, nor MUSL is responsible for Mega Millions® winning numbers reported in error.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &
Stats. Implemented: ORS 461
Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

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177-098-0090

Ineligible Players

(1) **General:** A Mega Millions® game ticket may not be purchased by and a prize may not be paid to, a member of the Lottery Commission, the director, the assistant directors or any employee of the Lottery, or to any spouse, child, brother, sister, or parent of such person.

(2) **MUSL Restrictions:** A Mega Millions® ticket issued by the MUSL or any of its Party Lotteries shall not be purchased by, and a prize won by any such ticket shall not be paid to:

(a) A MUSL employee, officer, or director;

(b) A contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(c) An employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, share-holders, or owners in the local office of the firm; or

(d) An immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subsections (a) through (c) of this section and residing in the same household.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &

Stats. Implemented: ORS 461

Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0100

Applicable Law

(1) **General:** In purchasing a Mega Millions® ticket issued by the Lottery, the purchaser agrees to comply with and be bound by all applicable statutes, administrative rules and procedures of the Lottery and MUSL, and by the directives and determinations of the Lottery director. The purchaser agrees, as the purchaser's sole and exclusive remedy, that claims arising out of a Mega Millions® ticket purchased from the Lottery can be pursued only against the Lottery and not any other Party Lottery. Litigation, if any, shall only be maintained within the state in which the Mega Millions® ticket was purchased and only against the Party Lottery that issued the ticket.

(2) **Final Determinations:** All decisions made by the Lottery director, including the declaration of prizes and the payment thereof and the interpretation of Mega Millions® game rules and procedures, are final and binding on all purchasers and on every person making a claim in respect thereof. Nothing in this rule shall be construed as a waiver of any defense or claim the Lottery may have in the event a purchaser or person making a claim pursues litigation against the Lottery Commission or the Lottery, its officers, or employees.

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &

Stats. Implemented: ORS 461

Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

177-098-0110

Megaplier®

(1) **General:** Megaplier® is an optional, limited extension promotion of the Mega Millions® Game described in OAR Division 98. The Lottery Director, in the Lottery Director's sole discretion and based on agreements with MUSL, is authorized to initiate and terminate the Megaplier® option.

(2) **Set Prizes Only:** Megaplier® multiplies the amount of any of the cash Set Prizes (the cash prizes normally paying \$2 to \$250,000) won in a drawing held during the promotion. The Jackpot Prize is not a Set Prize and will not be multiplied.

(3) **Qualifying Play:** A qualifying Megaplier® option play is any single Mega Millions® Play for which the player selects the Megaplier® option on either the Play Slip or by selecting the Megaplier® option through a clerk-activated or player-activated terminal, pays one extra dollar for the Megaplier® option play, and which is recorded at the Party Lottery's central computer as a qualifying play.

(4) **Prizes to be Multiplied:** A qualifying play which wins one of the eight lowest lump sum Set Prizes will be multiplied by the number selected (either 2, 3, or 4), in a separate random Megaplier® drawing announced in a manner determined by the Product Group.

(5) **Selection of Multiplier®:** MUSL will either itself conduct, or authorize a U.S. Lottery to conduct on its behalf, a separate random "Megaplier®" drawing. Before each Mega Millions® drawing a single number (2, 3 or 4) shall be drawn. The Mega Millions® Product Group may change one or more of these multiplier numbers for special promotions from time to time.

(6) **Megaplier® Prize Pool:** The prize pool for all prize categories offered by the Party Lotteries shall consist of up to fifty percent (50%) of each drawing period's sales, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, after the

Mega Millions® prize reserve accounts are funded to the amounts set by the Product Group. Any amount remaining in the prize pool at the end of the Mega Millions® game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state or jurisdiction law.

(7) **Megaplier® Prize Rollover or Reserve Accounts:** Any amount not used to pay for multiplied prizes may be collected and placed in the rollover account or in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the Product Group.

(8) **Expected Prize Payout:** Except as provided in these rules, all prizes awarded shall be paid as lump sum set prizes. Instead of the Mega Millions® set prize amounts, qualifying Megaplier® plays will pay the amounts shown below when matched with the Megaplier® number drawn: [Table not included. See ED. NOTE.]

In certain rare instances, the Mega Millions® set prize amount may be less than the amount shown. In such case, the Megaplier® prizes will be a multiple of the changed Mega Millions® prize amount announced after the draw. For example, if the Match 5+0 Mega Millions® set prize amount of \$250,000 becomes \$150,000 under the rules of the Mega Millions® game, then a Megaplier® player winning that prize amount with a 4X multiplier would win \$600,000 (\$150,000 x 4).

(9) **Probability of Winning:** The following table sets forth the probability of the various Megaplier® numbers being drawn during a single Mega Millions® drawing. The Product Group may elect to run limited promotions that may increase the multiplier numbers. [Table not included. See ED. NOTE.]

(10) **Prize Pool Carried Forward:** The prize pool percentage allocated to the Megaplier® set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(11) **Pari-Mutuel Prizes — All Prize Amounts:** If the total of the original Mega Millions® set prizes and the multiplied Megaplier® set prizes awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the set prizes (including the multiplied set prizes) awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the set prizes and carried forward from previous draws, if any.

(b) An amount from the Mega Millions® reserve accounts not to exceed the lesser of 300% of draw sales or 50% of draw sales plus \$50 million.

(c) If, after these sources are depleted, there are not sufficient funds to pay the set prizes awarded (including multiplied prizes), then the prize levels two through five shall become a pari-mutuel prize, as set out in OAR 177-098-0040. The Mega Millions® and Megaplier® prize pools shall be combined in the rare instance when the set prizes, pursuant to the rules, are paid on a pari-mutuel basis, so that the multipliers, as provided for in the rules, will remain in effect for all prize levels.

(12) **Prize Payment:** All Megaplier® prizes shall be paid in one lump sum. The Lottery may begin paying Megaplier® prizes after receiving authorization to pay from the MUSL central office.

(13) **Prizes Rounded:** Prizes, which under these rules may become pari-mutual prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 190, 461, OR Const. Art. XV, Sec. 4(4) &

Stats. Implemented: ORS 461

Hist.: LOTT 6-2010, f. 3-18-10, cert. ef. 3-21-10

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**Oregon University System,
Portland State University
Chapter 577**

Rule Caption: Amends Portland State University's Schedule of Fines and Fees for General services and other charges.

Adm. Order No.: PSU 1-2010(Temp)

Filed with Sec. of State: 4-5-2010

Certified to be Effective: 7-1-10 thru 11-1-10

Notice Publication Date:

Rules Amended: 577-060-0020

Subject: The amendment establishes updated fees, charges, fines and deposits for General Service for the 2010–2011 Fiscal year. It is in the interest of the general public for the State of Oregon that certain University services are self-sustaining. The amendment to this rule

ADMINISTRATIVE RULES

will permit the University to recover in fees the cost of providing various administrative and academic services.

Rules Coordinator: Julie Osborn—(503) 725-3701

577-060-0020

Schedule of Fines and Fees for General Services and Other Charges

The Schedule of Fines and Fees for General Services and Other Charges for the 2010–2011 Fiscal Year are hereby adopted by reference by Portland State University.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & ef. 7-18-88; PSU 7-1988(Temp), f. & ef. 11-29-88; PSU 3-1989, f. & ef. 7-26-89; PSU 5-1990, f. & ef. 7-5-90; PSU 2-1991(Temp), f. & ef. 6-28-91; PSU 3-1991, f. & ef. 8-7-91; PSU 4-1991(Temp), f. & ef. 12-4-91; PSU 1-1992, f. & ef. 1-17-92; PSU 2-1992, f. & ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & ef. 6-11-93; PSU 2-1993(Temp), f. & ef. 7-13-93; PSU 3-1993(Temp), f. & ef. 7-30-93; PSU 4-1994, f. & ef. 11-3-94; PSU 1-1995, f. & ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & ef. 6-27-96; PSU 1-1997, f. & ef. 8-1-97; PSU 4-1998, f. & ef. 9-17-98; PSU 4-1999, f. & ef. 8-11-99; PSU 2-2000, f. & ef. 8-1-00; PSU 1-2001, f. & ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & ef. 8-20-04; PSU 1-2005(Temp), f. & ef. 7-15-05 thru 12-28-05; PSU 3-2005, f. & ef. 12-13-05; PSU 2-2006, f. & ef. 6-30-06; PSU 5-2006(Temp), f. & ef. 8-30-06 thru 1-31-07; Administrative correction, 2-16-07; PSU 3-2007, f. & ef. 7-5-07; PSU 5-2008(Temp), f. 6-13-08, cert. ef. 7-1-08 thru 12-26-08; Administrative correction 1-23-09; PSU 1-2009(Temp), f. & ef. 5-14-09 thru 11-10-09; PSU 2-2009, f. 7-15-09, cert. ef. 8-1-09; PSU 6-2009(Temp), f. & ef. 8-24-09 thru 11-1-09; Administrative correction 11-19-09; PSU 1-2010(Temp), f. 4-5-10, cert. ef. 7-1-10 thru 11-1-10

Parks and Recreation Department Chapter 736

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

Adm. Order No.: PRD 5-2010

Filed with Sec. of State: 3-24-2010

Certified to be Effective: 3-24-10

Notice Publication Date: 2-1-2010

Rules Amended: 736-015-0006, 736-015-0015, 736-015-0030

Subject: References to “reservation change” in 736-015-0006 and 736-015-0015 have been amended to clarify that a cancellation is considered a reservation change. Ecola State Park has been added back onto the list of day use fee parks in 736-015-0030.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-015-0006

Definitions

As used in this division, unless the context requires otherwise:

(1) “Adoptive Foster Families” means one or more persons who have adopted one or more foster children pursuant to ORS 418.285. At least one of the children must currently be under 18 years of age and living with the Adoptive Foster Family.

(2) “Commission” means the Oregon State Parks and Recreation Commission.

(3) “Department” means the Oregon State Parks and Recreation Department.

(4) “Director” means the director of the department.

(5) “Enforcement Officer” means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations, and to issue oral or written warnings or citations to enforce park area rules.

(6) “Foster Families” means persons certified to maintain a Foster Home, a Relative Home for Children or a Foster Home for Children with Developmental Disabilities, as described in ORS 418.625 and 443.830, with their foster children.

(7) “In Kind Services” means a group or person who provides, at the direction of park staff, materials or services whose value to the park area equals or is greater than the normal fees.

(8) “Marketing and Promotion” generally are agency-sponsored events that are of regional or statewide significance promoting tourism or partnerships with local communities, other agencies or economic development.

(9) “Motor Vehicle” as defined in ORS 801.360 means a vehicle that is self-propelled or designed for self-propulsion. ORS 801.590 further defines “vehicle” as “any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.”

(10) “Non-Profit Entity” means a group having a 5012 exempt status filed with the US Department of Internal Revenue Service.

(11) “Park Area” means any state park, wayside, corridor, monument, historic, or recreation area, except portions of ocean shore recreation areas not abutting a state park or wayside, under the jurisdiction of the department.

(12) “Park Employee” means an employee of the department.

(13) “Park Facility” includes but is not limited to individual and group campsites, day use areas and shelters, cabins, yurts, tepees, camper wagons, meeting halls, lodges, pavilions, and other amenities of the department.

(14) “Park Manager” means the supervisor or designated park employee in charge of a park area.

(15) “Peace Officer” means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(16) “Person” includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(17) “Reduced Service Level” means a reduction in the normal level of service that a person may reasonably expect due to the department’s action/inaction or park facility failure lasting longer than 24 hours.

(18) “Reservation Change” means a modification to an existing reservation by a person that changes the arrival or departure dates, a complete change to reservation dates, or changes the type of site from the original request. “Reservation Change” includes cancellation of the reservation.

(19) “Special Events” may be an activity sponsored or co-sponsored by the department, an event that provides entertainment to park visitors, or other activities that promote the mission of the department or Oregon tourism.

(20) “Split Reservation” means a stay at a park area for one person for one continuous date range that requires a mid-stay move from one site to another.

(21) “Traditional Tribal Activities” generally means traditional, spiritual, natural and cultural resource practices that would have been or which still are conducted by a federally recognized tribe or its members.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.050, 390.111, 390.121 & 390.124

Hist.: PRD 4-2005, f. & ef. 5-5-05; PRD 15-2009, f. & ef. 9-29-09; PRD 5-2010, f. & ef. 3-24-10

736-015-0015

Reservations

(1) Purpose: Based on the department’s goal to promote outdoor recreation in Oregon, the department established a reservation program known as Reservations Northwest to increase use of park areas and facilities. The director may designate specific park facilities to offer for reservation through a centralized call center and through the Internet.

(2) General Regulations:

(a) Reservations will be accepted and processed for designated park facilities through Reservations Northwest.

(b) A person may make a reservation a minimum of two days and a maximum of nine months prior to the arrival date.

(c) A person must be 18 years of age or older to make a reservation.

(d) A person who qualifies under the Americans with Disabilities Act (ADA) may reserve accessible campsites.

(e) A person may not make reservations for multiple park areas for the same date range.

(f) A person reserving a boat slip (where available) must also reserve another facility at the same park area.

(g) Reservations and registrations for horse camping sites shall be made only for people camping with their horses or similar large animals unless otherwise specified by the park manager.

(h) Split reservations are allowed to accommodate persons. Only one split reservation shall be allowed per reservation.

(i) Only the person whose name appears on the original reservation or their designee (as documented in the original reservation) may change or cancel an existing reservation or access information associated with a reservation.

(j) Customer information may be made available upon written request in compliance with ORS Chapter 192 and department policy.

ADMINISTRATIVE RULES

(k) Specific information regarding a confirmed reservation will not be released to the public as provided in ORS 192.501 and 192.502.

(3) Transaction Fees and Deposits:

(a) The department will charge a \$8 non-refundable transaction fee for each reservation made through the centralized call center or the Internet.

(b) Reservations require a facility deposit equal to the full amount charged for use of the facility during the reservation period.

(c) All fees are due at the time the person makes the reservation.

(4) Payment Methods:

(a) A person may use a valid credit card (VISA or MasterCard) or bank debit card with a VISA or MasterCard logo.

(b) A person may pay by personal check, money order, certified check, or travelers check (in U.S. funds).

(c) The department must receive payment within five calendar days of the date the person makes the reservation. If payment is not received within this time frame, the department will cancel the reservation. The person remains responsible for the \$8 transaction fee for each reservation request.

(d) If a banking institution returns a check to the department for any reason or if a credit or debit card is declined, the department will attempt to contact the person. Inability to resolve the payment dispute will result in a reservation cancellation. The person will remain responsible for the \$8 transaction fee for each reservation.

(e) Government agencies and non-profit entities may request to be invoiced for services. Reservations should be made at least 30 days prior to arrival. The department must receive payment within 25 days of the date the reservation is made. If payment is not received the department will cancel the reservation. The department will bill for the \$8 transaction fee for each reservation.

(f) A person must pay all outstanding account balances prior to making future reservations.

(5) Reservation Cancellations:

(a) A person may cancel a reservation three calendar days or more prior to their arrival date by calling Reservations Northwest. An automated reservation cancellation voice mail system is available seven days a week, 24 hours a day.

(b) A person may also cancel a reservation three calendar days or more prior to their arrival date through E-mail by accessing the department's web site and following the posted cancellation procedures. The web site is available seven days a week, 24 hours a day.

(c) A person must contact the specific park to cancel reservations with an arrival date that is two calendar days or less from the current date.

(d) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(e) In order to receive a refund of the facility deposit, a person must cancel the reservation for individual campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more calendar days prior to arrival. If the cancellation is not received three or more days in advance of the arrival date, an amount of the facility deposit fee equal to one night rental for the facility will be forfeited.

(f) In order to receive a refund of the facility deposit for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas and other special facilities as designated by the department, a person must cancel the reservation at least one month prior to arrival. If the cancellation is not received one month or more in advance of the arrival date, an amount of facility deposit fee equal to one night rental for the facility will be forfeited.

(6) Reservation Changes:

(a) The department will charge an \$8 non-refundable transaction fee for each reservation change including cancellations.

(b) A person may request to change a confirmed reservation by calling Reservations Northwest during normal business hours Monday through Friday.

(c) A person may also request to change a reservation through Email by accessing the department's web site and following the posted reservation change procedures. The web site is available seven days a week, 24 hours a day.

(d) A person may not make any changes to reservations more than eight months in advance of the arrival date.

(e) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(f) The department will assess a fee equal to the nightly rental fees for all nights cancelled for any reservation change resulting in a reduction in length of stay for reservation bookings greater than five nights.

(g) A person must request a reservation change for campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more days in advance of the arrival date. The department will treat reservation change requests with an arrival date of three days or less from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(h) A person requesting a reservation change for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas, and other special facilities as designated by the department must request the change at least one month prior to arrival date. The department will treat reservation change requests with an arrival date of less than one month from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(7) Reservations to Accommodate Organized Groups:

(a) General: To promote the use of facilities by groups and to bring efficiencies to the group reservation process, the director may offer group camping to persons reserving multiple tent, electrical or full hook-up campsites.

(b) The department will charge only one transaction fee for the group when the sites are reserved together. The department will require a facility deposit fee equal to the full amount of the site fee for each campsite at the time the reservation is made.

(c) A person must reserve a minimum of five individual campsites during Discovery Season (October 1 to April 30) or ten individual campsites during the Prime Season (May 1 to September 30) to qualify for group camping benefits.

(d) The department will charge a transaction fee of \$8 for each site cancellation or change made to the group reservation.

(e) Reservations made on the Internet for a group of sites are not eligible.

(f) A person may reserve a meeting hall (where available) for one day's free use when the minimum number of sites are reserved and used. The person may reserve the meeting hall for additional days at the normal rental rate.

(g) Special facilities such as deluxe cabins and yurts, rustic cabins and yurts, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, and other special facilities as designated by the department are not included in the group camping program.

(h) A person must make reservations at least 10 days prior to arrival date to qualify for group camping benefits.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 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. 9-9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 2-1994, f. & cert. ef. 2-9-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 10-2003, f. & cert. ef. 10-17-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0099, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2009, f. 6-2-09, cert. ef. 8-1-09; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 5-2010, f. & cert. ef. 3-24-10

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:

(a) Parking permits are to be clearly displayed through 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;

ADMINISTRATIVE RULES

(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, Ecola State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), L.L. "Stub" Stewart Memorial State Park, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoeg State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Area (Winberry), Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111 & 390.121

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 1-2010, f. & cert. ef. 1-5-10; PRD 5-2010, f. & cert. ef. 3-24-10

Rule Caption: Clarification of recreational immunity language relating to charges for services and facilities.

Adm. Order No.: PRD 6-2010(Temp)

Filed with Sec. of State: 4-15-2010

Certified to be Effective: -- thru --

Notice Publication Date:

Rules Amended: 736-015-0010, 736-015-0020, 736-015-0026, 736-015-0030

Subject: Language is added to the division 15 rules which will: (1) provide users who are charged a fee the notice now required by law; and (2) protect the public interest in limiting exposure of the state park system to claims that could be brought absent recreational immunity.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-015-0010

General Regulations

(1) The commission shall establish fees through rule to promote department financial self-sufficiency and based on the following criteria:

- (a) Prevailing rates for comparable facilities;
- (b) Day of week;
- (c) Season of year;
- (d) Amenities of the park area and site;
- (e) Marketing opportunities to encourage use and revenues.

(2) Unless posted otherwise, a person shall pay established rates prior to use.

(3) The director may establish rates and rental charges for services, facilities and products that are optional, nonessential or complement the basic services described in this division. The director shall establish rates that take into consideration comparable services by other providers and marketing opportunities to encourage use and revenues.

(4) Pursuant to ORS 105.672 to 105.696, fees charges under this division are for use of the assigned area or park facility of the state park land for camping, picnicking, or boating and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 10-1983(Temp), f. & ef. 12-28-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1994, f. & cert. ef. 7-11-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0098, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2007, f. & cert. ef. 8-28-07; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10

736-015-0020

Overnight Rentals

The director may designate a Type I campsite rental schedule at selected high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The director is authorized 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.

(13) Pursuant to ORS 105.672 to 105.696, overnight rental charges under this rule are for use of the assigned area or park facility of the state park land for camping and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124 & HB 3673 (2010)

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.

ADMINISTRATIVE RULES

& 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; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10

736-015-0026

Group Day Use

(1) At designated park areas, a person may reserve a group picnic area(s) by calling Reservations Northwest during normal business hours. The park manager will determine the maximum group size for each park facility.

(2) The department will charge group picnic rental rates to offset additional park administration and maintenance costs:

(a) Base rate (0-50 people) — \$50;

(b) Charges for persons in excess of the 50 person base rate will be \$1 per person.

(3) The park manager may make advance arrangements with the group leader for parking, supervision, cleanup, checkout time, and other pertinent details.

(4) Upon arrival, the group leader will check in with the park manager who will direct the group to the reserved area.

(5) The group must have adult supervision at all times.

(6) Pursuant to ORS 105.672 to 105.696, group day use rental charges under this rule are for use of the assigned area or park facility of the state park land for picnicking and not for any other recreational purpose or area of state park land. The immunities provided under ORS 105.682 apply to use of state park land for any other recreational purpose

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124 & HB 3673 (2010)

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 83(Temp), f. 5-19-77, ef. 6-1-77; 1 OTC 85, f. & ef. 7-20-77; 1 OTC 3-1979, f. & ef. 2-9-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1992, f. & cert. ef. 2-14-92; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0115, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 15-2009, f. & cert. ef. 9-29-09; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10

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. This charge is a parking fee and not a charge for recreational purposes under ORS 105.672 to 105.696. The immunities provided under 105.682 apply to use of state park land for recreational purpose.

(2) General Regulations:

(a) Parking permits are to be clearly displayed through 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, Ecola State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), L.L. "Stub" Stewart Memorial State Park, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoeg State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Area (Winberry), Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & HB 3673 (2010)

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; PRD 5-2010, f. & cert. ef. 3-24-10; PRD 6-2010(Temp), f. & cert. ef. 4-15-10 thru 10-8-10

Secretary of State, Audits Division Chapter 162

Rule Caption: Minimum Standards for Audits of Oregon Municipal Corporations.

Adm. Order No.: AUDIT 1-2010

Filed with Sec. of State: 3-23-2010

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Notice Publication Date: 2-1-2010

Rules Adopted: 162-010-0316

Rules Amended: 162-010-0000, 162-010-0020, 162-010-0030, 162-010-0050, 162-010-0130, 162-010-0150, 162-010-0200, 162-010-0230, 162-010-0240, 162-010-0270, 162-010-0310, 162-010-0330

Subject: The amendments propose the following changes:

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

(2) OAR 162-010-0050 — Updates the hierarchy of generally accepted accounting principals with most recent audit standard.

(3) OAR 162-010-0230 — Requires the auditor to comment on whether an understanding of the municipality's internal control was obtained in performing the audit.

(4) OAR 162-010-0240 — Modifies compliance requirements for amendments to ORS Chapter 295 regarding deposits of public funds.

(5) OAR 162-010-0310 — modifies compliance requirements to public contracting laws amended into three chapters of law.

(6) 162-010-0330 — Clarifies responsibility to request an extension of time to file late reports.

(7) OAR 162-010-0316 — Sets forth the compliance requirements applicable to Public Charter Schools.

Rules Coordinator: Julie A. Sparks—(503) 986-2262

162-010-0000

Preface

(1) Pursuant to the provisions of ORS 297.465, there is presented herewith the Minimum Standards for Audits of Oregon Municipal Corporations.

(2) These Standards have been approved by the Oregon Board of Accountancy (the Board), and have been adopted by the Secretary of State as Administrative Rules under the provisions of ORS Chapter 183.

(3) All audits of municipal corporations shall be made in accordance with these Standards, and all audit reports shall be in the form prescribed herein. The Standards are effective for audits of fiscal years ending after March 31, 2010.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 297
Stats. Implemented: ORS 297.465
Hist.: DOA 3-1986, f. & ef. 5-29-86; DOA 1-1991, f. 3-8-91, cert. ef. 7-1-91; DOA 2-1995, f. 3-1-95, cert. ef. 7-1-95; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0020

Introduction

(1) All municipal corporations, as defined in ORS 297.405, are required to have their accounts and fiscal affairs audited annually in accordance with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants (AICPA), unless they qualify under ORS 297.435 to be reviewed in accordance with Statements on Standards for Accounting and Review Standards (SSARS), or file financial reports in lieu of having an audit. The accounts to be audited and examined may include financial statements, or they may consist solely of books, records, and other financial data. Fiscal affairs are all activities of a municipal corporation relating to the collection, receipt, custody, handling, expenditure, or disbursement of public funds.

(2) The accountant who contracts to conduct an audit of a municipal corporation must personally conduct the audit to an extent satisfactory to the Secretary of State, prepare an audit report and express an opinion on the accounts in accordance with these rules. The expression of opinion must be signed by the accountant. The audit report and expression of opinion are to be issued to the municipal corporation within six months after the close of the calendar or fiscal year unless an extension of time has been granted by the Secretary of State.

(3) Management (of the municipal corporation) has the responsibility for adopting sound accounting policies, for maintaining an adequate and effective system of accounts, for the safeguarding of assets, and for devising a system of internal control that will, among other things, help assure the production of proper financial statements. The transactions which should be reflected in the accounts and in the financial statements are matters within the direct knowledge and control of management. The independent auditor's knowledge of such transactions is limited to that acquired through the examination. Accordingly, the fairness of the representations made through financial statements is an implicit and integral part of management's responsibility. The independent auditor may make suggestions as to the form or content of financial statements or he/she may draft them in whole or in part, based on management's accounts and records. However, responsibility for the statements examined is confined to the expression of opinion on them. The financial statements remain the representations of management.

(4) Since the functions and forms of government, as well as the accounting, internal control, and management information systems, will vary greatly among municipal corporations, the independent auditor must be familiar with legal provisions applicable to municipal corporations and the accounting principles promulgated by GASB and other accounting principles considered to be generally acceptable for governmental organizations. The auditor shall review the information systems of accounting and internal control, develop audit programs to adequately test those systems, and form an opinion with respect to the accounts of the municipal corporation.

(5) Officials of the municipal corporation should make an accounting of all resources for which they are responsible. Preparation of the financial statements and notes thereto and the supplementary schedules considered necessary for full disclosure of financial position and results of operations as set forth in OAR 162-010-0050 through 162-010-0170 will be considered an appropriate accounting.

(6) The independent auditor is expected to determine if the accounts and records are maintained in a manner that will permit the preparation of financial statements which will fairly present the financial position and results of operations of the municipal corporation in accordance with legal provisions and in accordance with generally accepted accounting principles. The accounting principles contemplated are those contained in the pronouncements of authoritative bodies including, but not necessarily limited to, the Governmental Accounting Standards Board (GASB), the AICPA and the Financial Accounting Standards Board (FASB). If the municipal corporation fails to prepare and present the financial statements specified in OAR 162-010-0050 through 162-010-0170, the auditor must make a reasonable attempt to draft them for the municipal corporation from the accounts and records made available for audit. If the financial statements cannot be drafted with reasonable effort, appropriate comments must be included in the audit report, together with recommendations for improvements necessary to permit their preparation in the future. Wherever there is a conflict between legal provisions and generally accepted accounting principles, legal provisions are to take precedence. The auditor shall make

appropriate disclosure of such conflicts and shall be aware that a qualification of the opinion may be necessary.

(7) In addition to auditing the accounts and financial statements of a municipal corporation, the independent auditor is required to review its fiscal affairs. The review shall include, but not necessarily be limited to, determining if financial operations have been carried out in accordance with appropriate legal provisions including federal and state laws, charter provisions, court orders, ordinances, resolutions, and rules and regulations issued by other governmental agencies. It is the auditor's responsibility to disclose in the audit report material instances of noncompliance with such legal provisions.

(8) The audit report of a municipal corporation shall contain financial statements with appropriate notes, an accountant's report containing the independent auditor's expression of opinion on the financial statements, or an assertion that an opinion cannot be expressed, and the auditor's comments relating to the review of fiscal affairs and compliance with legal requirements:

(a) The auditor shall express an "in relation to" opinion on combining and individual fund statements and schedules required by OAR 162-010-0050 through 162-010-0190;

(b) The auditor shall also express an "in relation to" opinion on budgetary schedules presented as required supplementary information.

(c) The auditor's opinion must be prepared in accordance with the Statements on Auditing Standards issued by the AICPA.

(d) The report should include either an opinion on whether the accompanying financial information is fairly presented in all material respects in relation to the basic financial statements taken as a whole or a disclaimer of opinion, depending on whether the information has been subjected to the auditing procedures applied in the audit of the basic financial statements.

(e) The auditor's comments relating to the review of fiscal affairs, including compliance with legal requirements, shall be in accordance with the provisions of OAR 162-010-200 through 162-010-320.

(9) Audit reports are required to contain, immediately inside the front cover, the names and mailing addresses of officers of the municipal corporation and members of its governing body. In addition, audit reports of special districts, as defined by law, shall contain the name of the district's registered agent and its registered address. If a special district has not designated a registered agent or registered address, then the audit report shall so indicate.

(10) It is the responsibility of the municipal corporation to file a copy of its audit report with the Secretary of State. The reports are subject to review for compliance with these rules, and the Secretary of State may call for submission by the independent auditor of the work papers and audit programs covering an engagement. The work papers and audit programs must contain satisfactory written evidence of compliance with these rules.

(11) Within 30 days after delivering the audit report, as required by law, the independent auditor shall submit a summary of the revenues and expenditures of the municipal corporation for the period covered by the audit. The summary shall be made in the manner and on forms prescribed by the Secretary of State. One copy of the summary shall be delivered to the municipal corporation. A supply of the forms will be furnished to accountants upon request. Instructions are as follows:

(a) General: The summary shall include the revenues and expenditures or receipts and disbursements presented in the government-wide statement of activities.

(b) The amounts shall also include fiduciary fund additions and deductions.

(c) Revenues and expenditures of component units and turnovers to other governments should be identified in the summary as reductions in arriving at the net totals. Those amounts are included in separately issued financial statements.

Stat. Auth.: ORS 297
Stats Implemented: ORS 297.465

Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0015; DOA 1-1991, f. 3-8-91, cert. ef. 7-1-91; DOA 2-1995, f. 3-1-95, cert. ef. 7-1-95; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0030

General Requirements

(1) Audits are to be undertaken in accordance with a contract executed by the independent auditor and the municipal corporation. The contract shall set forth clearly the scope of work to be conducted by the auditor and must include provision for an expression of opinion on the financial statements of the municipal corporation and for a determination of compliance with finance related legal provisions. If the municipal corporation does not prepare the financial statements set forth in OAR 162-010-0050 through

ADMINISTRATIVE RULES

162-010-0190, the contract must provide for the auditor to make a reasonable attempt to draft them for and on behalf of the municipal corporation. Standard Form of Contract is as follows:

THIS CONTRACT, made this _____ day of _____, 20____, in accordance with the requirements of Oregon Revised Statutes 297.405 through 297.555 between ____ (Auditor)____, Certified Public Accountant(s) of _____, Oregon, and the ____ (Client)____, Oregon, provides as follows:

It hereby is agreed that ____ (Auditor)____ shall conduct an audit of the accounts and fiscal affairs of ____ (Client)____, Oregon, for the period beginning _____, and ending _____, (and annually thereafter) in accordance with the Minimum Standards for Audits of Municipal Corporations as prescribed by law. The audit shall be undertaken in order to express an opinion upon the financial statement of ____ (Client)____, Oregon, and to determine if the ____ (Client)____ has complied substantially with appropriate legal provisions.

____ (Auditor)____ agree(s) that the services contracted to perform under this contract shall be rendered by or under personal supervision and that the work will be faithfully performed with care and diligence.

It is understood and agreed that, should unusual conditions arise or be encountered during the course of the audit whereby the services of ____ (Auditor)____ are necessary beyond the extent of the work contemplated, written notification of such unusual conditions shall be delivered to the ____ (Client)____, Oregon, who shall instruct in writing ____ (Auditor)____ concerning such additional services, and that a signed copy of each such notification and instruction shall be delivered immediately to the Secretary of State by the party issuing the same.

The audit shall be started as soon after this contract is executed as is agreeable to the parties hereto and shall be completed and a written report thereon delivered within a reasonable time, but not later than six months, after the close of the audit period covered by this contract. Adequate copies of such report shall be delivered to the ____ (Client)____, Oregon, and its form and content shall be in accordance with and not less than that required by the Minimum Standards for Audits of Oregon Municipal Corporations.

It is understood and agreed that the ____ (Client)____, Oregon, is responsible for such financial statements as may be necessary to fully disclose and fairly present the results of operations for the period under audit and the financial condition at the end of that period. Should such financial statements not be prepared and presented within a reasonable period of time, it is understood that ____ (Auditor)____ shall draft them for ____ (Client)____, Oregon. The cost of preparing such financial statements shall be [(in addition to) (included in)] the fee for conducting the audit as set forth in Paragraph 7 below.

It is understood and agreed that either party may cancel this contract by giving notice in writing to the other party at least (ninety days) prior to July 1 of any year.

In consideration of the faithful performance of the conditions, covenants, and undertakings herein set forth the ____ (Client)____, Oregon, hereby agrees to pay ____ (Auditor)____ the sum of _____ (a reasonable fee) and the ____ (Client)____, Oregon, hereby affirms that proper provision for the payment of such fee has been or will be duly made and that funds for the payment thereof are or will be made legally available.

(Auditor)
by _____

(Client)
by _____

(2) Audits are to be conducted in accordance with the standards set forth in OAR 162-10-020.

(3) In performing the audits, the auditor should consider the concepts and procedures contained in OAR 162-011-0000 through 162-011-0040 and divisions 12 through 16.

(4) The scope of the audit of a municipal corporation shall include programs wholly or partially funded by other federal, state, or local governmental agencies. In determining the audit procedures to be applied to such programs, the independent auditor shall consider any specific audit procedures which may have been developed for those programs by appropriate governmental agencies. The auditor shall also determine if financial reporting requirements applicable to such programs have been complied with.

(5) If the municipal corporation requests the scope of the audit to be expanded to include a performance audit, a separate contract covering the expanded scope audit should be executed. Performance audits should be conducted in accordance with Government Auditing Standards published by the Comptroller General or the United States.

Stat. Auth.: ORS 297.465
Stats. Implemented: ORS 297.465
Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0020; DOA 1-1991, f. 3-8-91, cert. ef. 7-1-91; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0050 Financial Statements

(1) In 1984, the Financial Accounting Foundation created the Governmental Accounting Standards Board. The GASB is recognized as the standard-setting authority of GAAP for state and local governments. As such, fair presentation of financial position and results of operations in conformity with GAAP for Oregon municipal corporations are those financial statements consistent with GASB Statements and Interpretations and the hierarchy of GAAP applicable to state and local governments established

by the AICPA and adopted in GASB Statement Number 55 — *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments*.

(2) Since the focus of accounting in a governmental unit is the individual fund, the financial statements to be presented in the municipal corporation's annual report must also include nonmajor fund combining statements.

(3) Compliance with municipal audit law includes financial statements prepared on a basis of cash receipts and disbursements.

(4) In the event information necessary to prepare the financial statements or any of them individually, is not readily available, or is not maintained by the municipal corporation, then appropriate disclosure must be made in the accountant's report.

Stat. Auth.: ORS 297
Stats Implemented: ORS 297.465
Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0100; DOA 1-1991, f. 3-8-91, cert. ef. 7-1-91; DOA 2-1995, f. 3-1-95, cert. ef. 7-1-95; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0130 Schedule of Revenues, Expenditures/Expenses, and Changes in Fund Balances/Net Assets, Budget and Actual (Each Fund)

An individual schedule of revenues, expenditures/expenses, and changes in fund balances/net assets, budget and actual, must be prepared for each fund of any municipal corporation for which budgets are legally required. They must compare estimated with actual revenues or receipts, transfers in, expenditures or disbursements, transfers out and ending balances on the basis of the legally adopted budget. If the municipal corporation has made appropriations in a manner which differs materially from the presentation of estimated expenditures in the budget document, a separate schedule must be included which compares actual expenditures/expenses with the legally adopted appropriations.

Stat. Auth.: ORS 297
Stats. Implemented: ORS 297.465
Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0125; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0150 Schedule of Property Tax Transactions or Acreage Assessments

A schedule of property tax transactions or acreage assessments is required which presents the current year and each of the previous five years, separately, and all prior years in the aggregate. The schedule should include beginning of year balances, current year levy, adjustments, and end of year balances. The schedule may include such statistical information as may be desirable in order to fully and adequately disclose the property tax or acreage assessment transactions of the municipal corporation.

Stat. Auth.: ORS 297
Stats. Implemented: ORS 297.465
Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0145; DOA 2-1995, f. 3-1-95, cert. ef. 7-1-95; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0200 Required Disclosures and Independent Auditors Comments

Each audit report shall contain appropriate comments and disclosures relating to the independent auditor's review of fiscal affairs and compliance with legal requirements. These comments and disclosures shall, at a minimum, reference the subjects set forth in OAR 162-010-0210 through 162-010-0320. The auditor is required to prepare working papers that provide a clear understanding of the work performed, the evidence obtained and its source, and the conclusions reached to support each disclosure.

Stat. Auth.: ORS 297
Stats. Implemented: ORS 328.465
Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0200; AUDIT 1-1998, f. 2-2-98, cert. ef. 2-15-98; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0230 Internal Control

The auditor shall state either here or in a separately issued report, that in planning the audit, he or she followed generally accepted auditing standards in obtaining an understanding of the entity and its internal control over financial reporting. If significant deficiencies, material weaknesses or other recommendations for improvements have been communicated in a separate letter to management or in a report issued in accordance with *Government Auditing Standards*, reference to it should be made.

Stat. Auth.: ORS 297.465
Stats. Implemented: ORS 297.465

ADMINISTRATIVE RULES

Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0215; DOA 1-1991, f. 3-8-91, cert. ef. 7-1-91; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

Hist.: SD 115, f. & ef. 10-1-77; DOA 3-1986, f. & ef. 5-29-86; Renumbered from 165-030-0670; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0240

Public Fund Deposits

There shall be comments regarding the municipal corporation's compliance with ORS Chapter 295 — *Depositories of Public Funds and Securities*.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0220; AUDIT 2-2001, f. 4-26-01, cert. ef. 7-1-01; AUDIT 1-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0270

Insurance and Fidelity Bonds

Compliance with legal requirements and the government's policies relating to insurance and fidelity bond coverage shall be disclosed. Recommendations for further review of coverage by qualified individuals may be included, if appropriate.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Hist.: SD 104, f. 2-20-76, ef. 7-1-76; DOA 3-1986, f. & ef. 5-29-86, Renumbered from 165-030-0235; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0310

Public Contracts and Purchasing

Compliance with Public Contracting Code, ORS Chapters 279A, 279B and 279C pertaining to: The awarding of public contracts; and the construction of public improvements shall be disclosed.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Hist.: DOA 3-1986, f. & ef. 5-29-86; AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0316

Public Charter Schools

Public charter schools created under ORS Chapter 338 are subject to review and compliance with the following:

- (1) Insurance and Fidelity Bonds — OAR 162-010-0270;
 - (2) Programs Funded from Outside Sources — OAR 162-010-0280;
- and
- (3) Public Contracts and Purchasing — OAR 162-010-0310.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 328.465

Hist.: AUDIT 1-2010, f. 3-23-10, cert. ef. 4-1-10

162-010-0330

Extensions of Time to Deliver Audit Reports

If the required report is not filed with the Secretary of State within 180 days following the end of the fiscal year, the municipal corporation shall file a written request for extension of time. The request shall state the reasons for the delay and the expected filing date of the report. The Secretary of State, for good cause shown, may grant the request for a reasonable period of time.

(1) Requests for extensions of time to deliver audit reports must be submitted on forms provided by the Secretary of State. The request must contain the following information:

- (a) The name and registered or mailing address of the municipal corporation;
- (b) The name, address, and signature of the accountant or firm, if known, conducting the audit;
- (c) The accounting period under audit;
- (d) A statement setting forth the reasons for the delay in delivering the audit report;
- (e) The signed approval or disapproval of the request by the chair of the governing body, or managing or executive officer, of the municipal corporation. Reasons for disapproval must be included;
- (f) Requests applicable to school districts and community colleges must also contain the signed approval or disapproval of the local district superintendent or the superintendent's designee.

(2) Three copies of the extension request shall be submitted to the Secretary of State. After acting upon the request, one copy will be returned to the accountant and one copy will be furnished to the municipal corporation. The local district superintendent will also be furnished a copy of requests applicable to school districts and community colleges. If a request is disapproved by the Secretary of State, reasons therefore shall be given in writing to the accountant and to the municipal corporation.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

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

Adm. Order No.: AUDIT 2-2010

Filed with Sec. of State: 3-23-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 2-1-2010

Rules Adopted: 162-040-0001, 162-040-0136

Rules Amended: 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

Rules Renumbered: 162-040-0000 to 162-040-0002

Subject: The amendments propose the following changes:

- (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 — Address compliance requirements applicable to Public Charter Schools.
- (4) OAR 162-040-0020 — Updates the hierarchy of generally accepted accounting principals with most recent audit standard.
- (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—(503) 986-2262

162-040-0001

Preface

(1) Pursuant to the provisions of ORS 297.465, there is presented herewith the Minimum Standards for Review of Oregon Municipal Corporations.

(2) These Standards have been approved by the Oregon Board of Accountancy (the Board), and have been adopted by the Secretary of State as Administrative Rules under the provisions of ORS Chapter 183.

(3) All reviews of municipal corporations shall be made in accordance with these Standards, and all review reports shall be in the form prescribed herein. The Standards are effective for reviews of fiscal years ending after March 31, 2010.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Hist.: AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0002

Definitions

(1) "Accountant" as used in these rules means a person licensed by the Oregon Board of Accountancy to conduct municipal audits and reviews.

(2) "Analytical Procedures" are substantive tests of financial information made by a study and comparison of relationships among data.

(3) "Determine" as used in these rules means to come to a decision after making inquiries and observations and performing analytical procedures.

(4) "Review": A review of Financial Statements" is accomplished by making inquiries, observations and performing analytical procedures to provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles (GAAP) or, if applicable, another comprehensive basis of accounting such as the cash basis. A review does not include obtaining independent corroborative evidence unless specifically required by these rules.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0000; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; Renumbered from 162-040-0000 by AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

ADMINISTRATIVE RULES

162-040-0020

Financial Statements

(1) In 1984, the Financial Accounting Foundation created the Governmental Accounting Standards Board. The GASB is recognized as the standard-setting authority of GAAP for state and local governments. As such, fair presentation of financial position and results of operations in conformity with GAAP for Oregon municipal corporations are those financial statements consistent with GASB Statements and Interpretations and the hierarchy of GAAP applicable to state and local governments established by the AICPA and adopted in GASB Statement Number 55 — *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments*.

(2) Since the focus of accounting in a governmental unit is the individual fund, the focus of the review must also be at the level of the individual fund. Therefore, the financial statements to be reviewed in accordance with these rules, and upon which the accountant is to express limited assurance, must include the nonmajor combining and individual fund financial statements and schedules, whether presented as RSI or OSI.

(3) Each page of the financial statements should include a reference such as "See Accountant's Review Report." In the event information necessary to prepare these basic financial statements, or any of them individually, is not readily available, or is not maintained by the municipal corporation, then appropriate disclosure must be made in the accountant's review report.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0020; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0060

Schedule of Revenues, Expenditures, and Changes in Fund Balances/Retained Assets, Budget and Actual (Each Fund)

The municipal corporation must prepare an individual schedule of revenues, expenditures/expenses, and changes in fund balances/net assets, budget and actual, for each fund for which budgets are legally required. They must compare estimated with actual revenues or receipts, transfers in, expenditures or disbursements, transfers out and ending balances on the basis of the legally adopted budget. If the municipal corporation has made appropriations in a manner which differs materially from the presentation of estimated expenditures in the budget document, a separate schedule must be included which compares actual expenditures/expenses with the legally adopted appropriations.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0060; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0065

Schedule of Property Tax Transactions or Acreage Assessments

A schedule of property tax transactions or acreage assessments is required which presents the current year and each of the previous five years, separately, and all prior years in the aggregate. The schedule should include beginning of year balances, current year levy, adjustments, and end of year balances. In addition the schedule may include such statistical information as may be desirable in order to fully and adequately disclose the property tax or acreage assessment transactions of the municipal corporation.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0065; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0110

Accounting and Internal Control

A review in accordance with these rules does not contemplate a review of internal control. However, when performing inquiries, observations, and analytical procedures, the accountant should be ever conscious of the condition of the accounting records and the adequacy of internal control. The accountant should comment on any significant deficiencies noted, taking into account the size and complexity of the municipal corporation's financial activities. If recommendations have been made by management letter, reference to it should be made.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0110; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0115

Public Fund Deposits

The accountant shall state if he or she is aware of any failure to comply with ORS Chapter 295, *Depositories of Public Funds and Securities*.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0115; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0130

Insurance and Fidelity Bonds

The accountant shall state if he or she is aware of any failure to comply with legal requirements and government policies relating to insurance and fidelity bond coverage. The accountant may recommend further review of coverage by qualified individuals, if appropriate.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0130; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0135

Public Contracts and Purchasing

The accountant shall state if he or she is aware of any failure to comply with Public Contracting Code, ORS Chapters 279A, 279B and 279C pertaining to: The awarding of public contracts; and the construction of public improvements.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: SD 6-1981, f. & ef. 9-1-81; DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91, Renumbered from 165-040-0135; DOA 1-1996, f. 4-10-96, cert. ef. 6-1-96; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0136

Public Charter Schools

The accountant shall state if he or she is aware of any failure by the charter school to comply with the following requirements:

- (1) Insurance and Fidelity Bonds — OAR 162-040-0130,
- (2) Programs Funded from Outside Sources — OAR 162-040-0140;

and

- (3) Public Contracts and Purchasing — OAR 162-040-0135.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Hist.: AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0148

Investments

The accountant shall state whether he or she is aware of any failure to comply with legal requirements (as contained in ORS Chapter 294), pertaining to the investment of public funds.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

162-040-0160

Extensions of Time to Deliver Review Reports

If the required report is not filed with the Secretary of State within 180 days following the end of the fiscal year, the municipal corporation shall file a written request for extension of time. The request shall state the reasons for the delay and the expected filing date of the report. The Secretary of State, for good cause shown, may grant the request for a reasonable period of time.

(1) The municipal corporation must submit a request for extension of time to deliver a review report on forms provided by the Secretary of State. The request must contain the following information:

- (a) The name and registered or mailing address of the municipal corporation;
- (b) The name, address, and signature of the accountant or firm, if known, conducting the review;
- (c) The accounting period under review;
- (d) A statement setting forth the reasons for the delay in delivering the review report;
- (e) The signed approval or disapproval of the request by the chair of the governing body, or managing or executive officer, of the municipal corporation. Reasons for disapproval must be included.

(2) Three copies of the extension request shall be submitted to the Secretary of State. After acting upon the request, one copy will be returned to the accountant and one copy will be furnished to the municipal corporation. If a request is disapproved, the Secretary of State shall communicate

ADMINISTRATIVE RULES

the reasons for disapproval in writing to the accountant and to the municipal corporation.

Stat. Auth.: ORS 297.465

Stats. Implemented: ORS 297.465

Hist.: DOA 2-1991, f. 3-8-91, cert. ef. 7-1-91; AUDIT 2-2007, f. 6-7-07, cert. ef. 6-30-07; AUDIT 2-2010, f. 3-23-10, cert. ef. 4-1-10

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

Rule Caption: UCC Statutory Lien and EFS Filing Fees.

Adm. Order No.: CORP 5-2010

Filed with Sec. of State: 3-24-2010

Certified to be Effective: 4-2-10

Notice Publication Date: 3-1-2010

Rules Amended: 160-050-0140, 160-050-0215

Rules Repealed: 160-050-0140(T), 160-050-0215(T)

Subject: These rules amends the Uniform Commercial Code statutory lien and EFS filing fees from \$10 to \$15 in order for the UCC program to become self-supporting.

Rules Coordinator: Karen Hutchinson—(503) 986-2364

160-050-0140

Statutory Lien Filing and Search Fees

(1) The Statutory Lien filing fees are:

(a) Agricultural Services Lien:

(A) Notice of Claim of Agricultural Services Lien — \$15 per form;

(B) Certificate of Satisfaction — No Charge;

(C) Cessation — \$15 per form.

(b) Agricultural Produce Lien:

(A) Notice of Claim of Agricultural Produce Lien — \$15 per form;

(B) Certificate of Satisfaction of Agricultural Produce Lien — No

Charge.

(c) Grain Producer's Lien:

(A) Notice of Claim of Grain Producer's Lien — \$15 per form;

(B) Certificate of Satisfaction — No Charge.

(d) Hazardous Waste Lien: Notice of Claim of Lien for Environmental

Cleanup of Hazardous Waste — \$15 per form.

(2) The Statutory Lien search fees are:

(a) Lien Search — \$10 per name;

(b) Requested Lien Copy(ies) — \$5;

(c) Certificate (State seal) — \$10 per cert.

Stat. Auth.: ORS 87.246(3), 87.767, 177.130 & 192.440
Stats. Implemented: ORS 87.246, 87.736, 87.767, 177.130 & 192.440

Hist.: PRD 4-1988, f. & cert. ef. 3-17-88; Renumbered from 164-010-0030; PRD 1-1989, f. 12-12-89, cert. ef. 1-1-90; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 1-1995, f. 2-8-95, cert. ef. 9-1-95; CORP 3-2001 f. 12-14-01 cert. ef. 1-1-02; CORP 3-2010(Temp), f. 2-3-10, cert. ef. 2-27-10 thru 8-26-10; CORP 5-2010, f. 3-24-10, cert. ef. 4-2-10

160-050-0215

Filing fees

(1) The fee for filing a Form EFS-1 is \$15 for the first debtor name. Additional debtors may be added at no charge. The filing fee is required to be submitted with the EFS.

(2) If the Form EFS-3 is not accompanied by the filing fee, it will be rejected;

(3) The filing fees of Form EFS-3 transactions are set out in paragraphs (a) through (d) of this subsection as follows:

(a) Amendments: The filing fee for an amendment is \$15 for the first debtor name. Additional debtors may be added at no charge.

(b) Assignment: The filing fee for an assignment is \$15 for the first debtor name. Additional debtors may be added at no charge.

(c) Continuation: The filing fee for a continuation is \$15 for the first debtor name. Additional debtors may be added at no charge.

(d) Termination: There is no filing fee for filing a termination/lapse statement.

Stat. Auth.: ORS 80.106 & 80.115

Stats. Implemented: ORS 80.115

Hist.: CORP 1-2008, f. & cert. ef. 1-15-08; CORP 3-2010(Temp), f. 2-3-10, cert. ef. 2-27-10 thru 8-26-10; CORP 5-2010, f. 3-24-10, cert. ef. 4-2-10

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Amends Alt Assessment, Transitional Counselors, Restricted Transitional Administrators, reinstatement and fingerprinting rules.

Adm. Order No.: TSPC 3-2010

Filed with Sec. of State: 4-2-2010

Certified to be Effective: 4-2-10

Notice Publication Date: 12-1-2009

Rules Amended: 584-050-0015, 584-050-0100, 584-052-0030, 584-070-0111, 584-080-0153

Rules Repealed: 584-090-0050

Subject: (1) 584-050-0015: Reinstatement of Suspended, Revoked, or Surrendered License or Registration Generally: Removes reference to recent educational experience.

(2) 584-050-0100: Fingerprinting of Subject Individuals: Inserts three crimes, (5) (qq-ss), inadvertently left off the rule that are listed in ORS 342.143.

(3) 584-052-0030: Eligibility for Alternative Assessment: Clarifies that a test waiver does not guarantee applicant is eligible for licensure.

(4) 584-070-0111: Transitional School Counselor License: Clarifies degree requirements are consistent with other licensure. Updates Civil Rights requirements. Requires applicant submit a passing score on the commission-approved Civil Rights test prior to further licensure.

(5) 584-080-0153: Restricted Transitional Administrator License: License issued for one year at a time up to a maximum of three years subject to special renewal conditions. Updates Civil Rights requirements. Requires the applicant submit a passing score on the commission-approved Civil Rights test prior to further licensure.

(6) 584-090-0050: CPD Requirements for Renewal of Licensure Eliminates obsolete Continuing Professional Development (CPD) rule.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-050-0015

Reinstatement of Suspended, Revoked, or Surrendered License or Registration Generally

(1) A suspended, revoked, or surrendered license or charter school registration may be reinstated if the applicant is otherwise qualified and complies with the other applicable provisions of rules in this division.

(2) Licenses or registrations that are revoked, suspended, or surrendered and eligible for reinstatement will be reinstated for the same period of time as an application for a new or renewed license or registration of that type.

(3) The fee to reinstate a license is in addition to the application fee required to issue a new license. See OAR 584-036-0055.

Stat. Auth.: ORS 181 & 342

Stats. Implemented: ORS 181.525, 342.120 - 200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 3-1978, f. 7-24-78, ef. 1-1-79; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 4-2000, f. & cert. ef. 7-17-00; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2010, f. & cert. ef. 4-2-10

584-050-0100

Fingerprinting of Subject Individuals

(1) Definitions:

(a) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Commission for a criminal history check and review;

(b) "Conviction" means: For purposes of criminal background checks pursuant to ORS 342.223 conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized and generally refers to any felony or misdemeanor.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense,

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which if committed by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not effect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(c) "Fee" means the total charges for processing each fingerprint card submitted. The fee amount shall be as specified in OAR 584-036-0055.

(d) "Information to be required" means all information requested by the Commission for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint card;

(B) A properly completed TSPC form for fingerprint handlers;

(C) Certified court records of any arrests or criminal convictions; (See, definition of "convictions," above;) and

(D) A full explanation of the circumstances surrounding the arrest or conviction, signed and dated within the 30 days prior to submission to the commission.

(e) "Initial Issuance of a school nurse certificate" means: Any school nurse certificate if the applicant has not held an active TSPC certificate within the previous three years from the date of the application.

(f) "Initial Issuance of a charter school registration" means: Any charter school registration if the applicant has not held an active TSPC registration or license within the previous three years from the date of the application.

(g) "Student Teaching, Practicum or Internship" means: any placement of a student admitted to a commission-approved educator preparation program in a public or private school, charter school or other educational setting.

(h) "Subject individual" means:

(A) A person who is applying for initial issuance of a license under ORS 342.120 to 342.430 as a teacher, administrator or personnel specialist if the person has not submitted to a criminal records check by the commission within the previous three years.

(B) A person who is applying for reinstatement of a license as a teacher, administrator or personnel specialist whose license has lapsed for more than three years prior to the date of application.

(C) A person who is applying for initial issuance of a certificate under ORS 342.475 as a school nurse.

(D) A person who is registering with the commission for student teaching, practicum or internship as a teacher, administrator or personnel specialist, if the person has not submitted to a criminal records check by the commission within the previous three years for student teaching, practicum or internship as a teacher, administrator or personnel specialist.

(E) A person who is applying for initial issuance of a registration as a public charter school teacher or administrator under ORS 342.125.

(2) Certified LEDS personnel will review the criminal records of subject individuals upon the submission of the required fingerprints and state forms. The Executive Director or designee will establish a record of criminal history status.

(3) The TSPC shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Commission's office in Salem.

(4) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted will be denied licensure, registration or certification.

(5) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, will be denied licensure, certification or registration. The crimes listed in ORS 342.143 are:

(a) ORS 163.095 — Aggravated Murder;

(b) ORS 163.115 — Murder;

(c) ORS 163.185 — Assault in the First Degree;

(d) ORS 163.235 — Kidnapping in the First Degree;

(e) ORS 163.355 — Rape in the Third Degree;

(f) ORS 163.365 — Rape in the Second Degree;

(g) ORS 163.375 — Rape in the First Degree;

(h) ORS 163.385 — Sodomy in the Third Degree;

(i) ORS 163.395 — Sodomy in the Second Degree;

(j) ORS 163.405 — Sodomy in the First Degree;

(k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;

(l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;

(m) ORS 163.415 — Sexual Abuse in the Third Degree;

(n) ORS 163.425 — Sexual Abuse in the Second Degree;

(o) ORS 163.427 — Sexual Abuse in the First Degree;

(p) ORS 163.432 — Online Sexual Corruption of a Child in the Second Degree;

(q) ORS 163.433 — Online Sexual Corruption of a Child in the First Degree;

(r) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;

(s) ORS 163.445 — Sexual Misconduct;

(t) ORS 163.465 — Public Indecency;

(u) ORS 163.515 — Bigamy;

(v) ORS 163.525 — Incest;

(w) ORS 163.547 — Child Neglect in the First Degree;

(x) ORS 163.575 — Endangering the Welfare of a Minor;

(y) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;

(z) ORS 163.675 (1985 Replacement Part) — Sale or Exhibition of Visual Reproduction of Sexual Conduct by a Child;

(aa) ORS 163.680 (1993 Edition) — Paying for Viewing Sexual Conduct Involving a Child;

(bb) ORS 163.684 — Encouraging Child Sexual Abuse in the First Degree;

(cc) ORS 163.686 — Encouraging Child Sexual Abuse in the Second Degree;

(dd) ORS 163.687 — Encouraging Child Sexual Abuse in the Third Degree;

(ee) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;

(ff) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;

(gg) ORS 164.325 — Arson in the First Degree;

(hh) ORS 164.415 — Robbery in the First Degree;

(ii) ORS 166.005 — Treason;

(jj) ORS 166.087 — Abuse of a Corpse in the First Degree;

(kk) ORS 167.007 — Prostitution;

(ll) ORS 167.012 — Promoting Prostitution;

(mm) ORS 167.017 — Compelling Prostitution;

(nn) ORS 167.054 — Furnishing Sexually Explicit Material to a Child

(oo) ORS 167.057 — Luring a Minor

(pp) ORS 167.062 — Sadomasochistic Abuse for Sexual Conduct in a Live Show;

(qq) ORS 167.075 — Exhibiting Obscene Performance to a Minor;

(rr) ORS 167.080 — Displaying Obscene Materials to a Minor;

(ss) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

(tt) ORS 475.848 — Unlawful manufacture of heroin within 1,000 feet of school;

(uu) ORS 475.852 — Unlawful delivery of heroin within 1,000 feet of school;

(vv) ORS 475.858 — Unlawful manufacture of marijuana within 1,000 feet of school;

(ww) ORS 475.860 — Unlawful delivery of marijuana;

(xx) ORS 475.862 — Unlawful delivery of marijuana within 1,000 feet of school;

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(yy) ORS 475.864(4) — Possession of less than 1 ounce of marijuana within 1,000 feet of school;

(zz) ORS 475.868 — Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

(aaa) ORS 475.872 — Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

(bbb) ORS 475.878 — Unlawful manufacture of cocaine within 1,000 feet of school;

(ccc) ORS 475.880 — Unlawful delivery of cocaine;

(ddd) ORS 475.882 — Unlawful delivery of cocaine within 1,000 feet of school;

(eee) ORS 475.888 — Unlawful manufacture of methamphetamine within 1,000 feet of school;

(fff) ORS 475.890 — Unlawful delivery of methamphetamine;

(ggg) ORS 475.892 — Unlawful delivery of methamphetamine within 1,000 feet of school;

(hhh) ORS 475.904 — Unlawful manufacture or delivery of controlled substance within 1,000 feet of school; or

(iii) ORS 475.906 — Penalties for distribution to minors.

(6) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 or an attempt to commit any of the crimes listed in subsection (5) this rule shall be refused licensure, certification, or registration.

(7) Subject individuals who have been convicted of crimes involving the illegal use, sale or distribution of controlled substances may be refused licensure, certification or registration.

(8) Subject individuals who have been convicted of any crimes in any jurisdictions may be required to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a licensed educator, registered charter school educator or certified school nurse.

(9) 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.

(10) If it appears that a subject individual has made a false statement or has been convicted of crimes under subsection (5) or subsection 6 of this rule, the case will be referred to an investigator for further investigation. All investigation reports generated under this rule will be reviewed by the Commission pursuant to ORS 342.176.

(11) Subject individuals may be issued a temporary Emergency License pending the return of the criminal background check from the Oregon State Police and the Federal Bureau of Investigation.

(12) Only cards and forms approved by the Commission will be accepted. The Commission will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action. It is up to the applicant to resubmit valid fingerprints in order to have any application for student teaching criminal record clearance, licensure, registration or certification.

Stat. Auth.: ORS 342, 181

Stats. Implemented: ORS 342.143, 342.175 - 342.180, 342.223, 342.227, 181.534,

Hist.: TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 3-2010, f. & cert. ef. 4-2-10

584-052-0030

Eligibility for Alternative Assessment

(1) Applicants for any endorsement on a license may petition the Commission for alternative assessment in lieu of passing a subject-matter test when all of the following conditions have been met. The applicant:

(a) Has taken the appropriate subject-matter test at least twice without passing;

(b) One test must have been taken within the last calendar year;

(c) Submitted an application for alternative assessment in the form and manner required by the commission; and

(d) Has paid a fee of \$100 for the assessment;

(A) The fee will be valid for 90 days after the receipt of the application for alternative assessment.

(B) If the application is incomplete and the applicant does not complete the application within 90 days from the date the application and fee was received, a new fee must be paid.

(2) All evidence must be submitted at least four weeks prior to the commission meeting in order to be considered. The Commission reserves the right to accept late applications for submission only when extenuating circumstances have been demonstrated and Commission staff reasonably can complete the evaluation prior to the commission meeting.

(3) Obtaining a test waiver through alternative assessment does not guarantee that a license will be issued if other eligibility requirements have not been met.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430 & 342.985

Hist.: TSPC 5-2004, f. & cert. ef. 8-25-04; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 3-2010, f. & cert. ef. 4-2-10

584-070-0111

Transitional School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Transitional School Counselor License.

(2)(a) The Transitional School Counselor License is issued for three years and is non-renewable except under extenuating circumstances described below in subsection 6 of this rule.

(b) The educator must qualify for an Initial II School Counselor License upon expiration of ten years following the date the first Initial or Transitional School Counselor License was issued if the license was issued prior to July 1, 2005.

(c) All School Counselor Licenses issued after June 30, 2005 must qualify for an Initial II School Counselor License upon the expiration of nine years following the date the first Initial or Transitional School Counselor License was issued.

(3) The Transitional School Counselor License is valid for regular or substitute school counseling at all age or grade levels. Applicants who wish to counsel more than three years will be advised on how they can qualify for the Initial I or the Initial II School Counselor License, for which they may apply at any time.

(4) To be eligible for a Transitional School Counselor License, the applicant must have:

(a)(A) A master's or higher degree in counseling, education, or related behavioral sciences, including but not limited to social work or psychology, from a regionally accredited institution or an approved foreign equivalent; a master's degree or higher from a regionally accredited institution validates a non-regionally accredited bachelor's degree.

(B) Have held an unrestricted school counseling license in any state;

(b) Submit evidence the applicant has reviewed the Protecting Student and Civil Rights in the Education Environment study guide and test framework. The applicant must obtain a passing score on the commission-adopted Protecting Student and Civil Rights in the Education Environment licensure test prior to issuance of any next stage license; and

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(5) The Transitional School Counselor License will not be restricted as to employer if the applicant has held an unrestricted license for school counseling in any state.

(6)(a) Upon filing an application and fee in the form and manner required by the commission; a restricted extension to the Transitional School Counselor License may be issued for up to one year.

(b) To be eligible for the restricted extension the following must be filed:

(A) A joint application between the educator and the employing school district;

(B) A description of the extenuating circumstances that have prevented the educator from completing the requirements for the Initial I or Initial II School Counselor License within the life of the Transitional School Counselor License; and

(C) A description of the steps the district will take to ensure the applicant will qualify for the Initial I or Initial II School Counselor License upon expiration of the restricted extension to the Transitional School Counselor License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127 & 342.165

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 3-2010, f. & cert. ef. 4-2-10

584-080-0153

Restricted Transitional Administrator License

(1) Upon filing a correct and complete joint application with a co-applicant employing school district in form and manner prescribed by the commission, a qualified applicant may be granted a Restricted Transitional Administrator License.

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(2) The Restricted Transitional Administrator License is valid for regular or substitute administration at all age or grade levels and is restricted to the district from which the co-application is received.

(3) The Restricted Transitional Administrator License is not valid for substitute teaching at any level in any specialty.

(4) The Restricted Transitional Administrator License is only valid for up to three years and is not renewable. Upon expiration of the license, the educator must qualify for the Initial Administrator License.

(5) To be eligible for a Restricted Transitional Administrator License, the applicant must have all of the following:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's degree or higher from a regionally-accredited institution or approved foreign equivalent;

(c) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state must submit the evidence the applicant has reviewed the Protecting Student and Civil Rights in the Education Environment study guide and test framework. The applicant must obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics prior to any further licensure;

(d) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(e) Submit a letter from the employing district describing the particular need in relation to the applicant's administrator qualifications. The district must agree to provide a mentor and identify that mentor in the letter of application. The district must attest that circumstances prevent hiring a suitable administrator holding an unrestricted full-time license appropriate for the assignment to be filled.

(f) Submit a resume, and any other evidence required by the Commission as proof of substantial completion of academic preparation or substantial administrative work experience.

(6) Restricted Transitional Administrator Licenses will be issued for one year at a time for a maximum of three years total subject to special renewal conditions:

(a) First Renewal: The applicant must submit:

(A) A C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Proof of admission and enrollment or proof of pending enrollment into a program for administrative licensure.

(b) Second Renewal: The applicant must submit:

(A) A C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Significant proof of progress toward completion of their Initial Administrator License requirements.

(c) Renewal under these conditions is not subject to the 120-day grace period and must be submitted sufficiently in advance of the license expiration date to ensure continuity of licensure. Failure to submit a timely application is grounds for denial of a renewal pursuant to this subsection and may be grounds for discipline under OAR 584-020-0040.

(d) The Executive Director may deny renewal of the license upon failure to show progress in the licensure program needed for the next stage license.

(7) Upon expiration of the Restricted Transitional Administrator License, recipients of this license must meet all the requirements of the Initial Administrator License for which they may apply at any time or qualify for an Emergency Administrator License under the provisions provided below.

(8) Emergency Administrator License: Upon filing an application and fee in the form and manner required by the commission; an Emergency Administrator License may be issued for up to one year upon joint application from an educator and the employing district when the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for an Initial or Continuing Administrator License.

(a) If the extenuating circumstances are due to the lack of due diligence in completing licensure requirements by the applicant, only enough time to prevent the district from experiencing a true hardship may be granted at the Executive Director's discretion.

(b) The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the regular license upon expiration of the Emergency Administrator License.

(9) An applicant may be eligible for an extension up to one year of the Restricted Transitional Administrator License, upon joint application with the same or another co-applicant district, if the applicant has completed all the requirements for the Initial Administrator License except for the experience described in OAR 584-080-0012.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140 & 342.165

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 3-2010, f. & cert. ef. 4-2-10

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| 333-092-0020 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0052 | 2-16-2010 | Adopt | 4-1-2010 |
| 333-092-0025 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0053 | 2-16-2010 | Adopt | 4-1-2010 |
| 333-092-0030 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0070 | 2-16-2010 | Amend | 4-1-2010 |
| 333-092-0035 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0110 | 2-16-2010 | Amend | 4-1-2010 |
| 333-092-0040 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0120 | 2-16-2010 | Amend | 4-1-2010 |
| 333-092-0045 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0125 | 2-16-2010 | Adopt | 4-1-2010 |
| 333-092-0050 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0140 | 2-16-2010 | Amend | 4-1-2010 |
| 333-092-0055 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0150 | 2-16-2010 | Amend | 4-1-2010 |
| 333-092-0060 | 12-21-2009 | Repeal | 2-1-2010 | 333-118-0160 | 2-16-2010 | Amend | 4-1-2010 |
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| 461-115-0090 | 1-1-2010 | Amend | 2-1-2010 | 461-135-1125(T) | 1-1-2010 | Repeal | 2-1-2010 |
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| 461-115-0230(T) | 4-1-2010 | Repeal | 5-1-2010 | 461-135-1175 | 4-1-2010 | Amend(T) | 5-1-2010 |
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| 461-145-0260 | 1-1-2010 | Amend | 2-1-2010 | 461-170-0101 | 4-1-2010 | Amend | 5-1-2010 |
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| 573-041-0025 | 1-11-2010 | Repeal | 2-1-2010 | 581-016-1010 | 12-10-2009 | Repeal | 1-1-2010 |
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| 589-007-0700 | 12-14-2009 | Adopt | 1-1-2010 | 635-006-1025 | 1-1-2010 | Amend | 1-1-2010 |
| 603-010-0056 | 1-7-2010 | Adopt | 2-1-2010 | 635-006-1075 | 1-1-2010 | Amend | 1-1-2010 |
| 603-011-0610 | 2-26-2010 | Amend | 4-1-2010 | 635-006-1085 | 1-1-2010 | Amend | 1-1-2010 |
| 603-011-0615 | 2-26-2010 | Amend | 4-1-2010 | 635-007-0605 | 1-1-2010 | Amend | 1-1-2010 |
| 603-011-0620 | 2-26-2010 | Amend | 4-1-2010 | 635-007-0910 | 1-1-2010 | Amend | 1-1-2010 |
| 603-011-0700 | 2-10-2010 | Amend | 3-1-2010 | 635-008-0145 | 1-1-2010 | Amend | 1-1-2010 |
| 603-011-0701 | 2-10-2010 | Adopt | 3-1-2010 | 635-011-0100 | 1-1-2010 | Amend | 1-1-2010 |
| 603-011-0705 | 2-10-2010 | Amend | 3-1-2010 | 635-011-0170 | 3-15-2010 | Adopt | 4-1-2010 |
| 603-011-0706 | 2-10-2010 | Adopt | 3-1-2010 | 635-012-0020 | 6-30-2011 | Adopt | 2-1-2010 |
| 603-011-0725 | 2-10-2010 | Amend | 3-1-2010 | 635-012-0020 | 6-30-2011 | Adopt | 3-1-2010 |
| 603-027-0410 | 1-1-2010 | Amend | 2-1-2010 | 635-012-0030 | 6-30-2011 | Adopt | 2-1-2010 |
| 603-027-0410(T) | 1-1-2010 | Repeal | 2-1-2010 | 635-012-0030 | 6-30-2011 | Adopt | 3-1-2010 |
| 603-027-0420 | 1-1-2010 | Amend | 2-1-2010 | 635-012-0040 | 6-30-2011 | Adopt | 2-1-2010 |
| 603-027-0420(T) | 1-1-2010 | Repeal | 2-1-2010 | 635-012-0050 | 6-30-2011 | Adopt | 2-1-2010 |
| 603-027-0430 | 1-1-2010 | Amend | 2-1-2010 | 635-012-0050 | 6-30-2011 | Adopt | 3-1-2010 |
| 603-027-0430(T) | 1-1-2010 | Repeal | 2-1-2010 | 635-012-0060 | 6-30-2011 | Adopt | 2-1-2010 |
| 603-027-0440 | 1-1-2010 | Amend | 2-1-2010 | 635-012-0060 | 6-30-2011 | Adopt | 3-1-2010 |

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| 635-013-0004 | 1-1-2010 | Amend | 1-1-2010 | 635-041-0065(T) | 3-3-2010 | Suspend | 4-1-2010 |
| 635-013-0009 | 3-15-2010 | Amend(T) | 4-1-2010 | 635-042-0022 | 3-30-2010 | Amend(T) | 5-1-2010 |
| 635-014-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0022 | 4-7-2010 | Amend(T) | 5-1-2010 |
| 635-014-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0022(T) | 4-7-2010 | Suspend | 5-1-2010 |
| 635-016-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0110 | 4-1-2010 | Amend | 5-1-2010 |
| 635-016-0090 | 11-19-2009 | Amend(T) | 1-1-2010 | 635-042-0130 | 1-1-2010 | Amend(T) | 2-1-2010 |
| 635-016-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0130 | 2-8-2010 | Amend(T) | 3-1-2010 |
| 635-016-0090(T) | 11-19-2009 | Suspend | 1-1-2010 | 635-042-0130 | 3-11-2010 | Amend(T) | 4-1-2010 |
| 635-017-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0130(T) | 2-8-2010 | Suspend | 3-1-2010 |
| 635-017-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0130(T) | 3-11-2010 | Suspend | 4-1-2010 |
| 635-017-0095 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0135 | 1-1-2010 | Amend(T) | 2-1-2010 |
| 635-017-0095 | 4-1-2010 | Amend | 5-1-2010 | 635-042-0145 | 2-22-2010 | Amend(T) | 4-1-2010 |
| 635-018-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0145 | 2-26-2010 | Amend(T) | 4-1-2010 |
| 635-018-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0145 | 3-14-2010 | Amend(T) | 4-1-2010 |
| 635-018-0090 | 4-1-2010 | Amend(T) | 3-1-2010 | 635-042-0145 | 3-24-2010 | Amend(T) | 5-1-2010 |
| 635-018-0090 | 4-15-2010 | Amend(T) | 4-1-2010 | 635-042-0145 | 4-1-2010 | Amend(T) | 5-1-2010 |
| 635-018-0090(T) | 4-15-2010 | Suspend | 4-1-2010 | 635-042-0145(T) | 2-26-2010 | Suspend | 4-1-2010 |
| 635-019-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0145(T) | 3-14-2010 | Suspend | 4-1-2010 |
| 635-019-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0145(T) | 3-24-2010 | Suspend | 5-1-2010 |
| 635-021-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0145(T) | 4-1-2010 | Suspend | 5-1-2010 |
| 635-021-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0160 | 2-21-2010 | Amend(T) | 4-1-2010 |
| 635-023-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0170 | 4-19-2010 | Amend(T) | 4-1-2010 |
| 635-023-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-042-0180 | 2-22-2010 | Amend(T) | 4-1-2010 |
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| 635-023-0090(T) | 3-11-2010 | Suspend | 4-1-2010 | 635-043-0105 | 1-12-2010 | Amend | 2-1-2010 |
| 635-023-0095 | 1-1-2010 | Amend | 1-1-2010 | 635-044-0051 | 1-1-2010 | Adopt(T) | 2-1-2010 |
| 635-023-0095 | 2-21-2010 | Amend(T) | 4-1-2010 | 635-048-0080 | 12-15-2009 | Amend | 1-1-2010 |
| 635-023-0095 | 3-1-2010 | Amend(T) | 4-1-2010 | 635-055-0000 | 12-15-2009 | Amend | 1-1-2010 |
| 635-023-0095 | 4-1-2010 | Amend | 5-1-2010 | 635-055-0035 | 12-15-2009 | Amend | 1-1-2010 |
| 635-023-0095(T) | 3-1-2010 | Suspend | 4-1-2010 | 635-055-0037 | 12-15-2009 | Amend | 1-1-2010 |
| 635-023-0095(T) | 4-1-2010 | Repeal | 5-1-2010 | 635-055-0070 | 12-15-2009 | Amend | 1-1-2010 |
| 635-023-0125 | 1-1-2010 | Amend | 1-1-2010 | 635-058-0000 | 1-12-2010 | Adopt | 2-1-2010 |
| 635-023-0125 | 3-1-2010 | Amend(T) | 4-1-2010 | 635-058-0010 | 1-12-2010 | Adopt | 2-1-2010 |
| 635-023-0125 | 3-2-2010 | Amend(T) | 4-1-2010 | 635-058-0020 | 1-12-2010 | Adopt | 2-1-2010 |
| 635-023-0125(T) | 3-2-2010 | Suspend | 4-1-2010 | 635-059-0000 | 1-12-2010 | Adopt | 2-1-2010 |
| 635-023-0128 | 1-1-2010 | Amend | 1-1-2010 | 635-059-0010 | 1-12-2010 | Adopt | 2-1-2010 |
| 635-023-0130 | 1-1-2010 | Amend | 1-1-2010 | 635-059-0050 | 1-12-2010 | Adopt | 2-1-2010 |
| 635-023-0134 | 1-1-2010 | Amend | 1-1-2010 | 635-065-0015 | 3-3-2010 | Amend(T) | 4-1-2010 |
| 635-023-0134 | 4-24-2010 | Amend(T) | 5-1-2010 | 635-065-0765 | 1-25-2010 | Amend(T) | 3-1-2010 |
| 635-039-0080 | 1-1-2010 | Amend | 1-1-2010 | 635-065-0765 | 2-26-2010 | Amend(T) | 4-1-2010 |
| 635-039-0080 | 3-15-2010 | Amend | 4-1-2010 | 635-065-0765 | 3-30-2010 | Amend(T) | 5-1-2010 |
| 635-039-0080 | 4-1-2010 | Amend | 5-1-2010 | 635-068-0000 | 3-1-2010 | Amend | 4-1-2010 |
| 635-039-0085 | 3-15-2010 | Amend | 4-1-2010 | 635-069-0000 | 2-1-2010 | Amend | 2-1-2010 |
| 635-039-0085 | 4-1-2010 | Amend | 5-1-2010 | 635-070-0000 | 4-1-2010 | Amend | 4-1-2010 |
| 635-039-0090 | 1-1-2010 | Amend | 1-1-2010 | 635-070-0000 | 4-1-2010 | Amend | 4-1-2010 |
| 635-041-0005 | 4-15-2010 | Amend(T) | 5-1-2010 | 635-071-0000 | 4-1-2010 | Amend | 4-1-2010 |
| 635-041-0015 | 4-15-2010 | Amend(T) | 5-1-2010 | 635-071-0000 | 4-1-2010 | Amend | 4-1-2010 |
| 635-041-0020 | 4-15-2010 | Amend(T) | 5-1-2010 | 635-073-0000 | 2-1-2010 | Amend | 2-1-2010 |
| 635-041-0025 | 4-15-2010 | Amend(T) | 5-1-2010 | 635-073-0065 | 2-1-2010 | Amend | 2-1-2010 |
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| 635-041-0065 | 2-11-2010 | Amend(T) | 3-1-2010 | 635-090-0030 | 1-1-2010 | Amend | 1-1-2010 |
| 635-041-0065 | 2-26-2010 | Amend(T) | 4-1-2010 | 635-090-0050 | 1-1-2010 | Amend | 1-1-2010 |
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| 635-600-0005 | 1-1-2010 | Amend | 1-1-2010 | 731-070-0140 | 12-22-2009 | Amend | 2-1-2010 |
| 635-600-0010 | 1-1-2010 | Amend | 1-1-2010 | 731-070-0160 | 12-22-2009 | Amend | 2-1-2010 |
| 635-600-0030 | 1-1-2010 | Amend | 1-1-2010 | 731-070-0170 | 12-22-2009 | Amend | 2-1-2010 |
| 635-600-0040 | 1-1-2010 | Amend | 1-1-2010 | 731-070-0180 | 12-22-2009 | Amend | 2-1-2010 |
| 645-010-0015 | 2-23-2010 | Amend(T) | 4-1-2010 | 731-070-0190 | 12-22-2009 | Amend | 2-1-2010 |
| 660-028-0010 | 1-28-2010 | Adopt | 3-1-2010 | 731-070-0200 | 12-22-2009 | Amend | 2-1-2010 |
| 660-028-0020 | 1-28-2010 | Adopt | 3-1-2010 | 731-070-0210 | 12-22-2009 | Amend | 2-1-2010 |
| 660-028-0030 | 1-28-2010 | Adopt | 3-1-2010 | 731-070-0220 | 12-22-2009 | Amend | 2-1-2010 |
| 660-033-0120 | 12-7-2009 | Amend | 1-1-2010 | 731-070-0240 | 12-22-2009 | Amend | 2-1-2010 |
| 660-033-0130 | 12-7-2009 | Amend | 1-1-2010 | 731-070-0245 | 12-22-2009 | Adopt | 2-1-2010 |
| 660-036-0005 | 11-25-2009 | Adopt | 1-1-2010 | 731-070-0250 | 12-22-2009 | Amend | 2-1-2010 |
| 660-041-0000 | 2-9-2010 | Amend | 3-1-2010 | 731-070-0260 | 12-22-2009 | Amend | 2-1-2010 |
| 660-041-0020 | 2-9-2010 | Amend | 3-1-2010 | 731-070-0270 | 12-22-2009 | Repeal | 2-1-2010 |
| 660-041-0080 | 2-9-2010 | Amend | 3-1-2010 | 731-070-0280 | 12-22-2009 | Amend | 2-1-2010 |
| 661-010-0015 | 1-1-2010 | Amend | 2-1-2010 | 731-070-0295 | 12-22-2009 | Amend | 2-1-2010 |
| 661-010-0038 | 1-1-2010 | Amend | 2-1-2010 | 731-070-0300 | 12-22-2009 | Amend | 2-1-2010 |
| 661-010-0050 | 1-1-2010 | Amend | 2-1-2010 | 731-070-0320 | 12-22-2009 | Amend | 2-1-2010 |
| 690-020-0021 | 1-1-2010 | Am. & Ren. | 1-1-2010 | 731-070-0350 | 12-22-2009 | Amend | 2-1-2010 |
| 690-020-0022 | 1-1-2010 | Amend | 1-1-2010 | 731-070-0360 | 12-22-2009 | Amend | 2-1-2010 |
| 690-020-0025 | 1-1-2010 | Amend | 1-1-2010 | 731-146-0010 | 1-1-2010 | Amend(T) | 2-1-2010 |
| 690-020-0029 | 1-1-2010 | Amend | 1-1-2010 | 731-147-0010 | 1-1-2010 | Amend(T) | 2-1-2010 |
| 690-020-0035 | 1-1-2010 | Amend | 1-1-2010 | 731-148-0010 | 1-1-2010 | Amend(T) | 2-1-2010 |
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| 690-020-0100 | 1-1-2010 | Adopt | 1-1-2010 | 732-005-0000 | 1-29-2010 | Amend | 3-1-2010 |
| 690-020-0200 | 1-1-2010 | Adopt | 1-1-2010 | 732-005-0000(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 690-180-0005 | 11-23-2009 | Suspend | 1-1-2010 | 732-005-0010 | 1-29-2010 | Amend | 3-1-2010 |
| 690-180-0010 | 11-23-2009 | Suspend | 1-1-2010 | 732-005-0010(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 690-180-0100 | 11-23-2009 | Suspend | 1-1-2010 | 732-005-0016 | 1-29-2010 | Amend | 3-1-2010 |
| 690-180-0200 | 11-23-2009 | Suspend | 1-1-2010 | 732-005-0016(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 690-190-0005 | 11-23-2009 | Adopt | 1-1-2010 | 732-005-0021 | 1-29-2010 | Amend | 3-1-2010 |
| 690-190-0010 | 11-23-2009 | Adopt | 1-1-2010 | 732-005-0021(T) | 1-29-2010 | Repeal | 3-1-2010 |
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| 690-190-0200 | 11-23-2009 | Adopt | 1-1-2010 | 732-005-0027(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 690-340-0030 | 12-15-2009 | Amend | 1-1-2010 | 732-005-0031 | 1-29-2010 | Amend | 3-1-2010 |
| 690-382-0400 | 12-15-2009 | Amend | 1-1-2010 | 732-005-0031(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 731-005-0410 | 1-1-2010 | Amend(T) | 2-1-2010 | 732-005-0036 | 1-29-2010 | Amend | 3-1-2010 |
| 731-005-0470 | 1-1-2010 | Amend(T) | 2-1-2010 | 732-005-0036(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 731-005-0670 | 1-1-2010 | Amend(T) | 2-1-2010 | 732-005-0046 | 1-29-2010 | Amend | 3-1-2010 |
| 731-007-0210 | 1-1-2010 | Amend(T) | 2-1-2010 | 732-005-0046(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 731-007-0260 | 1-1-2010 | Amend(T) | 2-1-2010 | 732-005-0051 | 1-29-2010 | Amend | 3-1-2010 |
| 731-007-0290 | 1-1-2010 | Amend(T) | 2-1-2010 | 732-005-0051(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 731-035-0020 | 11-17-2009 | Amend | 1-1-2010 | 732-005-0056 | 1-29-2010 | Amend | 3-1-2010 |
| 731-035-0050 | 11-17-2009 | Amend | 1-1-2010 | 732-005-0056(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 731-035-0060 | 11-17-2009 | Amend | 1-1-2010 | 732-005-0061 | 1-29-2010 | Amend | 3-1-2010 |
| 731-035-0070 | 11-17-2009 | Amend | 1-1-2010 | 732-005-0061(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 731-070-0010 | 12-22-2009 | Amend | 2-1-2010 | 732-005-0066 | 1-29-2010 | Amend | 3-1-2010 |
| 731-070-0020 | 12-22-2009 | Amend | 2-1-2010 | 732-005-0066(T) | 1-29-2010 | Repeal | 3-1-2010 |
| 731-070-0030 | 12-22-2009 | Amend | 2-1-2010 | 732-005-0076 | 1-29-2010 | Amend | 3-1-2010 |
| 731-070-0050 | 12-22-2009 | Amend | 2-1-2010 | 732-005-0076(T) | 1-29-2010 | Repeal | 3-1-2010 |
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| 731-070-0060 | 12-22-2009 | Amend | 2-1-2010 | 732-005-0081(T) | 1-29-2010 | Repeal | 3-1-2010 |
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| 732-030-0020 | 1-29-2010 | Adopt | 3-1-2010 | 735-062-0070 | 1-28-2010 | Amend | 3-1-2010 |
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| 732-030-0025 | 1-29-2010 | Adopt | 3-1-2010 | 735-062-0125 | 1-1-2010 | Amend | 2-1-2010 |
| 732-030-0025(T) | 1-29-2010 | Repeal | 3-1-2010 | 735-062-0190 | 1-1-2010 | Amend | 2-1-2010 |
| 732-030-0030 | 1-29-2010 | Adopt | 3-1-2010 | 735-062-0290 | 1-28-2010 | Adopt | 3-1-2010 |
| 732-030-0030(T) | 1-29-2010 | Repeal | 3-1-2010 | 735-063-0000 | 3-17-2010 | Amend | 5-1-2010 |
| 732-030-0035 | 1-29-2010 | Adopt | 3-1-2010 | 735-063-0050 | 3-17-2010 | Amend | 5-1-2010 |
| 732-030-0035(T) | 1-29-2010 | Repeal | 3-1-2010 | 735-063-0060 | 3-17-2010 | Amend | 5-1-2010 |
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| 733-030-0520 | 3-15-2010 | Adopt | 4-1-2010 | 735-064-0100 | 1-1-2010 | Amend | 2-1-2010 |
| 734-020-0148 | 1-28-2010 | Adopt(T) | 3-1-2010 | 735-064-0220 | 1-1-2010 | Amend | 2-1-2010 |
| 734-065-0005 | 11-17-2009 | Repeal | 1-1-2010 | 735-070-0000 | 1-1-2010 | Amend | 2-1-2010 |
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| 734-065-0015 | 11-17-2009 | Amend | 1-1-2010 | 735-070-0170 | 1-1-2010 | Amend | 2-1-2010 |
| 734-065-0020 | 11-17-2009 | Amend | 1-1-2010 | 735-072-0035 | 1-1-2010 | Amend | 2-1-2010 |
| 734-065-0025 | 11-17-2009 | Amend | 1-1-2010 | 735-080-0020 | 1-1-2010 | Amend | 2-1-2010 |
| 734-065-0030 | 11-17-2009 | Repeal | 1-1-2010 | 735-080-0040 | 1-1-2010 | Amend | 2-1-2010 |
| 734-065-0035 | 11-17-2009 | Amend | 1-1-2010 | 735-080-0060 | 1-1-2010 | Amend | 2-1-2010 |
| 734-065-0040 | 11-17-2009 | Amend | 1-1-2010 | 735-090-0120 | 1-1-2010 | Amend | 2-1-2010 |
| 734-065-0045 | 11-17-2009 | Amend | 1-1-2010 | 735-090-0125 | 1-1-2010 | Adopt | 2-1-2010 |
| 734-065-0050 | 11-17-2009 | Amend | 1-1-2010 | 735-150-0005 | 2-25-2010 | Amend | 4-1-2010 |
| 734-074-0008 | 3-17-2010 | Amend | 5-1-2010 | 735-150-0005(T) | 2-25-2010 | Repeal | 4-1-2010 |
| 734-074-0020 | 3-17-2010 | Amend | 5-1-2010 | 735-150-0010 | 1-1-2010 | Amend | 2-1-2010 |
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| 735-024-0015 | 2-25-2010 | Amend | 4-1-2010 | 735-150-0042 | 1-1-2010 | Adopt | 2-1-2010 |
| 735-024-0015(T) | 2-25-2010 | Repeal | 4-1-2010 | 735-150-0047 | 1-1-2010 | Adopt | 2-1-2010 |
| 735-024-0025 | 2-25-2010 | Amend | 4-1-2010 | 735-150-0110 | 1-1-2010 | Amend | 2-1-2010 |
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| 735-024-0080 | 1-1-2010 | Suspend | 2-1-2010 | 735-158-0010 | 1-1-2010 | Amend(T) | 2-1-2010 |
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| 735-032-0010 | 2-25-2010 | Amend | 4-1-2010 | 736-004-0010 | 12-8-2009 | Amend | 1-1-2010 |
| 735-032-0010(T) | 2-25-2010 | Repeal | 4-1-2010 | 736-004-0015 | 12-8-2009 | Amend | 1-1-2010 |
| 735-040-0097 | 1-28-2010 | Amend | 3-1-2010 | 736-004-0020 | 12-8-2009 | Amend | 1-1-2010 |
| 735-040-0097(T) | 1-28-2010 | Repeal | 3-1-2010 | 736-004-0025 | 12-8-2009 | Amend | 1-1-2010 |
| 735-040-0098 | 1-28-2010 | Adopt | 3-1-2010 | 736-004-0030 | 12-8-2009 | Amend | 1-1-2010 |
| 735-040-0098(T) | 1-28-2010 | Repeal | 3-1-2010 | 736-004-0035 | 12-8-2009 | Adopt | 1-1-2010 |
| 735-046-0010 | 1-28-2010 | Amend | 3-1-2010 | 736-004-0060 | 12-8-2009 | Amend | 1-1-2010 |
| 735-046-0010(T) | 1-28-2010 | Repeal | 3-1-2010 | 736-004-0062 | 12-8-2009 | Amend | 1-1-2010 |
| 735-046-0050 | 1-28-2010 | Amend | 3-1-2010 | 736-004-0065 | 12-8-2009 | Amend | 1-1-2010 |
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| 735-050-0050 | 1-1-2010 | Amend | 2-1-2010 | 736-004-0085 | 12-8-2009 | Amend | 1-1-2010 |
| 735-050-0060 | 1-1-2010 | Amend | 2-1-2010 | 736-004-0090 | 12-8-2009 | Amend | 1-1-2010 |
| 735-050-0062 | 1-1-2010 | Amend | 2-1-2010 | 736-004-0095 | 12-8-2009 | Amend | 1-1-2010 |
| 735-050-0064 | 1-1-2010 | Amend | 2-1-2010 | 736-004-0110 | 12-8-2009 | Amend | 1-1-2010 |
| 735-050-0070 | 1-1-2010 | Amend | 2-1-2010 | 736-004-0115 | 12-8-2009 | Amend | 1-1-2010 |
| 735-050-0080 | 1-1-2010 | Amend | 2-1-2010 | 736-004-0120 | 12-8-2009 | Adopt | 1-1-2010 |
| 735-050-0120 | 1-1-2010 | Amend | 2-1-2010 | 736-004-0125 | 12-8-2009 | Adopt | 1-1-2010 |
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| 735-062-0007 | 1-1-2010 | Amend | 2-1-2010 | 736-009-0006 | 12-8-2009 | Adopt | 1-1-2010 |
| 735-062-0010 | 1-1-2010 | Amend | 2-1-2010 | 736-009-0010 | 12-8-2009 | Repeal | 1-1-2010 |
| 735-062-0015 | 1-1-2010 | Amend | 2-1-2010 | 736-009-0015 | 12-8-2009 | Repeal | 1-1-2010 |
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| 736-015-0006 | 3-24-2010 | Amend | 5-1-2010 | 736-147-0020 | 12-4-2009 | Repeal | 1-1-2010 |
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| 736-015-0015 | 3-24-2010 | Amend | 5-1-2010 | 736-147-0040 | 12-4-2009 | Adopt | 1-1-2010 |
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| 736-015-0030 | 1-5-2010 | Amend | 2-1-2010 | 736-148-0020 | 12-4-2009 | Amend | 1-1-2010 |
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| 801-010-0100 | 1-1-2010 | Amend | 1-1-2010 | 811-035-0005 | 12-22-2009 | Amend | 2-1-2010 |
| 801-010-0120 | 1-1-2010 | Amend | 1-1-2010 | 811-035-0015 | 12-22-2009 | Amend | 2-1-2010 |
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| 801-040-0010 | 1-1-2010 | Amend | 1-1-2010 | 812-003-0140 | 1-1-2010 | Amend | 1-1-2010 |
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| 804-020-0003 | 12-11-2009 | Amend | 1-1-2010 | 812-007-0060 | 2-1-2010 | Repeal | 3-1-2010 |
| 804-022-0000 | 2-17-2010 | Amend | 4-1-2010 | 812-007-0070 | 2-1-2010 | Repeal | 3-1-2010 |
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| 804-035-0030 | 2-17-2010 | Amend | 4-1-2010 | 812-007-0140 | 2-1-2010 | Adopt | 3-1-2010 |
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| 804-040-0000 | 2-17-2010 | Amend | 4-1-2010 | 812-007-0160 | 2-1-2010 | Adopt | 3-1-2010 |
| 806-010-0060 | 4-6-2010 | Amend | 5-1-2010 | 812-007-0200 | 2-1-2010 | Adopt | 3-1-2010 |
| 806-010-0145 | 4-6-2010 | Amend | 5-1-2010 | 812-007-0205 | 2-1-2010 | Adopt | 3-1-2010 |
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| 813-027-0070 | 2-25-2010 | Adopt(T) | 4-1-2010 | 830-060-0020 | 4-1-2010 | Adopt(T) | 5-1-2010 |
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| 813-028-0010 | 2-25-2010 | Adopt(T) | 4-1-2010 | 833-001-0015 | 1-5-2010 | Amend | 2-1-2010 |
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| 836-009-0035 | 3-25-2010 | Adopt | 5-1-2010 | 836-080-0240 | 1-1-2010 | Amend | 2-1-2010 |
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| 839-005-0140 | 2-24-2010 | Adopt | 4-1-2010 | 839-009-0355 | 2-24-2010 | Amend | 4-1-2010 |
| 839-005-0160 | 2-24-2010 | Adopt | 4-1-2010 | 839-009-0360 | 2-24-2010 | Amend | 4-1-2010 |
| 839-005-0170 | 2-24-2010 | Adopt | 4-1-2010 | 839-009-0362 | 2-24-2010 | Amend | 4-1-2010 |
| 839-005-0195 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0363 | 2-24-2010 | Amend | 4-1-2010 |
| 839-005-0200 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0365 | 2-24-2010 | Amend | 4-1-2010 |
| 839-005-0205 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0370 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-005-0206 | 2-24-2010 | Adopt | 4-1-2010 | 839-009-0380 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-005-0215 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0390 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-005-0220 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0400 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-006-0200 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0410 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-006-0202 | 2-24-2010 | Adopt | 4-1-2010 | 839-009-0420 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-006-0205 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0430 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-006-0206 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0440 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-006-0212 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0450 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-006-0240 | 2-24-2010 | Amend | 4-1-2010 | 839-009-0460 | 2-24-2010 | Adopt | 4-1-2010 |
| 839-006-0242 | 2-24-2010 | Amend | 4-1-2010 | 839-010-0100 | 2-24-2010 | Amend | 4-1-2010 |
| 839-006-0244 | 2-24-2010 | Amend | 4-1-2010 | 839-010-0140 | 2-24-2010 | Amend | 4-1-2010 |
| 839-006-0250 | 2-24-2010 | Amend | 4-1-2010 | 839-021-0070 | 1-1-2010 | Amend | 1-1-2010 |
| 839-006-0255 | 2-24-2010 | Amend | 4-1-2010 | 839-021-0280 | 1-1-2010 | Amend | 1-1-2010 |
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| 839-006-0270 | 2-24-2010 | Amend | 4-1-2010 | 839-025-0010 | 1-1-2010 | Amend | 1-1-2010 |
| 839-006-0275 | 2-24-2010 | Amend | 4-1-2010 | 839-025-0013 | 1-1-2010 | Amend | 1-1-2010 |
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| 839-006-0295 | 2-24-2010 | Amend | 4-1-2010 | 839-025-0020 | 1-1-2010 | Amend | 1-1-2010 |
| 839-006-0300 | 2-24-2010 | Amend | 4-1-2010 | 839-025-0020(T) | 1-1-2010 | Repeal | 1-1-2010 |
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| 839-025-0085(T) | 1-1-2010 | Repeal | 1-1-2010 | 850-060-0220 | 2-16-2010 | Amend | 4-1-2010 |
| 839-025-0200 | 1-1-2010 | Amend | 1-1-2010 | 850-060-0225 | 1-1-2010 | Amend | 1-1-2010 |
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| 839-025-0210 | 1-1-2010 | Amend | 1-1-2010 | 851-002-0010 | 1-1-2010 | Amend | 2-1-2010 |
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| 839-025-0530 | 1-1-2010 | Amend | 1-1-2010 | 851-002-0035 | 1-1-2010 | Amend | 2-1-2010 |
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| 839-025-0700 | 1-12-2010 | Amend | 2-1-2010 | 851-050-0001 | 1-1-2010 | Amend | 2-1-2010 |
| 839-025-0700 | 1-13-2010 | Amend | 2-1-2010 | 851-050-0002 | 7-1-2010 | Amend | 2-1-2010 |
| 839-025-0700 | 1-19-2010 | Amend | 3-1-2010 | 851-050-0004 | 1-1-2010 | Amend | 2-1-2010 |
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| 839-025-0700 | 4-1-2010 | Amend | 5-1-2010 | 851-050-0006 | 7-1-2010 | Amend | 2-1-2010 |
| 839-050-0080 | 3-3-2010 | Amend | 4-1-2010 | 851-050-0008 | 1-1-2010 | Adopt | 2-1-2010 |
| 839-050-0130 | 3-3-2010 | Amend | 4-1-2010 | 851-050-0010 | 1-1-2010 | Amend | 2-1-2010 |
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| 839-050-0240 | 3-3-2010 | Amend | 4-1-2010 | 851-056-0000 | 1-1-2010 | Amend | 2-1-2010 |
| 839-050-0370 | 3-3-2010 | Amend | 4-1-2010 | 851-056-0006 | 1-1-2010 | Amend | 2-1-2010 |
| 839-051-0010 | 3-3-2010 | Amend | 4-1-2010 | 851-056-0010 | 1-1-2010 | Amend | 2-1-2010 |
| 845-005-0413 | 3-1-2010 | Adopt | 4-1-2010 | 851-056-0016 | 1-1-2010 | Amend | 2-1-2010 |
| 845-005-0414 | 3-1-2010 | Adopt | 4-1-2010 | 851-056-0020 | 1-1-2010 | Amend | 2-1-2010 |
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| 845-020-0030 | 3-1-2010 | Amend | 4-1-2010 | 851-063-0030 | 12-17-2009 | Amend | 2-1-2010 |
| 847-005-0005 | 1-26-2010 | Amend | 3-1-2010 | 851-063-0035 | 12-17-2009 | Amend | 2-1-2010 |
| 847-005-0005(T) | 1-26-2010 | Repeal | 3-1-2010 | 851-063-0090 | 12-17-2009 | Amend | 2-1-2010 |
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| 847-010-0073 | 1-26-2010 | Amend | 3-1-2010 | 852-010-0080 | 12-11-2009 | Amend | 1-1-2010 |
| 847-026-0000 | 1-26-2010 | Adopt | 3-1-2010 | 852-020-0035 | 12-11-2009 | Amend | 1-1-2010 |
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| 847-026-0005 | 1-26-2010 | Adopt | 3-1-2010 | 852-050-0006 | 12-11-2009 | Amend | 1-1-2010 |
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| 847-026-0010 | 1-26-2010 | Adopt | 3-1-2010 | 855-007-0020 | 12-24-2009 | Amend | 2-1-2010 |
| 847-026-0010(T) | 1-26-2010 | Repeal | 3-1-2010 | 855-007-0030 | 12-24-2009 | Amend | 2-1-2010 |
| 847-026-0015 | 1-26-2010 | Adopt | 3-1-2010 | 855-007-0040 | 12-24-2009 | Amend | 2-1-2010 |
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| 847-026-0020 | 1-26-2010 | Adopt | 3-1-2010 | 855-007-0060 | 12-24-2009 | Amend | 2-1-2010 |
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| 847-035-0030 | 1-26-2010 | Amend | 3-1-2010 | 855-007-0090 | 12-24-2009 | Amend | 2-1-2010 |
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| 848-035-0020 | 3-1-2010 | Amend | 4-1-2010 | 855-043-0120 | 2-8-2010 | Am. & Ren. | 3-1-2010 |
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| 855-062-0003(T) | 12-24-2009 | Repeal | 2-1-2010 | 858-040-0065 | 1-8-2010 | Amend | 2-1-2010 |
| 855-062-0005 | 12-24-2009 | Adopt | 2-1-2010 | 858-040-0075 | 1-8-2010 | Repeal | 2-1-2010 |
| 855-062-0005(T) | 12-24-2009 | Repeal | 2-1-2010 | 858-040-0085 | 1-8-2010 | Repeal | 2-1-2010 |
| 855-062-0020 | 12-24-2009 | Adopt | 2-1-2010 | 858-040-0095 | 1-8-2010 | Repeal | 2-1-2010 |
| 855-062-0020(T) | 12-24-2009 | Repeal | 2-1-2010 | 858-050-0100 | 1-8-2010 | Repeal | 2-1-2010 |
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| 855-065-0001 | 12-24-2009 | Amend | 2-1-2010 | 858-050-0150 | 1-8-2010 | Repeal | 2-1-2010 |
| 855-065-0005 | 12-24-2009 | Amend | 2-1-2010 | 860-036-0010 | 11-24-2009 | Amend | 1-1-2010 |
| 855-065-0006 | 12-24-2009 | Amend | 2-1-2010 | 860-036-0030 | 11-24-2009 | Amend | 1-1-2010 |
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| 918-098-1315 | 4-1-2010 | Amend | 4-1-2010 | 918-515-0150 | 4-1-2010 | Amend | 4-1-2010 |
| 918-098-1320 | 4-1-2010 | Amend | 4-1-2010 | 918-515-0300 | 4-1-2010 | Amend | 4-1-2010 |
| 918-098-1325 | 4-1-2010 | Amend | 4-1-2010 | 918-515-0330 | 4-1-2010 | Amend | 4-1-2010 |
| 918-098-1330 | 4-1-2010 | Amend | 4-1-2010 | 918-515-0350 | 4-1-2010 | Amend | 4-1-2010 |
| 918-225-0240 | 1-1-2010 | Amend | 2-1-2010 | 918-515-0360 | 4-1-2010 | Amend | 4-1-2010 |
| 918-225-0600 | 1-1-2010 | Amend | 2-1-2010 | 918-515-0370 | 4-1-2010 | Amend | 4-1-2010 |
| 918-225-0605 | 1-1-2010 | Repeal | 2-1-2010 | 918-515-0480 | 4-1-2010 | Amend | 4-1-2010 |
| 918-225-0610 | 1-1-2010 | Repeal | 2-1-2010 | 918-515-0485 | 4-1-2010 | Amend | 4-1-2010 |
| 918-225-0620 | 1-1-2010 | Amend | 2-1-2010 | 918-515-0490 | 4-1-2010 | Amend | 4-1-2010 |
| 918-225-0630 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0010 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-305-0030 | 4-1-2010 | Amend | 4-1-2010 | 918-520-0015 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0270 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0020 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0280 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0030 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0340 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0040 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0380 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0050 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0390 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0060 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0395 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0070 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0445 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0080 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0525 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0090 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0630 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0100 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0660 | 1-1-2010 | Amend | 2-1-2010 | 918-520-0110 | 4-1-2010 | Repeal | 4-1-2010 |
| 918-400-0662 | 1-1-2010 | Adopt | 2-1-2010 | 918-525-0042 | 4-1-2010 | Amend | 4-1-2010 |
| 918-400-0740 | 1-1-2010 | Amend | 2-1-2010 | 918-600-0010 | 4-1-2010 | Amend | 4-1-2010 |
| 918-400-0800 | 1-1-2010 | Amend | 2-1-2010 | 943-001-0000 | 1-1-2010 | Adopt | 2-1-2010 |
| 918-500-0000 | 4-1-2010 | Amend | 4-1-2010 | 943-001-0000(T) | 1-1-2010 | Repeal | 2-1-2010 |
| 918-500-0005 | 4-1-2010 | Amend | 4-1-2010 | 943-001-0010 | 1-1-2010 | Adopt | 2-1-2010 |
| 918-500-0010 | 4-1-2010 | Amend | 4-1-2010 | 943-001-0010(T) | 1-1-2010 | Repeal | 2-1-2010 |
| 918-500-0020 | 4-1-2010 | Am. & Ren. | 4-1-2010 | 943-001-0015 | 1-1-2010 | Adopt | 2-1-2010 |
| 918-500-0021 | 4-1-2010 | Am. & Ren. | 4-1-2010 | 943-001-0015(T) | 1-1-2010 | Repeal | 2-1-2010 |
| 918-500-0035 | 4-1-2010 | Amend | 4-1-2010 | | | | |