

OREGON BULLETIN

Supplements the 2010 *Oregon Administrative Rules Compilation*

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KATE BROWN
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

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

Locating Administrative Rules Unit Publications

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

2009–2010 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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TABLE OF CONTENTS

	Page
Information and Publication Schedule	2
Table of Contents	3
Executive Orders	4
Other Notices	5–7
Notices of Proposed Rulemaking Hearings/Notices	
The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.	
Board of Examiners for Engineering and Land Surveying, Chapter 820.....	8
Board of Licensed Professional Counselors and Therapists, Chapter 833.....	8
Board of Nursing, Chapter 851	8, 9
Bureau of Labor and Industries, Chapter 839	9
Construction Contractors Board, Chapter 812.....	9, 10
Department of Agriculture, Chapter 603.....	10
Department of Agriculture, Oregon Dairy Products Commission, Chapter 617.....	10
Oregon Invasive Species Council, Chapter 609	10
Oregon Processed Vegetable Commission, Chapter 647.....	10
Department of Consumer and Business Services, Building Codes Division, Chapter 918.....	10, 11
Division of Finance and Corporate Securities, Chapter 441	11
Insurance Division, Chapter 836	11
Oregon Occupational Safety and Health Division, Chapter 437.....	11, 12
Workers’ Compensation Division, Chapter 436	12
Department of Corrections, Chapter 291	12
Department of Energy, Chapter 330.....	12, 13
Department of Environmental Quality, Chapter 340	13
Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, Chapter 413	13–16
Division of Medical Assistance Programs, Chapter 410.....	16
Public Health Division, Chapter 333.....	16
Department of Public Safety Standards and Training, Chapter 259.....	16
Department of State Lands, Chapter 141	16, 17
Department of Transportation, Chapter 731.....	17
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735.....	17, 18
Highway Division, Chapter 734	18
Employment Department, Chapter 471.....	18
Land Conservation and Development Department, Chapter 660.....	18
Landscape Contractors Board, Chapter 808	18, 19
Oregon Board of Naturopathic Medicine, Chapter 850.....	19
Oregon Business Development Department, Chapter 123.....	19, 20
Oregon Department of Education, Chapter 581.....	20
Oregon Film and Video Office, Chapter 951	20
Oregon Liquor Control Commission, Chapter 845.....	20, 21
Oregon Public Employees Retirement System, Chapter 459.....	21
Oregon University System, University of Oregon, Chapter 571	21, 22
Public Utility Commission, Chapter 860	22
Public Utility Commission, Board of Maritime Pilots, Chapter 856	22
Secretary of State, Business Services Division, Chapter 167	22
Corporation Division, Chapter 160	22
Elections Division, Chapter 165	22
Teacher Standards and Practices Commission, Chapter 584.....	22, 23
Travel Information Council, Chapter 733	23
Veterinary Medical Examining Board, Chapter 875	23
Administrative Rules	
The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.	
Board of Parole and Post-Prison Supervision, Chapter 255.....	24, 25
Bureau of Labor and Industries, Chapter 839	25–55
Construction Contractors Board, Chapter 812.....	55, 56
Department of Administrative Services, Oregon Educators Benefit Board, Chapter 111	56–59
Department of Agriculture, Chapter 603.....	59, 60
Department of Agriculture, Oregon Dungeness Crab Commission, Chapter 645	60
Department of Consumer and Business Services, Building Codes Division, Chapter 918.....	60–76
Insurance Division, Chapter 836	76–81
Oregon Occupational Safety and Health Division, Chapter 437	81–90
Department of Corrections, Chapter 291	90–92
Department of Environmental Quality, Chapter 340	92–97
Department of Fish and Wildlife, Chapter 635	97–111
Department of Human Services, Addictions and Mental Health Division: Addiction Services, Chapter 415	111, 112
Mental Health Services, Chapter 309	112–152
Children, Adults and Families Division: Child Welfare Programs, Chapter 413	152
Self-Sufficiency Programs, Chapter 461	152, 153
Division of Medical Assistance Programs, Chapter 410.....	153, 154
Public Health Division, Chapter 333.....	154–185
Seniors and People with Disabilities Division, Chapter 411	186, 187
Department of Justice, Chapter 137	187, 188
Department of Public Safety Standards and Training, Chapter 259.....	188–191
Department of Revenue, Chapter 150	191–194
Department of State Lands, Chapter 141	194
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735	195–197
Transportation Safety Division, Chapter 737	197–201
Employment Department, Chapter 471.....	201
Landscape Architect Board, Chapter 804.....	201–203
Office for Oregon Health Policy and Research, Chapter 409.....	203–207
Oregon Board of Naturopathic Medicine, Chapter 850.....	207, 208
Oregon Business Development Department, Chapter 123.....	208–210
Oregon Government Ethics Commission, Chapter 199.....	210–219
Oregon Health Licensing Agency, Chapter 331	219–222
Oregon Housing and Community Services Department, Chapter 813.....	222–226
Oregon Liquor Control Commission, Chapter 845	226–228
Oregon State Lottery, Chapter 177.....	229–231
Physical Therapist Licensing Board, Chapter 848	231–236
Secretary of State, Corporation Division, Chapter 160	236
Elections Division, Chapter 165	236, 237
Teacher Standards and Practices Commission, Chapter 584.....	237–240
Travel Information Council, Chapter 733	240, 241
OAR Revision Cumulative Index	242–274

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 10 - 03

DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN KLAMATH COUNTY AND CONTIGUOUS COUNTIES DUE TO DROUGHT AND EXTREME WEATHER CONDITIONS

Pursuant to ORS 401.165 and 536.740, I find that ongoing drought and low water conditions and weather patterns exist and imminently threaten to cause local adverse natural and economic disaster conditions in Klamath County and the Oregon counties contiguous to Klamath County. Projected weather patterns are not expected to significantly alleviate these conditions and drought conditions are continuing. The United States Department of the Interior's Bureau of Reclamation has determined that water shortages are likely during the upcoming 2010 irrigation season and has issued notice that Klamath Project water is not available for use at this time. (See attached March 9, 2010 letter from Bureau of Reclamation Klamath Basin Area Manager Susan M. Fry) These conditions threaten significant economic loss to Klamath County and its contiguous Oregon counties' agricultural, livestock, and natural resources.

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

A timely response to this situation being vital to the well being and economic security of the citizens and businesses of Klamath County and its contiguous counties, I am therefore declaring a "state of drought emergency" in Klamath County and the Oregon counties contiguous to Klamath County and directing the following activities:

IT IS HEREBY ORDERED AND DIRECTED:

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

5. This Executive Order expires on December 31, 2010

Done at Salem, Oregon this 16th day of March, 2010.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 10 - 04

AMENDING EXECUTIVE ORDER 07-23 ESTABLISHING SEARCH AND RESCUE POLICY COMMISSION

On November 29, 2007, I established the Search and Rescue Policy Commission ("Commission") through Executive Order 07-23, to continue the work of Oregon's Search and Rescue Task Force, which was previously established by Executive Order 07-01. The Commission was charged to meet and consider how the State can best ensure that Oregon's search and rescue system allows for and encourages effective and timely communication, coordination, and the pooling of all available and necessary resources.

This Executive Order removes the upward limit for Commission membership in order to allow for the appointment of all of the designated representatives.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

Executive Order 07-23 is amended as follows:

1. The Search and Rescue Policy Commission, established by Executive Order 07-23, shall consist of at least 14 members to be appointed by the Governor.
2. This Order expires on January 1, 2012.

Done at Salem, Oregon, this 22nd day of March, 2010.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION 3961 NE MARTIN LUTHER KING JR. BOULEVARD — (ECSI #5233)

COMMENTS DUE: April 30, 2010

PROJECT LOCATION: 3961 NE Martin Luther King Jr. Boulevard, Portland, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to issue a no further action (NFA) determination for the 3961NE Martin Luther King Jr. Boulevard (site). The DEQ has reviewed site investigation and remediation activities performed by the current property owners, Oregon Community Warehouse Inc., and has determined that no further cleanup actions are necessary.

HIGHLIGHTS: The Martin Luther King Jr. property site is located at the northeast corner of the intersection of NE Martin Luther King Jr. Boulevard and NE Shaver Street in Portland, Oregon. The single story structure (Site) was thought to be constructed in 1926, and utilized as a restaurant, tavern, dance hall, and/or warehouse until the 1960s then was listed as an auto repair facility from 1964 until at least 1990. A lawn mower and chain saw repair business operated at the Site from at least 1997 to 1999. Sometime during this history, the soil beneath the site warehouse became contaminated with petroleum hydrocarbons and other hazardous materials as a result of an in-ground oil-water-separator with associated piping and five in-ground hydraulic hoists. The parcel is currently used to store donated furniture in the warehouse and sell antiques in the storefront.

A risk-based evaluation consistent with DEQ guidance has been completed following the remedial actions. A total of 75.4 tons of petroleum contaminated soil was removed from the site. A small pocket of arsenic, lead and tetrachloroethene (PCE) contamination in soil is above risk-based standards remains in-place along the south-east boundary of the excavation pit beneath the vicinity of the warehouse structure and which has been covered with concrete following the removal action. This pocket has been shown to be limited in extent. The DEQ deems this pocket to present a de minimus potential health risk. All other areas of soil and groundwater have been demonstrated to be below risk-based values for human health exposure at the site. The proposed NFA is documented in the "File Memorandum" for the site dated April 30, 2010. DEQ will consider all public comments received by the close of the comment period before issuing the NFA determination.

HOW TO COMMENT: To access additional detail on the site, please view the DEQ Staff Report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet at <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>. Enter 5233 in the "Site ID" box and click "Submit" at the bottom of the page. Next, click the link labeled 5233 in the Site ID/Info column. Next, click on the staff report under Site Documents. You can review the administrative record for the proposed no further action at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call (503) 229-6729; toll free at (800) 452-4011; or TTY at (503) 229-5471. Please send written comments to Ray Hoy, Project Manager, DEQ Northwest Region, 2020 S.W. Fourth Ave., Suite 400, Portland, Oregon, 97201 or via email at: hoy.ray@deq.state.or.us. DEQ must receive written comments by 5 p.m. on April 31, 2010.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more, requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon

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

THE NEXT STEP: DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a No Further Action for the site.

OPPORTUNITY TO COMMENT PROPOSED NO FURTHER ACTION BLUE MTN ASPHALT PLANT HERMISTON, OREGON

COMMENT DUE: April 30, 2010

PROJECT LOCATION: 81500 Lind Rd, Hermiston

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 the Blue Mtn Asphalt Plant site located at 81500 Lind Rd in Hermiston, Oregon.

The Independent Cleanup Program has reviewed cleanup activities performed at the site. A 3,000 gallon release of oil occurred in May 2009 as a result of a damaged ball valve on a 20,000 gallon above ground storage tank (AST). Approximately 1,500 gallons of oil were recovered. A total of 150 tons of petroleum contaminated soil was excavated from the spill area. Confirmation soil samples were collected and detected concentrations of diesel and heavy oil are less than the most stringent risk based concentrations (RBCs).

Additional information concerning site-specific investigations and remedial actions is available in DEQ's Environmental Cleanup Site Information (ECSI) database located on the web at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 5213.

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 end on April 30, 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.

CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION FORMER HOLGATE TEXACO SITE (ECSI #4009)

COMMENTS DUE: May 3, 2010

PROJECT LOCATION: 4525 SE 28th Street, Portland, Oregon
Proposal: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to issue a no further action (NFA) for the former Holgate Texaco site (ECSI File #4009).

HIGHLIGHTS: The 0.31-acre site is located at the southwest corner of SE 28th Avenue and Holgate, and occupied by a retail fueling station and grocery. Since 1965 retail fueling station operations have been conducted at the site by a series of operators. Initial site investigation was conducted in April 2001. Gasoline range free-phase petroleum was observed in soil and groundwater samples. A UST release was reported to DEQ and assigned Leaking UST (LUST) ID No. 26-01-0027. The responsible party was unable to conduct the

OTHER NOTICES

necessary investigation and remediation required by DEQ's UST Program. DEQ determined that the site was a high priority for cleanup due to the extent of free-phase petroleum and potential for impacts to human health. In 2004 DEQ directed its contractor to remove residual gasoline from the USTs and accumulated free-phase product from one monitoring well in order to stabilize the site and prevent further releases. Additional soil and groundwater sampling was conducted by DEQ to determine the extent of contamination.

In June 2004 DEQ entered into a Prospective Purchaser Agreement (PPA) with Holgate Shell LLC for completion of additional cleanup actions, including removal of contaminated soil above risk based standards, installation of a free-phase petroleum recovery system, and groundwater monitoring. The soil removal was successful in removing free-phase petroleum such that DEQ did not require installation of the recovery system. Post-removal groundwater monitoring showed a substantial decrease in the extent and magnitude of contamination.

DEQ reviewed the existing environmental information for the site and concludes that the site currently does not present an unacceptable risk to human health or the environment, and that a no further action determination (NFA) is warranted for the site.

HOW TO COMMENT: To access additional detail on the site, please view the DEQ Staff Report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet at <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>. Enter 4009 in the "Site ID" box and click "Submit" at the bottom of the page. Next, click the link labeled 4009 in the Site ID/Info column. Next, click on the staff report under Site Documents. You can review the administrative record for the proposed conditional no further action at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call (503) 229-6729; toll free at (800) 452-4011; or TTY at (503) 229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 S.W. Fourth Ave., Suite 400, Portland, Oregon, 97201 or via email at: pugh.mark@deq.state.or.us. DEQ must receive written comments by 5 p.m. on May 3, 2010.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more, requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

THE NEXT STEP: DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a conditional No Further Action for the site.

CHANCE TO COMMENT ON...

PROPOSED NO FURTHER ACTION DETERMINATION FOR FORMER BAER PROPERTY, 9100 N VANCOUVER AVENUE, PORTLAND, OREGON

COMMENTS DUE: April 30, 2010

PROJECT LOCATION: 9100 N Vancouver Avenue, Portland, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.230 and 465.320, and Oregon Administrative Rules, OAR 340-122-0077, OAR 340-122-0078 and OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve a conditional no further action determination (CNFA) for the former Baer Property in Portland, Oregon. The site is listed in DEQ's Environmental Cleanup Site Information (ECSI) database as #5012.

HIGHLIGHTS: DEQ has reviewed reports that describe soil and groundwater sampling, methane gas investigations, and site engi-

neering/institutional controls established at this 1.4-acre property in a mixed industrial/commercial area in north Portland. This site is in an area that received contaminated debris and fill in the 1940's and 50's until it was commercially developed for warehouse space in the 1960s.

Site investigations in 2007 through 2008 showed that the property is underlain by structural material, fill soils and other wastes, and that soils and groundwater are contaminated with diesel and heavy-oil range petroleum hydrocarbons and elevated metals concentrations in several areas. Site investigations also showed that methane gas is present in the subsurface. The City of Portland Brownfields Program assisted with investigations and analysis in 2009 that indicated that subsurface contamination was localized within the existing fill and did not pose a threat to groundwater wells in the area, but that methane gas presence required additional evaluation.

Under a September 2009 Prospective Purchaser Agreement (PPA) with Moeller Family, LLC, DEQ directed additional analysis and methane mitigation measures on the site. Through the PPA engineering and institutional controls (EC/IC) were established and recorded in an Easement and Equitable Servitudes (E&ES) that has been filed with Multnomah County. The E&ES required improvements and maintenance on the site to reduce infiltration of water into the subsurface and measures to prevent methane from entering enclosed spaces. Moeller Family LLC has completed installation of mitigation measures. Methane measurements over the last year show that subsurface methane concentrations are above DEQ's protective criteria, but that methane is not entering the building.

Based on the work completed and the methane results, DEQ has concluded that there is no unacceptable risk to human health or the environment and is prepared to issue a CNFA for the Baer Property.

HOW TO COMMENT: DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments and requests to Chuck Harman, Project Manager, at the Northwest Region office address listed above or via email at harman.charles@deq.state.or.us by 5 p.m., April 30, 2010.

Site information can be found on the internet in DEQ's on-line ECSI database (<http://www.deq.state.or.us/wmc/ecsi/ecsiquery.htm>). The Baer Property is listed as ECSI # 5012.

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

THE NEXT STEP: DEQ will consider all public comments received by the April 30, 2010 deadline and the Regional Cleanup Manager will make a final decision after consideration of these public comments.

CHANCE TO COMMENT ON...

PROPOSED NO FURTHER ACTION DETERMINATION FOR SFI PROPERTY, 2407 NW 28TH AVENUE PORTLAND, OREGON

COMMENTS DUE: April 30, 2010

PROJECT LOCATION: 2407 NW 28th Avenue, Portland, Oregon. Proposal: Pursuant to Oregon Revised Statute, ORS 465.230 and 465.320, and Oregon Administrative Rules, OAR 340-122-0077, OAR 340-122-0078 and OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve a conditional no further action determination (CNFA) for the SFI Property in Portland, Oregon. The site is listed in DEQ's Environmental Cleanup Site Information (ECSI) database as #5103.

HIGHLIGHTS: DEQ has reviewed soil and groundwater investigations reports, underground storage tank (UST) decommissioning, contaminated soil removal, site engineering/institutional controls and confirmation sampling actions completed at the 1.3-acre site in the

OTHER NOTICES

NW area of Portland. This site operated as a steel hammer forge from about 1924 through 1992. This site, now identified as "SFI Property" was formerly part of a larger operation in this location known as Schmitt Forge.

Several contaminated areas were present on the site — polychlorinated biphenyl (PCB) contaminated soils within a former transformer vault; low level volatile organic compounds (VOCs) in site groundwater near the northeast corner; petroleum and metals-contaminated soils in the former forge floor area; limited petroleum contamination in the location of a former Bunker C oil tank; and residual contaminated soils and sediments within the sites' stormwater system. Bill Naito Company (BNC), the property owner, completed multiple remedial actions to remove or remediate these areas of contamination between April 2008 and March 2010.

BNC removed contaminated soils from the former transformer vault. Groundwater monitoring over two years did not indicate that a source area of VOCs was present and concentrations were below applicable risk-based concentrations (RBCs). DEQ and BNC negotiated an engineering and institutional control (EC/IC) that will be recorded through an Easement and Equitable Servitudes (E&ES) with the property deed to maintain and properly manage the existing concrete and asphalt caps that are present over the former forge floor and Bunker C oil tank areas. In December 2009, BNC completed a Stormwater Source Control Evaluation and related removal

actions to eliminate residual sources of sediment in the site's upland areas and stormwater system.

Based on the work completed DEQ has concluded that there is no unacceptable risk to human health or the environment and is prepared to issue a CNFA for the SFI Property.

HOW TO COMMENT: DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Please send written comments and requests to Chuck Harman, Project Manager, at the address listed above or via email at harman.charles@deq.state.or.us by 5 p.m., April 30, 2010.

Site information can be found on the internet in DEQ's on-line ECSI database (<http://www.deq.state.or.us/wmc/ecsi/ecsiquery.htm>). The SFI Property is listed as ECSI # 5103.

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

THE NEXT STEP: DEQ will consider all public comments received by the April 30, 2010 deadline and the Regional Cleanup Manager will make a final decision after consideration of these public comments.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: To amend and adopt rules that clarify requirements related to registration or application for registration.

Date:	Time:	Location:
5-11-10	1:30 p.m.	670 Hawthorne Ave. SE Suite 220 Salem, OR 97301

Hearing Officer: Grant Davis

Stat. Auth.: ORS 672.255

Other Auth.: ORS 670.310 & 408.450

Stats. Implemented: ORS 672.002–672.325

Proposed Adoptions: 820-010-0530

Proposed Amendments: 820-001-0000, 820-010-0212, 820-010-0213, 820-010-0214, 820-010-0215, 820-010-0305, 820-010-0440, 820-010-0450, 820-010-0470, 820-010-0610, 820-010-0625, 820-010-0635, 820-015-0026

Last Date for Comment: 5-11-10, Close of Hearing

Summary: OAR 820-010-0530 – Provides the process to request a waiver of the biennial renewal fees and continuing professional development requirements when a registrant is in the United States active military.

OAR 820-001-0000 – Includes the International Society of Automation (at their request) to receive notification of Board remarking.

OAR 820-010-0212 – To clarify that the take-home examination must be submitted prior to the release of examination results; not before receiving a certificate of registration, which would imply the individual passed the examination.

OAR 820-010-0213 – To clarify that the take-home examination must be submitted prior to the release of examination results; not before receiving a certificate of registration, which would imply the individual passed the examination.

OAR 820-010-0214 – To clarify that the take-home examination must be submitted prior to the release of examination results; not

before receiving a certificate of registration, which would imply the individual passed the examination.

OAR 820-010-0215 – To clarify that individuals who are submitting a re-application to a subsequent examination must include evidence of further preparation.

OAR 820-010-0305 – Delete the fee for annual renewal of an inactive registration.

OAR 820-010-0440 – Delete Photogrammetry from the Fall examination administration.

OAR 820-010-0450 – Housekeeping; consistency in verbiage.

OAR 820-010-0470 – To clarify the review of examinations administered by the Board; delete Washington Structural III and include the certified water right examiner test.

OAR 820-010-0610 – To clarify the certificates issued by the Board.

OAR 820-010-0625 – Delete language inconsistent with OAR 820-010-0615.

OAR 820-010-0635 – To clarify continuing education requirements as a condition of registration renewal.

OAR 820-015-0026 – To clarify the process to request a grace period related to an audit of continuing professional development units obtained.

Rules Coordinator: Mari Lopez

Address: 670 Hawthorne Avenue, SE Suite 220 Salem, OR 97301

Telephone: (503) 362-2666, ext. 26

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Board of Licensed Professional Counselors and Therapists Chapter 833

Rule Caption: Establish supervisor registry; amend rules for requirements for licensure as professional counselor, marriage/family therapist.

Stat. Auth.: ORS 675.785–675.835

Other Auth.: ORS 676.160–676.180

Stats. Implemented: ORS 675.785–675.835

Proposed Adoptions: 833-020-0201, 833-020-0301, 833-130-0010, 833-130-0020, 833-130-0030, 833-130-0040, 833-130-0050, 833-130-0060, 833-130-0070

Proposed Amendments: 833-010-0001, 833-020-0031, 833-020-0041, 833-020-0051, 833-020-0061, 833-030-0021, 833-030-0031, 833-040-0021, 833-040-0041, 833-050-0011, 833-050-0071, 833-050-0081, 833-060-0012, 833-060-0022, 833-060-0032, 833-070-0011, 833-110-0011

Last Date for Comment: 4-28-10, Close of Business

Summary: Establish definition of clinical supervision .

Adopt rules to establish requirements for supervisors of registered interns and establish a supervisory registry.

Revise requirements for supervision of work experience for those applying for license via reciprocity or direct methods.

Correct license application fee amounts required for applicants needing criminal background check.

Add components of professional disclosure statements for licensees and license applicants.

Add rule requiring licensees to keep Board apprised of contact information and changes.

Revise rule number references to reflect new rule structure

The proposed rules will be posted on the Board's website at: www.oregon.gov/oblpc

Rules Coordinator: Becky Eklund

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

Telephone: (503) 378-5499

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Board of Nursing Chapter 851

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

NOTICES OF PROPOSED RULEMAKING

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

Hearing Officer: Patricia Markesino, Board President

Stat. Auth.: ORS 678.372

Stats. Implemented: ORS 678.372

Proposed Amendments: 851-054-0010, 851-054-0040, 851-054-0050, 851-054-0055

Last Date for Comment: 6-15-10, 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 April 15, 2010. That hearing date has been canceled and this notice reschedules that hearing for June 17, 2010.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

Bureau of Labor and Industries
Chapter 839

Rule Caption: Implementing statutory enactments restricting use of employee's credit history for employment purposes.

Date: 5-3-10
Time: 3:30–5:30 p.m.
Location: Portland State Office Bldg.
800 NE Oregon St., Rm. 1-B
Portland, OR

Hearing Officer: Stefanie Plebanek

Stat. Auth.: ORS 659A.805

Other Auth.: SB 1045 (OR Legislatively Assembly 2010)

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), OR Legislative Assembly 2010

Proposed Adoptions: Rules in 839-005

Proposed Amendments: Rules in 839-005

Proposed Renumberings: Rules in 839-005

Proposed Ren. & Amends: Rules in 839-005

Last Date for Comment: 5-3-10, 5:30 p.m.

Summary: The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employment that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and employers for whom employees' credit history is substantially job-related.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Rule Caption: Amending subpoena rules to conform reference to statutory term "person" and to address corporations.

Stat. Auth.: ORS 651.060, 658.220 & 659A.800

Stats. Implemented: ORS 279C, 651, 652, 653, 658 & 659A

Proposed Amendments: 839-002-0030, 839-002-0040, 839-002-0045, 839-002-0050

Last Date for Comment: 4-21-10

Summary: The amendments would change one word, "individual," to "person" in conformance with the authorizing statutes. The amendments would conform rules to statutory requirements for service of subpoenas on corporations.

Temporary rule amendments were filed on 2/10/10 and are in effect until 8/6/10 or until replaced by permanent rules.

Rules Coordinator: Marcia Ohlemiller

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

Telephone: (971) 673-0784

Construction Contractors Board Chapter 812

Rule Caption: Fee increase, employee complaints, lay representation and housekeeping.

Date: 4-27-10
Time: 11 a.m.
Location: West Salem Roth's IGA
1130 Wallace Rd., Santiam Rm.
Salem, OR

Hearing Officer: Rob Hernandez

Stat. Auth.: ORS 183.310–183.550, 670.310, 701.238, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335

Stats. Implemented: ORS 183.450, 701.056, 701.063, 701.139, 701.140, 701.143, 701.145, 701.146, 701.238, 701.305, 701.330 & 701.335

Proposed Amendments: 812-003-0140, 812-004-0340, 812-009-0340, 812-009-0340, 812-012-0110

Last Date for Comment: 4-27-10, 11 a.m.

Summary: • OAR 812-003-0140 is amended to establish a fee increase to the CCB licensing fee from \$260 to \$325 for a two-year license effective July 1, 2010 as authorized by the CCB Legislative Approved Budget (LAB) (budget). At the January 26, 2010, Construction Contractors Board meeting, Board members determined that a license fee increase was needed to adequately fund the CCB for the 2010–12 biennium. This is an increase of \$32.50 per year of \$65/two year license period.

• 812-004-0340 is amended to set forth the evidence that is necessary to submit an employee complaint. If no time cards, paycheck stubs, or W-4 forms are available, the agency's current practice is to require a sworn affidavit from a non-related party. The rule, as amended, would permit a third-person (including a related person) to prepare and submit a written declaration under perjury. The Oregon Rules of Civil Procedure allow such declarations in lieu of affidavits. ORCP Rule 1.E.

• 812-009-0340 is amended in 2007, the Oregon legislature changes several statutes. In 2008, the Attorney General changed the format for lay representation rules. There are some very basic cases not previously included (e.g. bond suspensions, insurance cancellations) in which the agency needs to appear. For all of the matters covered by the rule, the Attorney General authorized the agency, by letter of June 12, 2008, to represent the agency.

• 812-012-0110 is amended to remove date in subsection (1)(c) because date has passed; revise subsection (1)(d) to correspond with language in ORS 701.305(2)(d), and delete subsection (1)(e) because it was removed by Oregon Laws 2009, Chapter 409 (SB 205), Section 1. See ORS 701.305(2)

Rules Coordinator: Catherine Dixon

Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

Telephone: (503) 378-4621, ext. 4077

Rule Caption: Amendments to Division 5 – Civil Penalties and Division 7 – Lead-Based Paint Rules.

Date: 4-27-10
Time: 11 a.m.
Location: West Salem Roth's IGA
1130 Wallace Rd., Santiam Rm.
Salem, OR

Hearing Officer: Rob Hernandez

Stat. Auth.: ORS 183.310–183.500, 670.310, 701.235, 701.515, 701.992 & 701.995

Other Auth.: 2009 OL Ch. 757 (HB 2134)

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.330, 701.345, 701.510, 701.515, 701.992 & 701.995

Proposed Adoptions: 812-007-0340

Proposed Amendments: 812-005-0800, 812-007-0310, 812-007-0330, 812-007-0350

Last Date for Comment: 4-27-10, 11 a.m.

NOTICES OF PROPOSED RULEMAKING

Summary: • 812-005-0800 is amended to add a sanction that extends to certified lead-based paint renovation contractors. This section references work practice standards, which are based on Department of Human Services, Public Health Division rule OAR 333-070-0110.

• OAR 812-007-0310 and 812-007-0330 are amended to add reference the Department of Human Services, Public Health Division rules.

• 812-007-0340 is adopted to require contractors to follow work practice standards for lead-based paint renovation as set forth by the Department of Human Services, Public Health Division.

• 812-007-0350 is amended to make violation of Department of Human Services, Public Health Division rule OAR 333-070-0090, 333-070-0100, and 333-070-0110, a basis for license sanction by the Construction Contractors Board.

Rules Coordinator: Catherine Dixon

Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

Telephone: (503) 378-4621, ext. 4077

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Department of Agriculture Chapter 603

Rule Caption: Amend the rules that govern field burning due to the passage of SB 528.

Date:	Time:	Location:
4-26-10	6 p.m.	Oregon State Fair & Expo Ctr. Cascade Hall 2330 17th St. NE Salem, OR
4-27-10	6 p.m.	Eugene State Office Bldg. Willamette Conf. Rm. 165 E. 7th Ave. Eugene, OR

Hearing Officer: ODA Staff

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Proposed Adoptions: 603-077-0119, 603-077-0139

Proposed Amendments: 603-077-0101, 603-077-0103, 603-077-0105, 603-077-0110, 603-077-0112, 603-077-0113, 603-077-0115, 603-077-0131, 603-077-0135, 603-077-0137, 603-077-0140, 603-077-0145, 603-077-0177

Proposed Repeals: 603-077-0125

Last Date for Comment: 4-30-10, 5 p.m.

Summary: The rules govern the operation and enforcement of field burning in the Willamette Valley. The rules are necessary for the Department of Agriculture to operate the field-burning program mandated by SB 528 passed by the 2009 Oregon Legislative Assembly, including the enforcement function under ORS 468A.585 and the terms of the Memorandum of Understanding with the Environmental Quality Commission.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4552

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Department of Agriculture, Oregon Dairy Products Commission Chapter 617

Rule Caption: Amend per diem rate for Oregon Dairy Products Commission Commissioners from \$30.00 to \$100.00.

Stat. Auth.: ORS 576.304(14)

Other Auth.: Motion approved by Oregon Dairy Products Commission Board Mtg. 2-16-10, Salem, OR.

Stats. Implemented: ORS 576.265 & 576.416

Proposed Amendments: 617-040-0010

Last Date for Comment: 4-25-10, Close of Business

Summary: Sets per diem for commissioners at \$100. The 2009 Oregon Legislature approved HB 2458 which amended ORS

576.265 to exempt commodity commissions from the per diem limits set in OAR 292.495.

Rules Coordinator: Pete Kent

Address: 10505 SW Barbur Blvd, Portland, OR 97219

Telephone: (503) 229-5033

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Department of Agriculture, Oregon Invasive Species Council Chapter 609

Rule Caption: Establishes protocol for declaration of invasive species emergency to release Invasive Species Control Account funds.

Date:	Time:	Location:
4-21-10	11 a.m.	Oregon Dept. of Agriculture 635 Capitol St. NE, Rm. D Salem, OR 97301

Hearing Officer: Stephanie Page

Stat. Auth.: ORS 570.755, 570.800 & 570.810

Other Auth.: ORS 570.755

Stats. Implemented: ORS 570.810

Proposed Adoptions: 609-010-0100

Last Date for Comment: 4-28-10

Summary: The proposed rule would establish a protocol to guide the Oregon Invasive Species Council in determining eligibility for release of funds from the Oregon Invasive Species Control account for the purposes of eradicating or controlling new infestations to infections of invasive species in Oregon. Requests for funds must be in writing and include a response plan including a risk assessment, budget, timeline, and evaluation of success. The Council may release funds only after declaring an Invasive Species Emergency. The Council may enter an agreement with a person, state or local government, Indian tribe or federal government that will be responsible for implementing a portion or all of the response plan.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, Oregon Invasive Species Council, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

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Department of Agriculture, Oregon Processed Vegetable Commission Chapter 647

Rule Caption: Amend rules related to assessment rates.

Date:	Time:	Location:
4-22-10	7:30 p.m.	3415 Commercial St. SE Salem, OR

Hearing Officer: Gary Hull

Stat. Auth.: ORS 576.051-576.595

Stats. Implemented: ORS 576.051-576.595

Proposed Amendments: 647-010-0010

Last Date for Comment: 4-22-10, 7:30 p.m.

Summary: The proposed rule amendments set the assessment rates for the six processed vegetable crops governed by the commission.

Rules Coordinator: John McCulley

Address: Department of Agriculture, Processed Vegetable Commission, PO Box 2042, Salem, OR 97308

Telephone: (503) 370-7019

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

Rule Caption: Public Records Requests.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 192.410-192.505

Proposed Repeals: 918-001-0200

Last Date for Comment: 4-23-10, 5 p.m.

Summary: The Department of Consumer and Business Services is amending its rules regarding public records requests, found in chapter 440, division 005. The goal of the rule making is to reflect recent

NOTICES OF PROPOSED RULEMAKING

changes in the law and to make the process of requesting public records from DCBS more clear for the public. As part of the rule making, DCBS is proposing to repeal public records provisions found in its various division rules. This will avoid duplication with the agency-wide rules and give the public a central source for agency rules on public records requests.

In addition to amending the rules, the department and each of its divisions will post the agency's written procedure for making public records requests on their web sites — so that citizens have access to clear information about how to make requests.

Text of the proposed rule as well as other rulemaking documents can be found at: <http://www.oregon.gov/DCBS/DIR/rules.shtml>

Address questions to: Kristen I. Miller, Rules Coordinator; phone 503-947-7866; fax 503-378-6444; or e-mail kristen.i.miller@state.or.us

Rules Coordinator: Kristen I. Miller

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

Telephone: (503) 947-7866

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

Rule Caption: Public Records Request.

Stat. Auth.: ORS 705.135

Stats. Implemented: ORS 192.410–192.505

Proposed Repeals: 441-002-0005, 441-002-0010, 441-002-0020, 441-002-0030, 441-002-0040

Last Date for Comment: 4-23-10, 5 p.m.

Summary: The Department of Consumer and Business Services is amending its rules regarding public records requests, found in chapter 440, division 005. The goal of the rule making is to reflect recent changes in the law and to make the process of requesting public records from DCBS more clear for the public. As part of the rule making, DCBS is proposing to repeal public records provisions found in its various division rules. This will avoid duplication with the agency-wide rules and give the public a central source for agency rules on public records requests.

In addition to amending the rules, the department and each of its divisions will post the agency's written procedure for making public records requests on their web sites — so that citizens have access to clear information about how to make requests.

Text of the proposed rule as well as other rulemaking documents can be found at: <http://www.oregon.gov/DCBS/DIR/rules.shtml>

Address questions to: Kristen I. Miller, Rules Coordinator; phone 503-947-7866; fax 503-378-6444; or e-mail kristen.i.miller@state.or.us

Rules Coordinator: Kristen I. Miller

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

Telephone: (503) 947-7866

Rule Caption: Technical revisions to pawnbroker statutes.

Stat. Auth.: ORS 726.260

Stats. Implemented: 2009 OL Ch. 372 § 2, 3, 4, 5 & 7

Proposed Amendments: 441-740-0000, 441-740-0010, 441-740-0015

Proposed Repeals: 441-740-0050

Last Date for Comment: 4-30-10, 5 p.m.

Summary: The 2009 legislature adopted House Bill 2753 to update the pawnbroker statutes. The bill authorized a new fee for lost, destroyed, or stolen pawn tickets and limited the fee that may be charged when a registered firearm is pawned to the time of the initial pawn. It also allowed an increase in the maximum storage fee to three percent of the value of the pledge loan, but capped this fee at \$100 for loans and loan renewals. HB 2753 also clarified when a loan

is a renewal versus a new loan and allowed a pawnbroker to pass on any fees some are being charged by local governments.

These proposed rules update the firearms fee and forfeiture notice rules, and delete rules that are now superseded by statute.

Draft rules are available from the division's rules coordinator, located at 350 Winter St. NE, Rm. 410, Salem, OR 97301 and are available on the division's website at: <http://www.cbs.state.or.us/external/dfcs/rulestat.html#proposed>

Rules Coordinator: Shelley Greiner

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

Telephone: (503) 947-7484

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Workers' Compensation Large Risk Alternative Rating Plans and Workers' Compensation Large Deductible Provisions.

Date:	Time:	Location:
4-26-10	2 p.m.**	Labor & Industries Bldg. Room F (basement) 350 Winter St. NE Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 731.244 & 737.325(1)

Stats. Implemented: ORS 737, 737.205, 737.310, 737.320, 737.325(1), 742.001–742.007 & 746.240

Proposed Adoptions: 836-042-0100, 836-042-0105, 836-042-0110, 836-042-0115

Proposed Amendments: 836-042-0080, 836-042-0210

Last Date for Comment: 4-29-10

Summary: **NOTE: The hearing will begin at 2 p.m. and end when all present who wish to testify have done so.

These proposed rules:

- Modify filing requirements to allow Oregon Large Risk Alternative Rating Plans to include workers' compensation insurance, provided the insured has countrywide workers' compensation standards premium in excess of \$500,000.

- Allow large deductible rating plans to reduce the minimum employer eligibility from \$750,000 to \$500,000 in countrywide workers' compensation standard premium. Because large deductible rating plans can be written as Large Risk Alternative Rating Plans, the proposed rule amendments will avert inconsistencies within the rules governing workers' compensation rating plans.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

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

Rule Caption: Proposed changes to Division 4, Agriculture.

Date:	Time:	Location:
4-27-10	11 a.m.	Rockford Grange 4250 Barrett Dr. Hood River, OR 97031
4-29-10	1:30 p.m.	Labor & Industries Bldg. 350 Winter St. NE Basement Conf. Rm. F Salem, OR 97301

Hearing Officer: Sue Joye

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

Stats. Implemented: ORS 654.001–654.295

Proposed Adoptions: 437-004-0251

Proposed Amendments: 437-004-0002, 437-004-0003, 437-004-0099, 437-004-0240, 437-004-1305

NOTICES OF PROPOSED RULEMAKING

Proposed Repeals: 437-004-0004, 437-004-0250

Last Date for Comment: 5-7-10

Summary: These changes result from legislation, input from the regulated community and input from Oregon OSHA staff.

Changes to the Division 4 scope in Subdivision 4/A, cross-reference and clarify the SIC and NAICS codes to which the Division 4, Agriculture rules apply. SIC/NAICS, 0831/113210 respectively was added to clarify when tree farms are agriculture employers and when they are forest activities. Rules for inspecting workplaces and investigating time-loss injuries and illnesses were cross-referenced with the proposed changes in Subdivision 4/C. A rule duplicating the adoption of the Worker Protection Standard was eliminated. New contact information was provided for the Wage and Hour Division of the Bureau of Labor and Industries.

Changes in Subdivision 4/C, Safety Awareness, fulfill Oregon OSHA's responsibility under a recent legislative mandate to require all Oregon employers, regardless of size, to have either a safety committee or to hold safety meetings. The current rule, OAR 437-004-0250 will be repealed and replaced with 437-004-0251 incorporating these changes. The number of non-seasonal employees (re-defined as "employed full-time or part-time for more than three months in a calendar year") per location determine whether the employer has the option of holding safety meetings or having a safety committee. The special needs of Agricultural employers were addressed by maintaining separate safety orientation requirements for employers of seasonal workers. The definition of seasonal workers was also redefined as "employed for three or fewer months in a calendar year." Both the rules for seasonal and non-seasonal workers include requirements to overcome language barriers when communicating safety awareness information by using non-technical terms, pictures, or translators. Additional notes were added to Safety Orientation for Seasonal Workers to explain training and orientation requirements.

Changes in Subdivision 4/K, Medical and First Aid clarify when eye-washes and safety showers are required and also the standards for both plumbed and free-standing systems. The current rule requires that employers assure the availability of emergency medical services for injured or sick employees. The proposed rule includes language to call emergency services timely to provide treatment.

Please visit our web site www.orosha.org

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

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

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

Rule Caption: Proposed rules affecting workers' compensation medical treatment and fees.

Date:	Time:	Location:
4-21-10	1:30 p.m.*	Rm. 260, 2nd Flr. Labor & Industries Bldg. 350 Winter Street NE Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656, 656.245, 656.248 & 656.260

Proposed Adoptions: 436-010-0225

Proposed Amendments: Rules in 436-009, 436-010-0330, 436-015-0090

Last Date for Comment: 4-27-10

Summary: *NOTE: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so. Written testimony will be accepted through April 27, 2010.

NOTE: "Insurer" in this summary includes self-insured employers. The agency proposes to amend OAR chapter 436 to improve organization, clarity and consistency, and to eliminate redundancy. In addition:

The agency proposes to amend OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules." These proposed rules address: Adoption of updated medical fee schedules and resources for the payment of health care providers; adoption of new fee schedules showing maximum allowable payments for CPT® and Oregon Specific Codes — thus eliminating the need to calculate the maximum allowable payment (using the Medicare Resource-Based Relative Value Scale and the Oregon Conversion Factors); time frames for appeals of disputed services or fees; changes in the dollar values of the conversion factors; changes in payment rates for physical and work capacity evaluations; adoption of a new fee schedule and procedures for language interpreters who assist at medical examinations; assignment of additional CPT® codes to the Medicare groups for payment of ambulatory surgical centers (ASCs); fee schedules for payment to ASCs for implants; revised notices that must accompany medical bill payments and denials of payments; and minimum patient contact times for physical capacity and work capacity examinations.

The agency proposes to amend OAR chapter 436, division 010, "Medical Services." These proposed rules address: The rights of a worker to choose any person to provide interpreter services to communicate with a medical provider.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or telephone 503-947-7627 or fax 503-947-7630.

Rules Coordinator: Fred Bruyns

Address: Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405
Telephone: (503) 947-7717

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Department of Corrections Chapter 291

Rule Caption: Death of an Inmate.

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

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

Proposed Adoptions: 291-027-0055, 291-027-0065

Proposed Amendments: 291-027-0010, 291-027-0020, 291-027-0030, 291-027-0040, 291-027-0050, 291-027-0070, 291-027-0080

Proposed Repeals: 291-027-0060

Last Date for Comment: 4-29-10

Summary: Modification and adoption of these rules is necessary to update and establish uniform procedures for prompt and proper reporting and investigation of an inmate death, compassion notification of the deceased inmate's emergency contact person, and disposition of the remains. These revisions are necessary to ensure rules align with current operations and organizational structure of the Department.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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Department of Energy Chapter 330

Rule Caption: Establishes procedural and other requirements including timeframes for assessing energy resource suppliers.

Date:	Time:	Location:
4-20-10	9 a.m.	Dept. of Energy 625 Marion St. Salem, OR 97301

Hearing Officer: Robert Underwood

Stat. Auth.: ORS 183.335 & 469.421

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 469.421

Proposed Amendments: 330-075-0005, 330-075-0015, 330-075-0025, 330-075-0035

Proposed Repeals: 330-075-0010, 330-075-0005(T), 330-075-0015(T), 330-075-0025(T), 330-075-0035(T)

Last Date for Comment: 4-23-10

Summary: The 2009 legislature, HB 2626, changed the definition of Energy Suppliers. The change added generation, transmission and distribution to the definition of activities eligible for inclusion under the energy supplier assessment. To implement this change and remain consistent with statute the ESA rules require amendment.

Rules Coordinator: Kathy Stuttaford

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

Telephone: (503) 373-2127

Department of Environmental Quality Chapter 340

Rule Caption: This rulemaking revises DEQ field burning rules to incorporate recent changes to the field burning statutes.

Date:	Time:	Location:
4-26-10	6 p.m.	Oregon State Fair & Expo Ctr. Cascade Hall 2330 17th St. NE Salem, OR
4-27-10	6 p.m.	Eugene State Office Bldg. Willamette Conf. Rm. 165 E 7th Ave. Eugene, OR

Hearing Officer: DEQ Staff

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: SB 528-B Enrolled 2009), ORS 468A.560-468A.620, 468A.990 & 468A.992

Proposed Adoptions: 340-266-0065, 340-266-0075, 340-266-0140

Proposed Amendments: 340-266-0010, 340-266-0020, 340-266-0030, 340-266-0040, 340-266-0050, 340-266-0060, 340-266-0070, 340-266-0080, 340-266-0090, 340-266-0100, 340-266-0110, 340-266-0120, 340-266-0130, 340-200-0040

Last Date for Comment: 4-30-10, 5 p.m.

Summary: DEQ is proposing this rulemaking to implement changes to the Oregon field burning state statutes (ORS 468A.550 through 468A.620) as a result of the adoption of Senate Bill 528 by the 2009 Oregon Legislature. This legislation contained the following provisions, among others:

- Prohibits Willamette Valley field burning in 2010, except for “emergency burning” and “identified species/steep terrain burning,” described below.
- Authorizes the Environmental Quality Commission to approve “emergency burning” of up to 2,000 acres per year to address disease outbreaks and insect infestations, where the need for burning outweighs the danger to public health. Also allows the EQC to assess fees for this burning.
- Reduces the limit on the burning of certain fire-dependent “identified species” and grass fields located on “steep terrain” from 25,000 acres to 15,000 acres per year.
- Reduces the limit on propane flaming to 500 acres per year until 2013, and then none thereafter.
- Reduces the limit on stack burning to 1,000 acres per year until 2013, and then none thereafter.
- Doubles the registration and burn fees for the remaining field burning and other types of burning.
- Authorizes the Environmental Quality Commission to prohibit field burning in “critical non-burn areas”, such as fields where power transmission lines are present.

DEQ’s proposed rulemaking principally consists of the following:

- (1) Incorporates into rule the acreage limitations and fee increases in Senate Bill 528 described above.

(2) Based on Senate Bill 528, establishes a new rule for “emergency burning” and the criteria and procedures for approval. Delegation of authority to DEQ’s Director by the Environmental Quality Commission is being proposed for this rule, based on ORS 468A.610(11)(a). This rule also would require fees for this burning, to cover administrative and smoke management related costs.

(3) Based on Senate Bill 528, establishes a new rule for “critical non-burn areas” in the Willamette Valley and proposes to define these areas as grass seed or cereal grain fields with 230kV or greater power transmission lines present, and fields within 500 feet of any school, airport, or hospital. Prohibits burning on the acreage in these non-burn areas.

(4) Clarifies other requirements that restrict or prohibit field burning in certain areas of the Willamette Valley, such as near cities, highways, and airports.

(5) Includes a new rule that requires a burn fee for any field burning conducted outside the Willamette Valley. This fee is currently required under statute (ORS 468A.615). This rulemaking adds this fee to DEQ rules to align with Oregon Department of Agriculture (ODA) rules. Limited amounts of field burning currently take place in Jefferson, Union, and Umatilla counties.

(6) Proposes miscellaneous changes to better align DEQ and ODA field burning rules.

If adopted, DEQ will submit these rule revisions to the U.S. Environmental Protection Agency as a revision to the State of Oregon Clean Air Act Implementation Plan, which is a requirement of the Clean Air Act.

To request additional information, please contact Brian Finneran, at the Department of Environmental Quality (DEQ), 811 SW Sixth Ave. Portland, OR 97204, too free in Oregon at 800-452-4011 or (503) 229-6278. See also DEQ’s Field burning website www.deq.state.or.us/aq/burning/willamette.htm

Comments may be mailed to Brian Finneran at the above address, faxed too Brian Finneran at (503) 229-5675, or submitted by email to fieldburningrules@deq.state.or.us

Rules Coordinator: Maggie Vandehey

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

Telephone: (503) 229-6878

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
4-23-10	1:30 p.m.	500 Summer St. NE, Rm. 252 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 417.365, 417.371, 418.005, 419A.004, 419B.116 & 419B.192

Other Auth.: Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949-3981)

Stats. Implemented: ORS 109.119-109.123, 417.365, 417.371, 418.005, 419A.004, 419B.116, 419B.192 & 419B.875

Proposed Adoptions: 413-015-1200, 413-015-1210, 413-015-1220, 413-015-1230

Proposed Amendments: 413-010-0300, 413-010-0310, 413-010-0320, 413-010-0330, 413-010-0340

Last Date for Comment: 4-28-10

Summary: OAR 413-010-0300 about the purpose of the Department’s rules (OAR 413-010-0300 to 413-010-0345) concerning the rights of relatives of a child placed into the legal custody of the Department, OAR 413-010-0310 about the definitions used in the rights of relatives rules, OAR 413-010-0320 about a relative’s rights around participation in case planning and court hearings, OAR 413-010-0330 about a relative’s rights regarding communication and visitation with a child in the legal custody of the Department, and OAR

NOTICES OF PROPOSED RULEMAKING

413-010-0340 are being amended to clarify the Department's policies for this program, include definitions used throughout the rights of relatives rules (OAR 413-010-0300 to 413-010-0345), reflect current Department terminology, and bring the Department into compliance with federal requirements.

OAR 413-015-1200 about the purpose of the Department's rules (OAR 413-015-1200 to 413-015-1230) concerning the assessment of an individual as a safety service provider, OAR 413-015-1210 about the definitions used in the Department's rules concerning the assessment of an individual as a safety service provider, OAR 413-015-1220 about how the Department assesses an individual's involvement in the safety management for a child conducted under a protective action or ongoing safety plan, and OAR 413-015-1230 about the actions the Department takes when an individual has been approved or not approved to be a safety service provider are being adopted to set the requirements and responsibilities for the Department during the assessment of suitability for an individual to assist the Department in managing a child's safety.

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 April 28, 2010 at 5 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
4-23-10	1:30 p.m.	500 Summer St. NE, Rm. 252 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 418.517

Other Auth.: Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949-3981)

Stats. Implemented: ORS 109.119, 418.005, 418.517, 419A.004 & 419B.192

Proposed Amendments: 413-070-0060, 413-070-0063, 413-070-0066, 413-070-0069, 413-070-0072, 413-070-0075, 413-070-0078, 413-070-0081, 413-070-0087, 413-070-0400, 413-070-0410, 413-070-0430, 413-070-0450, 413-070-0470, 413-070-0480, 413-070-0490

Proposed Repeals: 413-070-0090, 413-070-0092, 413-070-093, 413-070-0440

Last Date for Comment: 4-28-10

Summary: OAR 413-070-0060 about the purpose of the Department's rules concerning the search for and engagement of relatives and persons with a caregiver relationship for a child or young adult when managing the child or young adult's safety, substitute care, permanent placement, or other needs; OAR 413-170-0063 about the definitions used in the search for and engagement of relatives and persons with a caregiver relationship rules; OAR 413-070-0060 about the Department's responsibilities when conducting a search for a child or young adult's relatives; OAR 413-070-0069 about the Department's responsibilities regarding when and how it identifies relatives and persons with a caregiver relationship; OAR 413-070-0072 about the Department's responsibilities concerning who it contacts when seeking to locate or engage a child or young adult's relatives or persons with a caregiver relationship and when it contacts those identified; OAR 413-070-0075 about how the Department assesses a child or young adult's relative for possible involvement in safety management; OAR 413-070-0078 about how the Department eval-

uates a child or young adult's relative or person with a caregiver relationship as a possible substitute care provider; OAR 413-070-0081 about when and how the Department reviews its effort to place a child or young adult with a relative or person with a caregiver relationship; and OAR 413-070-0087 about how the Department provides relatives and persons with a caregiver relationship the opportunity for ongoing connection and support with a child or young adult are being amended — and OAR 413-070-0090 about the Department's procedures in concluding that relative was not a suitable resource, OAR 413-070-0092 about how the Department developed an alternative permanency plan for a child, and OAR 413-070-0093 about the actions the Department took when it concluded a relative was a potential placement resource are being repealed — to clarify the rules concerning the search for and engagement of relatives and persons with a caregiver relationship for a child or young adult when managing the child or young adult's safety, substitute care, permanent placement, or other needs; reflect current Department terminology; and bring the search for and engagement of relatives and persons with a caregiver relationship rules into compliance with federal requirements.

OAR 413-070-0400 about the purpose of the Department's rules regarding the prescribing and administering of psychotropic medications to a child or young adult placed with a substitute caregiver; OAR 413-070-0410 about the definitions used in the Department's rules regarding the prescribing and administering of psychotropic medications to a child or young adult placed with a substitute caregiver; OAR 413-070-0430 about the Department's retention of the medical and mental health records of children and young adults in substitute care, the types of consents and notifications required before a new psychotropic medication prescription can be filled for a child or young adult placed with a substitute caregiver, the assessment required before administering of a new psychotropic medication prescription to a child or young adult placed with a substitute caregiver, and the circumstances under which the Department conducts reviews of psychotropic medication administered to a child or young adult placed with a substitute caregiver; OAR 413-070-0450 about when the Department must disclose to parents the medical or mental health care obtained by a child 14 years of age or older or a young adult in substitute care; OAR 413-070-0470 about the responsibilities, including notification and record keeping requirements, of the substitute caregiver when a child or young adult in substitute care obtains, fills, or is administered a psychotropic medication; OAR 413-070-0480 and 413-070-0490 about the requirements that apply to Department notices concerning a child or young adult in substitute care who is prescribed, obtains, or is administered psychotropic medications, including when notice is required, timing, and to whom notice must be provided are being amended — and OAR 413-070-0440 about who could authorize the administration of a psychotropic medication prescription in an emergency situation is being repealed — in response to recent legislation (HB 3114 (2009 Or. Laws ch. 853) which modified ORS 418.517) to clarify the Department's rules regarding the prescribing and administering of psychotropic medications to a child or young adult placed with a substitute caregiver, accurately reflect Department policy, include the definitions for key terms used in these rules, and reflect current Department terminology.

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 April 28, 2010 at 5 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

NOTICES OF PROPOSED RULEMAKING

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066
Telephone: (503) 945-6067

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
4-23-10	10 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 412.084, 418.005, 418.340 & 419B.340

Other Auth.: Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949–3981)

Stats. Implemented: ORS 409.050, 409.010, 412.084, 412.144, 418.005, 418.330, 418.335, 418.340, 418.625, 419B.175, 419B.180, 419B.185 & 419B.340

Proposed Adoptions: 413-070-0919, 413-070-0969, 413-070-0979, 413-100-0335, 413-100-0345

Proposed Amendments: 413-070-0900, 413-070-0905, 413-070-0909, 413-070-0917, 413-070-0925, 413-070-0970, 413-100-0000, 413-100-0010, 413-100-0020, 413-100-0030, 413-100-0060, 413-100-0070, 413-100-0080, 413-100-0090, 413-100-0110, 413-100-0120, 413-100-0130, 413-100-0135, 413-100-0150, 413-100-0160, 413-100-0170, 413-100-0180, 413-100-0190, 413-100-0210, 413-100-0230, 413-100-0240, 413-100-0250, 413-100-0270, 413-100-0320

Proposed Repeals: 413-070-0915, 413-070-0900(T), 413-070-0905(T), 413-070-0909(T), 413-070-0915(T), 413-070-0917(T), 413-070-0919(T), 413-070-0925(T), 413-070-0292, 413-070-0934, 413-070-0939(T), 413-070-0944(T), 413-070-0949(T), 413-070-0959(T), 413-070-0964(T), 413-070-0969(T), 413-070-0970(T), 413-070-0974(T), 413-100-0020(T), 413-100-0335(T), 413-100-0345(T)

Proposed Ren. & Amends: 413-070-0920 to 413-070-0929, 413-070-0930 to 413-070-0939, 413-070-0935 to 413-070-0949, 413-070-0937 to 413-070-0959, 413-070-0940 to 413-070-0974, 413-070-0945 to 413-070-0964, 413-070-0955 to 413-070-0964, 413-070-0960 to 413-070-0944, 413-070-0965 to 413-070-0934

Last Date for Comment: 4-28-10, 5 p.m.

Summary: OAR 413-070-0900 about the purpose of the Department's Guardianship Assistance program rules (OAR 413-070-0900 to 413-070-0979), OAR 413-070-0905 about the definitions used in the Department's Guardianship Assistance program rules, OAR 413-070-0909 about how the Department funds guardianship assistance, OAR 413-070-0917 about the requirements for a child to be eligible for guardianship assistance, OAR 413-070-0925 about when the Department may approve guardianship assistance, and OAR 413-070-0970 about social and support services available to the child and the guardian program are being amended; OAR 413-070-0915 about the requirements for a child to be eligible for guardianship assistance is being repealed; OAR 413-070-0920 about when guardianship is determined to be the most appropriate permanency plan for a child is being amended and renumbered to OAR 413-070-0929; OAR 413-070-0930 about the requirements for income and payment standards and medical benefits in the Guardianship Assistance program is being amended and renumbered to OAR 413-070-0939; OAR 413-070-0935 about the formulation of a guardianship assistance agreement between the Department and a guardian is being amended and renumbered to OAR 413-070-0949; OAR 413-070-0937 about court orders for guardianship is being amended and renumbered to OAR 413-070-0959; OAR 413-070-0940 about the suspension or termination of guardianship assistance benefits is being amended and renumbered to OAR 413-070-0974; OAR 413-070-0945 about annual reviews of guardianship assistance eligibility and required reporting by a guardian and OAR 413-070-0955 about changes a guardian must report are being amended and renumbered to OAR 413-070-0964; OAR 413-070-0960 about special payments to vendor attorneys and for legal expenses is being amended and renumbered to

OAR 413-070-0944; OAR 413-070-0965 about the application requirements for guardianship assistance is being amended and renumbered to OAR 413-070-0934; and OAR 413-070-0919 about the requirements for a tribe and a child in the care and custody of a tribe to be eligible for guardianship assistance, OAR 413-070-0969 about the renegotiation of a guardianship assistance agreement between the Department and a guardian, and OAR 413-070-0979 about the Guardianship Assistance Review Committee and procedures for appealing guardianship assistance decisions are being adopted to clarify the Department's policies for this program, include definitions used throughout the Guardianship Assistance program rules (OAR 413-070-0900 to 413-070-0979), reflect current Department terminology, and bring the Guardianship Assistance program into compliance with federal requirements. These rules also are being adopted and amended to make permanent temporary changes adopted on December 16, 2009 and February 1, 2010.

OAR 413-100-0000 about the purpose of the Department's Title IV-E Foster Care and General Assistance funding eligibility rules (OAR 413-100-0000 to 413-100-0345), OAR 413-100-0010 about the Title IV-E funding eligibility requirements, OAR 413-100-0020 about the definitions used in the Department's Title IV-E Foster Care and General Assistance funding eligibility rules, OAR 413-100-0030 about the requirements for documenting the certification or licensure of foster homes, OAR 413-100-0060 about which placements of and payments for children are Title IV-E reimbursable, OAR 413-100-0070 about which children's cases are referred for Title IV-E eligibility determinations, OAR 413-100-0080 about the effective date of Title IV-E eligibility, OAR 413-100-0090 about retroactive Title IV-E eligibility, OAR 413-100-0110 about how the Department determines the effective date for closure of Title IV-E eligibility, OAR 413-100-0120 about how the Department verifies Title IV-E eligibility, OAR 413-100-0130 about how Title IV-E eligibility determinations are made under the Aid to Families with Dependent Children (AFDC) administrative rules in effect on July 16, 1996 had an application for AFDC program benefits been made, OAR 413-100-0135 about Title IV-E eligibility requirements for a child to be living with a specified relative and how the child was removed from his or her home, OAR 413-100-0150 about the Title IV-E eligibility requirement that a child suffer from parental deprivation, OAR 413-100-0160 about the financial need eligibility requirement of the AFDC program, OAR 413-100-0170 about how the Department treats resources when determining AFDC program eligibility, OAR 413-100-0180 about how the Department treats the earned income of a student when determining AFDC program eligibility, OAR 413-100-0190 about how the Department treats unearned income when determining AFDC program eligibility, OAR 413-100-0210 about citizenship and immigration status requirements for Title IV-E eligibility, OAR 413-100-0230 about the age limitations on a child's Title IV-E eligibility, OAR 413-100-0240 about which judicial findings must be made for a child to be Title IV-E eligible, OAR 413-100-0250 about how the Department treats voluntary custody and voluntary placement agreements when determining Title IV-E eligibility, OAR 413-100-0270 about when and how the Department redetermines a child's Title IV-E eligibility, and OAR 413-100-0320 about the requirements for a child's Title XIX Medicaid eligibility are being amended; and OAR 413-100-0335 about Title IV-E eligibility determinations for children eligible for adoption assistance benefits and OAR 413-100-0345 about Title IV-E eligibility determinations for children eligible for guardianship assistance benefits are being adopted to clarify the Department's policies for this program, include definitions used throughout the Title IV-E Foster Care and General Assistance funding eligibility rules (OAR 413-100-0000 to 413-100-0345), reflect current Department terminology, and bring the Title IV-E Foster Care and General Assistance funding eligibility rules into compliance with federal requirements. These rules also are being adopted and amended to make permanent temporary changes adopted on December 16, 2009.

NOTICES OF PROPOSED RULEMAKING

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 April 28, 2010 at 5 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066

Telephone: (503) 945-6067

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

Rule Caption: April 2010 Technical changes to the January 1, 2009–December 31, 2011 Health Services Commission's Prioritized List of Health Services.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065, 414.737 & 409.010

Proposed Amendments: 410-141-0520

Last Date for Comment: 4-20-10

Summary: The Oregon Health Plan Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to certain clients. DMAP needs to permanently amend 410-141-0520 to reference the January 1, 2009–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

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: Caregiver Registry Licensing Program.

Date:	Time:	Location:
4-22-10	1:30 p.m.	800 NE Oregon St., Suite 1D Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 443.105

Stats. Implemented: ORS 443.005, 443.019, 443.035, 443.045, 443.100 & 443.105

Proposed Adoptions: 333-540-0005, 333-540-0010, 333-540-0015, 333-540-0020, 333-540-0025, 333-540-0030, 333-540-0035, 333-540-0040, 333-540-0045, 333-540-0050, 333-540-0055, 333-540-0060, 333-540-0065, 333-540-0070, 333-540-0075, 333-540-0080, 333-540-0085, 333-540-0090

Last Date for Comment: 4-23-10, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to adopt Oregon Administrative Rules relating to the establishment of standards for the operation and licensing of caregiver registries in response to the passage of SB 158 during the 2009 legislative session. These rules will provide a process for licensing, handling complaints, investigations of complaints, surveys, and discipline for caregiver registries by assessing a civil penalty.

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

**Department of Public Safety Standards and Training
Chapter 259**

Rule Caption: Amend policy committee representation, consistent with 2009 legislation (House Bill 2790).

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.637

Proposed Amendments: 259-006-0000

Last Date for Comment: 4-22-10, Close of Business

Summary: This rule amendment incorporates legislatively adopted changes to the membership of DPSST's discipline-specific policy committees, and incorporates in to our rules the list of members of the Private Security Policy Committee, which had previously been omitted from the list in the agency's rules.

Rules Coordinator: Marilyn Lorange

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2427

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Rule Caption: Amend policy committee representation, consistent with 2009 legislation (House Bill 2790).

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.637

Proposed Amendments: 259-007-0000

Last Date for Comment: 4-22-10, Close of Business

Summary: Housekeeping change to delete obsolete reference to the Advisory Committee on Private Security Services.

Rules Coordinator: Marilyn Lorange

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2427

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Rule Caption: Amend reference to process of selecting DPSST director, consistent with current statute.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.635

Proposed Amendments: 259-030-0000

Last Date for Comment: 4-22-10, Close of Business

Summary: Housekeeping change to reflect current statutory process for selecting Director of Department.

Rules Coordinator: Marilyn Lorange

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2427

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Rule Caption: Housekeeping change to ensure consistency in process of determining waiver eligibility.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-008-0060

Last Date for Comment: 4-22-10, Close of Business

Summary: Amendment will allow continuation of current waiver eligibility provisions that would otherwise be impacted by loss of DPSST Basic Supervision and Management Courses; additionally, current rule resulted in inconsistent waiver eligibility provisions for applicants for Executive certification. The proposed changes allow agency to continue current practice with regard to eligibility for waivers in these matters.

Rules Coordinator: Marilyn Lorange

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2427

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**Department of State Lands
Chapter 141**

Rule Caption: Amend rules authorizing uses of state-owned submerged and submersible land.

Date:	Time:	Location:
4-28-10	7–9 p.m.	Seafood Consumer Center 2021 Marine Dr. Astoria, OR

Hearing Officer: Jeff Kroft

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 183, 273 & 274

Other Auth.: OR Constitution, Art. VIII, Sec. 5

Stats. Implemented:

Proposed Adoptions: 141-082-0044

Proposed Amendments: 141-082-0000, 141-082-0030, 141-082-0040, 141-082-0060, 141-082-0070, 141-082-0080, 141-082-0090, 141-082-0100, 141-082-0110, 141-082-0130, 141-082-0140, 141-082-0150, 141-082-0160, 141-082-0170, 141-082-0200

Proposed Repeals: 141-082-0046, 141-082-0049, 141-082-0101, 141-082-0105, 141-082-0120, 141-082-0190, 141-082-0210

Proposed Ren. & Amends: 141-082-0020 to 141-082-0004, 141-082-0010 to 141-082-0014

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

Summary: These rules govern the granting of leases, public facility licenses and registrations for a wide variety of commercial and non-commercial and public uses in, on, under and over state-owned submerged and submersible land. Since they were last amended in 2002, DSL staff and the public have identified a number of changes that need to be made to these rules to clarify various provisions; streamline some of the processes used; ensure that the definitions of terms used in the rules are the same as those recently used in other rules; and have the same format now used when creating new or amending existing rules. Additionally, DSL is proposing to increase the application fees for its registration program as well as the application fee for a public facility license to enable the Department to cover the costs of its Removal-Fill Program as well as this and other agency activities.

In September 2009, DSL made its first revisions to these rules available for public review. During three public hearings and the public comment period, DSL received considerable input concerning its proposed revisions. In response to the public comments, DSL has made a number of changes to these rules, among which include:

- Allowing legally constituted diking or other special districts and persons to use a single application and pay one fee to apply for a registration for dikes, rip-rap and tide gates.
- Deferring until July 1, 2011 when the proposed increases in the registration fees would take effect.
- Allowing a person who holds a registration to apply for a new 5-year registration at the current rate until June 30, 2011.
- Modified the requirement that a person making repairs to a structure must notify DSL.

Rules Coordinator: Elizabeth Martino

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

Telephone: (503) 986-5239

.....
Department of Transportation
Chapter 731

Rule Caption: Procurement Rules Addressing 2009 Legislative Changes for Public Contracting.

Date:	Time:	Location:
4-19-10	1 p.m.	355 Capitol St. NE, Rm. 122 Salem, OR

Hearing Officer: Kathy Booher

Stat. Auth.: ORS 184.616, 184.619 & 279A.065

Stats. Implemented: ORS 279A.050 & 279A.065, 279B, 279C, 2009 OL Ch. 880 (HB 2867) & 2009 OL Ch. 235 (SB 479)

Proposed Amendments: 731-005-0410, 731-005-0470, 731-005-0670, 731-007-0210, 731-007-0260, 731-007-0290, 731-146-0010, 731-147-0010, 731-148-0010, 731-149-0010

Last Date for Comment: 4-21-10

Summary: The 2009 Oregon Legislature passed bills affecting public procurements of goods and services, including HB 2867 (Ch 880 OL 2009) and SB 479 (Ch 235 OL 2009). ODOT is proposing to permanently adopt the Attorney General's model public contracting rules as well as changes to OAR 731 divisions 005 and 007. The changes reflect the requirements related to contracting with disabled veterans, revisions to clarify several defined terms (see OAR chap-

ter 137, division 46); revisions to implement HB 2867, including feasibility and cost analysis, good cause for not requiring contractors to meet highest performance standards, consequences of contractors failing to meet performance standards, provisions dealing with Competitive Sealed Bidding and Proposals, Procedures for Competitive Range and Discussions and Negotiations for Multi-tiered and Multistep Proposals, Small Procurements, Bids or Proposals as Offers, Late Offers, Late Withdrawals and Late Modifications, Prequalification of Prospective Offerors, Pre-negotiation of Contract Terms and Conditions, Offer Evaluation and Award, Availability of Award Decisions, Amendments to Contracts and Price Agreements, revisions to simplify and clarify other provisions (see OAR chapter 137, division 47); 2009 legislative changes affecting procurements of Architectural, Engineering and Land Surveying Services and Related Services, including, Applicable Selection Procedures, Pricing Information, Disclosure of proposals, increase in the small estimated fee amount to \$50,000, revisions to clarify the defined terms "Procurement" and "Consultant" and to simplify several provisions (see OAR chapter 137, division 48); providing clarity regarding when the first-tier subcontractor disclosure form is required, requirements for determining an Offeror's responsibility, form and manner of withholding retainage and other clarifications to existing rules (see OAR chapter 137, Division 49.)

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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

Rule Caption: Provisions Regarding Administrative Review of a Driver License Suspension, Revocation or Cancellation.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 809.140 & 809.440

Stats. Implemented: ORS 809.140 & 809.440

Proposed Amendments: 735-001-0050

Last Date for Comment: 4-21-10

Summary: OAR 735-001-0050 specifies when DMV will provide an administrative review in addition to those circumstances specified in ORS 809.140. There have been some changes to statute regarding when DMV will provide an administrative review and DMV proposes to amend the rule to reflect those changes.

DMV proposes to amend OAR 735-001-0050 to delete two outdated references. The limited vision condition program is no longer a pilot program and no longer contains a provision for DMV to notify all persons issued a driving privilege under the program of a cancellation effective on June 30, 2008, for which the person was entitled to an administrative review. Therefore DMV proposes to amend Section (2) of the rule. Likewise the provision providing an administrative review based on a denial of a certificate of eligibility by the State Health Officer has changed as DMV now employs a Medical Determination Officer and any person denied driving privileges due to a determination by DMV is entitled to a contested case hearing. Therefore DMV proposes to amend Section (5) of the rule.

DMV proposes to amend OAR 735-001-0050 to add three new sections to describe when DMV will provide an administrative review as provided by law. These sections update statutory changes. In addition to those circumstances already described, DMV will provide an administrative review when a hazardous materials endorsement is canceled under ORS 807.173, when there is a lapse in future financial responsibility filings under ORS 809.415(3)(c) and when DMV receives notification from the Federal Highway Safety Administration that a person is disqualified from holding a commercial driver license as an imminent hazard under ORS 809.413(8).

DMV also proposes to correct and update statutory references.

NOTICES OF PROPOSED RULEMAKING

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: Department of Transportation Tow Hearing Process addressing 2009 legislative changes.

Stat. Auth.: ORS 184.616, 184.619 & 2009 OL Ch. 371

Stats. Implemented: ORS 819.110–819.190 (as amended by 2009 OL Ch. 371)

Proposed Adoptions: 734-020-0148

Last Date for Comment: 4-21-10

Summary: The rule is needed to establish the hearing process required by changes to the agency responsibility for tow hearings in HB 2738 passed by the 2009 Legislature. The change shifts responsibility for abandoned vehicle and hazard vehicle tows from the sheriff's office to the agency responsible for ordering the tow.

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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**Employment Department
Chapter 471**

Rule Caption: Allow federal extension of 100% Extended Benefits to apply to additional qualified individuals.

Stat. Auth.: ORS 657.610

Stats. Implemented:

Proposed Adoptions: 471-030-0225

Last Date for Comment: 5-1-10

Summary: Allow federal extension of 100% Extended Benefits to apply to additional qualified individuals. This rule will permit additional individuals to qualify beyond their benefit year.

Rules Coordinator: Courtney Brooks

Address: Employment Department, 875 Union St. NE, Salem, OR 97311

Telephone: (503) 947-1250

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**Land Conservation and Development Department
Chapter 660**

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

Date:	Time:	Location:
4-15-10	9 a.m.–12 p.m.	City of Portland Bureau of Planning Bldg. 1900 SW 4th Ave., Rm. 2500 Portland, OR

4-22-10	8:30 a.m.	City Hall, Council Chambers 801 SW Hwy. 101 Lincoln, City, OR
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Hearing Officer: LCDC

Stat. Auth.: ORS 197.040

Other Auth.: Statewide Planning Goals 3, 4, 5, 8 & 12 (OAR 660-015)

Stats. Implemented: ORS 195.137–195.145 & 2007 OL Ch. 723

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

Last Date for Comment: 4-22-10

Summary: The proposed amendments make minor modifications to rules under OAR 660, division 27, that currently prohibit counties and Metro from making any amendments to land use regulations applied to areas designated as urban or rural reserves in the Portland

Metro area. The proposed rule amendments would allow only certain land use regulation amendments, pertaining to:

(1) Newly inventoried Goal 5 Resources. Currently Goal 5 and its implementing rules and related statutes require plan amendments and corresponding zone amendments to recognize and protect newly-inventoried significant Goal 5 resources. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to respond to new to amended Goal 5 inventories.

(2) New roads, highways and other transportation facilities and improvements. Statutes and LCDC rules, including ORS 215.213(10)(a), ORS 215.238(10)(a), and ORS 215.296, require plan and zone amendments, including exceptions to statewide goals, in order to authorize certain new roads, highways and other transportation facilities and improvements. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to authorize new roads, highways and other transportation facilities and improvements; and

(3) New or amended regional park or trail plans and uses authorized in such plans. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to authorize new or amended regional park or trail plans, including authorization for trails and regional park uses authorized by such plans.

Rules Coordinator: Casaria Tuttle

Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 250, Salem, OR 97301

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

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**Landscape Contractors Board
Chapter 808**

Rule Caption: Clarifies uniforms are not required to include the LCB number, eliminates the fee for a new license card, clarifies bond language.

Date:	Time:	Location:
4-22-10	9 a.m.	2111 Front St. NE, Suite 2-101 Salem, OR 97301

Hearing Officer: Michael Snyder

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.530, 671.650, 671.660 & 671.690

Proposed Amendments: 808-003-0010, 808-003-0130, 808-003-0610

Last Date for Comment: 4-22-10, Close of Hearing

Summary: 808-003-0010 – Clarifies that uniforms are not required to include the landscape contracting business license number.

808-003-0130 – Eliminates the requirements for a licensee to pay a fee when a new card is required to be issued.

808-003-0610 – Clarifies bonds effective January 1, 2010 should state “landscape contracting business”; not “contractor.”

Rules Coordinator: Kim Gladwill-Rowley

Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301

Telephone: (503) 378-5909

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Rule Caption: Clarifies a landscape contracting business may only advertise for, bid on, contract for or perform those phases of landscape work for which its owners or employees hold a valid landscape construction professional license.

Date:	Time:	Location:
4-22-10	9 a.m.	211 Front St. NE, Suite 2-101 Salem, OR

Hearing Officer: Michael Snyder

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.530, 671.560 & 671.565

Proposed Amendments: 808-002-0885, 808-003-0010, 808-003-0018, 808-003-0040, 808-003-0045, 808-003-0125

Proposed Repeals: 808-003-0200

Last Date for Comment: 4-22-10, Close of Hearing

NOTICES OF PROPOSED RULEMAKING

Summary: 808-002-0885 – Clarifies a “valid” as an active license.

808-003-0010 – Does not allow a landscape contracting business to advertise to work outside the scope of the business’ license.

808-003-0018 – Clarifies how a landscape contracting business must employ the landscape construction professionals and moves change of license phase to another rule.

808-003-0040 – Updates title of section and clarifies a landscape contracting business may only advertise for, bid on, contract or perform those phases of landscaping work for which its owners or employees hold a valid license.

808-003-0045 – Clarifies if a phase of license for a landscape contracting business changes, that business must immediately stop advertising, bidding, contracting or performing those phases of landscaping work they no longer hold a valid license for and moves notification to the LCB of change of license phase to a new section.

808-003-0125 – Clarifies notification of the LCB of a change of license phase.

808-003-0200 – Repealed; landscape contracting businesses are no longer allowed to bid on landscaping work that includes the phase of landscaping work for which is not licensed.

Rules Coordinator: Kim Gladwill-Rowley

Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301

Telephone: (503) 378-5909

Rule Caption: Updates civil penalties; clarifies hours and documentation for continuing education; allows agency administrator to approve courses taken more than 30 days prior to approval.

Date:	Time:	Location:
4-22-10	9 a.m.	2111 Front St. NE, Suite 2-101 Salem, OR

Hearing Officer: Michael Snyder

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.676

Proposed Amendments: 808-005-0020, 808-040-0020, 808-040-0050, 808-040-0060

Last Date for Comment: 4-22-10, Close of Hearing

Summary: 808-005-0020 – Updates civil penalties to include penalty for failure to submit complete continuing education documentation and failure to complete the hours by deadline.

808-040-0020 – Clarifies hours used to meet the education requirement for one licensing period cannot be reported to meet the education requirement of another licensing period.

808-040-0050 – Allows agency administrator to approve courses taken more than 30 days prior and accredited college and university courses relating to landscaping do not require pre-approval.

808-040-0060 – Clarifies satisfactory documentation of completing the required continuing education.

Rules Coordinator: Kim Gladwill-Rowley

Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301

Telephone: (503) 378-5909

Oregon Board of Naturopathic Medicine Chapter 850

Rule Caption: Rule will state the specific compensation for Board members.

Stat. Auth.: ORS 685.125

Other Auth.: ORS 292 & 182

Stats. Implemented: ORS 685.190

Proposed Adoptions: 850-005-0190

Last Date for Comment: 4-30-10

Summary: Compensation to Board members will be outlined in this rule per ORS 292.145

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: To clarify specific authority of naturopathic physicians.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Proposed Amendments: 850-060-0220

Last Date for Comment: 4-30-10

Summary: Clarifies language of authority of licensees.

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: These rules have been revised due to 2009 Legislation.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320–285B.371

Proposed Amendments: 123-011-0021, 123-011-0025, 123-011-0027, 123-011-0030, 123-011-0035, 123-011-0040

Last Date for Comment: 4-22-10

Summary: These rules for Economic Development Revenue Bonds have been revised due to HB 2152 in the 2009 Legislative Session. The name of the department has been changed, eligibility requirements have been updated and some definitions have been removed and other revised. Statute references have been revised as well.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

Rule Caption: Rules relate to the Business Retention Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Proposed Amendments: 123-016-0000, 123-016-0010, 123-016-0020, 123-016-0030

Last Date for Comment: 4-22-10

Summary: These rules are revised due to changes in 2009 Legislation through HB 2152 changing the name of the department. The name of the funds has also been changed.

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 revise the Capital Access Program.

Stat. Auth.: ORS 285A.075, 285B.109–285B.119 & 183.310–183.550

Stats. Implemented: ORS 285B.109–285B.119

Proposed Amendments: 123-018-0010, 123-018-0020, 123-018-0080, 123-018-0085, 123-018-0100, 123-018-0120, 123-018-0150, 123-018-0160

Last Date for Comment: 4-22-10

Summary: These rules revise the Capital Access Program based on 2009 Legislation through HB 2152. Revisions include updating the department’s name and eliminating and revising definitions. The main update to the rules is including new language to the Termination of and Withdrawal from Program section that allows the department to terminate a failed Participating Financial Institution’s membership in the Program and transfers the funds back to the department based on the institution being closed or taken over by the FDIC.

Statutory references have been updated.

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

Rule Caption: These rules revise the eligibility requirements of the Credit Enhancement Fund.

Stat. Auth.: ORS 285A.075 & 285A.213

Stats. Implemented: ORS 285A.213

Proposed Amendments: 123-021-0020

Last Date for Comment: 4-22-10

Summary: These rules revise the eligibility requirements for the Credit Enhancement Fund.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

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Rule Caption: These update the Strategic Investment Program.

Stat. Auth.: ORS 285A.075 & 285C.615

Stats. Implemented: ORS 285C.615(7)

Proposed Renumberings: 123-023-1200 to 123-623-1200, 123-023-1250 to 123-623-1250, 123-023-1300 to 123-623-1300, 123-023-1525 to 123-623-1525, 123-023-3300 to 123-623-3300

Proposed Ren. & Amends: 123-023-1000 to 123-623-1000, 123-023-1100 to 123-623-1100, 123-023-1400 to 123-623-1400, 123-023-1500 to 123-623-1500, 123-023-1550 to 123-623-1550, 123-023-1600 to 123-623-1600, 123-023-1700 to 123-623-1700, 123-023-1800 to 123-623-1800, 123-023-1900 to 123-623-1900, 123-023-1950 to 123-623-1950, 123-023-2000 to 123-623-2000, 123-023-3000 to 123-623-3000, 123-023-3100 to 123-623-3100, 123-023-3200 to 123-623-3200, 123-023-3400 to 123-623-3400, 123-023-4000 to 123-623-4000, 123-023-4100 to 123-623-4100

Last Date for Comment: 4-22-10

Summary: These rules revise the Operational Changes to Existing Designations to include statutory requirements regarding the Oregon Business Development Commission. Other basic housekeeping changes have been made in definitions and other areas.

This division has been renumbered from 123-023 to 123-623.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

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Rule Caption: This new rules set relates to Recovery Zone Bonds.

Stat. Auth.: ORS 285A.630 & 285A.075

Stats. Implemented: ORS 285A.630(4) & 285A.075

Proposed Adoptions: 123-165-0010, 123-165-0020, 123-165-0030, 123-165-0040, 123-165-0045, 123-165-0050

Last Date for Comment: 4-22-10

Summary: These rules implement HB 3199 from the 2009 Legislative Session. The rules describe the process and criteria for allocation and reallocation of funds from Oregon's recovery Zone Economic Development Bonding Authority and Recovery Zone Facility Bonding Authority. They describe the use of original allocation and reallocation of the bonds as well as bonds cap.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

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Rule Caption: These rules relate to OMWESB Certification Procedures.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Proposed Adoptions: 123-200-0005, 123-200-0010, 123-200-0020, 123-200-0030, 123-200-0040, 123-200-0050, 123-200-0060, 123-200-0070, 123-200-0080, 123-200-0090, 123-200-0100, 123-200-0120, 123-200-0130, 123-200-0140, 123-200-0150, 123-200-0160, 123-200-0170, 123-200-0180, 123-200-0190, 123-200-0200

Last Date for Comment: 4-22-10

Summary: These rules relate to the certification procedures for the programs offered by the Office of Minority, Women and Emerging Small Business in 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

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Rule Caption: Revises the Port Revolving Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669-285A.723 & 285A.690

Proposed Amendments: 123-030-0050

Last Date for Comment: 4-22-10

Summary: These rules are being revised in 123-030-0050 to replace Authority with Department. Statutory references have been updated.

Rules Coordinator: Mindee Sublette

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

Telephone: (503) 986-0036

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Oregon Department of Education Chapter 581

Rule Caption: Modifies rule relating to administration of state assessments by school districts.

Date:	Time:	Location:
4-21-10	2 p.m.	Oregon Dept. of Education 255 Capitol St. NE Salem, OR

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 326.051 & 32.075

Stats. Implemented: ORS 329.075 & 329.485

Proposed Amendments: 581-022-0610

Last Date for Comment: 4-21-10, 5 p.m.

Summary: Allows school district to delegate assessment responsibilities to another school district or education service district.

Removes reference to Oregon School for the Blind.

Removes OAKs paper/pencil and OAKs Large Print as format for paper-based administration of state assessment.

Allows school districts to print test items under certain circumstances.

Rules Coordinator: Diane Roth

Address: 255 Capitol St NE, Salem, OR 97310

Telephone: (503) 947-5791

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Oregon Film and Video Office Chapter 951

Rule Caption: Rate change for qualifying tax credit purchases and change in maximum credits to be sold.

Stat. Auth.: ORS 284.335 & 315.514

Stats. Implemented: ORS 315.514

Proposed Amendments: 951-003-0005

Last Date for Comment: 4-22-10, Close of Business

Summary: Change the rate at which credits may be purchased from a flat rate to a formula tied to the 2 year Treasury Note; Raise the maximum amount of tax credits sold per fiscal year to \$7.5 million, per SB 621.

Rules Coordinator: Susan Haley

Address: 1001 SE Water Avenue, Suite 430, Portland, OR 97214

Telephone: (503) 229-5832

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Oregon Liquor Control Commission Chapter 845

Rule Caption: Adopt new rule implementing statute creating certificate of approval for importing distilled spirits into Oregon.

Date:	Time:	Location:
4-27-10	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Jennifer Huntsman
Stat. Auth.: ORS 471, 471.030, 471.251 & 471.730(1), (5) & (8)
Stats. Implemented: ORS 471.251 & 471.404
Proposed Adoptions: 845-006-0380
Last Date for Comment: 5-11-10

Summary: The 2009 legislature passed Senate Bill (SB) 135 which creates new statutory provisions and amended ORS 471.404 effective January 1, 2010. These statutory changes create a new certificate of approval for distilled spirits (plus grain and ethyl alcohol) which authorizes their import into Oregon for sale in the state. The new proposed rule would clarify that a certificate of approval will be automatically issued by the Commission to all manufacturers, importers and vendors who import distilled spirits (or grain and ethyl alcohol) into Oregon, with no application process or fee. The new rule will also establish financial assistance violations as grounds for suspension or revocation of the certificate of approval.

Rules Coordinator: Jennifer Huntsman
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
Telephone: (503) 872-5004

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Rule Caption: Adopt new rule setting standards for approved seller training programs.

Date:	Time:	Location:
4-29-10	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman
Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.410
Proposed Adoptions: 845-009-0150
Last Date for Comment: 5-13-10

Summary: This new rule provides information on Commission-approved training programs that can be used by alcohol sellers to receive a reduced criminal penalty when they sell to a minor. The 2009 legislature passed House Bill (HB) 3343, effective January 1, 2010, giving sellers this new option. HB 3343 amends ORS 471.410 creating a new provision for employees of a liquor licensee or retail sales agent who sell, serve, give or otherwise make alcohol available to a minor. These employees may receive a reduced permit or have completed a Commission-approved training program. The proposed rule would set the standards and procedures the Commission will use when approving seller training programs and also clarify record-keeping responsibilities.

Rules Coordinator: Jennifer Huntsman
Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222
Telephone: (503) 872-5004

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Oregon Public Employees Retirement System Chapter 459

Rule Caption: Clarify the interaction of the leave without pay (LWOP), creditable service, and retirement credit rules.

Date:	Time:	Location:
4-27-10	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 238.005, 238.300 & 238A.140
Proposed Amendments: 459-010-0010, 459-010-0014, 459-075-0150
Last Date for Comment: 4-30-10

Summary: Minor edits to these rules were recommended to reconcile perceived conflicting standards for the accrual of service credit and the loss of service credit for periods of LWOP. The primary modifications clarify that a leave without pay of at least 11 business days in a calendar month precludes the accrual of creditable service in the PERS Chapter 238 Program or retirement credit in the

OPSRP Pension Program for that month. The proposed modifications also clarify the standards for accrual of Educational Service Credit. Other minor edits are proposed for clarity and consistency. The proposed modification accommodate current practice and functionality.

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

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

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Rule Caption: Clarifies SB 897 provisions regarding retirement credit for retroactive salary payments.

Date:	Time:	Location:
4-27-10	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.105 & 2007 OL Ch. 769, Enrolled SB 897 (2010)
Proposed Amendments: 459-011-0050
Proposed Repeals: 459-010-0042
Last Date for Comment: 4-30-10

Summary: SB 897 provides that if a retroactive payment of wages is included in the salary of an employee, the employee shall receive retirement credit for the periods to which the payment was allocated.

OAR 459-010-0042 (Repeal): All sections of this rule other than section (4) are redundant and do not require clarification in OAR. The only relevant section (4) is being moved into OAR 459-011-0050.

OAR 459-011-0050: The proposed changes to this rule incorporate the voluntary redeposit section (4) from repealed OAR 459-010-0042.

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

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

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Oregon University System, University of Oregon Chapter 571

Rule Caption: Amend special fees, fines, penalties, and service charges.

Date:	Time:	Location:
4-22-10	3-5 p.m.	Erb Memorial Union, Rogue Room University of Oregon Eugene, OR

Hearing Officer: Deb Donning
Stat. Auth.: ORS 351.070 & 352
Stats. Implemented: ORS 351.070
Proposed Amendments: 571-060-0005
Last Date for Comment: 4-23-10, 12 p.m.

Summary: The University administration has determined that the adoption of the amendments to the fee list will be necessary in order to provide the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, and penalties.

Rules Coordinator: Deb Donning

NOTICES OF PROPOSED RULEMAKING

Address: Oregon University System, University of Oregon, 1226 University of Oregon, Eugene, OR 97403
Telephone: (541) 346-3082

.....
Public Utility Commission
Chapter 860

Rule Caption: In the Matter of Clarifying Changes to Rules regarding the RSPF Surcharge and Remittance Reports.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290

Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290

Proposed Amendments: 860-033-0006, 860-033-0007, 860-033-0008

Last Date for Comment: 4-23-10, Close of Business

Summary: (Docket AR 542) The proposed amendments correct a statutory citation; clarify the authority for the exemption of counties and political subdivisions, and for federal, state and municipal government bodies or public corporations; and further clarify when the late report fee may be assessed so that the rule language is consistent with other reporting and fee collection activities related to telecommunications providers.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 542 on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418.

For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16102>

Rules Coordinator: Diane Davis

Address: PO Box 2148, Salem, Oregon 97308

Telephone: (503) 378-4372

.....
Public Utility Commission,
Board of Maritime Pilots
Chapter 856

Rule Caption: Expands the number of qualifying continuing professional development courses and adds safety training.

Stat. Auth.: ORS 670 & 776

Stats. Implemented: ORS 670.310 & 776.1185

Proposed Adoptions: 856-010-0027

Proposed Amendments: 856-010-0015

Last Date for Comment: 4-26-10

Summary: Continuing professional development (CPD) requirements were first adopted in 2000 and have not significantly changed since then. Since that time, numerous and varied types of courses and facilities have been developed for the maritime industry. The original CPD requirements are proposed to be deleted from the Renewal of License rules and incorporated into new rule as an expanded list of approved topics from which licensees can choose, to comply with requirements for annual license renewals. The requirements must be completed within 63 months prior to the expiration date of a license. The new rule also requires one day of personal safety training per year.

Rules Coordinator: Susan Johnson

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

Telephone: (971) 673-1530

.....
Secretary of State,
Business Services Division
Chapter 167

Rule Caption: Updating the procurement rules for the Secretary of State.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.065 & 279A.070

Proposed Amendments: 167-001-0005, 167-001-0007, 167-001-0030, 167-001-0081, 167-001-0085, 167-001-0360, 167-001-0605

Last Date for Comment: 4-30-10

Summary: The Secretary of State is amending current procurement rules to incorporate recent legislative action as well as Department of Administrative Services Rules and Department of Justice Administrative rules into their rules.

Rules Coordinator: Robin Rickard

Address: Secretary of State, Business Services Division, 255 Capitol St. NE, Suite 180, Salem, OR 97310

Telephone: (503) 986-2357

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

Rule Caption: This rule sets notary administrative services fees.

Stat. Auth.: ORS 194.052 & 194.164

Stats. Implemented: ORS 177.130, 192.440, 194.020, 194.052 & 194.164

Proposed Amendments: 160-100-0040

Last Date for Comment: 4-21-10

Summary: This rule sets the fees that Secretary of State shall charge for performing notary administrative services.

Rules Coordinator: Karen Hutchinson

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

Telephone: (503) 986-2364

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

Rule Caption: Amendment of the 2010 Campaign Finance Manual.

Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200

Stats. Implemented: ORS 260.005, 260.007, 260.035, 260.037, 260.038, 260.039, 260.041, 260.042, 260.043, 260.044, 260.045, 260.046, 260.049, 260.054, 260.055, 260.056, 260.057, 260.076, 260.078, 260.083, 260.085, 260.102, 260.112, 260.118, 260.156 & 260.232

Proposed Amendments: 165-012-0005

Last Date for Comment: 4-20-10

Summary: This proposed amendment revises the 2010 Campaign Finance Manual by adopting updated circumstances of when a transaction is considered late. The amendment provides that if the transaction type is amended from any transaction type other than a contribution or expenditure to a contribution or expenditure, and the original transaction was filed after the deadline (the transaction is considered late from the transaction due date to the date the original transaction is filed).

Rules Coordinator: Brenda Bayes

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

Telephone: (503) 986-1518

.....
Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Considers rules regarding Career and Technical Education (CTE) Licenses, disciplinary action, and other licensure rules.

Date:

4-22-10

Time:

1-3 p.m.

Location:

TSPC Office
465 Commercial St. NE
Salem, OR 97301

Hearing Officer: Victoria Chamberlain

Stat. Auth.: ORS 342

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 342.120, 342.127 & 342.165

Proposed Adoptions: 584-042-0021, 584-042-0031, 584-042-0036, 584-042-0041, 584-042-0044, 584-042-0051, 584-042-0060, 584-042-0070, 584-042-0081, 584-042-0090

Proposed Amendments: 584-020-0040, 584-036-0055; 584-044-0014, 584-044-0015; 584-080-0012

Last Date for Comment: 5-13-10

Summary: (1) 584-020-0040: *Grounds for Disciplinary Action:* Reconciles 60-day failure to give notice with statutory changes. Makes standards for assigning educator without valid licensure (administrators) the same as teachers working without valid license.

(2) 584-036-0055: *Fees:* Renames new CTE licenses, adds provision for intermittent renewal of new CTE licenses, clarifies language.

(3) 584-042-0021: *Definitions:* Updates and clarifies definitions for new CTE rules.

(4) 584-042-0031: *Career and Technical Education I Teaching License:* Creates new CTE I license.

(5) 584-042-0036: *Career and Technical Education II Teaching License:* Creates new CTE II license.

(6) 584-042-0041: *Assignment of a CTE Program:* Clarifies requirements for CTE assignments.

(7) 584-042-0044: *Career and Technical Education Endorsements:* Explains endorsements for CTE licenses.

(8) 584-042-0051: *Career and Technical Education (CTE) Professional Development Plan:* Clarifies requirements for the CTE Professional Development Plan.

(9) 584-042-0060: *Waivers:* Explains the waivers of work experience or associates degree requirements.

(10) 584-042-0070: *Career and Technical Education Work Experience:* Clarifies work experience.

(11) 584-042-0081: *Career and Technical Education Restricted Substitute Teaching License:* Explains requirements and limitations for CTE Restricted Substitute Teaching licenses.

(12) 584-042-0090: *Transfer of a CTE I or CTE II License to Another District:* Clarifies requirements of CTE license holder to transfer to another district.

(13) 584-044-0014: *Basic School Psychologist:* Removes obsolete language.

(14) 584-044-0015: *Standard Personnel Service License Requirements:* Deletes obsolete language.

(15) 584-080-0012: *Initial Administrator License (IAL):* Clarifies work beyond Initial Administrator may occur anytime after the

master's is received. Continuing Administrator License (CAL) or equivalent must be completed within 3 years of obtaining a superintendent position only when position is in Oregon.

Rules Coordinator: Victoria Chamberlain

Address: Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301

Telephone: (503) 378-6813

.....
Travel Information Council
Chapter 733

Rule Caption: Amend rules to change Logo definitions, criteria, requirements, and qualifications.

Stat. Auth.: ORS 377.700–377.840

Stats. Implemented: ORS 183.310–183.550

Proposed Amendments: Rules in 733-030

Last Date for Comment: 4-22-10

Summary: The travel information council held a quarterly meeting on March 12, 2010. The Council proposed to amend rules for qualification of Attraction Logo signs, to define travel Plazas, amend the number of supplemental logo plaques, and add approved supplemental messages.

Rules Coordinator: Diane Cheyne

Address: Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302

Telephone: (503) 378-4508

.....
Veterinary Medical Examining Board
Chapter 875

Rule Caption: Updates minimum standards for pain management for veterinary dental patients.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.040 & 686.370

Proposed Amendments: 875-015-0050

Last Date for Comment: 4-30-10

Summary: Adds requirements for pain management of veterinary dental patients in conformance with industry practices and minimum standards of care.

Rules Coordinator: Lori Makinen

Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232

Telephone: (971) 673-0224

ADMINISTRATIVE RULES

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Amending division 94 to expand the jurisdiction and to add some definitions.

Adm. Order No.: PAR 2-2010

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 2-26-10

Notice Publication Date: 2-1-2010

Rules Adopted: 255-094-0002

Rules Amended: 255-094-0010, 255-094-0015, 255-094-0020

Rules Ren. & Amend: 255-094-0000 to 255-094-0006

Subject: These rules are being amended to add a "Definitions" section, and to include the Local Supervisory Authority in the rules.

Adding 255-094-0002 to provide definition of Releasing Authority.

Renumbering 255-094-0000 to 255-094-0006 to better organize the rules of division 94 and because the new rule added at the beginning of the division.

Rules Coordinator: Michelle Mooney—(503) 945-0914

255-094-0002

Definitions

(1) Releasing Authority means:

(a) The Board or its designee for:

(A) Any felony offender who received a sentence of more than twelve (12) months in the custody of the Department of Corrections; or

(B) Any felony offender who received a sentence of twelve (12) months or less but who also has an additional sentence(s) of greater than twelve (12) months.

(i) If an offender is on post-prison supervision for multiple sentences which include a sentence that exceeds twelve (12) months ("Board case") and sentence of twelve (12)-months or less ("Local Supervisory Authority case"), the Board will maintain jurisdiction of the post-prison supervision of the Local Supervisory Authority case until the Board's active involvement in the Board case(s) expires. Following expiration of the Board's case(s), the Board will maintain jurisdiction over the post-prison supervision of the Local Supervisory Authority case(s) until an offender is re-released following revocation of the post-prison supervision for the Local Supervisory Authority case(s), or until the Local Supervisory Authority petitions to assume jurisdiction, whichever comes first. Jurisdiction will fall under the Local Supervisory Authority at that point.

(ii) If the Board issued the order of post-prison supervision for an offender whose only sentence was twelve (12) months or less, jurisdiction will remain with the Board until petition by the Supervisory Authority to assume jurisdiction or upon re-release following revocation of the post-prison supervision for that sentence; whichever comes first.

(b) The Local Supervisory Authority or its designee for any felony offender whose crime was committed after November 1, 1989, was sentenced by the court to twelve (12) months or less, and who does not have an additional sentence of more than twelve (12) months for a felony.

Stat. Auth.: ORS 144.085, 1995 SB 1145, 1999 OL 163 & 924

Stats. Implemented: ORS 144.085

Hist.: PAR 2-2010, f. & cert. ef. 2-26-10

255-094-0006

Period of Active Parole or Post-Prison Supervision

(1) The minimum periods of active parole and post-prison supervision shall be:

(a) Six (6) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 1, 2 and 3;

(b) Twelve (12) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 4, 5, 6, 7, 8, 9 and 10;

(c) For offenders whose crimes were committed after December 4, 1986, but prior to November 1, 1989, the period of active supervision shall be set by determining the equivalent sentencing guidelines crime category and applying sub-section (a) and (b) above, subject to the exceptions in section (2) below;

(d) For offenders whose crimes were committed prior to December 4, 1986, the Releasing Authority shall apply the rules in effect at the time the crime was committed.

(2) The following minimum periods of active parole and post-prison supervision are exceptions to section (1) of this rule:

(a) Three (3) years for offenders sentenced as dangerous offenders under ORS 161.725 to 161.737;

(b) Three (3) years for offenders sentenced for murder under ORS 163.115;

(c) Three (3) years for offenders sentenced for aggravated murder under ORS 163.105;

(d) Offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, Sex Abuse 2, and Attempts of these which occurred on or after September 29, 1991, shall serve active supervision to the expiration of the indeterminate sentence;

(e) Offenders sentenced for Sex Abuse I or Attempted Sex Abuse I for crimes occurring on or after November 4, 1993, shall serve active supervision to the expiration of the indeterminate sentence;

(f) Offenders sentenced for Sodomy II or Rape II for crimes occurring on or after October 23, 1999, shall serve active supervision to the expiration of the indeterminate sentence.

(g) Offenders sentenced for Sex Abuse I or Attempted Sex Abuse I, for crimes which occurred on or after November 1, 1989, and prior to November 4, 1993, will serve active supervision in accordance with the period of post-prison supervision set by the sentencing court and the sentencing guidelines grid;

(h) Offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, or Sexual Abuse I, which occurred on or after December 4, 1986, and prior to November 1, 1989, shall serve a minimum of 36 months active supervision or to expiration of the sentence which ever comes first;

(i) Offenders sentenced for Robbery in the First Degree under ORS 164.415 which occurred on or after June 30, 1995, shall serve a minimum period of 36 months active supervision; and

(j) Offenders sentenced for Arson in the First Degree under ORS 164.325 which occurred on or after June 30, 1995, shall serve minimum period of 36 months active supervision; and

(k) Offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, shall serve active supervision for life.

(3) Upon completion of the specified period of active parole or post-prison supervision, the supervisory authority shall place the offender on inactive supervision status subject to the exceptions in OAR 255-094-0010, and notify the Releasing Authority of the status change.

(4) Upon revocation of supervision and rerelease to the community, the period of active supervision shall be as provided in OAR 255-094-0001(1) & (2) provided that the period of active supervision does not exceed the sentence expiration date.

(5) After a rereleased offender has completed the minimum active supervision period as provided in OAR 255-094-0001(1)(2) and has substantially fulfilled the conditions of supervision, the supervising officer may place the offender on inactive supervision.

(6) Inmate/offenders found to be sexually violent dangerous offenders pursuant to OAR 255-060-0008(6) shall be subject to intensive supervision for the full period of parole or post-prison supervision as defined in OAR 255-005.

Stat. Auth.: ORS 144.085, 1995 SB 1145, 1999 OL 163 & 924

Stats. Implemented: ORS 144.085, 1995 SB 1145, & 1999 OL 163 & 924

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 4-2000, f. & cert. ef. 2-15-00; PAR 2-2001, f. & cert. ef. 1-12-01; PAR 2-2005, f. & cert. ef. 4-25-05; Renumbered from 255-094-0000, PAR 3-2009(Temp), f. & cert. ef. 8-21-09 thru 2-16-10; Administrative correction 3-18-10; Renumbered from 255-094-0000, PAR 2-2010, f. & cert. ef. 2-26-10

255-094-0010

Exceptions to Inactive Supervision and Return to Active Supervision

(1) No sooner than thirty days prior to the expiration of the offender's active period of supervised parole or post-prison supervision or during a period of inactive supervision, the supervising officer or designee may send to the Releasing Authority a report on offenders who have not substantially fulfilled the supervision conditions, or who have failed to complete payment of restitution. The supervising officer or designee may request continuation on active supervision, or return to active supervision if it is in the community's or the offender's best interest. This report shall include:

(a) An evaluation of the offender's compliance with supervision conditions;

(b) The status of the offender's court ordered monetary obligations, including fines and restitution, if any;

(c) The offender's employment status;

(d) The offender's address;

(e) Treatment program outcome;

(f) Any new criminal activity;

ADMINISTRATIVE RULES

Bureau of Labor and Industries Chapter 839

(g) Other relevant information;

(h) A recommendation that the Releasing Authority extend the active supervision period or return the offender to active supervision.

(2) After reviewing the report, if the Releasing Authority or its designated representative finds the offender has not substantially fulfilled the supervision conditions, or it is in the offender's or the community's best interest, the Releasing Authority may order that the offender remain on active supervision or return to active supervision for the remainder of the supervision period set by the sentencing court or set by law. The Releasing Authority shall send the offender notice of the continuation or return to active supervision.

(3) Once extended or returned to active supervision, the supervising officer may place the offender on inactive supervision when the offender has substantially fulfilled the conditions of supervision and completed restitution payments, or active supervision is no longer in the best interest of the offender and the community.

(4) When an offender being supervised in Oregon is placed on inactive supervision, the 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 Releasing Authority remain in effect).

(b) Special Conditions specifically deleted by the Releasing Authority.

(5) An offender being supervised via Interstate Compact is not eligible to be placed on unsupervised status.

Stat. Auth.: ORS 144.085 & 1995 SB 1145

Stats. Implemented: ORS 144.085 & 1995 SB 1145

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 2-2005, f. & cert. ef. 4-25-05; PAR 3-2009(Temp), f. & cert. ef. 8-21-09 thru 2-16-10; PAR 2-2010, f. & cert. ef. 2-26-10

255-094-0015

Return to Active Supervision

(1) An offender is subject to arrest for violations of conditions of supervision while on either active or inactive supervision.

(2) The Releasing Authority may return an offender to active supervision for the remainder of the supervision period set by the sentencing court or set by law when the Releasing Authority receives a report from the supervising agency showing good cause why the inactive status is no longer in the offender's best interest or the best interest or safety of the community.

(3) If the supervising agency has good cause to return an offender to active supervision, and the whereabouts of the offender are unknown, the supervising agency may request a warrant from the Releasing Authority.

(4) When an offender is returned to active supervision status, all general conditions plus all previously imposed special conditions shall be in effect.

Stat. Auth.: ORS 144.085 & SB 1145, OL 1995

Stats. Implemented: ORS 144.085 & SB 1145, OL 1995

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 2-2001, f. & cert. ef. 1-12-01; PAR 3-2009(Temp), f. & cert. ef. 8-21-09 thru 2-16-10; PAR 2-2010, f. & cert. ef. 2-26-10

255-094-0020

Sentence Expiration

(1) During the pendency of violation proceedings, the running of the supervision period both active and inactive, the sentence is stayed, and the Releasing Authority retains jurisdiction over the offender until the proceedings are resolved. The Releasing Authority may grant credit toward the sentence for time the offender serves incarcerated pending the violation proceedings.

(2) These rules shall not preclude more than one extension or renewal of active parole or post-prison supervision, however an extension or renewal period may not exceed the maximum sentence.

(3) After expiration of the sentence of an offender on parole or post-prison supervision, the Releasing Authority shall send written notice of the expiration to the offender and the supervisory authority.

(4) For offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, upon receipt of a court order resentencing the offender and terminating post-prison supervision, the Releasing Authority shall send written notice of the termination of post-prison supervision to the offender and supervisory authority.

Stat. Auth.: ORS 144.085, 1995 SB 1145 & 1999 OL 163

Stats. Implemented:

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 4-2000, f. & cert. ef. 2-15-00; PAR 3-2009(Temp), f. & cert. ef. 8-21-09 thru 2-16-10; PAR 2-2010, f. & cert. ef. 2-26-10

Rule Caption: Implementing amendments to procedures for complaints of discriminatory practice to require signature by aggrieved party.

Adm. Order No.: BLI 6-2010

Filed with Sec. of State: 2-24-2010

Certified to be Effective: 2-24-10

Notice Publication Date: 12-1-2009

Rules Amended: 839-003-0005, 839-003-0025, 839-003-0040, 839-003-0200

Subject: The proposed rules would amend the rules implementing complaint procedures for civil rights violations to include newly enacted requirements that a verified written complaint is valid only if signed by the aggrieved party (SB 56).

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

839-003-0005

Definitions

Except where otherwise required by ORS 654.005 and except as provided below, definitions for terms used in these rules are found in ORS 659A.001 and 659A.100:

(1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the administrator.

(2) "Bureau" means the Bureau of Labor and Industries.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.

(4) "Complaint" means for the purpose of ORS chapter 659A, except housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law, a written, verified statement signed by the complainant that:

(a) Gives the name and address of the complainant and the respondent;

(b) Identifies the protected class basis of the complaint;

(c) Describes the actions complained of, including:

(A) The date(s) of occurrence;

(B) What the action was and how it harmed the complainant; and

(C) The causal connection between the complainant's protected class and the alleged harm.

(5) "Complainant" means a person filing a complaint personally or through an attorney.

(6) "Days," unless otherwise stated in the text of a document, means calendar days. "Work days" means Monday through Friday, except holidays officially recognized by the State of Oregon or the federal government.

(7) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(8) "EEOC" means the Equal Employment Opportunity Commission of the federal government.

(9) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development ("HUD") has jurisdiction.

(10) "Notice" means written information delivered personally or sent by mail to the person's last known personal or business address or business address of the person's designated representative.

(11) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 et seq.

(12) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, or a perception of that characteristic, such as race, sex, age, disability or other.

(13) "Person" has the meaning given in ORS 659A.001(9).

(14) "Respondent" includes any person or other entity against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.

(16) "Substantial evidence" means proof that a reasonable person would accept as sufficient to support the allegations of the complaint.

(17) "Substantial Evidence Determination" means the division's written findings of substantial evidence.

(18) "Written verified complaint" means a complaint that is:

(a) In writing; and

ADMINISTRATIVE RULES

(b) Under oath or affirmation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.001, ORS ch. 659A, 42 U.S.C. 3601 et seq

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 7-1982, f. & ef. 4-22-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 6-2010, f. & cert. ef. 2-24-10

839-003-0025

Filing a Complaint

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be filed in accordance with 839-003-0200.

(1) A person or the person's attorney may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. The complaint must meet the standards provided in OAR 839-003-0005(4).

(2) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0005(4).

(3) Except as provided in section (5) of this rule, a person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(4) A person alleging constructive discharge must file a discrimination complaint with the division within one year of the date the discharge occurred.

(5) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 90 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

(a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and

(b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 90 days of the alleged retaliation.

(A) If a notice required by OSEA, as provided in OAR 437-001-0275(2)(a), was properly posted in the employee's workplace, continuously on and following the date of the alleged retaliation, the division will find that the employee knew or should have known of the 90-day filing requirement.

(B) If the employer failed to post the required OSEA poster, the 90-day filing requirement will begin on the date the employee learned of the right to file a complaint and of the 90-day filing requirement. The employee may establish this date based on the employee's own statement or other evidence offered by the employee.

(C) If the employer disagrees with the employee's presented date as the date the employee learned of the right to file a complaint, the burden is on the employer to show that the employee knew or should have known on an earlier date.

(D) If extenuating circumstances exist, the division may extend the 90-day period as provided in 29 CFR Part 15(d)(3).

(6) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire to assist in determining if there is a basis for filing a complaint;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062, 659A, 29 CFR Part 15(d)(3)

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 12-2004, f. 10-22-04 cert. ef. 10-25-04; BLI 19-2007(Temp), f. & cert. ef. 7-18-07 thru 1-1-08; BLI 29-2007, f. 9-27-07 cert. ef. 10-1-07; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 6-2010, f. & cert. ef. 2-24-10

839-003-0040

Amendment of Complaints

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be amended in accordance with 839-003-0205.

(1) The division may amend a complaint to correct technical defects and to add additional persons as respondents. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, the complainant must file a new complaint meeting the standards provided in OAR 839-003-0005(4).

(3) Amended complaints need not be verified or signed by the complainant.

(4) The division will send a copy of the amended complaint to the complainant and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 2-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 6-2010, f. & cert. ef. 2-24-10

839-003-0200

Filing a Complaint Under State and Federal Housing Discrimination Laws

(1) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law includes a person who believes that the person has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(2) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law or the person's attorney, or the commissioner may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. Complaint means a written, verified statement signed by the complainant that:

(a) Gives the name and address of the complainant and the respondent;

(b) Describes the acts or omissions alleged to be an unlawful practice, including those acts or omissions the person believes are about to occur and;

(c) Describes how the person was harmed or will be harmed by such actions.

(3) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0200(2).

(4) A person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(5) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

(6) The Division will serve notice upon the complainant acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under ORS Chapter 659A and federal housing law.

(7) Within 10 days after the filing of a complaint, the division will serve the respondent with a copy of the original complaint that identifies the

ADMINISTRATIVE RULES

alleged discriminatory housing practice and a notice that advises the respondent of the procedural rights and obligations of the Respondent, including the respondent's right to file an answer to the complaint.

(8) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

Stat. Auth.: ORS 659A.805

Stats. Implemented: 659A.145, 659A.421, 659A.820, 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 6-2010, f. & cert. ef. 2-24-10

Rule Caption: Renumber rules for reorganization; no text changes.

Adm. Order No.: BLI 7-2010

Filed with Sec. of State: 2-24-2010

Certified to be Effective: 2-24-10

Notice Publication Date:

Rules Renumbered: 839-005-0016 to 839-005-0031, 839-005-0035 to 839-005-0011, 839-005-0045 to 839-005-0013, 839-005-0050 to 839-005-0014

Subject: 839-005-0016, Exceptions to Sexual Orientation Discrimination, is renumbered to 839-005-0031; 839-005-0035, Constructive Discharge, is renumbered to 839-005-0011; 839-005-0045, BFOQ, is renumbered to 839-005-0013; 839-005-0050, Successors in Interest, is renumbered to 839-005-0014.

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

839-005-0011

Constructive Discharge

Constructive discharge occurs when an individual leaves employment because of unlawful discrimination. The elements of a constructive discharge are:

(1) The employer intentionally created or intentionally maintained discriminatory working conditions related to the individual's protected class status;

(2) The working conditions were so intolerable that a reasonable person in the complaining individual's circumstances would have resigned because of them;

(3) The employer desired to cause the complaining individual to leave employment as a result of those working conditions, or knew or should have known that the individual was certain, or substantially certain, to leave employment as a result of the working conditions; and

(4) The complaining individual left employment as a result of the working conditions.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; Renumbered from 839-005-0035, BLI 7-2010, f. & cert. ef. 2-24-10

839-005-0013

Bona Fide Occupational Qualification (BFOQ) and Affirmative Action Plan Exceptions

(1) Discrimination is not unlawful if it is based on a bona fide occupational qualification (BFOQ), as provided in ORS 659A.030(1)(a). To prove a BFOQ, the employer must show that the BFOQ is reasonably necessary to the normal operation of the business. If so, the employer must then show:

(a) A factual basis exists for believing that all or substantially all individuals in the protected class adversely affected by the BFOQ would be unable to perform safely and efficiently the tasks required in the job; or

(b) It is impossible or highly impractical to screen applicants on an individual basis.

(2) An employer may not claim a BFOQ for such reasons as:

(a) Customer, co-worker or employer preference;

(b) Stereotypes or assumed characteristics of a protected class.

(3) When discrimination is based on a bona fide voluntary affirmative action plan, it is not unlawful if the plan:

(a) Is a temporary measure;

(b) Has the purpose of eliminating the effects of past discrimination; and

(c) Does not unnecessarily trammel the interests of other protected classes.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.030

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; Renumbered from 839-005-0045, BLI 7-2010, f. & cert. ef. 2-24-10

839-005-0014

Successors in Interest

An employer's liability for unlawful discrimination under ORS 659A.030 and OAR 839-005-0010 to 839-005-0045 extends to a successor employer. Determining whether a respondent is a successor employer involves a nine-part test. Not every element of the test need be present to find an employer to be a successor; the facts must be considered together to reach a determination:

(1) Whether respondent had notice of the charge at the time of acquiring or taking over the business;

(2) The ability of the predecessor to provide relief;

(3) Whether there has been a substantial continuity of business operations;

(4) Whether the respondent uses the same plant as the predecessor;

(5) Whether respondent uses the same or substantially the same work force as the predecessor;

(6) Whether respondent uses the same or substantially the same supervisory personnel as the predecessor;

(7) Whether under respondent the same jobs exist under substantially the same working conditions as under the predecessor;

(8) Whether respondent uses the same machinery, equipment and methods of production as the predecessor;

(9) Whether respondent produces the same product as the predecessor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: 659A

Hist.: BLI 10-2002, f. & cert. ef. 5-17-02; Renumbered from 839-005-0050, BLI 7-2010, f. & cert. ef. 2-24-10

839-005-0031

Exceptions to Discrimination Based on Sexual Orientation

(1) The following actions are not unlawful practices under ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law:

(a) Housing and the use of facilities. It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing or the use of facilities when:

(A) The action taken is based on a bona fide religious belief about sexual orientation; and

(B) The housing or the use of facilities involved is closely connected with or related to the primary purpose of the church or institution; and

(C) The housing or the use of facilities involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(b) Employment Preference. It is not an unlawful employment practice for a bona fide church or other religious institution, including but not limited to a school, hospital or church camp, to prefer an employee, or an applicant for employment, of one religious sect or persuasion over another if:

(A) The employee or applicant belongs to the same religious sect or persuasion as the church or institution; and

(B) In the opinion of the church or institution, the preference will best serve the purposes of the church or institution; and

(C) The employment involved is closely connected with or related to the primary purposes of the church or institution; and

(D) The employment involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(c) Employment Actions. It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation when:

(A) The employment position involved is directly related to the operation of the church or other place of worship, such as clergy, religious instructors and support staff;

(B) The employment position involved is in a nonprofit religious school, nonprofit religious camp, nonprofit religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, nonprofit religious radio station or nonprofit religious shelter; or

(C) The employment position involves religious activities, as long as the employment position:

(i) Is closely connected with or related to the primary purpose of the church or institution; and

(ii) Is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(d) Dress Code. An employer is not prohibited from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a

ADMINISTRATIVE RULES

case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(2) The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A, OL 2007 Ch. 100
Hist.: BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; Renumbered from 839-005-0016, BLI 7-2010, f. & cert. ef. 2-24-10

Rule Caption: Implementing statutory enactments and amendments regarding disability, veterans' preference and discrimination based on uniformed service.

Adm. Order No.: BLI 8-2010

Filed with Sec. of State: 2-24-2010

Certified to be Effective: 2-24-10

Notice Publication Date: 12-1-2009

Rules Adopted: 839-005-0206, 839-006-0202, 839-006-0307, 839-006-0480

Rules Amended: 839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0021, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0215, 839-005-0220, 839-006-0200, 839-006-0205, 839-006-0206, 839-006-0212, 839-006-0240, 839-006-0242, 839-006-0244, 839-006-0250, 839-006-0255, 839-006-0265, 839-006-0270, 839-006-0275, 839-006-0280, 839-006-0290, 839-006-0295, 839-006-0300, 839-006-0305, 839-006-0330, 839-006-0335, 839-006-0435, 839-006-0440, 839-006-0445, 839-006-0450, 839-006-0455, 839-006-0460, 839-006-0465, 839-006-0470

Subject: The proposed rules and amendments would implement amendments to statutes providing for employment preference for veterans. (HB 2510).

The proposed rules and amendments would implement amendments to disability discrimination statutes to conform them to the federal Americans with Disabilities Act Amendments Act of 2008. (SB 874).

The proposed rules would implement newly enacted statutes prohibiting discrimination in employment on the basis of uniformed service. (HB 3256).

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

839-005-0000

Purpose and Scope

(1) It is the policy of the State of Oregon that unlawful discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability and other classes protected under Oregon statutes is a matter of state concern and that such discrimination threatens individual rights and privileges and menaces the institutions and foundations of a free democratic state.

(2) Prohibited discrimination is a basis of unlawful practices and unlawful employment practices described in ORS Chapter 659A and other chapters of the Oregon statutes.

(3) The Civil Rights Division of the Bureau of Labor and Industries is responsible for protecting individual rights through the enforcement of civil rights statutes prohibiting unlawful practices and unlawful employment practices over which the bureau has jurisdiction.

(4) The purpose of these rules is to implement, interpret and describe the division's approach to civil rights enforcement under the bureau's jurisdiction.

(5) These rules apply to all inquiries and complaints received by the division on or after the effective date of these rules.

(6) An individual claiming a violation of the civil rights statutes may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025 or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A
Hist.: BL 9-1982, f. & ef. 6-11-8; BL 4-1996, f. & cert. ef. 3-12-96; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0003

Definitions

As used in enforcing ORS Chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law:

(1) "Bureau" means the Bureau of Labor and Industries.

(2) "Complainant" means an individual who files a complaint with the division, personally or through the individual's attorney, pursuant to the guidelines provided in OAR 839-003-0025 or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employee" does not include any individual employed by that individual's parents, spouse or child or in the domestic service of any person.

(5) "Employer" means any person in this state who, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed. Employer also includes any public body that, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed, including all officers, agencies, departments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, municipal corporations and all other political subdivisions of the state.

(6) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(7) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, or speech, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(8) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(9) "Labor organization" includes any organization that is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(10) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint-stock companies, corporations, legal representatives, trustees, and trustees in bankruptcy or receivers. "Person" also includes a public body as defined in ORS 30.260. For the purposes of ORS 659A.145 or 659A.421 or federal housing law, "person" also includes fiduciaries, mutual companies, trusts and unincorporated organizations.

(11) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic.

(12) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(13) "Sex" means the anatomical, physiological and genetic characteristics associated with being male or female.

(14) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's assigned sex at birth.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A,
Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0005

Unlawful Discrimination

(1) To discriminate means to make a distinction between individuals or groups based on common characteristics, real or perceived. Certain kinds of discrimination are unlawful. Oregon civil rights laws generally prohibit making decisions in employment, housing, places of public accommodation and career schools because an individual is a member of a class protected by these statutes.

(2) When an individual files a complaint with the division alleging unlawful discrimination, the division must determine whether substantial evidence of such discrimination exists.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A
Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0010

Discrimination Theories: Employment

(1) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The complainant is a member of a protected class;

(c) The complainant was harmed by an action of the respondent; and

(d) The complainant's protected class was the motivating factor for the respondent's action. In determining whether the complainant's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class, unless the respondent can show that a bona fide occupational qualification or a bona fide voluntary, court-ordered affirmative action plan (OAR 839-005-0013) allows the action.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the complainant was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the complainant differently than comparably situated individuals who were not members of the complainant's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The complainant at all times has the burden of proving that the complainant's protected class was the reason for the respondent's unlawful action.

(2) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(3) An employer must reasonably accommodate an employee or applicant's religious belief, observance or practice unless the employer can demonstrate that such accommodation would cause undue hardship on the employer's business (see OAR 839-005-0140).

(4) Harassment: Harassment based on an individual's protected class is a type of intentional unlawful discrimination. In cases of alleged unlawful sexual harassment in employment see OAR 839-005-0030.

(a) Conduct of a verbal or physical nature relating to protected classes other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(C) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(c) Employer Proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the employer's president, owner, partner or corporate officer.

(d) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against the individual. A tangible employment action includes, but is not limited to, any of the following:

(A) Terminating employment, including constructive discharge;

(B) Failing to hire;

(C) Failing to promote; or

(D) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(e) Harassment by Supervisor, No Tangible Employment Action: When harassment by a supervisor with immediate or successively higher authority over the individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(A) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(B) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(i) That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and

(ii) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(f) Harassment by Coworkers or Agents: An employer is liable for harassment by the employer's employees or agents who do not have immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(g) Harassment by Non-Employees: An employer is liable for harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases, the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(h) Withdrawn Consent: An employer may be liable for harassment by the employer's supervisory or non-supervisory employees, agents or non-employees even if the acts complained of were of a kind previously consented to by the complaining individual, if the employer knew or should have known that the complaining individual had withdrawn consent to the offensive conduct.

(i) When employment opportunities or benefits are granted because of an individual's submission to an employer's harassment, the employer is liable for unlawful discrimination against other individuals who were qualified for but denied that opportunity or benefit.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A & 42 U.S.C. 3601 et seq.

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2007, f. 1-29-07, cert. ef. 2-2-07; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0021

Discrimination Based On Sex

(1) Employers are not required to treat all employees exactly the same, but are prohibited from using sex as the basis for employment decisions with regard to hiring, promotion or discharge; or in terms, conditions

ADMINISTRATIVE RULES

or privileges of employment such as benefits and compensation.

(2) Discrimination because of sex includes sexual harassment, discrimination based on pregnancy, childbirth and medical conditions and occurrences related to pregnancy and childbirth.

(3) In very rare instances, sex may be a bona fide occupational qualification (BFOQ), as defined in OAR 839-005-0013.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.029 & 659A.030

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0195

Purpose and Scope

(1) The public policy of the State of Oregon guarantees all individuals the fullest possible participation in the social and economic life of the state, including the right to purchase, lease, rent or occupy property without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes. The Bureau of Labor and Industries, through the Civil Rights Division, protects these rights by enforcement of ORS 659A.145, 659A.421 and the Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing and Urban Development has jurisdiction.

(2) An individual claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may file a complaint with the Civil Rights Division as described in OAR 839-003-0200.

(a) An individual claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law includes an individual who believes that the individual has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(3) These rules apply to all complaints and inquiries relating to these sections received on or after the effective date of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0200

Definitions

(1) "Aggrieved person" includes a person who believes that the person:

(a) Has been injured by an unlawful practice or discriminatory housing practice; or

(b) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(2) "Complainant" means an individual who files a complaint with the division, personally or through the individual's attorney, pursuant to the guidelines provided under OAR 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

(3) "Disability" means:

(a) A physical or mental impairment that substantially limits one or more major life activities of the individual.

(b) A record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. An individual has a record of having a physical or mental impairment if the individual has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) A physical or mental impairment that the individual is regarded as having.

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(4) "Dwelling" means any building, structure, or portion of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for

sale or lease for the construction or location of any such building, structure, or portion of such a building or structure. "Family" includes a single individual.

(5) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and the individual with whom they are domiciled who is:

(a) A parent or another person having legal custody of the individual;

or

(b) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(c) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(d) "Domiciled" includes but is not limited to part-time residence in a dwelling where an individual has a reasonable expectation of a continuing right to return.

(6) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development has jurisdiction.

(7) "Major life activity" includes, but is not limited to:

(a) Caring for oneself;

(b) Performing manual tasks;

(c) Seeing;

(d) Hearing;

(e) Eating;

(f) Drinking;

(g) Sleeping;

(h) Walking;

(i) Standing;

(j) Lifting;

(k) Bending;

(L) Twisting;

(m) Speaking;

(n) Breathing;

(o) Cognitive functioning;

(p) Learning;

(q) Education;

(r) Reading;

(s) Concentrating;

(t) Remembering;

(u) Thinking;

(v) Communicating;

(w) Working;

(A) To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions;

(x) Socialization;

(y) Sitting;

(z) Reaching;

(aa) Interacting with others;

(bb) Sexual relations;

(cc) Employment;

(dd) Ambulation;

(ee) Transportation;

(ff) Operation of a major bodily function, including but not limited to:

(A) Functions of the immune system;

(B) Normal cell growth; and

(C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and

(gg) Ability to acquire, rent or maintain property.

(8) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(9) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers, fiduciaries, mutual companies, trusts and unincorporated organizations and public bodies as defined in ORS 30.260 that have the primary purpose of serving, representing or otherwise benefiting the protected class.

(10) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and

ADMINISTRATIVE RULES

endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(11) "Property" and "real property" means property used or intended for commercial, business or residential purposes including, but not limited to a dwelling.

(12) "Purchaser" includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer or prospective buyer.

(13) "Receipt or alleged receipt of treatment for a mental disorder," as used in ORS 659A.142(5), means actual treatment of an individual for a mental condition or an assertion that the person received such treatment.

(14) "Regarded as having an impairment," as used in ORS 659A.100(2)(c), means:

(a) An individual having a physical or mental impairment that does not substantially limit a major life activity but who has been treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson;

(b) An individual having a physical or mental impairment that substantially limits a major life activity only as a result of the attitude of others toward such impairment; or

(c) An individual having no physical or mental impairment but who is treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson.

(15) "Residential real estate related transaction" means any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(B) Secured by residential real estate; or

(b) The selling, brokering or appraising of residential real property.

(16) "Substantially limits" means that an individual has an impairment, had an impairment or is perceived as having an impairment that restricts one or more major life activities of the individual.

(a) An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual.

(b) To have a disability (or to have a record of a disability) an individual must be substantially limited in performing a major life activity as compared to most people in the general population.

(c) An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active.

(d) The term "substantially limits" shall be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of ORS 659A.100 to 659A.145 and 659A.400 to 659A.425, and should not require extensive analysis.

(17) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(18) "Treatment" includes examination, evaluation, diagnosis and therapy by a health professional within the scope of the professional's applicable license.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et. seq. OL 2007 Ch. 100

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0205

Prohibited Discrimination

(1) A person may not, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes of any individual:

(a) Refuse to sell, lease or rent any real property to a purchaser;

(b) Expel a purchaser from any real property;

(c) Make any distinction, discrimination or restriction against a purchaser in price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection with real property;

(d) Attempt to discourage the sale, rental, lease or occupancy of any real property to a purchaser;

(e) Publish, circulate, issue or display or cause to be published, circu-

lated, issued or displayed, any communication, notice, advertisement, or sign of any kind whether oral, written or electronic, relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes;

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates ORS 659A.145, 659A.421, federal housing law or these rules;

(g) Coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by ORS 659A.145, 659A.421, federal housing law or these rules;

(h) Deny access to, or membership or participation in, any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any individual in the terms or conditions of the access, membership or participation;

(i) Represent to an individual that a dwelling is not available for inspection, sale, rental or lease when the dwelling in fact is available for inspection, sale, rental or lease;

(j) Otherwise make unavailable or deny a dwelling to an individual.

(2) A person whose business includes engaging in residential real estate related transactions may not discriminate against any individual in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(3) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(4) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of an individual or individuals of a particular race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(5) For purposes of OAR 839-005-0205(1) to (4), "source of income" does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et. seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0206

Discrimination Theories: Housing

(1) For the purposes of housing discrimination complaints under ORS 659A.145 or 659A.421 or discrimination complaints under federal housing law, a complainant need not be a member of a protected class. An aggrieved person may file a complaint of housing discrimination.

(2) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals, based on the totality of circumstances known at the time of the decision, evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-003(10); and

(b) The individual to whom an action of respondent is directed or about to be directed is a member of a protected class; and

(c) The individual or aggrieved person was harmed by an action of the respondent; and

(d) The individual's protected class was the motivating factor for the respondent's action. In determining whether the individual's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members

ADMINISTRATIVE RULES

of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the individual was harmed or was about to be harmed by the action of the respondent under circumstances that make it appear that the respondent treated the individual differently than comparably situated individuals who were not members of the individual's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of unlawful discrimination.

(ii) The complainant at all times has the burden of proving that the individual's protected class was the motivating factor for the respondent's unlawful action.

(3) Adverse Impact Discrimination in Housing:

(a) For the purposes of interpreting ORS 90.390, a court or the commissioner may find that a person has violated or is going to violate ORS 659A.145 or 659A.421 if:

(A) The person applies a facially neutral housing policy to a member of a protected class;

(B) Application of the policy adversely impacts members of the protected class to a greater extent than the policy impacts persons generally.

(b) In determining under subsection (a) of this section whether a violation has occurred or will occur and, if it is determined that a violation has occurred or will occur, what relief should be granted, a court or the commissioner will consider:

(A) The significance of the adverse impact on the protected class;

(B) The importance and necessity of any business purpose for the facially neutral housing policy; and

(C) The availability of less discriminatory alternatives for achieving the business purpose for the facially neutral housing policy.

(4) As used in enforcing ORS 659A.145 or 659A.421 or federal housing law, harassment on the basis of a protected class is an unlawful practice in housing when:

(a) Conduct of a verbal or physical nature relating to protected classes is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (2) of this rule is shown; and

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of creating an offensive, intimidating, hostile, or offensive environment; or

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of housing; or

(C) Submission to or rejection of such conduct is used as the basis for housing decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the individual against whom the harassment is directed would so perceive it.

(5) Discrimination based on disability may involve intentional discrimination, including harassment, or discrimination that need not be intentional, including adverse impact, or the failure to permit reasonable modifications, the refusal to make reasonable accommodations or the failure to design and construct covered buildings under applicable rules. To be protected from discrimination based on disability, an individual must have a disability, as described in ORS 659A.104 and the relevant rules. Reasonable accommodation in real property transactions is covered by ORS 659A.145 and OAR 839-005-0220. Reasonable modifications in housing and the design and construction of covered buildings are covered by ORS 659A.145. Claims of disability discrimination brought under federal housing law are defined under that law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0215

Religious Exemption

It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing based on a bona fide religious belief about sexual orientation as long as the housing is closely connected with or related to the primary purpose of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution (see OAR 839-005-0031).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-005-0220

Individuals with Disabilities

(1) Individuals protected from discrimination on the basis of disability in real property transactions include any individual with a disability associated with a purchaser.

(2) In addition to the prohibitions in OAR 839-005-0205, discrimination in real property transactions based on an individual's disability includes, but is not limited to:

(a) Refusing to permit, at the expense of an individual with a disability, reasonable modifications of existing premises occupied or to be occupied by that individual if such modifications may be necessary to afford that individual full enjoyment of the premises, except that, in the case of rental, the landlord may, where it is reasonable to do so, condition permission for modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(A) In the case of a rental, a disabled renter is only required to restore the interior premises to the condition that existed before the modification when the landlord required restoration as a condition to granting the disabled renter's reasonable modification request.

(b) Refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling and;

(c) Failure to design and construct a covered multifamily dwelling as required by the Fair Housing Act (42 U.S.C. 3601 et seq.).

(3) Direct Threat. A lessor or agent may engage in conduct otherwise prohibited by ORS 659A.145 when:

(a) Leasing or rental of the subject property by an individual with a disability would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others; and

(b) No reasonable accommodation is possible that would eliminate or acceptably minimize the risk to health and safety.

(4) A lessor or agent must allow alterations of existing premises if the premises are occupied by or to be occupied by an individual with a disability, and the individual with a disability pays for the alterations, as provided in section 2 of this rule.

(5) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence of an individual's inability to acquire, rent or maintain property.

(6) In the sale, lease or rental of real estate, a person may not disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0200

Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee individuals with disabilities the fullest possible participation in the social and economic life of the state, including employment. The people of Oregon have the right to employment without discrimination on the basis of disability.

(2) It is an unlawful employment practice for any employer to refuse to hire or promote, to bar or discharge from employment or to discriminate in compensation, terms, conditions or privileges of employment because a qualified individual has a disability.

(3) Prohibited discrimination includes, but is not limited to:

(a) Limiting, segregating or classifying applicants or employees with

ADMINISTRATIVE RULES

disabilities in a way that adversely affects opportunities or status;

(b) Participating in a contractual or other arrangement with the effect of discriminating against applicants or employees with disabilities, including but not limited to, relationships with employment or referral agencies, labor unions, organizations providing fringe benefits, or training and apprenticeship programs;

(c) Using standards, criteria or methods of administration that have the effect of discrimination against applicants or employees with disabilities;

(d) Excluding or denying equal employment or benefits to a qualified individual because the individual is known to have an association with an individual with a disability;

(e) Failing to make reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the business of the employer;

(f) Using qualification standards, tests or other criteria, including those based on an individual's uncorrected vision or unaided hearing, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criterion, as used by the employer, is job related for the position in question and is consistent with business necessity;

(g) Failing to select and administer tests in a way that accurately reflects the skills and aptitude of applicants or employees with disabilities that impair sensory, manual or speaking skills. An employer may, however, administer tests measuring sensory, manual and speaking skills of applicants and employees.

(4) It is an unlawful employment practice for an employment agency to:

(a) Fail or refuse to refer for employment, or otherwise discriminate against an individual because that individual has a disability; or

(b) Classify or refer an individual for employment because that individual has a disability.

(5) It is an unlawful employment practice for a labor organization to exclude or to expel from its membership, or to discriminate in any way against an individual because that individual has a disability.

(6) It is an unlawful employment practice for any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any individual because the individual has opposed any practices forbidden by ORS 659A.103 to 659A.142.

(7) It is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce an individual to do any of the acts forbidden by ORS 659A.103 to 659A.142 or to attempt to do so.

(8) The Civil Rights Division of the Bureau of Labor and Industries has the authority to protect the rights of employees and applicants with disabilities through the enforcement of ORS 659A.103 to 659A.142. OAR 839-006-0200 to 839-006-0265 interpret these statutes and apply to all complaints and inquiries relating to these statutes received on or after the effective date of these rules.

(9) An individual claiming a violation of ORS 659A.103 to 659A.142 may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 - 659A.142

Hist.: BL 2-1984, f. & ef. 1-31-84 ; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0202

Determining Disability under ORS 659A.103 to 659A.142

The determination of whether an individual has a disability shall be construed in favor of broad coverage of individuals under ORS 659A.103 to 659A.142, to the maximum extent permitted by the terms of ORS 659A.103 to 659A.142.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 - 659A.142

Hist.: BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0205

Definitions

(1) "Disability" means:

(a) A physical or mental impairment that substantially limits one or more major life activities of the individual.

(b) A record of having a physical or mental impairment that substantially limits one or more major life activities of the individual. An individual has a record of having a physical or mental impairment if the individual

has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities of the individual.

(c) A physical or mental impairment that the individual is regarded as having.

(A) An individual is regarded as having a physical or mental impairment if the individual has been subjected to an action prohibited under ORS 659A.112 to 659A.139 because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity of the individual.

(B) An individual is not regarded as having a physical or mental impairment if the individual has an impairment that is minor and that has an actual or expected duration of six months or less.

(2) "Employer" means any person that employs six or more persons and includes the state, counties, cities, districts, authorities, public corporations and entities and their instrumentalities, except the Oregon National Guard, as provided in ORS 659A.106. The "six or more persons" need not be employed within Oregon.

(3) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(4) "Essential functions" are the fundamental duties of a position an individual with a disability holds or desires.

(a) A job function may be essential for any of several reasons, including but not limited to, the following:

(A) The position exists to perform that function;

(B) A limited number of employees is available to carry out the essential function; or

(C) The function is highly specialized so that the position incumbent was hired for the expertise or ability required to perform the function.

(6) Evidence of whether a particular function is essential includes but is not limited to:

(A) The amount of time spent performing the function;

(B) The consequences of not performing the function;

(C) The terms of a collective bargaining agreement;

(D) The work experience of past incumbents in the job; and

(E) The current work experience of incumbents in similar jobs.

(5) "Labor organization" includes any organization constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(6) "Major life activity" includes, but is not limited to:

(a) Caring for oneself;

(b) Performing manual tasks;

(c) Seeing;

(d) Hearing;

(e) Eating;

(f) Drinking;

(g) Sleeping;

(h) Walking;

(i) Standing;

(j) Lifting;

(k) Bending;

(l) Twisting;

(m) Speaking;

(n) Breathing;

(o) Cognitive functioning;

(p) Learning;

(q) Education;

(r) Reading;

(s) Concentrating;

(t) Remembering;

(u) Thinking;

(v) Communicating;

(w) Working;

(A) To be substantially limited in the major life activity of working, an individual must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions;

(x) Socialization;

(y) Sitting;

(z) Reaching;

(aa) Interacting with others;

(bb) Sexual relations;

(cc) Employment;

ADMINISTRATIVE RULES

- (dd) Ambulation;
- (ee) Transportation;
- (ff) Operation of a major bodily function, including but not limited to:
 - (A) Functions of the immune system;
 - (B) Normal cell growth; and
 - (C) Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; and
- (gg) Ability to acquire, rent or maintain property.
- (7) "Medical," as used in ORS 659A.133 and 659A.136 and these rules, means any information, whether oral, written or electronic that:
 - (a) Is created or received by an employer; and
 - (b) Relates to the past, present, or future physical or mental health status or condition of an individual.
- (8) "Misclassified," as used in ORS 659A.104(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.
- (9) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.
- (10) A "qualified individual with a disability" is an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of a position that the individual holds or desires, and who can, with or without reasonable accommodation, perform the position's essential functions.

(11) "Reasonable accommodation" is defined in OAR 839-006-0206.

(12) "Substantially limits" means that an individual has an impairment, had an impairment or is perceived as having an impairment that restricts one or more major life activities of the individual.

(a) An impairment that substantially limits one major life activity of the individual need not limit other major life activities of the individual.

(b) In determining whether an impairment substantially limits a major life activity, the ability of the individual with the impairment to perform that major life activity is compared to that of individuals in the general population.

(c) Factors that could affect whether an impairment "substantially limits a major life activity" include, but are not limited to, the presence of other impairments that combine to make the impairment disabling.

(d) An impairment that is episodic or in remission is considered to substantially limit a major life activity of the individual if the impairment would substantially limit a major life activity of the individual when the impairment is active.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 - 659A.142

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 15-1990, f. 10-29-90, cert. ef. 11-1-90; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 4-2007, f. 1-29-07, cert. ef. 2-1-07; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0206

Reasonable Accommodation

(1) "Reasonable Accommodation" means modifications or adjustments:

(a) To a job application process that enable a qualified applicant with a disability to be considered for the position;

(b) To the work environment, or to the manner or circumstances under which a position is customarily performed, that enable a qualified employee or applicant with a disability to perform the position's essential functions; or

(c) That enable a qualified employee or applicant with a disability to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without a disability.

(2) Reasonable accommodation of a qualified employee or applicant with a disability may include, but is not limited to:

(a) Making existing facilities used by employees readily accessible to and usable by an employee with a disability;

(b) Providing job restructuring, such as part-time or modified work schedules or reassignment to vacant positions;

(c) Acquiring or modifying equipment or devices;

(d) Appropriately adjusting or modifying examinations, training materials or policies;

(e) Providing qualified readers or interpreters; or

(f) Providing a leave of absence.

(3) Failure of an employer to make reasonable accommodation to the

known physical or mental limitations of a qualified employee or applicant with a disability who requests reasonable accommodation or otherwise discloses to the employer a disability that may require reasonable accommodation, will be found to be prohibited discrimination unless the employer can demonstrate that reasonable accommodation would impose an undue hardship on the business of the employer. Undue hardship is defined at ORS 659A.121.

(4) Once a qualified employee or applicant with a disability has requested reasonable accommodation or otherwise disclosed to the employer a disability that may require reasonable accommodation, the employer has a duty to initiate a meaningful interactive process with the employee or applicant to determine whether reasonable accommodation would allow the employee or applicant to perform the essential functions of a position held or sought.

(5) A meaningful interactive process is an informal process between a qualified employee or applicant with a disability and an employer in an effort to identify potential reasonable accommodation.

(a) An interactive process between an employee or applicant with a disability and an employer, that readily identifies mutually agreeable reasonable accommodation, is a meaningful interactive process.

(b) When reasonable accommodation is not readily identifiable, a meaningful interactive process identifies the nature of the limitations resulting from the disability, relevant to potential reasonable accommodation that could allow the employee or applicant to perform the essential functions of the job.

(6) A meaningful interactive process is a mandatory step in the reasonable accommodation of a qualified employee or applicant with a disability. Failure of an employer to engage in a meaningful interactive process with a qualified employee or applicant with a disability who has requested reasonable accommodation or has otherwise disclosed to the employer a disability that may require reasonable accommodation is a failure to reasonably accommodate in violation of ORS 659A.112(2)(e) and:

(a) The employer may be found liable for remedies described in OAR 839-003-0090(5) regardless of whether reasonable accommodation would have been possible; and

(b) The employer may also be found liable for any other remedies described in OAR 839-003-0090 if reasonable accommodation would have been possible.

(7) An employer is not required to provide a reasonable accommodation to an individual who meets only the criterion of being regarded as having a physical or mental impairment that substantially limits one or more major life activities.

(8) An employer may not be found to have engaged in an unlawful employment practice solely because the employer fails to provide reasonable accommodation to an employee or applicant with a disability arising out of transsexualism. However, an employer may not:

(a) Refuse to hire an applicant or promote an employee;

(b) Bar or discharge an employee or applicant from employment; or

(c) Discriminate in compensation, terms, conditions or privileges of employment because an employee or applicant is transsexual when the employee or applicant is otherwise qualified.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 - 659A.142

Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 4-2007, f. 1-29-07, cert. ef. 2-1-07; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0212

Determining Whether an Individual Is Substantially Limited

(1) When determining whether an impairment substantially limits a major life activity of an individual, the determination shall be made without regard to the ameliorative effects of mitigating measures, including:

(a) Medication;

(b) Medical supplies, equipment or appliances;

(c) Low vision devices or other devices that magnify, enhance or otherwise augment a visual image, except that ordinary eyeglasses or contact lenses or other similar lenses that are intended to fully correct visual acuity or eliminate refractive error may be considered when determining whether an impairment substantially limits a major life activity of an individual;

(d) Prosthetics, including limbs and devices;

(e) Hearing aids, cochlear implants or other implantable hearing devices;

(f) Mobility devices;

(g) Oxygen therapy equipment or supplies;

(h) Assistive technology;

(i) Reasonable accommodations or auxiliary aids or services; or

(j) Learned behavioral or adaptive neurological modifications.

ADMINISTRATIVE RULES

(2) The determination of whether a person is substantially limited in a major life activity must be made on a case-by-case basis.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142
Hist.: BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0240

Temporary and Progressive Impairments

Conditions that are progressive (including, but not limited to, cancer, Hodgkin's disease, multiple sclerosis and HIV infection, whether or not such condition substantially limits the individual in any major life activity at the time of the alleged discrimination) may not form the basis for an employer to refuse to employ or promote; bar or discharge from employment; or discriminate in compensation, terms, conditions or privileges of employment.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142
Hist.: BL 2-1984, f. & ef. 1-31-84; BL 15-1990, f. 10-29-90, cert. ef. 11-1-90; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0242

Medical Evaluation

(1) An employer may not require any applicant to obtain a medical examination or evaluation prior to an offer of employment.

(2) An employer may require a medical examination or evaluation after making an employment offer but before the individual commences work, only if all individuals receiving offers of employment in that same job category are required to obtain a medical examination or evaluation.

(3) A drug test is not considered a medical examination or evaluation, for purposes of ORS 659A.133, 659A.136 and sections (1) and (2) of this rule, limiting employer actions in regard to medical examinations and inquiries.

(4) As provided in ORS 659A.306, the employer must pay the cost of any medical examination or evaluation or test, including a drug test, or the production of any health certificate required by the employer.

(5) An employer may not use qualification standards based on vision tests of an individual's uncorrected vision unless the qualification standards are shown to be job-related for the position in question and are consistent with business necessity.

(6) An employer obtaining medical information about an employee or applicant must collect and maintain the information on separate medical forms and in separate medical files to be treated as confidential medical records, except as follows:

(a) Supervisors and managers may be informed regarding necessary restrictions on the work duties of an employee or necessary accommodations;

(b) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(c) Officers and employees of the Division investigating compliance with disability discrimination laws must be provided relevant information on request.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142
Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98, Renumbered from 839-006-0235; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0244

Direct Threat

(1) Notwithstanding other provisions of these rules, an employer may refuse to employ an individual with a disability posing a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or reduced below the level of significant risk of substantial harm by reasonable accommodation.

(2) The determination that an individual with a disability poses a "direct threat" is based on an individualized assessment of the individual's present ability to safely perform the essential functions of the position. The assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge or on the best available objective evidence. In making the determination, factors to be considered include:

- The duration of risk;
- The nature and severity of potential harm;
- The likelihood that potential harm will occur; and
- The imminence of potential harm.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142
Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98, Renumbered from 839-006-0230; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-

2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0250

Customer or Co-Worker Preference

An employer may not consider the attitude or preference of employees, managers, supervisors, co-workers, customers, clients or the general public toward an individual's perceived or actual impairment in determining whether an individual is qualified for a position.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142
Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0255

Effect of Law

Where a state or federal law or regulation prevents employment in a particular position of an individual with a specified, medically verifiable impairment or specified severity of impairment, an employer is not required to employ an individual with a disability with such an impairment in that position. Nothing in this rule will be construed to permit denial of employment to such individual in a position that is not subject to such law or regulations.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142
Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0265

Subterfuge

An employer may not use the provisions of these rules as a subterfuge to avoid the employer's duty not to discriminate under ORS 659A.103 to 659A.142.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 - 659A.142
Hist.: BL 2-1998, f. & cert. ef. 2-3-98; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0270

Purpose and Scope

(1) ORS 659A.103 provides that it is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including participating in and receiving the benefits of the services, programs and activities of state government, without discrimination on the basis of disability.

(2) ORS 659A.142(5) provides that it is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual has a disability.

(3) State government shall make reasonable modifications in services, programs or activities, including but not limited to policies and procedures, when the modifications are necessary for state government to comply with ORS 659A.142(5) unless state government can demonstrate that making the modifications would result in a fundamental alteration in the nature of the service, program, or activity or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.

(4) ORS 659A.142(5) and these rules are not intended to:

(a) Create an independent entitlement to any service, program or activity of state government; or

(b) Require state government to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial or administrative burdens, as determined on a case-by-case basis.

(5) In determining whether financial and administrative burdens are undue for purposes of ORS 659A.142(5) and these rules, all resources available for use in the funding and operation of the service, program, or activity will be considered.

(6) Nothing in ORS 659A.142(5) or these rules prohibits state government from providing benefits, services, or advantages to individuals with disabilities beyond those required by 659A.142(5) or these rules.

(7) An individual claiming a violation of ORS 659A.142(5) may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.104, 659A.106, 659A.109, 659A.139, 659A.142

ADMINISTRATIVE RULES

Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 8-2010, f. & cert. ef. 2-24-10

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.104, 659A.106, 659A.109, 659A.139, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0275

Definitions — Disability

- (1) “Disability” has the meaning given in OAR 839-006-0205 (1) and (8).
- (2) “Major life activity” has the meaning given in OAR 839-006-0205 (6).
- (3) “Physical or mental impairment” has the meaning given in OAR 839-006-0205(10).
- (4) “Substantially limits” has the meaning given in OAR 839-006-0205(12).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.104, 659A.106, 659A.109, 659A.139, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0280

Definitions — State Government

(1) For purposes of ORS 659A.142(5) and these rules, “state government” has the meaning given to that term in ORS 174.111 and includes the executive, judicial and legislative departments of state government. Consistent with ORS 174.108(3), it does not include the Oregon Health and Science University, the Oregon State Bar, any intergovernmental entity formed by a public body with another state or with a political subdivision of another state, or any intergovernmental entity formed by a public body with an agency of the federal government.

(2) Pursuant to ORS 174.112, “executive department” means all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the executive department of government as described in Article III, Section 1 of the Oregon Constitution, and that are not in the judicial department, legislative department, local governments or special government bodies. “Executive department” includes:

(a) An entity created by statute for the purpose of giving advice only to the executive department and that does not have members who are officers or employees of the judicial department or legislative department;

(b) An entity created by the executive department for the purpose of giving advice to the executive department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the executive department other than an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the executive department.

(3) Pursuant to ORS 174.113, “judicial department” means the Oregon Supreme Court, the Oregon Court of Appeals, the Oregon Tax Court, the Oregon circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. “Judicial department” includes:

(a) An entity created by statute for the purpose of giving advice only to the judicial department and that does not have members who are officers or employees of the executive department or legislative department;

(b) An entity created by the judicial department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the judicial department other than an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the judicial department.

(4) Pursuant to ORS 174.114, “legislative department” means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. “Legislation department” includes:

(a) An entity created by statute for the purpose of giving advice only to the legislative department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the legislative department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the legislative department by a document other than a statute and that is not an entity described in paragraph (b) of this subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the legislative department.

839-006-0290

Other Statutes, Regulations and Agencies Governing Access by or Discrimination Against Persons with Disabilities

(1) Public transportation services, programs, and activities of public entities are subject to Title II of the federal Americans with Disabilities Act and regulated by the U.S. Department of Transportation. See 42 USC 12141 § 221 and 49 CFR § 37.

(2) Accessibility of government facilities is subject to Title II of the Americans with Disabilities Act, 42 USC §12131. The U.S. Department of Justice regulates existing government facilities (28 CFR § 35.150) and new construction and alterations to government facilities (28 CFR § 35.151). The Oregon Department of Consumer and Business Services has jurisdiction over disability access to state and local government facilities in Oregon. See ORS 447.210 to 447.310 and administrative rules and standards adopted pursuant thereto.

(3) The federal Rehabilitation Act provides that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any federal executive agency or by the United States Postal Service. 29 USC § 794.

(4) Discrimination against individuals with disabilities in employment is subject to ORS 659A.103 to 659A.142 and OAR 839-006-0200 to 0265.

(5) Discrimination against individuals with disabilities with respect to goods and services offered in a commercial manner by places of public accommodation is subject to ORS 659A.142 and OAR 839-006-0300 to 0335.

(6) Discrimination against individuals with disabilities in real property transactions is subject to ORS 659A.142, 659A.145 and OAR 839-005-0195 to 839-005-0220.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.100, 659A.103 & 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0295

Provision of Auxiliary Aids and Services

(1) Except as provided for in subsection (3) of this section, state government must provide auxiliary aids and services when necessary to ensure equal access to state government programs, services, and activities.

(2) Auxiliary aids and services may include:

(a) Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, computer aided real time captioning (CART), or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(b) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, e-mail, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) Acquisition or modification of equipment or devices; and

(d) Other similar services and actions.

(3) State government is not required to provide auxiliary aids or services that state government can demonstrate would result in a fundamental alteration in the nature of a service, program or activity of state government or would result in undue financial or administrative burdens on state government. This will be determined on a case by case basis.

(4) State government may not place a surcharge on an individual with a disability to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual with the nondiscriminatory treatment required by ORS 659A.142(5).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103, 659A.104, 659A.106, 659A.109, 659A.139, 659A.142
Hist.: BLI 21-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0300

Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee individuals equal access to and enjoyment of places of public accommodation as defined in ORS 659A.142 and 659A.400. No place of public accommodation may discriminate against an individual by any distinction or restriction on the basis of disability.

ADMINISTRATIVE RULES

(2) Discrimination on the basis of disability by places of public accommodation is an unlawful practice and the Civil Rights Division of the Bureau of Labor and Industries has the authority to protect the rights of individuals with disabilities through the enforcement of ORS 659A.142(4). OAR 839-006-0300 to 839-006-0335 interpret this statute and apply to all complaints and inquiries relating to these statutes received on or after the effective date of these rules.

(3) An individual claiming a violation of ORS 659A.142(4), pertaining to discrimination against individuals on the basis of disability by a place of public accommodation, may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.142
Hist.: BL 10-1996, f. & cert. ef. 12-4-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0305

Definitions

(1) "Disability" has the meaning given in OAR 839-006-0205(1) and (8).

(2) "Major life activity" has the meaning given in OAR 839-006-0205(6).

(3) "Physical or mental impairment" has the meaning given in OAR 839-006-0205(10).

(4) "Places of public accommodation" means any places or services offering the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise. However, places of public accommodation do not include institutions, bona fide clubs or places of accommodation that are in their nature distinctly private.

(5) "Substantially limits" has the meaning given in OAR 839-006-0205(12).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 30.675, 659A.100, 659A.103, 659A.142 & 659A.121
Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0307

Discrimination Theories: Public Accommodation of Individuals with Disabilities

(1) A violation of discrimination laws against individuals with disabilities may involve either intentional or unintentional discrimination. Discrimination against individuals with disabilities need not be intentional to be unlawful. Unintentional discrimination may occur in situations involving adverse impact, the failure to permit reasonable modifications, the refusal to make reasonable accommodations, the failure to design and construct covered buildings under applicable rules or the failure to remove physical barriers from facilities as provided in OAR 839-006-0310. To be protected from discrimination based on disability, an individual must have a disability, as described in ORS 659A.104 and the relevant rules. Reasonable modifications in services, programs or activities, provision of auxiliary aids, services by state government, removal of barriers to facilities, goods and services and provision of auxiliary aids by public accommodations are covered by ORS 659A.142 and these rules.

(2) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The complainant is an individual with a disability;

(c) The complainant was harmed by an action of the respondent; and

(d) The complainant's disability was the motivating factor for the respondent's action. In determining whether the complainant's disability was the motivating factor for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because that individual has a disability.

(B) Different or Unequal Treatment Theory: The respondent treats individuals with disabilities differently than others who do not have disabilities. When the respondent makes this differentiation because of the individual's disability and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the complainant was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the complainant differently than compa-

rably situated individuals who do not have disabilities. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that an individual's disability was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's disability was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The complainant at all times has the burden of proving that the complainant's disability was the motivating factor for the respondent's unlawful action.

(3) Adverse impact by a place of accommodation on the basis of disability: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (2) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(4) Harassment by a place of public accommodation on the basis of disability:

(a) Conduct of a verbal or physical nature on the basis of disability is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (2) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of creating an intimidating, hostile or offensive environment; or

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of public accommodations; or

(C) Submission to or rejection of such conduct is used as the basis for decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the individual against whom the harassment is directed would so perceive it.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 & ORS 659A.142
Hist.: BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0330

Removal of Barriers to Goods and Services

(1) Places of public accommodation must remove physical and administrative barriers, if readily achievable (as defined in OAR 839-006-0310) in order to make offered goods and services accessible.

(2) If barrier removal is not readily achievable, places of public accommodation must take alternative steps to make offered goods and services accessible, such as providing goods and services at the door, sidewalk or curb; providing home delivery; retrieving merchandise from inaccessible shelves or racks; relocating activities to accessible locations; or relaxing administrative policies.

(3) Places of public accommodation may not impose charges on individuals with disabilities to recover costs of barrier removal.

(4) Removal of physical or administrative barriers that would result in significant difficulty or expense or in a fundamental alteration in the nature of the offered goods or services is not required and is to be determined on a case-by-case basis.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.103 & 659A.142
Hist.: BL 10-1996, f. & cert. ef. 12-4-96; BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

ADMINISTRATIVE RULES

839-006-0335

Direct Threat

(1) Notwithstanding other provisions of these rules, places of public accommodation may refuse to permit an individual with a disability to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation if the individual with a disability poses a direct threat to the health or safety of others. Direct threat means significant risk of substantial harm that cannot be eliminated or reduced below the level of significant risk of substantial harm by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.

(2) In determining whether an individual with a disability poses a direct threat to the health or safety of others, places of public accommodation must make an individualized assessment, based on reasonable judgment that relies on the most current medical knowledge, or on the best available objective evidence, to ascertain:

- (a) The duration of risk;
- (b) The nature and severity of potential harm;
- (c) The likelihood that potential harm will occur;
- (d) The imminence of potential harm; and
- (e) Whether reasonable modifications of policies, practices or procedures will mitigate the risk.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 & 659A.142

Hist.: BLI 15-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 14-2008, f. 5-30-08, cert. ef. 6-6-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0435

Veterans' Preference in Public Employment

(1) It is the policy of the State of Oregon that a public employer grant a preference in hiring and promotion to veterans and disabled veterans under the provisions of ORS 408.230.

(2) The requirement to grant a preference in hiring and promotion to veterans and disabled veterans under the provisions of ORS 408.230 applies only to a public employer's civil service positions.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0440

Definitions

(1) "Active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

(2) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof. (Title 38 USC Part I Chapter 1 Section 101). Reserve components mean:

- (a) The Army Reserve;
- (b) The Navy Reserve;
- (c) The Marine Corps Reserve;
- (d) The Air force Reserve;
- (e) The Coast Guard Reserve;
- (f) The Army National Guard of the United States; and
- (g) The Air National Guard of the United States.

(3) "Civil service position" means any position for which a hiring or promotion decision is made or required to be made based on the results of a merit based, competitive process that includes, but is not limited to, consideration of an applicant's or employee's relative ability, knowledge, experience and other skills.

(a) A "civil service" position need not be labeled a "civil service position."

(4) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

(5) "Disabled veteran" means a person entitled to disability compensation under the laws administered by the U.S. Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

(6) "Military leave" means any period of time for which a person is absent from a permanent civil service position for the performance of active duty in the Armed Forces of the United States.

(7) "Promotion" means any position with a higher maximum salary rate.

(8) "Public employer" includes a public body as defined in ORS 174.109, and any person authorized to act on behalf of the public body, with respect to control, management or supervision of any employee. "Public employer" includes but is not limited to:

(a) Employers in local governments;

(b) Employers in a public corporation created under a statute of this state and specifically designated as a public corporation; and

(c) Employers in any public body that is created by statute, ordinance or resolution that is not part of state government or local government.

(9) "Veteran" means a person who:

(a) Served on active duty with the Armed Forces of the United States;

(i) For a period of more than 178 consecutive days and was discharged or released from active duty under honorable conditions;

(ii) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability; or

(iii) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions; or

(b) Received a combat or campaign ribbon for service in the Armed Forces of the United States.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0445

Eligibility for Employment Preference

(1) A veteran is eligible to use the preference provided for in OAR 839-006-0450 and 839-006-0455 for a civil service position for which application is made at any time after discharge or release from service in the Armed Forces of the United States.

(2) Except as provided in (1) of this rule there are no limitations to the number of times a person can claim the preference.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0450

Applying the Employment Preference

(1) At each stage of the application process a public employer will grant a preference to a veteran or disabled veteran who successfully completes an initial application screening or an application examination or a civil service test the public employer administers to establish eligibility for a vacant civil service position.

(2) For an initial application screening used to develop a list of persons for interviews, the public employer will add five preference points to a veteran's score and ten preference points to a disabled veteran's score.

(3) For an application examination, given after the initial application screening, that results in a score, the public employer will add five preference points to a veteran's and ten preference points to a disabled veteran's total combined examination score without allocating the points to any single feature or part of the examination.

(4) If a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will devise and apply methods by which the public employer gives special consideration in the public employer's hiring decision to veterans and disabled veterans.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235

Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0455

Employment Preference for Promotions

(1) A public employer will grant a preference to a person seeking promotion and who is employed by the public employer in a permanent civil service position only if the person:

(a) Was granted military leave by the public employer to serve in the Armed Forces of the United States;

(b) Returned from the military leave to the civil service position;

(c) Qualified as a veteran or disabled veteran, as defined in OAR 839-006-0440(5) and (9), by reason of the person's service during the military leave or otherwise;

(d) Successfully completed a test or examination for the promotional position; and

(e) Meets the minimum qualifications and any special qualifications for the promotional position.

(3) If a person meets the criteria for a promotional preference under subsection (1) of this rule, the public employer will add five preference points to a veteran's score and ten preference points to a disabled veteran's score.

ADMINISTRATIVE RULES

(4) For the purposes of a promotional preference under subsection (1) of the rule, if a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will devise and apply methods by which the public employer gives special consideration in the public employer's hiring decision to veterans and disabled veterans.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.225, 408.230, 408.235
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0460

Appointment to a Position

(1) A public employer will appoint an otherwise qualified veteran or disabled veteran to a vacant civil service position if the results of a veteran's or disabled veteran's application examination, when combined with the veteran's or disabled veteran's preference, are equal to or higher than the results of an application examination for an applicant who is not a veteran or disabled veteran.

(2) Preferences of the type described in OAR 839-006-0450 and 839-006-0455 are not a requirement that a public employer appoint a veteran or disabled veteran to a civil service position.

(3) A public employer may base a decision not to appoint the veteran or disabled veteran solely on the veteran's or disabled veteran's merits or qualifications with respect to the vacant civil service position.

(4) If a public employer does not appoint a veteran or disabled veteran to a vacant civil service position, upon written request of the veteran or disabled veteran, the public employer, will provide the public employer's reasons for the decision not to appoint the veteran or disabled veteran to the position.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.230, 408.235
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0465

Certification

(1) A public employer may require an applicant to provide certification that the person is an eligible veteran or disabled veteran under OAR 839-006-0440(5) and (9).

(2) An applicant for a position with a public employer claiming veteran's or disabled veteran's preference points may submit as certification of eligibility under OAR 839-006-0440(5) and (9) a copy of the Certificate of Release or Discharge from Active Duty (a federal DD Form 214 or 215) with the application for employment.

(3) Disabled veterans may also submit a copy of their veteran's disability preference letter from the U.S. Department of Veterans Affairs, unless the information is included in the federal DD Form 214/215.

(4) If a person's record appears to show service qualifying for the preference the public employer may provisionally designate an applicant as an eligible veteran or disabled veteran. However, before the person can be appointed, the person must submit proof of the entitlement to the preference.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.225, 408.230, 408.235
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0470

Enforcement

The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 408.230. A person claiming a violation of ORS 408.230 may file a verified written complaint with the Civil Rights Division in accordance with ORS 659A.820.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 408.230, 408.235, 659A.820
Hist.: BLI 37-2008, f. 11-6-08, cert. ef. 11-10-08; BLI 8-2010, f. & cert. ef. 2-24-10

839-006-0480

Discrimination Based on Uniformed Service

(1) For purposes of this rule:

(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service; and

(b) "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard or military reserve forces.

(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:

(a) Denying a public officer or public employee the status or rights

provided by ORS 408.240 to 408.240 and 408.290, if the employer is a public body.

(b) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.

(c) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:

(A) Initial employment;

(B) Reemployment following a leave from employment taken by reason of service in a uniformed service;

(C) Retention in employment;

(D) Promotion; or

(E) Any other term, condition or privilege of employment, including but not limited to compensation.

(3) An employer does not commit an unlawful employment practice under this rule if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

(4) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute.

(5) To the extent possible, this rule shall be construed in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC 43.

(6) Protections for spouses and domestic partners of uniformed service members may be found under the Oregon Family Military Leave Act, ORS 659A.090 to 659A.099 and OAR 839-009-0370-839-009-0460.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.082
Hist.: BLI 8-2010, f. & cert. ef. 2-24-10

Rule Caption: Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Adm. Order No.: BLI 9-2010

Filed with Sec. of State: 2-24-2010

Certified to be Effective: 2-24-10

Notice Publication Date: 12-1-2009

Rules Adopted: 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-006-0332

Subject: The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

839-005-0138

Discrimination Based on Child Support Obligations

(1) For purposes of this rule:

(a) "Child" has the meaning given that term in ORS 110.303.

(b) "Child support" means an obligation imposed or imposable by law to provide support, including but not limited to medical support and an unsatisfied obligation to provide support to a child under ORS Chapter 25.

(c) "Obligor" means an individual or the estate of a decedent:

(A) Who owes or is alleged to owe a duty of support;

(B) Who is alleged but has not been adjudicated to be a parent of a child; or

ADMINISTRATIVE RULES

(C) Who is liable under a support order.

(d) "Order to withhold" means an order or other legal process that requires a withholder to withhold support from the income of an obligor.

(e) "Withholder" means any person who disburses income and includes but is not limited to an employer, conservator, trustee or insurer of the obligor.

(2) It is an unlawful employment practice for an employer to discharge, refuse to hire or in any other manner discriminate, retaliate, or take disciplinary action against an employee because of the entry or service of an order to withhold under ORS 25.378 and 25.402 or because of the obligations or additional obligations that the order imposes upon the employer.

(3) An obligor may bring an action under ORS 659A.885 or may file a complaint with the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 25.424, 659A.885
Hist.: BLI 9-2010, f. & cert. ef. 2-24-10

839-005-0140

Accommodation of Religious Practices

(1) An employer violates ORS 659A.030 if the employer does not allow an employee to use vacation leave, or other leave available to the employee, for the purpose of allowing an employee to engage in the religious observance or practices of the employee.

(a) This requirement applies only to leave that is not restricted as to the manner in which the leave may be used and that the employer allows the employee to take by adjusting or altering the work schedule or assignment of the employee.

(2) An employer is required to accommodate such leave only when reasonably accommodating use of the leave by the employee will not impose an undue hardship on the operation of the business of the employer.

(a) A reasonable accommodation imposes an undue hardship on the operation of the business of the employer for the purposes of this section if the accommodation requires significant difficulty or expense. For the purpose of determining whether an accommodation requires significant difficulty or expense, the following factors shall be considered:

(A) The nature and the cost of the accommodation needed.

(B) The overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility caused by the accommodation.

(C) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of persons employed by the employer and the number, type and location of the employer's facilities.

(D) The type of business operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities of the employer.

(E) The safety and health requirements in a facility, including requirements for the safety of other employees and any other person whose safety may be adversely impacted by the requested accommodation.

(3) An employer violates ORS 659A.030 if the employer imposes an occupational requirement that restricts the ability of an employee to wear religious clothing, to take time off for a holy day or to take time off to participate in a religious observance or practice when:

(a) Reasonably accommodating those activities does not impose an undue hardship on the operation of the business of the employer as described in this rule; and

(b) The activities have only a temporary or tangential impact on the employee's ability to perform the essential functions of the job.

(4) "Undue hardship" for purposes of ORS 659A.033 and this rule is described in ORS 659A.033.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.033
Hist.: BLI 9-2010, f. & cert. ef. 2-24-10

839-005-0160

Protection from Discrimination and Safety Accommodation for Victims of Domestic Violence, Sexual Assault or Stalking

(1) As provided in ORS 659A.290, it is an unlawful employment practice for an employer, because an individual is a victim of domestic violence, sexual assault or stalking, to:

(a) Refuse to hire an otherwise qualified individual; or

(b) Discharge, threaten to discharge, demote, suspend or in any way discriminate or retaliate against an individual with respect to promotion,

compensation or any other terms, conditions or privileges of employment.

(2) ORS 659A.290 requires employers to provide safety accommodation for victims of domestic violence, sexual assault or stalking.

(3) The Civil Rights Division ("division") of the Bureau of Labor and Industries enforces ORS 659A.290.

(4) Leave from employment is available for victims of domestic violence, sexual assault or stalking for purposes including but not limited to: seeking legal or law enforcement remedies, seeking medical care or counseling, and for relocating or other safety measures. The division enforces ORS 659A.270 to 659A.285, which require leave for victims of domestic violence, sexual assault or stalking. OAR 839-009-0321 to 839-009-0365 implement and interpret ORS 659A.270 to 659A.285.

(5) OAR 839-005-0160 to 839-005-0170 implement and interpret ORS 659A.290.

(6) Definitions for OAR 839-005-0160 to 839-005-0170:

(a) "Victim of domestic violence" means:

(A) An individual who has been threatened with abuse or is a victim of abuse, as defined in ORS 107.705; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(b) "Victim of sexual assault" means:

(A) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(c) "Victim of Stalking" means:

(A) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(B) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(d) In no event will an alleged perpetrator of domestic violence, sexual assault or stalking be considered a victim for the purposes of ORS 659A.290 or these rules.

Stat. Auth.: ORS 659A.805, 659A.270
Stats. Implemented: ORS 659A.290
Hist.: BLI 9-2010, f. & cert. ef. 2-24-10

839-005-0170

Reasonable Safety Accommodation for Victims of Domestic Violence, Sexual Assault or Stalking

(1) It is an unlawful employment practice to refuse to make a reasonable safety accommodation requested by an individual who is a victim of or under threat of domestic violence, sexual assault, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(2) "Reasonable safety accommodation" may include, but is not limited to, a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, implemented safety procedure or any other adjustment to a job structure, workplace facility or work requirement in response to actual or threatened domestic violence, sexual assault or stalking.

(3) Undue hardship means a significant difficulty and expense to an employer's business and includes consideration of the size of the employer's business. Other factors to consider in determining whether granting a safety accommodation will cause an undue hardship on an employer's business include, but are not limited to:

(a) The safety accommodation requested and the relative cost to an employer's business;

(b) The overall financial resources of the employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the safety accommodation were granted;

(c) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees and the number, type and location of the employer's facilities;

(d) The type of operations conducted by the employer, including the composition, structure and functions of the employer's workforce.

(4) Prior to making a reasonable safety accommodation, an employer may require an individual to provide certification that the individual is a victim of domestic violence, sexual assault, or stalking.

ADMINISTRATIVE RULES

(a) An individual must provide a certification permitted under OAR 839-009-0362(5) within a reasonable time after receiving the employer's request for certification.

(b) Any of the following constitutes sufficient certification:

(i) A copy of a police report indicating that the individual was or is a victim of domestic violence, sexual assault or stalking.

(ii) A copy of a protective order or other evidence from a court or attorney that the individual appeared in or is preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.

(iii) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the individual was or is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking.

(iv) All records and information kept by an employer regarding a reasonable safety accommodation made for an individual are confidential and may not be released without the express permission of the individual, unless otherwise required by law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.290

Hist.: BLI 9-2010, f. & cert. ef. 2-24-10

839-006-0332

Lift Systems for Transient Lodging

(1) A transient lodging provider shall ensure that in transient lodging facilities of 175 or more rooms or suite of rooms that at least one room or suite of rooms has a lift system or multiple lift systems that enable an individual with a disability to access a bed, a toilet, and a shower or bathtub in the room or suite of rooms occupied by the individual with a disability.

(a) "Lift system" means a system that:

(A) Is used to transfer a person to a bed, toilet, shower or bathtub, but does not provide the individual with independent mobility;

(B) May be a manual lift, an electronic lift or a lift that uses a track system; and

(C) May require operation by an assistant.

(b) "Transient lodging" means a unit consisting of a room or suite of rooms that:

(A) Is not occupied as a principal residence;

(B) Is typically occupied for a period of fewer than 30 consecutive days; and

(C) Includes services that are part of the regularly charged cost of occupancy, including maid and linen services.

(2) Additional information regarding the requirement described in section (3) of this rule is available at ORS 659A.144.

(3) Any violation of section (1) of this rule or of the authorizing statutes is an unlawful practice.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.144, 659A.411 - 659A.417

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Rule Caption: Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

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Subject: The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include

newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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839-009-0210

Definitions

(1) "Alternate duty" means work assigned to an employee that may consist of:

(a) The employee's same duties worked on a different schedule; or

(b) Different duties worked on the same or different schedule.

(2) "Child," for the purposes of parental and sick child leave only (not for the purposes of serious health condition leave), means a biological, adopted, foster or stepchild, the child of an employee's same-gender domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be:

(a) Under the age of 18; or

(b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.100(2)(d).

(3) "Covered employer" means any employer employing 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar work weeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

(4) "Domestic partner" means an individual joined in a domestic partnership.

(5) "Domestic partnership" for the purposes of ORS chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.405(1) and rules adopted by the State Registrar of the Center for Health Statistics.

(6) "Eligible employee" means an employee employed in the State of Oregon on the date OFLA leave begins. For eligibility of employees reemployed following a period of uniformed service, see subsections (c) and (d) of this section.

(a) For the purpose of taking parental leave, an employee must be employed by a covered employer for at least 180 calendar days immediately preceding the date on which OFLA leave begins.

(b) For purposes of taking all other types of OFLA leave, including pregnancy disability leave, an employee must have worked for a covered employer for an average of at least 25 hours per week during the 180 calendar days immediately preceding the date OFLA leave begins.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act (See 29 CFR Part 785).

(c) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member

ADMINISTRATIVE RULES

may have a cause of action under USERRA but not under OFLA. [Note: USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC 2601-2654 (FMLA).]

(d) ORS 659A.082 — 659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OFLA prior to the date uniformed service began, OFLA's eligibility requirements are considered met.

(e) For the purpose of qualifying as an eligible employee, the employee need not work solely in the State of Oregon.

(7) "Family member" means the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of *in loco parentis*. It also includes the biological, adopted, foster or stepchild of an employee or the child of an employee's same-gender domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave is taken.

(8) "FMLA" is the federal Family and Medical Leave Act, 29 USC 2601.

(9) "Foreseeable leave" means leave taken for a purpose set out in ORS 659A.159 that is not "unforeseeable leave" as defined in OAR 839-009-0210(21).

(10) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(11) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.

(12) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or lifestyle, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(13) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(14) "Health care provider" means:

(a) The person primarily responsible for providing health care to an eligible employee or to a family member of an eligible employee; and

(b) Who is a physician licensed to practice medicine or surgery, including a doctor of osteopathy; or

(c) A podiatrist, a dentist, a clinical psychologist, an optometrist, a naturopath, a nurse practitioner, a licensed physician's assistant, a direct entry midwife, a nurse-midwife or a clinical social worker authorized to practice and perform within the scope of a professional license as provided by law; or

(d) A Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Mass; or

(e) A chiropractor, but only to the extent that a chiropractor provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(15) "In loco parentis" means in the place of a parent, having financial and day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(16) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(17) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.

(18) "OFLA leave" means a leave of absence for purposes described in ORS 659A.159 and OAR 839-009-0230(1) through (4). Except that "OFLA leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(19) "OFLA leave year," for calculating the OFLA leave year entitlement, means a calendar year (January to December), a fixed 12-month peri-

od such as a fiscal year, a 12-month period measured forward from the date of the employee's first OFLA leave, or a 12-month period measured backward from the date the employee uses any OFLA leave. The option selected must be applied to all employees. In the absence of an employer policy or collective bargaining agreement defining how an OFLA leave year will be measured, a calendar year will be used.

(20) "Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member:

(a) That requires inpatient care in a medical care facility such as a hospital, hospice or residential facility such as a nursing home. When a family member resides in a long-term residential care facility, leave applies only to:

(A) Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;

(B) Transportation or other assistance required for a family member to obtain care from a physician; or

(C) Serious health conditions as described in (b) through (h) of section (19) of this rule.

(b) That the treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) That requires constant or continuing care such as home care administered by a health care professional;

(d) That involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) That results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes or epilepsy;

(f) That involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) That involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or

(h) That involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

(21) "Unforeseeable leave" means leave taken as a result of:

(a) An unexpected serious health condition of an employee or family member of an employee; or

(b) An unexpected illness, injury or condition of a child of the employee that requires home care; or

(c) A premature birth or a placement for adoption or foster care the exact date of which cannot be previously determined with certainty.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2006, f. 10-3-06, cert. ef. 10-4-06; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0220

Relationship of OFLA to FMLA

(1) Leave taken under FMLA counts as OFLA leave provided the employee is also eligible for OFLA leave.

(2) Provisions of OFLA will be construed to the extent possible in a manner that is consistent with any similar provisions of FMLA; however, employers subject to both OFLA and FMLA must apply the provision that is more beneficial to the employee's circumstances.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0240

Length of Leave and Other Conditions

(1) An eligible employee is entitled to as much as 12 weeks of OFLA leave in any one-year period except that:

(a) An eligible female employee may take up to 12 weeks of preg-

ADMINISTRATIVE RULES

nancy disability leave in addition to 12 weeks of OFLA leave for any leave purpose;

(b) An eligible employee taking the entire 12 weeks of OFLA leave for parental leave may take an additional 12 weeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except for the balance of the initial 12 weeks. The employee may also use this balance for any other OFLA leave purpose.

(2) An eligible female employee may take up to 36 weeks of OFLA leave in one leave year that includes up to 12 weeks of pregnancy disability leave, followed by 12 weeks of parental leave, and 12 weeks of sick child leave.

(3) An eligible employee may take up to 24 weeks of OFLA leave in one leave year under the following circumstances:

(a) The employee takes 12 weeks of parental leave, followed by:

(b) Twelve weeks of sick child leave.

(4) When two eligible family members work for the same covered employer, both employees may take OFLA leave at the same time only under the following circumstances:

(a) One employee needs to care for the other employee suffering from a serious health condition; or

(b) One employee needs to care for a child suffering from a serious health condition while the other employee is also suffering from a serious health condition; or

(c) Both family members are suffering from a serious health condition; or

(d) The employer allows concurrent leave.

(5) Unless the employer approves otherwise, parental leave must be taken in one uninterrupted period, and must be completed within 12 months of the birth, adoption or placement of the child. An exception must be made to allow parental leave to effectuate adoption or foster placement of the child. Such leave need not be taken in one, uninterrupted period with any additional parental leave.

(6) The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12-week period of parental leave.

(7) Sick child leave need not be provided to an eligible employee by a covered employer if another family member, including a non-custodial biological parent, is willing and able to care for the child.

(8) A covered employer may not reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(a) If an employee uses OFLA leave for a workplace injury pending acceptance of a workers' compensation claim, upon acceptance of the claim any OFLA leave used for the workplace injury must be restored to the employee. If the claim is denied, OFLA leave will be deducted from the employee's entitlement.

(A) If the employer uses a rolling forward leave year, a fixed leave year or a calendar leave year, and a worker's compensation claim is first denied and then accepted, the employer must restore any OFLA leave taken in the leave year in which the worker's compensation claim is accepted.

(b) An employee must be eligible under OAR 839-009-0210(6) in order to use OFLA leave following a period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(9) Notwithstanding section (8) of this rule, the employer may reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005 after the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See ORS 659A.043(4), 659A.046(5), 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(10) For the purpose of intermittent leave, OFLA leave entitlement is calculated for an employee by multiplying the number of hours the employee normally works per week by 12. (For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours OFLA leave.)

(a) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period must be used for calculating the employee's normal work week. (For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours OFLA leave.)

(b) If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted

toward the 12 weeks of OFLA leave to which the employee is entitled.

(11) An employee who has previously qualified for and taken some portion of OFLA leave must requalify as an "eligible employee" as defined in OAR 839-009-0210(6) each time the employee begins additional OFLA leave within the same leave year. Exceptions:

(a) An employee who has been granted OFLA leave for a qualifying serious health condition of the employee or family member need not requalify under OAR 839-009-0210(6) each time leave for the same purpose (the same individual and the same serious health condition) is taken.

(b) A female employee who has been granted OFLA pregnancy disability leave need not requalify under OAR 839-009-0210(6) for an additional 12 weeks of leave within the same leave year for any OFLA leave purpose.

(c) An employee who has taken 12 weeks of OFLA parental leave, need not requalify under OAR 839-009-0210(6) for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave.

(12) An exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act (see 29 CFR Part 541 through 541.315) or the state minimum wage and overtime laws (ORS chapters 652 and 653).

(a) When OFLA leave is also covered by FMLA and the employee takes intermittent leave in blocks of less than one day, the employer may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(30)(a).

(b) When OFLA leave is not covered by FMLA (e.g., the employer has 25 to 49 employees, the leave is taken for a sick child, for the serious health condition of a parent-in-law, for the serious health condition of a registered domestic partner or for the serious health condition of a registered domestic partner's parents), and the employee takes intermittent leave in blocks of less than one day, an employer will jeopardize the employee's exempt status if the employer reduces the employee's salary for the part-day absence.

(13) The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, that provides as one of its options employee leave at least as generous as the leave required by OFLA.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0245

Intermittent Leave and Alternate Duty

(1) An employer may transfer an employee on intermittent OFLA leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

(a) The employee accepts the transfer position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

(c) The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, providing all the employee protections found in FMLA regulations 29 CFR Part 825;

(d) Transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and

(e) The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

(2) An employee transferred, as provided in section (1)(a) through (e) of this rule, to an alternate position for the purpose of a reduced work schedule must be returned to the employee's former position when the employee notifies the employer that the employee is ready to return to the former position at the end of the alternate duty leave.

(3) OFLA leave time for an employee on intermittent leave or a reduced work schedule is the difference between the number of hours the employee normally works and the number of hours the employee actually works during the intermittent leave or reduced work schedule. When it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work during a shift, such as when a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed "clean room" during a certain period of time, the entire period of

ADMINISTRATIVE RULES

work from which the employee is forced to be absent is designated as OFLA leave and counts against the employee's OFLA entitlement.

(4) Holidays or days in which the employer's business is not in operation are not counted toward intermittent or reduced work schedule OFLA leave.

(5) An employer may transfer an employee recovering from a serious health condition to an alternate position that accommodates the serious health condition provided:

(a) The employee accepts the position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;

(c) The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, providing all the employee protections found in FMLA regulations 29 CFR Part 825; and

(d) The transfer is not used to discourage the employee from taking OFLA leave for a serious health condition, or to create a hardship for the employee.

(6) An employee is not on OFLA leave if the employee has been transferred — as provided in section (5)(a) through (d) of this rule — to an alternate position for the purpose of alternate work duties that the employee is able to perform within the limitations of the employee's own serious health condition, but not requiring a reduced work week. An employee working in an alternate position retains the right to return to the employee's original position unless all OFLA leave taken in that leave year plus the period of time worked in the alternate position exceed 12 weeks.

(7) An alternate position accommodating an employee's serious health condition may result in the employee working fewer hours than the employee worked in the original position. The employee's OFLA leave is the difference between the number of hours the employee worked in the original position and the number of hours the employee actually works in the alternate position.

(8) Intermittent leave for school teachers is subject to the special rules in OAR 839-009-0290.

Stat. Auth.: ORS 659A.805 & 659A.162

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0250

Notice by Employee; Designation by Employer; Notice by Employer Regarding Eligibility or Qualification

(1) Except in situations described in sections (2) and (3) of this rule, a covered employer may require an eligible employee to give 30 days written notice of the need for foreseeable leave, including an explanation of the need for leave, before starting OFLA leave. The employee is not required to specify that the request is for OFLA leave.

(a) An employee able to give advance notice of the need to take OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave, absent unusual circumstances.

(b) An employer may request additional information to determine that a requested leave qualifies for designation as OFLA leave, except in cases of parental leave (no medical verification required) or sick child leave (no medical verification may be required until after three occurrences).

(c) The employer may provisionally designate an absence as OFLA leave until sufficient information is received to make a determination. An employee who calls in sick without providing further information will not be considered to have provided sufficient notice to trigger an employer's obligations under OFLA.

(d) An employee on OFLA leave who needs to take more leave than originally authorized must give the employer reasonable notice prior to the end of the authorized leave, following the employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of OFLA leave has ended and an employee does not return to work, an employer having reason to believe the continuing absence may qualify as OFLA leave must request additional information, and may not treat a continuing absence as unauthorized unless requested information is not provided or does not support OFLA qualification.

(2) When an employee is unable to give the employer 30 days notice but has some advance notice of the need for leave, the employee must give the employer as much advance notice as is practicable.

(3) When taking OFLA leave in an unforeseeable situation, an employee must give verbal or written notice within 24 hours before or after commencement of the leave. This notice may be given by any other person on behalf of an employee taking unanticipated OFLA leave. The employer may require written notice by the employee within three days of the employee's return to work.

(4) If an employee fails to give notice as required by sections (1), (2), and (3) of this rule or the employer's policies:

(a) The employer may reduce the period of unused OFLA leave by an amount no greater than the number of days of leave the employee has taken without providing timely notice of leave. This reduction of leave may not exceed three weeks in a one-year leave period (see ORS 659A.165(4)); and

(b) The employee may also be subject to disciplinary action under an employer's uniformly applied policy or practice. This practice must be consistent with the employer's discipline for similar violations of comparable rules.

(5) When an employee requests OFLA leave, or when the employer acquires knowledge that an employee's leave may be for an OFLA-qualifying reason, the employer must notify the employee within five business days whether the employee is eligible and qualifies to take OFLA leave absent extenuating circumstances. All OFLA absences for the same qualifying reason are considered a single leave event and employee qualification as to that reason for leave does not change during the applicable 12-month period unless the reason is no longer qualifying. If an employer determines that an employee does not qualify for OFLA leave for the reason requested, the employer must notify the employee in writing that the employee does not qualify.

(a) The written notice that the employee does not qualify must state that the employee is ineligible or the reason for requested leave does not qualify for OFLA leave and at least one reason why the employee is not eligible or the reason does not qualify for leave.

(b) If an employer determines that an employee does not qualify for OFLA leave for the reason requested because a medical verification is incomplete or insufficient, the written notice that the employee does not qualify must state what additional information is required to make the verification complete or sufficient, and the employee must be afforded a reasonable period of time to correct the deficiency.

(6) When an employee fails to respond to reasonable employer requests for medical verification of the employee's requested reason for leave to determine whether the leave is OFLA qualifying, the employer may deny use of OFLA leave until medical verification is received.

(7) An employer may not reduce an employee's available OFLA leave or take disciplinary action unless the employer has posted the required Bureau of Labor and Industries Family Leave Act notice or the employer can otherwise establish that the employee had actual knowledge of the notice requirement.

(8) Federal regulations prohibit reducing the leave period under FMLA, but allow an employer to delay the start of leave because of improper notice (see 29 CFR Section 825.304).

(9) When an employee is subject to both FMLA and OFLA, the employer must apply the discipline available under (4)(a), (b) or (6) of this rule that is most beneficial to the employee's individual circumstances.

(10) An employee who refuses an offer of employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d) and who otherwise is entitled to OFLA leave under 659A.150 to 659A.186:

(a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and

(b) Need not give notice to the employer that would otherwise be required by this rule that the employee is commencing a period of leave. See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 1-2007, f. 1-16-07, cert. ef. 1-17-07; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0260

Medical Verification and Scheduling of Treatment

(1) An employer may require an employee to provide medical verification of the need for OFLA leave, except that an employer may not require medical verification for parental leave. All requests for medical verification must be in writing and must state the consequences for failure to provide the requested medical verification.

(2) Consistent with ORS 659A.306, the employer must pay the cost of any medical verification not covered by insurance or another benefit plan.

(3) When an employer requires eligible employees to give advance written notice of a foreseeable need for leave and an eligible employee gives such notice, the employer may require the employee to provide medical verification of the need for OFLA leave before the leave starts.

(4) When an employee commences unforeseeable OFLA leave as defined in ORS 659A.165(2) without prior notice, the employee must provide medical verification within 15 days of the employer's request for verification.

ADMINISTRATIVE RULES

(5) If an employer determines that a medical verification provided by an employee is incomplete or insufficient, the employer must provide written notice that states the verification is incomplete or insufficient and the additional information needed to make it complete or sufficient.

(6) When an employee fails to respond to reasonable employer requests for medical verification of the employee's eligibility for foreseeable leave to determine whether the leave is OFLA qualifying, the employer may deny use of OFLA leave until complete or sufficient medical verification is received.

(7) An employer may not delay the use of OFLA leave when medical verification is not received before the commencement of unforeseeable leave. The employer may designate the leave as provisionally approved, subject to medical verification.

(8) If an employee submits medical verification signed by a health care provider, the employer may not directly request additional information from the employee or family member's health care provider. However, with permission from the employee or family member, a health care provider representing the employer may contact the employee or family member's health care provider to clarify or authenticate the medical verification.

(9) An employer may not request subsequent medical verifications more often than every 30 days and then only in connection with the employee's absence except when:

(a) Circumstances described by the previous medical verification have changed significantly (e.g., the duration or frequency of absences, the severity of conditions, or complications); or

(b) The employer receives information that casts doubt upon the employee's stated reason for the absence.

(10) If an employee requests OFLA leave for any purpose except parental leave, the employer may require the employee to obtain the opinion of a second health care provider designated by the employer, at the employer's expense. If the opinion of the second provider conflicts with the medical verification provided by the employee, the employer may require the two providers to designate a third health care provider to provide an opinion at the employer's expense (see ORS 659A.168). The opinion of the third provider is binding on both the employer and the employee.

(11) Upon request by the employee, the employer is required to provide the employee with a copy of any second and third medical opinions required under section 10 of this rule. Absent extenuating circumstances, the requested copies must be provided within five business days after the receipt of the employee's request.

(12) When OFLA is taken for the employee's serious health condition, the employer may require the employee to present verification from the employee's health care provider that the employee is able to resume work before restoring the employee to work. The employer may not require the employee to obtain a second opinion about the employee's ability to return to work after taking OFLA leave. (see OAR 839-009-0270(7)).

(13) If an employee has taken sick child leave on all or any part of three separate days during a leave year, the employer may require medical verification from a health care provider on the fourth day or subsequent occurrence of sick child leave within that leave year. The employer must pay the cost of the verification not covered by insurance or another benefit plan (see ORS 659A.306). The opinion of the health care provider is binding, and the employer may not require the employee to obtain a second opinion.

(14) When possible, an employee must make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 24-2005, f. 11-15-06, cert. ef. 11-16-05; BLI 12-2006, f. 3-22-06, cert. ef. 3-24-06; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0265

Medical Verification in Languages Other than English

(1) In circumstances in which an employee or family member needs to obtain medical verification in a foreign country, the employer shall accept a medical verification as well as second and third opinions from a health care provider who practices in that country.

(2) When a medical verification by a health care provider is in a language other than English, the employer may request that the employee provide a written translation of the verification.

(a) The employee's request for OFLA leave may not be denied on the basis of failure of a good faith effort to obtain translation of a medical verification.

(b) The employer may not deny the employee access to translation

resources available to the employer (for instance, bilingual personnel or computer programs).

(c) The employer must request the translation as soon as is practicable upon learning that an employee's circumstances may result in a medical verification being issued in a language other than English.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186

Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0270

Job Protection

(1) An employer must restore an employee returning from OFLA leave, including intermittent and alternative duty leave, to the employee's former position if the job still exists, even if it has been filled during the employee's OFLA leave. The former position is the position held by the employee at the time OFLA leave began, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same truck, delivering the same goods, on the same shift and working from the same location as when the driver started OFLA leave.)

(2) Any worker hired during an eligible employee's leave to perform the same work that the eligible employee performed before the leave was taken is a replacement worker. When the eligible employee notifies the employer that the employee is ready to return to work, the employer must give that employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work.

(3) The employee is not entitled to return to the former position if the employee would have been bumped if OFLA leave had not been taken.

(4) If the position held by the employee at the time OFLA leave began has in fact been eliminated and not merely renamed or reclassified, the employer must restore the employee to any available, equivalent position.

(a) An available position is a position that is vacant or not permanently filled.

(b) An equivalent position is a position that is the same as the former position in as many aspects as possible. If an equivalent position is not available at the employee's former job site, the employee may be restored to an equivalent position within 20 miles of the former job site.

(5) Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provide otherwise:

(a) An employee on OFLA leave does not accrue seniority, production bonuses or other benefits that would accrue while the employee is working;

(b) An employee has no greater right to a job or other employment benefits than if the employee had not taken OFLA leave; and

(c) An employee is subject to layoff the same as similarly situated employees not taking OFLA leave.

(6) Except for benefits used while on OFLA leave, benefits an employee was entitled to prior to starting OFLA leave must be restored in full upon the employee's return to work. (For example, an employer's medical insurance requires a three-month waiting period for health insurance coverage. An employee works seven months, takes OFLA leave for 12 weeks and returns to work with health problems. The employee must be covered immediately at the same level of coverage, with the same benefits as before the commencement of the OFLA leave.) The benefits do not have to be restored, however, if such benefits have been eliminated or changed for similarly situated employees. This applies to all benefit provisions.

(a) An employer electing to continue health or other insurance coverage for an employee on OFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave.

(b) If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage as required in section (6) of this rule.

(c) If an employer pays any portion of any employee's benefit coverage for employees on non-OFLA leave, the employer must pay that portion during OFLA leave.

(d) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on OFLA leave, the employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

(e) If an employee fails to return to work — unless the failure to return to work is because of a serious health condition for which the employee would be entitled to OFLA leave or another circumstance beyond the employee's control — the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to

ADMINISTRATIVE RULES

collect the amount owed for the employee's share of benefits paid by the employer, including deducting the amount from the employee's final paycheck.

(7) An employer may require an employee to follow the employer's established leave policy regarding periodic reporting to the employer of the employee's current status. Before restoring the employee to work after taking OFLA leave for the employee's own serious health condition, the employer may require the employee to present verification from the employee's health care provider that the employee is able to resume work, provided such requirement is applied pursuant to a uniformly applied practice or policy of the employer.

(a) Pursuant to ORS 659A.168(1), the employer is responsible for any co-pay or other out-of-pocket costs incurred by the employee in providing the verification.

(b) The employer may not require the employee to obtain a second opinion.

(8) If an employee gives unequivocal notice of intent not to return to work from OFLA leave:

(a) The employee is entitled to complete the approved OFLA leave, providing that the original need for OFLA leave still exists. The employee remains entitled to all the rights and protections under OFLA, including but not limited to, the use of vacation, sick leave and health benefits pursuant to OAR 839-009-0270 and 839-009-0280, except that:

(A) The employer's obligations under OFLA to restore the employee's position and to restore benefits upon the completion of leave cease, except as required by federal COBRA law, 29 USC 1161 et seq.; and

(B) The employer is not required to hold a position vacant or available for the employee who gives unequivocal notice of intent not to return.

(9) An employer may not use the provisions of this section as a subterfuge to avoid the employer's responsibilities under OFLA.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0280

Use of Paid Leave

(1) Except as provided in this rule or the terms of a collective bargaining agreement, an agreement between the eligible employee and the covered employer, or an employer policy, OFLA leave is not required to be granted with pay.

(2) An employee eligible to take OFLA leave is entitled to use accrued paid sick leave, personal leave, vacation leave or any other paid leave that is offered in lieu of vacation leave, during the period of OFLA leave. As used in this rule, accrued paid sick leave does not include disability insurance or disability benefits.

(3) An employer may require an employee to use available paid leave during OFLA leave that would otherwise be unpaid, and may determine the order in which paid leave is to be used if to do so is consistent with a collective bargaining agreement or other written agreement between the eligible employee and the covered employer or an employer policy. The employer may exercise these prerogatives only if:

(a) Prior to the commencement of OFLA leave, the employer provides written notice to the employee that accrued paid leave is to be used during OFLA leave; or

(b) Within two business days of the employee's notice of unanticipated or emergency leave, the employer provides written notice to the employee.

(4) An eligible employee or covered employer may choose to have the employee's OFLA leave run concurrently with a type of paid or unpaid leave not referenced in these rules, as provided or allowed under an employer policy, except that an employer may not reduce the amount of OFLA leave available to an eligible employee by any period the employee is unable to work because of a disabling compensable injury, as defined in ORS 656.005 (see ORS 659A.162(6)).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 656.240, 659A.150 - 659A.186
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 47-2006, f. 12-29-06, cert. ef. 1-3-07; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0290

Special Rules for Public School Teachers

(1) The provisions of this section apply only to employees of a school district, employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

(2) If a public school teacher requests foreseeable OFLA leave for a serious health condition of the employee or the employee's family member,

and the teacher will be absent more than 20 percent of the total number of working days in the period during which the leave would occur, the employer may require the teacher to elect one of the following options:

(a) To take OFLA leave for one uninterrupted period of time to complete medical treatment. (School holidays and school vacation days are not counted as OFLA leave); or

(b) To transfer temporarily into an available alternative position that better accommodates periodic absences.

(3) If a teacher begins OFLA leave more than five weeks before the end of the academic term because of the teacher's own serious health condition, the employer may require the teacher to remain on leave until the end of the term if:

(a) The OFLA leave is at least three weeks long; and

(b) The teacher's return to work would occur within three weeks of the end of the term.

(4) If a teacher begins OFLA leave within five weeks of the end of the academic term for parental leave or the serious health condition of a family member, the employer may require the teacher to remain on OFLA leave through the end of the term if:

(a) The leave is at least two weeks long; and

(b) The teacher's return would occur within the last two weeks of the term.

(5) If a teacher begins OFLA leave within three weeks of the end of the academic term for parental leave or to care for a family member with a serious health condition and the leave is greater than five working days, the employer may require the teacher to remain on family leave until the end of the term.

(6) If a teacher takes OFLA leave to the end of the school year and continues the leave at the beginning of the next school term, the leave is consecutive rather than intermittent leave.

(a) The period between the end of the school term and the beginning of the next school term, when a teacher would not have been required to report for duty, is not counted against the teacher's OFLA leave entitlement.

(b) A teacher on OFLA leave at the end of the school term must be provided with the same benefits during the period between school terms that the teacher would normally receive if no OFLA leave were taken.

(7) If a teacher is required by the employer to remain on leave to the end of the academic term, only the period of leave the teacher requested can be charged against the teacher's OFLA leave entitlement.

(8) Nothing in these rules prohibits the employer from allowing the teacher to work as a substitute or in some other paid capacity during the weeks prior to the end of term under subsection (4) or (5) of this rule.

(9) Full-time employees covered by this rule, and who have been maintained on the payroll by a school district during 180 consecutive calendar days, are thereafter deemed to have been employed by that school district for an average of at least 25 hours per week during the 180 days immediately preceding the date any OFLA leave begins.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0300

Postings

(1) Each covered employer must display the Bureau of Labor and Industries Family Leave Act notice. The notice must be displayed in each building or worksite in an area that is accessible to and regularly frequented by employees. Failure to post the Family Leave Act notice is an unlawful employment practice as provided in ORS 659A.001(12).

(2) Electronic posting of the Family Leave Act notice is not sufficient to satisfy posting requirements, but may supplement worksite posting.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.150 - 659A.186
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0325

Purpose and Scope

(1) The Civil Rights Division of the Bureau of Labor and Industries ("division") enforces ORS 659A.270 to 659A.285 which require leave for victims of domestic violence, sexual assault or stalking. These rules implement and interpret ORS 659A.270 to 659A.285.

(2) The division enforces ORS 659A.290, requiring employers to provide safety accommodation for, and prohibiting discrimination or retaliation against, victims of domestic violence, sexual assault or stalking. The rules implementing and interpreting ORS 659A.290 are found at OAR 839-005-0160 and 839-005-0170.

ADMINISTRATIVE RULES

(3) ORS 659A.190 to 659A.198 provide for leave for crime victims to attend criminal proceedings. The division does not enforce ORS 659A.190 to 659A.198.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0335

Relationship of ORS 659A.270 to 659A.285, Leave for Victims of Domestic Violence, Sexual Assault or Stalking, to OFLA

To the extent the employee's need for leave under ORS 659A.270 to 659A.285 is also covered by the Oregon Family Leave Act (OFLA), the employer may run the two types of leave concurrently.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0340

Definitions

(1) "Covered employer" means an employer who employs 6 or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the calendar year in which an eligible employee takes leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking or in the calendar year immediately preceding the year in which an eligible employee takes the leave.

(2) "Eligible employee" means an employee who is employed in the State of Oregon on the date leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking begins; and

(a) Worked an average of more than 25 hours per week for a covered employer for at least 180 calendar days immediately preceding the date the employee takes the leave.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining more than 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act (See 29 CFR Part 785).

(C) For the purpose of qualifying as an eligible employee, the employee need not perform work solely in the State of Oregon.

(D) Eligibility of employees reemployed following a period of uniformed service:

(i) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet the eligibility requirements of these rules. In the event that a service member is denied leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking for failing to satisfy the days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under these statutes.

(ii) ORS 659A.082-659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employ-

ment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking prior to the date uniformed service began, the leave eligibility requirements are considered met.

(b) Is a victim of domestic violence, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault or stalking.

(3) "Dependent" means an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.100(2)(d) or any adult of whom the employee has guardianship.

(4) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's natural parent.

(5) "Health Care Professional" means a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services.

(6) "Immediate Family" means spouse, domestic partner, father, mother, sibling, child, stepchild, grandparent, or any person who had the same primary residence as the victim at the time of the domestic violence, sexual assault or stalking.

(7) "In loco parentis" means in the place of a parent, having financial and day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(8) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(9) "Law Enforcement Officer" means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651.

(10) "Minor Child," means a biological, adopted, foster or stepchild, or a child with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee's registered domestic partner. The minor child must be under the age of 18.

(11) "Parent or Guardian" means a custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent or an employee who is or was in relationship of in loco parentis with a minor child or a dependent with whom the employee is or was in a relationship of in loco parentis.

(12) "Protective Order" means an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(13) "Reasonable Leave" means any amount of leave that does not cause an undue hardship on a covered employer's business.

(14) "Victim of Domestic Violence" means:

(a) An individual who has been threatened with abuse or who is a victim of abuse, as defined in ORS 107.705; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the domestic violence be considered a victim for the purposes of these rules.

(15) "Victims Services Provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, sexual assault or stalking.

(16) "Victim of Sexual Assault" means:

(a) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the sexual offense be considered a victim for the purposes of these rules.

(17) "Victim of Stalking" means:

(a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the stalking be considered a victim for the purposes of these rules.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

ADMINISTRATIVE RULES

839-009-0345

Purposes for Taking Leave

(1) A covered employer must allow an eligible employee to take reasonable leave from employment for any of the following purposes:

(a) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking.

(b) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault or to stalking of the eligible employee or the eligible employee's minor child or dependent.

(c) To obtain, or to assist the eligible employee's minor child or dependent in obtaining counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking.

(d) To obtain services from a victim services provider for the eligible employee or the eligible employee's minor child or dependent.

(e) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the eligible employee's minor child or dependent. Relocate includes:

(A) Transition periods spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangements for such transitions related to domestic violence, sexual assault or stalking;

(B) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, sexual assault or stalking.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0350

Length of Leave and Other Conditions

(1) A covered employer must allow an eligible employee to take reasonable leave and may only limit the amount of leave an eligible employee takes if the eligible employee's leave creates an undue hardship on the covered employer's business.

(2) An eligible employee must follow the covered employer's known, reasonable, and customary procedures regarding periodic reporting to the covered employer of the eligible employee's current status.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0355

Undue Hardship

(1) Undue Hardship means a significant difficulty and expense to a covered employer's business and includes consideration of the size of the covered employer's business and the covered employer's critical need for the eligible employee. Other factors to consider in determining whether granting leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking will cause an undue hardship on a covered employer's business include, but are not limited to:

(a) The length of leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking requested and the relative cost to a covered employer's business;

(b) The overall financial resources of the covered employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking were granted;

(c) The overall financial resources of the covered employer, the overall size of the business of the covered employer with respect to the number of its employees and the number, type and location of the covered employer's facilities;

(d) The type of operations conducted by the covered employer, including the composition, structure and functions of the covered employer's workforce.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

10

839-009-0360

Intermittent Leave and Alternate Duty

(1) An eligible employee may take leave under ORS 659A.270 to

659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking in multiple blocks of time and/or requiring an altered or reduced work schedule.

(2) A covered employer may transfer an employee on intermittent leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

(a) The eligible employee accepts the transfer position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

(c) Transfer to an alternate position is used only when there is no other reasonable option available that would allow the eligible employee to use intermittent leave or reduced work schedule; and

(d) The transfer is not used to discourage the eligible employee from taking intermittent or reduced work schedule leave, or to create a hardship for the eligible employee.

(3) An eligible employee transferred to an alternate position for the purpose of a reduced work schedule under section (2)(a) through (d) of this rule must be returned to the eligible employee's former position when the eligible employee notifies the employer that the eligible employee is ready to return to the former position.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0362

Notice by Employee

(1) An eligible employee seeking leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking will give the covered employer reasonable advance notice of the employee's intention to take leave unless giving the advance notice is not feasible.

(2) When taking leave in an unanticipated or emergency situation, an eligible employee must give oral or written notice as soon as is practicable. This notice may be given by any other person on behalf of an eligible employee taking unanticipated leave.

(3) An eligible employee able to give advance notice of the need to take leave must follow the covered employer's known, reasonable and customary procedures for requesting any kind of leave;

(4) The covered employer may require the eligible employee to provide certification that:

(a) The eligible employee or the eligible employee's minor child or dependent is a victim of domestic violence, sexual assault or stalking as defined in OAR 839-009-0340(14), (16) and (17); and

(b) The leave taken is for one of the purposes identified in OAR 839-009-0345.

(5) Any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the eligible employee's minor child or dependent was a victim or alleged victim of domestic violence, sexual assault or stalking as defined in OAR 839-009-0340(14), (16) and (17); or

(b) A copy of a protective order or other evidence from a court or attorney that the eligible employee appeared in or is preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking as defined in OAR 839-009-0340(14), (16) and (17); or

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the eligible employee's minor child or dependent is undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, sexual assault or stalking as defined in OAR 839-009-0340(14), (16) and (17).

(6) Consistent with ORS 659A.306, the covered employer must pay the cost of any medical verification related to OAR 839-009-0345(1)(b) and (c) not covered by insurance or other benefit plan.

(7) The eligible employee will provide the certification within a reasonable time after receiving the covered employer's written request for the certification.

(8) The covered employer may provisionally designate an absence as leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking until sufficient certification is received, if requested, to make a determination.

(9) An eligible employee on leave who needs to take more leave than originally authorized should give the covered employer notice as soon as is practicable prior to the end of the authorized leave, following the covered employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of leave has ended

ADMINISTRATIVE RULES

and an eligible employee does not return to work, a covered employer having reason to believe the continuing absence may qualify as leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking may request additional information. If the covered employer requests additional information the eligible employee will provide the requested information as soon as is practicable. The covered employer may not treat a continuing absence as unauthorized unless requested information is not provided or does not support leave qualification.

(10) All records and information kept by a covered employer regarding an eligible employee's leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking, including the fact that the eligible employee has requested or obtained such leave, are confidential and may not be released without the express permission of the eligible employee, unless otherwise required by law.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0363

Use of Paid Leave

(1) Leave is unpaid leave unless otherwise provided by:

(a) A collective bargaining agreement;
(b) The terms of an agreement between the eligible employee and the covered employer; or
(c) A covered employer's policy.

(2) An eligible employee taking leave pursuant to an agreement between the eligible employee and the covered employer, a collective bargaining agreement or a covered employer policy may use any paid accrued vacation leave or may use any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or a covered employer policy, the covered employer may determine the order in which paid accrued leave is to be used when more than one type of paid accrued leave is available to the employee.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0365

Enforcement and Denial of leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking

(1) It is an unlawful employment practice for a covered employer to deny leave under ORS 659A.270 to 659A.285 for Victims of Domestic Violence, Sexual Assault or Stalking to an eligible employee or to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions, or privileges of employment because the employee inquires about, applies for, or takes leave as provided under ORS 659A.270 to 659A.285.

(2) A covered employer's duties and obligations under ORS 659A.270 to 659A.285 extend to a successor employer as defined in 29 CFR 825.107.

(3) It is an unlawful employment practice for a covered employer to count leave under ORS 659A.270 to 659A.285 against an employee in determining the employee's compliance with attendance policies or to count such leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from leave under ORS 659A.270 to 659A.285 and may not be disqualified from the bonus as a result of taking leave.

(4) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of ORS 659A.270 to 659A.285 or to attempt to do so.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.270 - 659A.285
Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0370

Purpose and Scope

(1) The Civil Rights Division of the Bureau of Labor and Industries enforces the Oregon Military Family Leave Act, ORS 659A.090–659A.099 (OMFLA). Oregon Military Family Leave is leave taken by the spouse or domestic partner of a member of the Armed Forces of the United States, the National Guard, or the military reserve forces of the United States who has been called to active duty or notified of an impending call or order to active

duty, or who is on leave from active duty during a period of military conflict. These rules implement and interpret OMFLA.

(2) These rules apply to complaints and inquiries received under the Oregon Military Family Leave Act, ORS 659A.090–659A.099, and under these rules.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0380

Definitions

(1) "Active duty or call to active duty status" means duty under a call or order to active duty, or notification of an impending call or order to active duty, during a contingency operation, pursuant to Title 10 of the United States Code.

(a) "Contingency operation" means a military operation that:

(A) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. 101(a)(13))

(2) "Covered employer" means:

(a) The state, and a department, agency, board or commission of the state; and

(b) A local government, including but not limited to a county, city, town, municipal corporation, independent public corporation or political subdivision of the state.

(c) A person, firm, corporation, partnership, legal representative, or other business entity that engages in any business, industry, profession, or activity in the state of Oregon and that employs 25 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the calendar year in which an eligible employee takes OMFLA leave or in the calendar year immediately preceding the year in which an eligible employee takes OMFLA leave;

(3) "Domestic partner" means an individual joined in a domestic partnership.

(4) "Domestic partnership" for the purposes of ORS chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.405(1) and rules adopted by the State Registrar of the Center for Health Statistics.

(5) "Eligible employee" means an individual who performs services for compensation for an employer for an average of at least 20 hours per week and includes all individuals employed at any site owned or operated in Oregon by an employer, but does not include independent contractors.

(a) In determining an average of at least 20 hours per week, the employer must count actual hours worked using guidelines set out pursuant to the Fair Labor Standards Act. (See 29 CFR Part 785)

(b) For the purpose of qualifying as an eligible employee, the employee need not perform services solely in the state of Oregon.

(c) Eligibility of employees reemployed following a period of uniformed service: The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for OMFLA leave if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet the eligibility requirements of these rules. In the event that a service member is denied OMFLA leave for failing to satisfy the days and hours of work requirement

ADMINISTRATIVE RULES

due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OMFLA.

(d) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OMFLA prior to the date uniformed service began, OMFLA's eligibility requirements are considered met.

(6) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(7) "Period of Military Conflict" means a period of war:

- (a) Declared by the United States Congress;
- (b) Declared by executive order of the President of the United States;

or

(c) In which a reserve component of the Armed Forces of the United States is ordered to active duty pursuant to Title 32 of the United States Code or section 12301 or 12302 of Title 10 of the United States Code.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0390

Length of Leave

(1) During a period of military conflict, an employee who is a spouse or domestic partner of a member of the Armed Forces of the United States, the National Guard or the military reserve forces of the United States who has been notified of an impending call or order to active duty or who has been deployed, is entitled to a total of 14 days of unpaid leave per deployment that may be taken:

(a) After the military spouse or domestic partner has been notified of an impending call or order to active duty and before deployment; and/or

(b) When the military spouse or domestic partner is on leave from deployment.

(2) The 14 day entitlement is per deployment. If multiple deployments occur in an employee's OFLA leave year (see OAR 839-009-0240) the employee is entitled to use all OMFLA leave until OFLA leave entitlement is exhausted.

(3) The 14 days of unpaid leave to which the employee is entitled are individual days on which the employee, if working their normal schedule, would otherwise perform services for compensation for the employer. (Example: Employee normally works Monday through Friday. Employee is entitled to 14 days of leave, which if taken consecutively would be Monday through Friday on two consecutive weeks plus Monday through Thursday of the third week.)

(4) OMFLA leave need not be taken in one, uninterrupted period, but may be taken intermittently.

(a) For the purpose of intermittent leave, OMFLA leave is calculated for an employee by multiplying the number of hours the employee normally works per day by 14. (For example, an employee normally employed to work eight hours per day is entitled to 14 times eight hours, or a total of 112 hours of OMFLA leave.)

(b) If an employee's schedule varies from day to day, a daily average of the employee's hours must be used for calculating the employee's normal work day. For example, an employee working an average of six hours per day is entitled to 14 times six hours, or a total of 84 hours of OMFLA leave. An employee working an average of 10 hours per day is entitled to 14 times 10 hours, or 140 hours.

(c) If an employee takes intermittent OMFLA leave, only the actual number of hours of leave taken may be counted toward the hours of OMFLA leave to which the employee is entitled.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0400

Prohibited Discrimination

It is an unlawful employment practice for a covered employer to deny OMFLA leave to an eligible employee or to discharge, threaten to discharge, demote, suspend, or in any manner retaliate or in any way discriminate against any person with respect to hiring, promotion, compensation, tenure or any other terms, privileges or condition of employment because

the person inquires about OMFLA, submits a request for Oregon Military Family Leave, or invokes any provision of the Oregon Military Family Leave Act.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0410

Relationship of OMFLA to OFLA

Oregon Military Family Leave taken by an eligible employee is included in the total amount of leave authorized under ORS 659A.162(1) of the Oregon Family Leave Act.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0420

Relationship of OMFLA to FMLA

To the extent the employee's need for OMFLA leave is also covered by the Qualifying Exigency entitlements of the Family and Medical Leave Act (FMLA) under 29 CFR 825.126, the employer may run OMFLA leave and FMLA leave concurrently.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0430

Notice by Employee

(1) An eligible employee seeking Oregon Military Family Leave must provide the employer with notice of the intention to take leave within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, or as soon as is practicable when official notice is provided fewer than five days before commencement of the leave.

(2) The active duty orders of a covered military member will generally specify if the service member is serving in support of a period of military conflict by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the military conflict (see OAR 839-009-0380(7)).

(3) An eligible employee's notice of intention to take OMFLA leave must follow the covered employer's known, customary, and uniformly applied procedures for requesting any kind of leave.

(a) The covered employer may require in writing that the eligible employee provide a photocopy of the service member's orders to verify that the leave is for the purpose defined in OAR 839-009-0380(7).

(b) The eligible employee will provide any required photocopy of the service member's orders within a reasonable time after receiving the covered employer's written request.

(c) The covered employer may provisionally designate an absence as OMFLA leave until any requested photocopy of the service member's orders is received.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0440

Use of Paid Leave for OMFLA

(1) Leave is unpaid unless otherwise provided by:

(a) A collective bargaining agreement;

(b) The terms of an agreement between the eligible employee and the covered employer; or

(c) A covered employer's policy.

(2) An employee eligible to take Oregon Military Family Leave is entitled to use accrued paid sick leave, personal leave, vacation leave or any other paid leave that is offered in lieu of vacation leave during the period of Oregon Military Family Leave. As used in this rule, accrued paid sick leave does not include disability insurance or disability benefits.

(3) Subject to the terms of any agreement between the eligible employee and the covered employer or the terms of a collective bargaining agreement or a covered employer policy, the employee may determine the order in which paid accrued leave is to be used when more than one type of paid accrued leave is available to the employee.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0450

Job Protection

(1) An employer must restore an employee returning from OMFLA

ADMINISTRATIVE RULES

leave, including intermittent and alternative duty leave, to the employee's former position if the job still exists, even if it has been filled during the employee's OMFLA leave. The former position is the position held by the employee at the time OMFLA leave began, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same truck, delivering the same goods, on the same shift and working from the same location as when the driver started OMFLA leave.)

(2) Any worker hired during an eligible employee's leave to perform the same work that the eligible employee performed before the leave was taken is a replacement worker. When the eligible employee notifies the employer that the employee is ready to return to work, the employer must give that employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work.

(3) The employee is not entitled to return to the former position if the employee would have been bumped if OMFLA leave had not been taken.

(4) If the position held by the employee at the time OMFLA leave began has in fact been eliminated and not merely renamed or reclassified, the employer must restore the employee to any available, equivalent position.

(a) An available position is a position that is vacant or not permanently filled.

(b) An equivalent position is a position that is the same as the former position in as many aspects as possible. If an equivalent position is not available at the employee's former job site, the employee may be restored to an equivalent position within 20 miles of the former job site.

(5) Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provide otherwise:

(a) An employee on OMFLA leave does not accrue seniority, production bonuses or other benefits that would accrue while the employee is working;

(b) An employee has no greater right to a job or other employment benefits than if the employee had not taken OMFLA leave; and

(c) An employee is subject to layoff the same as similarly situated employees not taking OMFLA leave.

(6) Except for benefits used while on OMFLA leave, benefits an employee was entitled to prior to starting OMFLA leave must be restored in full upon the employee's return to work. The benefits do not have to be restored, however, if such benefits have been eliminated or changed for similarly situated employees. This applies to all benefit provisions.

(a) An employer electing to continue health or other insurance coverage for an employee on OMFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave.

(b) If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage as required in section (6) of this rule.

(c) If an employer pays any portion of any employee's benefit coverage for employees on non-OMFLA leave, the employer must pay that portion during OMFLA leave.

(d) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on OMFLA leave, the employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

(e) Unless the cause is a serious health condition for which the employee would be entitled to OFLA leave or another circumstance beyond the employee's control, if an employee fails to return to work, the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of benefits paid by the employer, including deducting the amount from the employee's final paycheck.

(8) If an employee gives unequivocal notice of intent not to return to work from OMFLA leave:

(a) The employee is entitled to complete the approved OMFLA leave, providing that the original need for OMFLA leave still exists. The employee remains entitled to all the rights and protections under OMFLA, including but not limited to, the use of vacation, sick leave and health benefits; except

(A) The employer's obligations under OMFLA to restore the employee's position and to restore benefits upon the completion of leave cease, except as required by federal COBRA laws, 29 USC 1161 et seq.; and

(B) The employer is not required to hold a position vacant or available for the employee giving unequivocal notice of intent not to return.

(9) An employer may not use the provisions of these rules as a subterfuge to avoid the employer's responsibilities under OMFLA.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

839-009-0460

Enforcement and Retaliation

(1) A covered employer's duties and obligations under OMFLA extend to a successor employer as defined in 29 CFR 825.107.

(2) In accordance with the provisions of OMFLA an eligible employee claiming a violation of the OMFLA may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

(3) It is an unlawful employment practice for a covered employer to retaliate or in any way discriminate against any person with respect to hiring, tenure or any other term or condition of employment because the person has inquired about OMFLA leave, submitted a request for OMFLA leave or invoked any provision of OMFLA.

(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for a covered employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OMFLA.

(5) It is an unlawful employment practice for a covered employer to count OMFLA leave against an employee in determining the employee's compliance with attendance policies, or to count OMFLA leave against an employee when determining eligibility for bonuses based on attendance.

(6) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OMFLA or to attempt to do so.

Stat. Auth.: ORS 659A.093(6)
Stats. Implemented: ORS 659A.090 – 659A.099
Hist.: BLI 10-2010, f. & cert. ef. 2-24-10

Rule Caption: Implementing statutory enactments regarding employment discrimination based on reporting of statutory or rule violations.

Adm. Order No.: BLI 11-2010

Filed with Sec. of State: 2-24-2010

Certified to be Effective: 2-24-10

Notice Publication Date: 12-1-2009

Rules Amended: 839-010-0100, 839-010-0140

Subject: The proposed rules would amend the rules implementing the Oregon Whistleblower Law to include newly enacted amendments making discrimination and retaliation against an employee on the basis of good faith reporting of a state or federal statutory or rule violation an unlawful employment practice, and to clarify, edit and make housekeeping changes (HB 3162).

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

839-010-0100

Prohibited Discrimination by Employers

(1) ORS 659A.199 prohibits any employer with one or more employees in Oregon from discharging, demoting, suspending, or in any manner discriminating or retaliating against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information to anyone that the employee believes is evidence of a violation of any state or federal law, rule or regulation.

(2) ORS 659A.230 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against an employee because the employee has in good faith, or the employer believes the employee has:

(a) Reported to any person, orally or in writing, criminal activity by any person;

(b) Reported to any person, orally or in writing, any activity the employee believed to be criminal;

(c) Caused criminal charges to be brought against any person, whether by the complainant's information or by a complaint, as defined in ORS 131.005(3) and (4);

(d) Cooperated with a law enforcement agency criminal investigation, whether or not under subpoena;

(e) Brought a civil proceeding against an employer; or

(f) Testified at a civil proceeding or criminal trial, whether or not

ADMINISTRATIVE RULES

under subpoena. (With regard to civil proceedings, see also OAR 839-010-0140.)

(3) ORS 659A.233 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against a current, former, or any other employer's employee because the employee has in good faith:

(a) Reported possible violations of ORS chapter 441, ORS 443.400 to 443.455;

(b) Testified at an unemployment compensation hearing; or

(c) Testified at a hearing conducted pursuant to ORS chapter 657.

(4) ORS 652.355 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against a current, former, or any other employer's employee because:

(a) The employee has made a wage claim or has discussed with anyone, inquired of anyone, or consulted an attorney or agency about a wage claim; or

(b) The employee has caused to be instituted, has testified in or is about to testify in any proceedings under or related to ORS 652.310 to 652.414.

(5) ORS 659A.060 prohibits any employer with one or more employees in Oregon from discharging or in any other manner discriminating against a current, former, or any other employer's employee because:

(a) The employee has made an oral or written complaint to anyone that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;

(b) The employee has caused to be instituted or is about to cause to be instituted or has testified or is about to testify in any proceeding under or related to ORS 653.010 to 653.261.

Stat. Auth.: ORS 659A.805, 652.355(2) & 653.060(2)

Stats. Implemented: ORS 659A.230, 652.355, 653.060, 659A.199

Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 11-2010, f. & cert. ef. 2-24-10

839-010-0140

Protection in Activities Related to Civil Proceedings

Under ORS 659A.230 and these rules, an employee is protected in activities related to civil proceedings. A civil proceeding, as used in ORS 659A.230 and these rules, includes a proceeding before an administrative agency or a court. The employee is protected under the statute if:

(1) The employee has brought, in good faith, a civil proceeding against an employer.

(a) Bringing a civil proceeding, as used in ORS 659A.230 and the rules, includes filing complaints to or cooperation with administrative agencies as well as courts.

(b) An employee is considered to have initiated a civil proceeding when the employee has contacted an administrative agency the employee believes in good faith to have jurisdiction and the ability to sanction the employer.

(c) The employer against whom a civil proceeding is filed or initiated need not be the employee's current employer.

(2) The employee has testified in good faith, whether or not under subpoena, in any civil proceeding.

(3) The employer believes that the employee has engaged in the civil proceedings acts described above.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.230

Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BL 10-1996, f. & cert. ef. 12-4-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 11-2010, f. & cert. ef. 2-24-10

Rule Caption: Proposed rule implementing procedures or housing discrimination contested cases and mediations, and clarifying edits.

Adm. Order No.: BLI 12-2010

Filed with Sec. of State: 3-1-2010

Certified to be Effective: 3-3-10

Notice Publication Date: 11-1-2009

Rules Amended: 839-050-0080, 839-050-0130, 839-050-0140, 839-050-0150, 839-050-0240, 839-050-0370, 839-051-0010

Subject: The rule amendments implement time limits for specified contested case procedures in housing discrimination cases; implement procedures for election of remedies in housing discrimination cases; specify that only an employee of the Bureau of Labor and Industries may hear a housing discrimination contested case; implement specific confidentiality provisions for mediation of housing discrimination contested cases; provide for awarding of attorney fees

and costs to interveners in housing discrimination contested cases; clarify when pleadings and answers in contested cases may be amended; incorporate into the mediation rules a reference to the Department of Justice Alternative Dispute resolution Agreement to Mediate form.

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

839-050-0080

Notice of Hearing

(1) When a party makes a timely written request for a contested case hearing, that hearing will be scheduled in accordance with OAR 839-050-0070 and the Hearings Unit will issue a notice of hearing to the participants.

(2) When Formal Charges are issued, the notice of hearing will accompany the Formal Charges.

(3) In civil rights housing cases only, unless a complainant or respondent named in a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law elects to have the matter heard in circuit court under ORS 659A.885 (see ORS 659A.870(4)(b)), a contested case hearing must commence no later than 120 days after Formal Charges are issued. If it is not practicable to commence the hearing within 120 days after Formal Charges are issued, the Administrative Law Judge will include on the notice of hearing or in a separately issued document the general reasons for the delay and will schedule the hearing as soon as practicable.

(4) A notice of hearing will include:

(a) A statement of the time and place of the hearing, including the statement that the hearing will reconvene on successive business days thereafter until concluded;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) The name of the administrative law judge designated by the commissioner to preside at the hearing and whether the administrative law judge is an employee of the Agency; and

(f) A statement indicating whether the case for the Agency will be presented by the Department of Justice or by an Agency case presenter.

(5) Sections (3)(c) and (d) above are satisfied if the notice of hearing attaches and incorporates a charging document that includes the matters referred to in those paragraphs.

(6) The notice of hearing may contain a statement that:

(a) When a party fails to timely request a hearing, or having made a timely request subsequently withdraws it, the Agency file will be the evidentiary record of the proceeding;

(b) When, following an answer and request for hearing (when required), the party subsequently notifies the Agency that the party will not appear at the hearing, or, without such notice, the party fails to appear at the hearing, the Agency file may become part of the contested case record; and

(c) When a party fails to answer a charging document, the Agency file will become part of the contested case record upon default for the purpose of proving a prima facie case.

Stat. Auth.: ORS 183 & 651.060(4)

Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845, 659A.850, 659A.870

Hist.: BL 8-1986, f. & cert. ef. 9-2-86; BL 12-1986, f. 10-29-86, cert. ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0055; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 12-2010, f. 3-1-10, cert. ef. 3-3-10

839-050-0130

Responsive Pleadings

(1) A party filing a written request for a hearing or a party served with Formal Charges must file a written response, referred to as an "answer," to the allegations in the charging document.

(2) The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations. A general denial is not sufficient to constitute an answer. An answer not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 839-050-0330, as if no answer had been filed.

(3) Except for good cause shown to the administrative law judge, factual matters alleged in the charging document and not denied in the answer will be deemed admitted by the party. The failure of the party to raise an affirmative defense in the answer is a waiver of such defense. Any new facts or defenses alleged in the answer will be deemed denied by the Agency.

ADMINISTRATIVE RULES

Evidence will not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer as originally filed or as amended pursuant to OAR 839-050-0140.

(4) Except as may be otherwise provided in subsections (5), (6) and (7) of this rule, a party must file an answer within 20 days after service of the charging document.

(5) ORS 652.332 provides administrative procedures for wage claim collection.

(6) A party must file an answer within 60 days after service of the charging document if that document proposes to deny a license.

(7) A respondent or complainant named in a complaint filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law must file any election to have the matter heard in circuit court under ORS 659A.885, within 20 days after service of Formal Charges.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845, 659A.850, 659A.870
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0060; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 12-2010, f. 3-1-10, cert. ef. 3-3-10

839-050-0140 Amendments

(1) The Agency may amend its pleading once as a matter course before the party served with the charging document files an answer. Otherwise, a charging document or answer may only be amended as provided in sections (2) and (3) of this rule.

(2) Except as provided in section (1) of this rule, a participant may amend its pleading prior to the hearing only by permission of the administrative law judge or by written consent of the other participants. Permissible amendments to charging documents include, but are not limited to: additions to or deletions of charges; changes to theories of liability; and increases or decreases to the damages, penalties, or other remedies sought. Permissible amendments to answers include, but are not limited to: additions to or deletions of any defenses, except that affirmative defenses may only be added upon a showing by a participant at the participant did not know and reasonably could not have known of the existence of the defense or that other circumstances make denial of leave to amend unjust. Otherwise, permission to amend pleadings will be given when justice so requires.

(3) Once the hearing commences, issues not raised in the pleadings may be raised and evidence presented on such issues, provided there is express or implied consent of the participants, except that affirmative defenses not raised in the pleadings may only be raised in response to an agency motion to amend that is made and allowed under this section or section (4) of this rule. Consent will be implied when there is no objection to the introduction of such issues and evidence or when the participants address the issues. Any participant raising new issues must move the administrative law judge, before the close of the evidentiary portion of the hearing, to amend its pleading to conform to the evidence and to reflect issues presented. The administrative law judge may address and rule upon such issues in the Proposed Order.

(4) If evidence is objected to at hearing on the grounds that it is not within the issues raised by the pleadings, the administrative law judge may allow the pleadings to be amended to conform to the evidence presented. The administrative law judge will allow the amendment when the participant seeking to amend its pleading shows good cause for not having included the new matter in its pleading prior to hearing and the objecting participant fails to satisfy the administrative law judge that it would be substantially prejudiced by the admission of such evidence. The administrative law judge may grant a continuance to enable the objecting participant to meet such evidence.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845, 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0075; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 42-2006, f. & cert. ef. 12-6-06; BLI 12-2010, f. 3-1-10, cert. ef. 3-3-10

839-050-0150 Motions

Except as otherwise stated in OAR 839-050-0050, all pre-hearing and post-hearing motions will be submitted in writing to the administrative law judge through the Hearings Unit. If the nonmoving participant chooses to respond, the nonmoving participant must file a written response to a written motion within seven days after service of the motion, unless the admin-

istrative law judge orders otherwise. Motions include but are not limited to the following:

- (1) Motion to dismiss: This motion must be based upon:
 - (a) Lack of jurisdiction over the subject matter or person;
 - (b) Insufficiency of process or service of process; or
 - (c) Failure to state a claim upon which relief can be granted.

- (2) Motion to change the place of hearing.

- (3) Motion to exclude witnesses:

- (a) The motion may be made by any participant at any time prior to or during the hearing.

- (b) The administrative law judge may, without a motion being made by a participant, exclude witnesses from the hearing except for a party, counsel, the Agency case presenter, an authorized representative, claimants, complainants and any persons authorized by statute to attend. Notwithstanding this rule, an administrative law judge may expel any person from the hearing if that person engages in conduct that disrupts the hearing.

- (4) Motion for summary judgment:

- (a) A motion for summary judgment may be made by a participant or by decision of the administrative law judge for an accelerated decision in favor of any participant as to all or part of the issues raised in the pleadings. The motion may be based on any of the following conditions:

- (A) Issue or claim preclusion;

- (B) No genuine issue as to any material fact exists and the participant is entitled to a judgment as a matter of law, as to all or any part of the proceedings; or

- (C) Such other reasons as are just.

- (b) When the administrative law judge grants the motion, the decision will be set forth in the Proposed Order.

- (5) Motion for a postponement:

- (a) Any participant making a request for a postponement of any part of the contested case proceeding must state in detail the reason for the request. The administrative law judge may grant the request for good cause shown. In making this determination, the administrative law judge will consider:

- (A) Whether previous postponements have been granted;

- (B) The timeliness of the request;

- (C) Whether a participant has previously indicated it was prepared to proceed;

- (D) Whether there is a reasonable alternative to postponement; for example, submitting a sworn statement of a witness; and

- (E) The date the hearing was originally scheduled to commence.

- (b) The administrative law judge will issue a written ruling either granting or denying the motion and will set forth the reasons therefore;

- (c) If all participants agree to a postponement, in order for the postponement to be effective, the administrative law judge will approve of this agreement. Whether the administrative law judge grants or denies such a motion for postponement, the administrative law judge will issue a written ruling setting forth the reasons therefore.

- (6) Motion for consolidation of hearings: This motion must allege facts sufficient to meet the criteria of OAR 839-050-0190.

- (7) Motion for hearing by telephone: Any participant may file a motion to conduct the hearing by telephone. The motion must contain:

- (a) A statement setting forth the reason(s) for the request;

- (b) A statement explaining why no participant will be substantially prejudiced by having a hearing in this manner;

- (c) A statement of the location of the majority of witnesses expected to be called;

- (d) A statement estimating the number and/or volume of documents to be introduced into the record;

- (e) A statement indicating whether the participant intends to call any expert witness; and

- (f) A statement indicating whether an interpreter or an assistive communication device under OAR 839-050-0300 will be required for any witness.

- (8) Motion for an earlier hearing date: After issuance of a notice of hearing, a participant may request an earlier hearing date upon a showing that the purposes of the law or the interests of justice would otherwise be frustrated.

- (9) Motion for a protective order.

- (10) Motion for default when a respondent has failed to timely file an answer within the time specified in the charging document.

- (11) Motion to amend.

- (12) Motion to make more definite and certain.

- (13) Motion for prevailing party costs and reasonable attorney fees for

ADMINISTRATIVE RULES

an aggrieved person who intervenes in a proceeding alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845, 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0070; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 4-2002, f. 2-14-02, cert. ef. 2-15-02; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 13-2006, f. 3-23-06, cert. ef. 3-24-06; BLI 12-2010, f. 3-1-10, cert. ef. 3-3-10

839-050-0240

Responsibilities of the Administrative Law Judge

(1) The commissioner designates as administrative law judges those employees who are employed by the Agency as hearings officers and those persons who are appointed to preside at particular hearings. The commissioner delegates to such designee the authority to:

- (a) Rule on all motions filed prior to the hearing.
- (b) Issue subpoenas and otherwise oversee the discovery process in a manner consistent with rules relating to these powers.
- (c) Hold appropriate conferences, if necessary, before or during the course of the hearing to discuss the conduct of the proceedings or the issues to be presented.
- (d) Regulate the course of the hearing, including scheduling, reconvening, and adjourning.
- (e) Maintain order during the course of the hearing, including the authority to expel persons whose conduct is disruptive.
- (f) Make rulings on motions or evidence, with or without objection, during the hearing.
- (g) Question witnesses at the hearing and set time limitations for argument or presentation.
- (h) Limit or extend filing periods.
- (i) Decide procedural matters, but not grant motions for summary judgment or other motions by a party that involve final determination of the proceeding, but to issue a Proposed Order as provided for in these rules. Nothing in this section may be construed to prohibit the administrative law judge from making a routine disposition of a hearing proceeding based on a settlement, on the Agency's withdrawal of the charging document, or on other reasons not requiring a Final Order by the commissioner.
- (j) Prepare a Proposed Order at the conclusion of the contested case hearing and send it to the Agency, the commissioner, and all parties to the case; and at the request of the commissioner, assist in responding to any exceptions and the preparation of the Final Order.
- (k) Take any other action consistent with the duties of an administrative law judge.

(2) In a contested case proceeding alleging an unlawful practice under ORS 659A.145 or 659A.421, or discrimination under federal housing law, only an employee of the bureau may be a member of a special tribunal or administrative law judge appointed to hear the matter.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845, 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0100; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 12-2010, f. 3-1-10, cert. ef. 3-3-10

839-050-0370

Proposed Orders

(1) The administrative law judge will prepare and serve upon the commissioner and all participants a Proposed Order including the following:

- (a) Rulings, motions, or objections, including those rulings previously reserved;
- (b) Findings of fact, including those matters at issue that are either agreed to as fact at the hearing or by stipulation, or that, when disputed, are determined by the administrative law judge to be a fact over contentions to the contrary, and will include:
 - (A) A concise statement of facts supporting the findings as to each contested issue of fact;
 - (B) Ultimate facts required to support the Agency's order; and
 - (C) Credibility findings when credibility is of importance in the decision of the case, including the evidence relied on to reach this finding and the relevance of that evidence.
- (c) Conclusions of law;
- (d) An opinion explaining the rationale for the findings of fact and conclusions of law; and

(e) An order setting forth the administrative law judge's suggested determination, when the proposed decision is adverse to the party, of the amount owed by the party and any other relief within the authority of the commissioner.

(2) Proposed Orders will include a statement that written exceptions, if any, must be filed by participants within ten days of the date of issuance of the Proposed Order.

(3) Unless it is not practicable to do so, a proposed order in a case involving alleged violations of ORS 659A.145 or 659A.421, or federal housing law, will be issued within 60 days of the date of the closure of the hearing record. If the issuance of the proposed order will be delayed, written notice will be given to the participants by the Administrative Law Judge as to the general reasons for the delay.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845, 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0160; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 12-2010, f. 3-1-10, cert. ef. 3-3-10

839-051-0010

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 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 be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 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;
- (c) Mediation in which the only parties are public bodies;
- (d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;
- (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

ADMINISTRATIVE RULES

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 format of the "Agreement to Mediate" form linked to the Oregon Department of Justice Alternative Dispute Resolution web page at http://www.doj.state.or.us/adr/bul_indx.shtml. This form may be used separately or incorporated into an "agreement to mediate."

(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.

(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 Commissioner of the Bureau of Labor and Industries 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 17.095 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.

(11) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may be disclosed in any manner, including but not limited to disclosure under ORS 192.410 to 192.505, or be used as evidence in a subsequent proceeding under ORS Chapter 659A or under federal housing law, without the written consent of the persons concerned.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232, 659A.840

Hist.: BLI 5-1998(Temp), f. & cert. ef. 10-6-98 thru 3-27-99; BLI 10-1998, f. & cert. ef. 12-17-98; BLI 12-2010, f. 3-1-10, cert. ef. 3-3-10

Construction Contractors Board Chapter 812

Rule Caption: Lead-Based Paint recognized training programs.

Adm. Order No.: CCB 5-2010(Temp)

Filed with Sec. of State: 3-11-2010

Certified to be Effective: 3-11-10 thru 9-3-10

Notice Publication Date:

Rules Amended: 812-007-0020

Subject: OAR 812-007-0020 is amended because currently, the Department of Human Services, Public Health Division is not able to accredit training programs because it has not yet adopted its rules. The only accredited training programs are those accredited by the Environmental Protection Agency (EPA). CCB needs to recognize

ADMINISTRATIVE RULES

these training programs as meeting the requirements for licensure, or there will be no way for contractors to obtain a certified LBP renovation contractor license.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-007-0020

Definitions

The following definitions apply to division 7 of OAR chapter 812.

(1) "Abatement" means any measure or set of measures designed to permanently eliminate LBP hazards.

(2) "Accredited training program" means a training program provisionally accredited or accredited by the Environmental Protection Agency or the Department, either directly or reciprocity, to provide training for individuals engaged in LBP activities or renovation.

(3) "Certified" means certified by the Department to perform LBP activities.

(4) "Certified lead-based paint renovation contractor" means a construction contractor that is licensed by the board to conduct LBP renovation under ORS 701.515.

(5) "Child-occupied facility" means a building, or portion of a building, constructed before 1978 and visited regularly by the same child, six years of age or under, on at least two different days within any week (Sunday through Saturday), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(6) "Course completion certificate" means documentation issued by an accredited training program to an individual as proof of successful completion of an accredited renovator training program (initial or refresher).

(7) "Department" means the Oregon Department of Human Services.

(8) "Deteriorated lead-based paint (LBP)" means any interior or exterior paint or other covering that is peeling, chipping, chalking, cracking, flaking or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(9) "Dust-lead hazard" means surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 $\mu\text{g}/\text{ft}^2$ on floors or 250 $\mu\text{g}/\text{ft}^2$ on interior windows or 400 $\mu\text{g}/\text{ft}^2$ in troughs based on wipe samples.

(10) "Inspection" means a surface-to-surface investigation to determine the presence of LBP and an accompanying report explaining the results of the investigation.

(11) "Lead abatement contractor" means a construction contractor that is licensed by the board to perform abatement.

(12) "Lead assessor" or "risk assessor" means an individual who has been trained by an accredited training program and certified by the Department to conduct risk assessments.

(13) "Lead-based paint" or "LBP" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(14) "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

(15) "Lead-based paint (LBP) hazard" means deteriorated LBP, dust-lead hazard or soil-lead hazard.

(16) "Lead inspection contractor" means a construction contractor that is licensed by the board to perform inspections or risk assessments.

(17) "Lead inspector" means an individual who has been trained by an accredited training program and certified by the Department to conduct inspections.

(18) "Lead supervisor" means an individual who has been trained by an accredited training program and certified by the Department to supervise and conduct abatements and prepare abatement reports.

(19) "Lead worker" or "lead abatement worker" means an individual who has been trained by an accredited training program and certified by the Department to perform abatements.

(20) "Minor repair and maintenance" means activities, (including minor heating, ventilation, air conditioning work, electrical work, or plumbing) that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities, that do not involve prohibited or restricted work activities and do not involve window replacement or painted surface demolition. Jobs, other than emergency renovations, performed within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

(21) "Prohibited or restricted work activities" include:

(a) Open flame burning or torching;

(b) Machines to remove paint through high-speed operation without HEPA exhaust control; and

(c) Operating a heat gun at temperatures at or above 750 degrees Fahrenheit.

(22) "Renovation" means the modification of any existing structure, or portion thereof, which results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term renovation includes, but is not limited to:

(a) Removal, modification or repair of painted surfaces or painted components, such as modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping or other such activities that may generate paint dust);

(b) The removal of building components, such as walls, ceilings, plumbing and windows;

(c) Window replacement;

(d) Weatherization projects, such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, or planing thresholds to install weather-stripping;

(e) Interim controls that disturb painted surfaces. A renovation for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation. The term "renovation" does not include minor repair and maintenance.

(23) "Renovation Right Pamphlet" means the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* or any pamphlet approved by the Environmental Protection Agency (EPA) for the same purpose.

(24) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of a LBP hazard and an accompanying report explaining the results of the investigation and options for reducing LBP hazards.

(25) "Soil lead hazard" means 400 ppm of lead in child play areas or 1200 ppm in non-child play areas.

(26) "Target housing" means any housing constructed before 1978, except housing for the elderly or persons with disabilities or any housing with no bedrooms.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.505 - 701.520

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renum from 812-007-0015, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 2-2010, f. & cert. ef. 2-1-10; CCB 5-2010(Temp), f. & cert. ef. 3-11-10 thru 9-3-10

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Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

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

Adm. Order No.: OEGB 2-2010(Temp)

Filed with Sec. of State: 3-3-2010

Certified to be Effective: 3-3-10 thru 8-29-10

Notice Publication Date:

Rules Amended: 111-040-0040

Subject: 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—(503) 378-6588

111-040-0040

Qualified Status Changes

(1) Active eligible employees experiencing a change in family or work status as noted below during the plan year have 31 calendar days from

ADMINISTRATIVE RULES

the date of the event to make changes unless indicated otherwise. The eligible employee may make only those changes that are consistent with the event for themselves and dependents. Please refer to the Qualified Status Change matrix for details on what changes can occur with each event.

(2) Change in status. Events include:

(a) Gain spouse by marriage or domestic partner by meeting domestic partner eligibility;

(b) Loss of spouse or domestic partner by divorce, annulment, death or termination of domestic partnership, 60 days from the event;

(c) Gain dependent by birth, placement for/or adoption, affidavit of dependency or Domestic Partner's children (by affidavit of domestic partnership), 60 days from the event;

(d) Active eligible employee starts new employment and gains eligibility;

(e) Change in employment status by active eligible employee which affects eligibility;

(f) Active eligible employee ends employment or other change in employment status resulting in a loss of eligibility;

(g) Spouse or domestic partner starts new employment or other change in employment status which affects eligibility;

(h) Spouse or domestic partner's employment ends or other change in employment status resulting in a loss of eligibility under their employer's plan;

(i) Event by which dependent child satisfies eligibility requirements under OEGB plans (for a list of requirements see 111-010-0015);

(j) Event by which dependent ceases to satisfy eligibility requirements under OEGB plans (for a list of requirements see 111-010-0015), 60-days from the event;

(k) Changes in the residence of the active eligible employee or family member (i.e., moving out of the service area of an HMO);

(l) Reinstatement of coverage. Reinstatement can be used in the following situations:

(A) Military (USERRA).

(B) When coverage was continued under COBRA.

(C) When coverage was terminated in error and there is no lapse in coverage.

(m) Significant changes in cost that result in a negative impact to:

(A) The amount an active eligible employee must contribute toward benefits.

(B) The amount a spouse or domestic partner must contribute toward his or her group health insurance plan cost.

(n) Related laws or court orders. For example: Qualified Medical Child Support Order (QMSCO), Medicare, HIPAA, or Family Health Insurance Assistance Program (FHIAP). Changes are determined by the applicable law or court order.

(3) Changes in coverage, or contribution amounts that result in a reduced amount that an employee or eligible dependent must contribute toward benefits, do not constitute a Qualified Status Change.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864

Hist.: OEGB 14-2008, f. & cert. ef. 8-15-08; OEGB 10-2009(Temp), f. 5-4-09, cert. ef. 5-5-09 thru 10-31-09; OEGB 11-2009, f. & cert. ef. 7-31-09; OEGB 17-2009(Temp), f. & cert. ef. 10-7-09 thru 4-4-10; OEGB 22-2009, f. & cert. ef. 12-17-09; OEGB 2-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10

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Rule Caption: Amended to clarify language relating to what provisional non-subject districts need to do to request a comparability assessment.

Adm. Order No.: OEGB 3-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 1-1-2010

Rules Amended: 111-020-0001

Subject: OAR 111-020-0001 is amended to provide clarifying language relating to what provisional non-subjects need to do to request a comparability assessment.

Rules Coordinator: April Kelly—(503) 378-6588

111-020-0001

Initial Employee Group Phase-in

(1) Any employee group in Subject Districts or Provisional Non-subject Districts may elect to participate in benefit plans provided by the Board beginning on October 1, 2008, October 1, 2009, or October 1, 2010, without having to meet the phase-in requirements outlined under Sections 2, 3 and 4; however:

(a) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2007, through June 30, 2008, must participate in benefit plans provided by the Board beginning October 1, 2008.

(b) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2008, through June 30, 2009, must participate in benefit plans provided by the Board beginning October 1, 2009.

(c) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date on or after July 1, 2009, must participate in benefit plans provided by the Board beginning October 1, 2010.

(d) Eligible employees of a Subject District who are not represented under a collective bargaining agreement must participate in benefit plans provided by the Board consistent with the requirements governing eligible employees of the Subject District who are represented under a collective bargaining contract as outlined under section 1(a), (b) and (c) above. If more than one collective bargaining contract exists in the Subject District, the earliest collective bargaining contract end date must be applied. If no employee group in the Subject District is represented through a collective bargaining agreement, all eligible employees of the district must participate in benefit plans provided by the Board beginning October 1, 2008.

(2) An employee group electing to participate in benefit plans provided by the Board under section 1 must provide notice of such election not later than May 31 of the year in which they plan to move to the OEGB benefit plans on October 1.

(3) A Provisional Non-subject District wanting to continue providing benefit plans other than those benefit plans provided by the Board must submit an application requesting to be excluded from the requirements of this Section. Beginning in calendar year 2010, applications must be received by OEGB no later than May 31st each year. The application must include the requested plan design, enrollment and premium/cost information for all coverage plans currently available through the OEGB benefits program for purposes of establishing comparability. A Provisional Non-subject District must submit this application to OEGB at least once every two years or on an annual basis if either the District or labor organization representing the District's employees requests the comparability analysis.

(4) Employee groups in Provisional Non-subject Districts who elect to participate in benefit plans provided by the Board cannot return to benefit plans provided or administered by an entity other than the Board.

(5) Employee groups electing to participate in OEGB benefit plans prior to the date mandated by Senate Bills 426 and 1066 (Chapter 7, Oregon Laws 2007, as amended by Chapter 39, Oregon Laws 2008) must participate in all types of benefit coverage offered by OEGB at the time of plan selection.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.886

Hist.: OEGB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEGB 3-2007(Temp), f. & cert. ef. 11-15-07 thru 3-18-08; OEGB 5-2008, f. & cert. ef. 4-1-08; OEGB 12-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEGB 2-2009, f. & cert. ef. 1-30-09; OEGB 6-2009(Temp), f. & cert. ef. 3-10-09 thru 9-4-09; OEGB 9-2009, f. & cert. ef. 5-1-09; OEGB 3-2010, f. & cert. ef. 3-15-10

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Rule Caption: Establishes the Oregon Educators Benefit Board rules surrounding the implementation of House Bill 2557.

Adm. Order No.: OEGB 4-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 1-1-2010

Rules Adopted: 111-070-0001, 111-070-0005, 111-070-0015, 111-070-0020, 111-070-0030, 111-070-0040, 111-070-0050, 111-070-0060, 111-070-0070

Subject: Adopt rules to implement House Bill 2557 which was enacted by the Legislative Assembly. These rules define eligibility and the process for which part time faculty members, who are not otherwise eligible for health benefits, can obtain health benefits through the Oregon Educators Benefit Board.

Rules Coordinator: April Kelly—(503) 378-6588

111-070-0001

Definitions

For the purpose of this rule:

(1) "HB 2557 eligible member" means a part time faculty who is eligible for membership in the Public Employees Retirement System (PERS) by teaching or conducting research at a single institution of higher educa-

ADMINISTRATIVE RULES

tion or in aggregate at multiple public institutions of higher education during the prior year. "HB 2557 eligible member" does not mean or include a part time faculty member who has revoked PERS membership by opting to enroll in another employer retirement plan, or a part time faculty member who is eligible for benefits through the Public Employees' Benefit Board (PEBB).

(2) "Eligible dependent" means a Spouse, Domestic Partner or dependent child as defined in OAR 111-010-0015.

(3) "Overpayment" means the amount of a participating HB 2557 eligible member's monthly payment to OEBB that exceeded the amount due.

(4) "PERS" means the Oregon Public Employees Retirement System.

(5) "Plan Year" means the coverage period, usually 12 months long that is used for administration of a health benefits plan.

(6) "Public institution of higher education" means an Oregon community college or a state institution of higher education listed in ORS 352.002.

(7) "Underpayment" means a payment submitted by a participating HB 2557 eligible member that is less than the invoiced amount.

(8) "Electronic funds transfer" refers to a payment through an Automated Clearing House (ACH) credit or ACH debit that initiates the movement of funds from an HB 2557 eligible member's individual banking account to the OEBB Treasury account electronically.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)

Stats. Implemented: 2009 OL Ch. 351 (HB 2557)

Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0005

Plan Selections

HB 2557 eligible members may enroll in medical plans only in the tiered rate structure. The plan selections will be determined on an annual basis, included in our policies and communicated to those individuals identified by PERS as being eligible under HB 2557 to enroll in OEBB medical benefits the next Plan Year.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)

Stats. Implemented: 2009 OL Ch. 351 (HB 2557)

Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0015

Enrollment

(1) OEBB will directly provide HB 2557 eligible members notice of their eligibility, the open enrollment schedule and instructions for completing the required enrollment information prior to the beginning of the open enrollment period.

(2) HB 2557 eligible members and eligible dependents may enroll in a medical plan as specified in 111-070-0005 when one of the following occurs:

(a) During the annual open enrollment period (August 15 through September 15);

(A) Required enrollment information may be submitted by the member to the OEBB office prior to the beginning of the open enrollment period;

(B) All required enrollment information must be received from the member by OEBB by close of business on September 15;

(C) Required enrollment information not received from the member on or before the end of the open enrollment period will be considered a declination of coverage for the Plan Year;

(D) Coverage selected will be effective at the beginning of the new Plan Year (October 1) for HB 2557 eligible member and dependent(s) who have submitted the required enrollment information by the submission deadline; or

(b) Following confirmation that an individual not initially identified as eligible for benefits is eligible for benefits:

(A) All required enrollment information must be received from the member by OEBB by close of business on the date specified in the written eligibility notice sent to the HB 2557 eligible member. Failure to meet the due date will be considered a declination of coverage for the Plan Year;

(B) Coverage selected will be effective the first day of the month following eligibility confirmation and receipt of the required enrollment information.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)

Stats. Implemented: 2009 OL Ch. 351 (HB 2557)

Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0020

Effective Date

(1) HB 2557 eligible members who are eligible for membership in PERS during a calendar year are eligible for medical benefits through the Oregon Educators Benefit Board for the following Plan Year.

(2) Eligibility will be determined annually within 30 days after the first quarter of the current calendar year.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)

Stats. Implemented: 2009 OL Ch. 351 (HB 2557)

Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0030

Termination

(1) OEBB coverage will be terminated under the following circumstances:

(a) Premiums are not paid in full by the due date. Coverage is contingent upon the receipt of the full monthly premium payment. Coverage will be terminated on the last day of the month in which premiums were paid in full; or

(b) Eligibility for PERS membership is lost during the previous calendar year. Coverage will be terminated on the September 30th following the calendar year in which PERS membership is lost.

(c) Upon notification and confirmation that an individual is not eligible for benefits due to adjustments that affect the individual's PERS membership. Coverage will be terminated on the last day of the month in which ineligibility is confirmed.

(d) Upon notification and confirmation that an individual is not eligible for benefits due to not being a teaching or research faculty member during the calendar year upon which eligibility determination was based. Coverage will be terminated retroactively to the original coverage effective date. Refunds of premiums are limited to 90 days.

(2) Upon loss of OEBB coverage due to a qualifying event, HB 2557 eligible members and their eligible dependents will have COBRA rights. Cancellation due to failure to make a premium payment does not constitute COBRA rights.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)

Stats. Implemented: 2009 OL Ch. 351 (HB 2557)

Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0040

Qualified Status Changes (QSC's)

(1) HB 2557 eligible members experiencing a change in family status during the plan year have 31 calendar days from the date of the event to make allowed changes.

(2) The HB 2557 eligible member may make only those changes that are consistent with the event for themselves and eligible dependent(s).

(3) Qualified Status Changes which allow the subscriber to make changes to his or her coverage are:

(a) Gain spouse by marriage or domestic partner by meeting domestic partner eligibility;

(b) Loss of spouse or domestic partner by divorce, annulment, death or termination of domestic partnership, 60 days from the event;

(c) Gain dependent by birth, placement for/or adoption, affidavit of dependency or Domestic Partner's children (by affidavit of domestic partnership), 60 days from the event;

(d) Event by which dependent child satisfies eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015);

(e) Event by which dependent ceases to satisfy eligibility requirements under OEBB plans (for a list of requirements see 111-010-0015), 60-days from the event;

(f) Changes in cost or coverage do not constitute a Qualified Status Change. All changes resulting from a change in cost or coverage must be made during Open Enrollment.

(g) Related laws or court orders. For example: Qualified Medical Child Support Order (QMSCO), Medicare, or HIPAA. Changes are determined by the applicable law or court order, and the Family Health Insurance Assistance Program (FHIAP).

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)

Stats. Implemented: 2009 OL Ch. 351 (HB 2557)

Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0050

Premium Payment

(1) **HB 2557 Eligible Member Payment Methods and Due Dates:**

(a) HB 2557 eligible members will submit payment to OEBB for benefits by electronic funds transfer (EFT).

(b) OEBB may grant an exception from the requirement in section (1) to pay by EFT if the HB 2557 eligible member demonstrates their financial institution cannot accommodate an EFT transfer, or the member does not maintain an account at a financial institution.

(c) Notwithstanding section (2), the electronic transfer of funds will occur on the 25th day of the month prior to the next month's health care coverage. All payments will be subject to this due date.

ADMINISTRATIVE RULES

(2) HB 2557 Eligible Member Invoicing:

(a) OEBB will enroll a new HB 2557 eligible member after one of the following is completed:

(A) The required ACH payment agreement for electronic transfer of funds is received from the member, processed and set-up with their financial institution; or

(B) The Exception Request Form is received from the member, reviewed and approved;

(b) OEBB will mail payment reminders to HB 2557 eligible members to provide notification of the amount and date the automatic checking deduction will occur.

(c)(A) If the payment is not received in full by the 25th calendar day of the month, the member's coverage will be terminated on the last day of the month in which a full premium payment was received. All premium payments must be paid in full before payment to the carrier will be made.

(B) OEBB shall not be responsible for any unpaid portion of premiums for coverage and will terminate the HB 2557 eligible member and dependent coverage for non-payment or underpayment of premiums due.

(3) HB 2557 Eligible Member Overpayments:

(a) OEBB will mail notification of overpayments to the HB 2557 eligible member. This written notice shall inform the member of the amount overpaid and a description of the overpayment.

(b)(A) OEBB will automatically apply any overpayments to the next month's premium due. The member may complete a Request for Reimbursement form if a refund of an overpayment is desired. However, the member may be responsible for processing fees associated with refunds less than \$100.

(B) Remaining balances on coverage that has ended will be refunded in full.

(4) HB 2557 Eligible Member Underpayments:

(a) Premiums that are not paid in full by the 25th calendar day of the month prior to the coverage effective month will result in the eligible member's and dependent's coverage being terminated at the end of the last month for which premiums were paid in full.

(b)(A) HB 2557 eligible members will be notified if their coverage was terminated due to the premium not being paid in full, including payments returned by the bank for Non-Sufficient Funds (NSF).

(B) A check or ACH transaction that is returned for NSF is considered non-payment of premiums.

(c) Coverage terminated due to non-payment or underpayment can not be reinstated until a following Plan Year in which a person is deemed a HB 2557 eligible member.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)
Stats. Implemented: 2009 OL Ch. 351 (HB 2557)
Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0060

Appeals and Administrative Reviews

HB 2557 eligible members have the right to use the OEBB Appeals and Administrative Review process.

(1) HB 2557 eligible members may appeal OEBB's eligibility decision.

(2) HB 2557 eligible members have the right to request a review of benefit and claim issues that are not resolved following the completion of the carrier appeal process. Administrative Review requests relating to denied benefits are limited to a determination of whether or not a benefit was intended to be covered under the current contract.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)
Stats. Implemented: 2009 OL Ch. 351 (HB 2557)
Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

111-070-0070

Continuation of Coverage

HB 2557 eligible members and dependents have COBRA rights consistent with 111-050-0001 and 111-070-0030.

Stat. Auth.: ORS 243.864, 2009 OL Ch. 351 (HB 2557)
Stats. Implemented: 2009 OL Ch. 351 (HB 2557)
Hist.: OEBB 4-2010, f. & cert. ef. 3-15-10

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Department of Agriculture Chapter 603

Rule Caption: Allows new test for *Trichostrongylus axei* diagnosis.

Adm. Order No.: DOA 9-2010

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 2-26-10

Notice Publication Date: 1-1-2010

Rules Amended: 603-011-0610, 603-011-0615, 603-011-0620

Subject: On September 1, 2009, testing bulls for the Trich Year 2010 begins. On August 5, 2009, we received the research results about a new trichomonas diagnostic test that is more accurate and less expensive than our current culture method. This test, known as a real-time Polymerase Chain Reaction (PCR) Assay, is more accurate as a single test than are three cultures that are now required by rule, to rule out trichomoniasis. This permanent administrative rule will address the need to allow producers to use the new PCR Assay in place of the culture method for testing their bulls during the Trich Year 2010 that begins September 1, 2009.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0610

Definitions

(1) "Bovine trichomoniasis" is a sexually transmitted disease of cattle caused by the parasitic protozoan organism *Trichostrongylus axei*.

(2) "The Department" is the Oregon Department of Agriculture (ODA).

(3) "Virgin bull" is a sexually intact male bovine less than 12 months of age that is certified by the owner/manager as having had no potential breeding contact with females.

(4) "Exposed herds" are cattle herds which have had, within twelve months, direct commingling or cross fence contact with test-positive herd during a time of potential breeding activity.

(5) "Permanent Identification" is a steel alphanumeric ear tag provided as official identification to accredited veterinarians, breed registry tattoos, or other means of identification established by the Department after review by the Trichomoniasis Advisory Panel.

(6) "Herd" is a group of cattle managed as a separate unit and not mixed with other cattle under the same ownership.

(7) "Test positive herd" is a defined herd of cattle in which a diagnosis of trichomoniasis has been made by a certified, licensed veterinarian.

(8) "Trich-year" is the period from September 1st to August 31st of any given year.

(9) "qPCR Assay" is a TAQMAN Probe Assay defined by Lyle McMillen in *Veterinary Parasitology* Volume 141, 2006 including an endogenous amplification control.

Stat. Auth.: ORS 591 & 596
Stats. Implemented: ORS 596.392
Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05; DOA 19-2007, f. & cert. ef. 11-28-07; DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08; DOA 13-2009(Temp), f. 8-28-09 cert. ef. 9-1-09 thru 2-28-10; DOA 9-2010, f. & cert. ef. 2-26-10

603-011-0615

Importation Requirements

In addition to an import permit and other disease control requirements, the following requirements must be met regarding bovine trichomoniasis.

(1) Each bull 12 months of age and over shall have all of the following:

(a) Individual negative trichomoniasis test results within 60 days preceding entry into Oregon performed by a certified veterinarian and

(b) A Certificate of Veterinary Inspection that states:

(A) The bulls represented on this Certificate of Veterinary Inspection have been tested for and found to be negative for trichomoniasis pursuant to subsection (1)(a) above and have been confined and have not had sexual contact with females since their last negative test; and

(B) Trichomoniasis has not been diagnosed in the herd of origin within the past 24 months.

(2) Any bull originating from a herd in which trichomoniasis has been diagnosed within the past 24 months shall have all of the following:

(a) Three (3) consecutive negative trichomoniasis culture tests conducted at least seven (7) days apart, but not more than 28 days apart, or one (1) negative qPCR Assay with the last test conducted within 60 days preceding entry; and

(b) A Certificate of Veterinary Inspection that states that the requirements, set forth in subsection (2)(a) above, have been met.

(3) All breeding bulls, 12 months of age and over, entering Oregon as part of a herd that has an authorized Out-of-State Grazing permit pursuant to section 603-011-0264, do not require a Certificate of Veterinary Inspection but are required to have one negative trichomoniasis test within the 12 months preceding entry. However, all bulls from a herd in which trichomoniasis has been diagnosed within the past 24 months must comply with (2)(a) above to qualify the herd for an Out-of-State Grazing permit. All Out-of-State Grazing permits shall include an attached copy of the test

ADMINISTRATIVE RULES

record, that includes the permanent identification number of the bull(s) tested and the name and telephone number of the testing certified veterinarian.

(4) Bulls may be exempt from the trichomoniasis test requirements for entry into Oregon under any one or all of the following conditions:

(a) Used solely for exhibition purposes and remain under confinement at the location of the exhibition without having access to or allowed to commingle with sexually mature female cattle; or

(b) Used solely for artificial insemination using semen extension and preservation protocols that meet Certified Semen Services standards; or

(c) Consigned directly to slaughter without unloading before the arrival at the slaughter plant.

Stat. Auth.: ORS 596

Stats. Implemented:

Hist.: DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08; DOA 13-2009(Temp), f. 8-28-09 cert. ef. 9-1-09 thru 2-28-10; DOA 9-2010, f. & cert. ef. 2-26-10

603-011-0620

Procedures

(1) The Department shall establish a Bovine Trichomoniasis Advisory Panel, whose membership shall be:

(a) Five voting members who are representatives of the cattle industry, recommended by the Animal Health Committee of the Oregon Cattlemen's Association; and

(b) Four non-voting advisory members who are: the OSU Extension Veterinarian, two practicing veterinarians appointed by the Advisory Panel, and one representative of the office of the ODA State Veterinarian.

(2) Duties of the Advisory Board shall be to:

(a) Advise the Department on management of issues related to the program; and

(b) Advise the Department on preferred policies and processes for resolution of disputes related to the program.

(3) Certified veterinarians, as described in 603-011-0630, must report a positive test result of *Trichomonas fetus* to the Department on a form supplied by the Department within 48 hours of determining the result.

(4) In response to a positive bovine trichomoniasis test the Department shall:

(a) Conduct an investigation to identify herds that were potentially exposed to the infected herd.

(b) Require that any further bovine trichomoniasis testing be performed by a certified person, and accept the results of a retest by a certified person, if the original test was performed by a non-certified person; and

(c) Require permanent identification and testing of all bulls, excepting virgin bulls, in the test-positive herd and exposed herds.

(5) All bulls in herds required to be tested must be withdrawn from breeding contact and tested between 10 and 90 days after withdrawal.

(6) All bulls in test-positive herds must each have three consecutive negative culture test results with each test event separated by at least seven days and no more than 28 days, or one (1) negative qPCR Assay result completed at least seven (7) days after initial diagnosis is made. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(8).

(a) Test-positive herds with valid Out-of-State Permit will have all bulls restricted in place until negative test results are complete as described in (6) above. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(8); or

(b) Return all herdmate bulls from Out-of-State Permit affected herds to their state of origin to complete negative trichomoniasis testing as described in (6) above. The Department shall release the herdmate bulls from restriction when the State Veterinarian from the state of origin notifies the Department that the required testing is complete. Test-positive bulls shall not return.

(c) Out-of-State Permit herds exposed to trichomoniasis will have all bulls restricted in place until one negative trichomoniasis test is complete. Any cattle determined to be infected will be restricted and the herd status will be changed to a test-positive herd and subject to the requirements of subsection (6)(a) or (b); or

(d) Return all herdmate bulls to their state of origin to complete one negative trichomoniasis test. The Department shall release the herdmate bulls from restriction when the State Veterinarian from the state of origin notifies the Department that the required testing is complete. Any bull that has a positive test result shall cause the herd to be classified as test-positive and treated as in (6)(a) or (b).

(7) All bulls from a test-positive herd must be re-tested every trich-year until every remaining bull tests negative during the same test period.

(a) All bulls from a test-positive herd must be re-tested before February 1 of the following year.

(b) All bulls removed or culled from a test-positive herd are to be tested before removal or culling.

(8) Test-positive bulls shall be held under quarantine separate and apart from other cattle or shall comply with one of the following:

(a) Culture test-positive bulls may be retested and, if found negative on qPCR Assay completed at least seven (7) days after initial diagnosis is made may be considered test-negative and released from quarantine; or

(b) Test-positive bulls moving into feeding channels shall be castrated before moving from the ranch; or

(c) Test-positive bulls moving out of the infected herd into commercial slaughter-marketing channels, including collection points, shall be identified before moving with an "S" brand applied to both sides of the tail-head and shall move only to slaughter under authority of a VS Form 1-27 Permit for Movement of Restricted Animals; or

(d) Test-positive bulls moving out of the infected herd directly to slaughter shall do so with:

(A) A VS Form 1-27 Permit for Movement of Restricted Animals; and

(B) Prior notification of the State Veterinarian; and

(C) Record of their permanent identification on the VS Form 1-27 under which authority they move.

(9) Failure to comply with the above provisions for response to a positive bovine trichomoniasis test shall result in quarantine of all cattle in the non-compliant herd under provisions of ORS 596.392(4).

(10) The Department may waive the mandatory testing and quarantine provisions of this rule if:

(a) The owner or manager demonstrates that a herd program for control of bovine trichomoniasis which the Department determines, after consultation with the Advisory Panel, to be adequate under the circumstances, is in place and operational at time of diagnosis; or

(b) The owners or managers of the test positive herd and of all exposed herds agree to not test, or agree to pursue a control program of their own design, and the Department determines that such action is adequate under the circumstances.

Stat. Auth.: ORS 591 & 596

Stats. Implemented: ORS 596.392

Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05; DOA 19-2007, f. & cert. ef. 11-28-07; DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08; DOA 13-2009(Temp), f. 8-28-09 cert. ef. 9-1-09 thru 2-28-10; DOA 9-2010, f. & cert. ef. 2-26-10

Department of Agriculture, Oregon Dungeness Crab Commission Chapter 645

Rule Caption: Adjusts the date monthly assessment fees and reports are due to ODCC office.

Adm. Order No.: ODCC 1-2010(Temp)

Filed with Sec. of State: 2-23-2010

Certified to be Effective: 2-23-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 645-010-0015

Subject: This rule adjusts the due date of monthly assessment fees and reports from the 15th day of the month to the 30th day of each month for all purchases or deliveries of Oregon Dungeness crab in the previous month.

Rules Coordinator: Shirley D. Velazquez—(541) 267-5810

645-010-0015

Reports and Payment of Assessment Moneys

First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports shall include all purchases by or deliveries to a first purchaser of Oregon Dungeness Crab in the previous month. Assessment reports are due in the commission office by 5:00 p.m. on the 30th day of each month.

EXAMPLE: Assessment reports for August 1–August 31 would be due in the commission office by 5:00 p.m. on September 30th.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.335 & 576.304(14)

Hist.: DCC 2, f. 12-28-77, ef. 1-1-78; ODCC 1-2000, f. & cert. ef. 12-15-00; ODCC 1-2010(Temp), f. & cert. ef. 2-23-10 thru 7-31-10

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

Rule Caption: Adopts the 2010 Oregon Manufactured Dwelling Installation Specialty Code; includes housekeeping changes to division rules.

ADMINISTRATIVE RULES

Adm. Order No.: BCD 1-2010

Filed with Sec. of State: 3-1-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 12-1-2009

Rules Adopted: 918-500-0530, 918-500-0540, 918-500-0550, 918-500-0560, 918-500-0570, 918-500-0580, 918-500-0590

Rules Amended: 918-020-0090, 918-098-1012, 918-098-1015, 918-098-1210, 918-098-1215, 918-098-1300, 918-098-1305, 918-098-1315, 918-098-1320, 918-098-1325, 918-098-1330, 918-305-0030, 918-500-0000, 918-500-0005, 918-500-0010, 918-500-0035, 918-500-0040, 918-500-0055, 918-500-0100, 918-500-0105, 918-500-0110, 918-500-0300, 918-500-0310, 918-500-0320, 918-500-0330, 918-500-0340, 918-500-0400, 918-500-0410, 918-500-0420, 918-500-0430, 918-500-0450, 918-500-0470, 918-515-0010, 918-515-0020, 918-515-0030, 918-515-0110, 918-515-0150, 918-515-0300, 918-515-0330, 918-515-0350, 918-515-0360, 918-515-0370, 918-515-0480, 918-515-0485, 918-515-0490, 918-525-0042, 918-600-0010

Rules Repealed: 918-520-0010, 918-520-0015, 918-520-0020, 918-520-0030, 918-520-0040, 918-520-0050, 918-520-0060, 918-520-0070, 918-520-0080, 918-520-0090, 918-520-0100, 918-520-0110

Rules Ren. & Amend: 918-500-0020 to 918-500-0510, 918-500-0021 to 918-500-0520

Subject: These rules adopt the 2010 Oregon Manufactured Dwelling Installation Specialty Code, which was developed by the Building Codes Division and is based on the Department of Housing and Urban Development (HUD) installation standard, nationally recognized standards, and the current Oregon specialty code for the installation of manufactured dwellings. The rules adopt additional requirements for manufactured dwellings that are outside the scope of the installation code. Additional housekeeping changes to these administrative rules provide clarity and consistency among the division's rules. Construction and listing requirements repealed in OAR chapter 918, division 520 for heat producing appliances are no longer needed. Listing requirements are referenced in the Oregon Residential Specialty Code.

Rules Coordinator: Shauna M. Parker—(503) 373-7438

918-020-0090

Program Standards

The division and every municipality that administers and enforces a building inspection program must establish and maintain the minimum standards, policies, and procedures set forth in this section.

(1) Administrative Standards. A building inspection program must:

(a) Provide adequate funds, equipment, and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers, and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments, and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review, and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates; and

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent.

(2) Permitting Standards. A building inspection program must:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits, and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration, and certification of any person who proposes to engage in any activity regulated by ORS chapters 446, 447, 455, 479, 693, and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program must:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably appraises persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" is defined by the division, taking into consideration the regional procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction must also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the regional procedures in OAR chapter 918, division 50. The process may not allow a project to proceed beyond the level of approval authorized by the building official. The process must:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell, or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and

(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;

(F) Verify for those architects and engineers requesting the use of alternative one and two family dwelling plan review program that all plans have been stamped by a registered professional who is also a residential plans examiner. This process must require the building official to:

(i) Establish policies and procedures in their operating plan for this process;

(ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one and two family dwellings; and

(iii) Establish an appropriate fee for processing plans submitted under this rule.

ADMINISTRATIVE RULES

(b) Employ or contract with a person licensed, registered, or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations, and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" must:

(a) Comply with the requirements for prescriptive construction under the Oregon Residential Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling Installation Specialty Code and the requirements in OAR chapter 918, division 500; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following are considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the division or municipality or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule is deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program must:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations, and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors must require proof of compliance with the licensing, permitting, registration, and certification requirements of persons engaged in any activity regulated by ORS chapters 446, 447, 455, 479, 693, and 701. Inspectors must report any violation of a licensing, permitting, registration, or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's

compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program must establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in ORS 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program must demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.030, 455.467, 455.469, 455.156

Stats. Implemented: ORS 455.150, 455.467, 455.469, 455.156

Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1012

Scope Of Work Allowed For Persons With An Oregon Inspector Certification and an International Code Council Certification

(1) Individuals meeting the experience requirement in OAR 918-098-1010 who possess a valid Oregon Inspector Certification and a current International Code Council certification may perform work based on the type of International Code Council Certification they possess.

(2) A Certified Building Official Legal/Management may oversee a jurisdiction's administration and enforcement of the state building code for those specialty codes assumed by the jurisdictions pursuant to ORS 455.148 or 455.150. Building officials may not perform plan reviews or inspections unless they possess the appropriate certification for the type of plan review or inspection being performed.

(a) Commercial Building Inspector certificate holders may conduct construction inspections for:

(A) All work regulated by the **Oregon Structural Specialty Code**; and

(B) Structural work on townhouse structures, rowhouse structures, and apartment buildings regulated by the Oregon Residential Specialty Code.

(b) Commercial Building Plans Examiner certificate holders may review construction plans for:

(A) Compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) Fire and life safety construction on townhouse structures, rowhouse structures, and apartment buildings regulated by the Oregon Residential Specialty Code.

(c) Commercial Fire Plans Examiner certificate holders who also have the Commercial Building Plans Examiner Certificate may review construction plans for compliance with the fire and life safety plan review provisions of the Oregon Structural Specialty Code and the Oregon Fire Code.

(d) A Commercial Mechanical Inspector certificate holder may conduct construction inspections and may review construction plans for:

(A) All work regulated by the Oregon Mechanical Specialty Code; and

(B) Mechanical work on townhouse structures, rowhouse structures and apartment buildings regulated by the Oregon Residential Specialty Code.

(e) A Residential Building Inspector certificate holder may conduct construction inspections and plan reviews for:

(A) Structural work regulated by the Oregon Residential Specialty Code, except apartment buildings; and

(B) Construction work on manufactured structures and accessory buildings and structures regulated under the **Oregon Manufactured Dwelling Installation Specialty Code**, the provisions of OAR chapter 918,

ADMINISTRATIVE RULES

division 500, or the Manufactured Home Construction and Safety Standards in 24 CFR 3280 and 24 CFR 3282. Construction work does not include the scope of work described in OAR 918-098-1305.

(f) A Residential Mechanical Inspector certificate holder may conduct inspections and plan reviews for:

(A) Mechanical work regulated by the Oregon Residential Specialty Code, except for apartment buildings; and

(B) Mechanical work on manufactured dwelling alterations under the Oregon Manufactured Dwelling Installation Specialty Code and the provisions of OAR chapter 918, division 500.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06;

BCD 13-2007, f. 12-28-07 cert. ef. 1-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1015

Scope of Work for Persons Holding Oregon Code Certifications

Persons who possess a current Oregon Code Certification may perform inspections and plan reviews based on the class designated on their certificate. The classes, other than electrical and plumbing inspector classifications found in OAR 918-281-0020 and 918-695-0400, are:

(1) **Building Official.** Persons certified as a Building Official legal management certification may oversee jurisdictions' administration and enforcement of the state building code for those specialty codes assumed by the jurisdiction(s) pursuant to ORS 455.148 or 455.150. Building officials may not perform plan-reviews or inspections unless they possess the appropriate certification for the plan review or inspection being performed.

(2) **Fire and Life Safety.** Persons certified as fire and life safety plans examiners review construction plans for compliance with the fire and life safety plan review provisions of the **Oregon Structural Specialty Code and the Oregon Fire Code** for any structure regulated by the **Oregon Structural Specialty Code**.

(3) **A-Level.**

(a) Persons certified as A-level structural plans examiners:

(A) May review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code** for all work regulated by the **Oregon Structural Specialty Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) May review construction plans for work that falls within the B-level structural plans examiner classification.

(b) Persons certified as A-level structural inspectors:

(A) May conduct construction inspections of all work regulated by the Oregon Structural Specialty Code; and

(B) May conduct inspections of work that falls within the B-level structural inspector classification.

(c) Persons certified as A-level mechanical inspectors:

(A) May conduct construction inspections and may review construction plans for all work regulated by the Oregon Mechanical Specialty Code; and

(B) May conduct inspections and may review construction plans for work that falls within the B-level mechanical inspector classification.

(4) **B-Level.**

(a) Persons certified as B-level structural plans examiners may review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code and Oregon Fire Code** for work regulated by the Oregon Structural Specialty Code, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

(b) Persons certified as B-level structural inspectors may conduct construction inspections of work regulated by the Oregon Structural Specialty Code, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

(c) Persons certified as B-level mechanical inspectors may conduct construction inspections of work regulated by the Oregon Mechanical Specialty Code, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

(d) Persons certified as B-level structural plans examiners, B-level structural inspectors, or B-level mechanical inspectors:

(A) May qualify to be certified to review construction plans or conduct inspections of structures regulated by the Oregon Residential Specialty Code; and

(B) Shall not be authorized to review construction plans or conduct inspections of structures that are outside the B-level classification without first obtaining the appropriate certification.

(5) One and two family dwelling or residential.

(a) Persons certified as one and two family dwelling or residential:

(A) Structural inspectors may conduct construction inspections of structural work regulated by the Oregon Residential Specialty Code, excluding apartment buildings, and manufactured structures and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling Installation Specialty Code**, the provisions of OAR chapter 918, division 500, or the Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 24 CFR 3282 but not the scope of work described in OAR 918-098-1305;

(B) Mechanical inspectors may conduct inspections of mechanical work regulated by the Oregon Residential Specialty Code, excluding apartment buildings, and manufactured dwelling alterations under the Oregon Manufactured Dwelling Installation Specialty Code and the provisions of OAR chapter 918, division 500;

(C) Plumbing inspectors may conduct inspections of plumbing work regulated by the Oregon Residential Specialty Code, excluding apartment buildings; and

(D) Electrical inspectors conduct inspections of electrical work regulated by the Oregon Residential Specialty Code, excluding apartment buildings.

(b) Persons certified as a one-and-two family dwelling plans examiners review construction plans for compliance with provisions of the Oregon Residential Specialty Code, excluding apartment buildings and structures under the Oregon Manufactured Dwelling Installation Specialty Code, the provisions of OAR chapter 918, division 500, or the Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 24 CFR 3282.

(c) Persons certified as a one and two family dwelling or residential inspectors and plans examiners shall not be authorized to review construction plans or conduct inspections of either A-level or B-level structures without the required commercial A-level or B-level certification.

(d) See OAR 918-098-1325 for additional requirements of one and two family dwelling residential inspectors and plans examiners performing manufactured dwelling alteration inspections or plan reviews.

(e) See OAR 918-098-1330 for additional requirements of one and two family dwelling residential inspectors performing manufactured structure accessory structure or accessory building inspections.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 24-1978, f. & ef. 9-1-78; DC 10-1980, f. & ef. 9-10-80; DC 4-1983, f. & ef. 1-12-83; Renumbered from 814-003-0065; BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0065; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0060; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0060; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 13-2007, f. 12-28-07 cert. ef. 1-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1210

Residential Plumbing Inspectors

(1) A person possessing a "**One and Two Family Dwelling Plumbing Inspector**" certification prior to July 1, 2005, shall be considered a "Residential Plumbing Inspector" for the purpose of these rules.

(2) A person issued a residential plumbing inspector certification after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing residential plumbing inspections.

(3) A residential plumbing inspector may conduct inspections for:

(a) Plumbing work regulated by the Oregon Residential Specialty Code, except for apartment buildings; and where connection to the building is not a separate plumbing system.

(b) Plumbing work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the Oregon Manufactured Dwelling Installation Specialty Code and the provisions of OAR chapter 918, division 500.

ADMINISTRATIVE RULES

(4) To qualify to perform work as a residential plumbing inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education, or training requirements:

(a) A current division certification as an Oregon Plumbing Specialty Code inspector; or

(b) Two years of experience designing or installing plumbing systems as a journeyman plumber or its equivalent; or

(c) 2 years of experience as a plumbing inspector in another jurisdiction inspecting plumbing systems in commercial or residential structures for compliance with a recognized code for plumbing installations; or

(d) 90 quarter hours or 60 semester hours education and training in mechanical engineering which includes designing and installing plumbing systems through a college or community college; or

(e) Current division certification as a one and two family dwelling or residential inspector under one or more provisions of the Oregon Residential Specialty Code and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a one and two family dwelling or residential plumbing inspector cross-training program that meets the minimum requirements established by the division.

(f) Any combination of experience designing, installing, or inspecting plumbing systems totaling 3 years.

(5) Persons certified by a nationally recognized certification body to inspect plumbing systems in commercial or residential structures according to a recognized code in plumbing installations shall be granted 1 year of credit toward the experience requirements listed in subsections (4)(b) and (c) of this rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0220; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0220; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1215

Residential Electrical Inspectors

(1) A person possessing a "One and Two Family Dwelling Electrical Inspector" certification prior to July 1, 2005, shall be considered a "Residential Electrical Inspector" for the purpose of these rules.

(2) A person issued a residential electrical inspector certification after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing residential electrical inspections.

(3) Residential electrical inspectors may conduct inspections for:

(a) Electrical work regulated by the **Oregon Residential Specialty Code**, excluding for apartment buildings; and

(b) Electrical work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling Installation Specialty Code** and the provisions of OAR chapter 918, division 500.

(4) To qualify to perform work as a residential electrical inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education, or training requirements:

(a) A current division certification as an **Oregon Electrical Specialty Code** inspector; or

(b) 2 years of Experience installing electrical systems as a limited residential journeyman electrician or a general journeyman electricians license or their respective equivalents; or

(c) 2 years of experience as an electrical inspector in another jurisdiction inspecting electrical installations in commercial or residential structures for compliance with a recognized code for electrical installations; or

(d) 90 quarter hours or 60 semester hours education and training in electrical engineering which includes designing and installing electrical systems through a college or community college; or

(e) Current division certification as a one and two family dwelling or residential inspector under one or more provisions of the **Oregon Residential Specialty Code**, and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the division that an applicant has completed a one and two family dwelling or residential electrical inspector cross-training program that meets the minimum requirements established by the division.

(f) Any combination of experience or education listed in subsections (a) through (d) of this section designing, installing or inspecting electrical systems totaling 3 years.

(5) Persons certified by a nationally recognized certification body to inspect electrical installations in commercial or residential structures according to a recognized code in electrical installations may be granted 1 year of credit toward the experience requirements and may be considered as meeting some requirements of a division approved cross-training program, except the experience listed subsections (4)(b) and (c) of this rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0230; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0230; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1300

Certifications Related to Manufactured Structures and Parks

References and Undertakings.

(1) Scope. The rules in OAR 918-098-1300 to 918-098-1330 relate to certifications for inspectors and plans examiners dealing with manufactured dwellings, recreational vehicles, manufactured dwelling parks, organizational camps, recreation parks, and picnic parks.

(2) A person issued a manufactured structure installation inspector, recreational vehicle inspector certification, manufactured structure construction inspector, or park and camp inspector certification after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

(3) Hiring Non-Certified Persons. The division or a jurisdiction may employ a person not meeting the minimum requirements of OAR 918-098-1305 through 918-098-1320 while the person is being trained or waiting to qualify to take the division examination. During this period, the person may only perform inspections or plan reviews under the direct supervision of appropriately certified trainers. Training must be provided by an inspector or plans examiner having a minimum of three years experience in the same certification or a person approved by the board. This rule does not waive the requirements of ORS 455.730 or permit the division or jurisdiction to hire or use persons whose certifications have lapsed or been revoked.

(4) Inspectors and plans examiners of prefabricated structures do not require special certifications but shall have the appropriate certifications required for performing inspections or plan reviews under the specific specialty code being used.

(5) The following definitions apply to OAR 918-098-1300 through 918-098-1330 only. Also, see applicable definitions in OAR 918-098-1005:

(a) "Board" means the Residential and Manufactured Structures Board.

(b) "Building Construction," relating to experience qualifications, means site-built construction, prefabricated construction or manufactured structure construction.

(c) "One Year," relating to experience qualifications, means 2,000 hours of work experience, 45 or more credit hours of schooling in the quarter system or 30 or more credit hours of schooling in the semester system.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0130; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0300; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0300; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1305

Manufactured Structure Installation Inspector Certification

(1) Scope of Activities and Authority.

(a) A manufactured structure installation inspector conducts on-site field inspections of manufactured dwelling or park trailer installations including site preparation, setbacks, drainage, stand, foundation support, earthquake bracing systems, tie-downs, under-floor enclosures, access, egress, plumbing utility connections (within 30 lineal feet of the manufactured dwelling), mechanical connections and electrical feeder assembly connections (as defined by Article 550 of the National Electrical Code), electrical fixture connections and plumbing, mechanical and electrical crossover connections for manufactured structures under ORS 446.230 and 446.240;

(b) This certification does not include inspections or plan reviews of manufactured dwelling alterations or manufactured structure accessory structures and accessory buildings. See OAR 918-098-1325 and 918-098-1330 for certification requirements.

(c) This certification can be used only in a jurisdiction that:

ADMINISTRATIVE RULES

- (A) Meets all of the requirements of this rule and OAR 918-500-0055;
- (B) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;
- (C) Issues permits according to ORS 446.253; and
- (D) Enforces the current edition of the Oregon Manufactured Dwelling Installation Specialty Code, the provisions of OAR chapter 918, division 500, and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule, make application, pay the required fees, attend a division-approved training program and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant must have at least one of the following:

- (a) 2 years of supervisory experience in the building construction industry; or
- (b) 2 years of experience in design work related to building construction; or
- (c) Be a division-certified building inspector or plans examiner; or
- (d) 2 years of experience as a quality assurance inspector in a manufactured structure manufacturing plant; or
- (e) 2 years of experience as an Oregon licensed manufactured dwelling installer; or
- (f) An associate degree or equal from a division-approved education program in a construction-related field; or
- (g) Any combination of the experience and education listed in subsections (a) through (f) of this section equaling at least 2 years; or
- (h) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of 180 hours working under the supervision of a person with a minimum of three years experience as a certified manufactured structure installation inspector or a person approved by the board.

(4) Inspector Training and Examination. An applicant must successfully complete a division-approved manufactured structure installation inspector training program and pass a division-approved examination covering:

- (a) The Oregon Manufactured Dwelling Installation Specialty Code, the provisions of OAR chapter 918, division 500, and those standards referenced therein;
 - (b) ORS 446.003, 446.155 to 446.253, and 446.395 to 446.420; and
 - (c) OAR chapter 918, divisions 500, 515, and 530.
- (5) After October 1, 2005, a Manufactured Structure Installation Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

(6) Revocation. The division is authorized to revoke this certification under ORS 446.255. Persons certified under this rule who fail to meet the minimum continuing education requirements shall be subject to revocation. If the minimum continuing education is met within 60 days from the date it was originally due, the division shall discontinue any pending revocation action based on a failure to meet minimum continuing education requirements.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.250, 446.255 & 455.720

Stats. Implemented: ORS 446.250, 446.255 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0135; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0310; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0310; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1315

Manufactured Structure Construction Inspector Certification

(1) Scope of Activities and Authority. A manufactured structure construction inspector conducts field, dealer lot, consumer assistance, alteration, visual and manufacturing plant inspections, reviews plans, and provides technical services for manufactured dwelling manufacturers, dealers, and owners.

(2) Procedure for Qualification. An applicant for this certification must meet the general qualifications in section (3) of this rule, make application, pay the required fees, and pass a division-approved examination.

(3) Experience, Education, and Training Requirements. An applicant for certification as a manufactured structure construction inspector must have at least one of the following:

- (a) 2 years of experience as a supervisor in the building construction industry;
- (b) 2 years of experience in design work related to building construction;

(c) 2 years of experience as a certified building inspector or plans examiner;

(d) 2 years of experience as a quality control inspector in a manufactured structures plant;

(e) An associate degree or equal from a division-approved education program in a construction-related field; or

(f) Any combination of the experience and education listed in subsections (a) through (e) of this section equaling at least two years; or

(g) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of 800-hours working under the supervision of a person with a minimum of three years experience as a certified manufactured structure construction inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification as a manufactured structure construction inspector must pass a division-approved examination covering:

(a) Oregon Manufactured Dwelling Installation Specialty Code;

(b) National Electrical Code (NFPA) 70 (2005 Edition);

(c) Manufactured Home Construction and Safety Standards Act;

(d) Public Law 93-383, Title VI;

(e) ORS 446.003 and 446.155 to 446.253; and

(f) OAR chapter 918, division 500.

(5) After October 1 2005, a Manufactured Structure Construction Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0145; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0330; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0330; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1320

Park and Camp Inspector Certification

(1) Scope of Activities and Authority.

(a) A park and camp inspector conducts field inspections, reviews plans, and provides other technical services for manufactured dwelling parks, recreational parks, organizational camps, and picnic parks under ORS 446.066 and 446.335.

(b) This certification can be used only in a jurisdiction that:

(A) Meets all of the requirements of this rule;

(B) Complies with ORS 446.430, 455.170 and 455.680 relating to the delegation of full responsibility for permit issuance and inspections; and

(C) Issues permits, enforces the current edition of ORS chapter 446, OAR chapter 918, divisions 600 and 650, and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule, make application, pay the required fees, and pass a division-approved examination.

(3) Experience, Education, and Training Requirements. An applicant for certification as a park and camp inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building or road construction industry;

(b) 2 years of experience in design work related to building or road construction;

(c) 2 years of experience as a road construction inspector;

(d) 2 years of experience as a surveyor or landscape architect;

(e) 2 years of experience as a registered sanitarian;

(f) 2 years of experience as an Oregon licensed manufactured dwelling installer;

(g) A division certification as a building inspector or plans examiner;

(h) An associate degree or equal from a division-approved education program in a construction-related field; or

(i) Any combination of the experience and education listed in subsection (a) through (h) of this section equaling 2 years; or

(j) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of 180-hours working under the supervision of a person with a minimum of three years experience as a certified park and camp inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification under this rule must pass a division-approved park and camp inspector certification examination covering:

ADMINISTRATIVE RULES

(a) ORS 446.003 to 446.140, 446.310 to 446.350, 446.430, 455.170, and 455.680;

(b) OAR chapter 918, divisions 600 and 650; and

(c) **2002 Oregon Manufactured Dwelling and Park Specialty Code**, Chapters 1, 2, 9, and 10.

(5) After October 1, 2005, a Park and Camp Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0150; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0340; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0340; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1325

Requirements for Alteration Inspection and Plan Review of Manufactured Dwellings

(1) Scope of Work. Manufactured dwelling alteration inspections and plan reviews include on-site field inspections of alterations including structural, fire and life safety, electrical, plumbing, and mechanical alterations made to manufactured dwellings after the initial sale of the home to the first consumer after all the terms of the sales contract have been met. Most alteration inspections made prior to this time are the responsibility of the division and must be performed by a certified manufactured structure construction inspector. All alteration inspections made to recreational vehicles and park trailers are the responsibility of the division and must be performed by a certified recreational vehicle inspector.

(2) Certifications. Inspectors of manufactured dwelling alterations are required to be certified by ORS 446.250. The division requires that persons performing inspections or plan reviews on manufactured dwelling alterations have:

(a) The appropriate Oregon Code Certification under OAR 918-098-1015 for the **Oregon Residential Specialty Code** for the specific discipline being used issued prior to October 1, 2005; or

(b) An Oregon Inspector Certification and the appropriate ICC Residential Certification as described in OAR 918-098-1010; or

(f) An Oregon Code Certification issued under OAR 918-098-1210 or 918-098-1215 after October 1, 2005.

(3) The requirement in section (2) is not applicable to alteration inspections performed on manufactured homes still under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD), recreational vehicles, or park trailers.

(4) Authority. Inspectors and plans examiners of manufactured dwelling alterations may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling alteration program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Issues permits and enforces the current edition of ORS chapter 446 and OAR chapter 918, division 500;

(c) Meets the requirements of OAR 918-500-0055 for delegation; and

(d) Enforces the current edition of the **Oregon Manufactured Dwelling Installation Specialty Code** and all referenced standards contained therein.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0350; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0350; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-098-1330

Manufactured Structure Accessory Structure or Accessory Building Inspection

(1) Scope of Work. Manufactured structure accessory structure or accessory building inspections and plan reviews include on-site field inspections of installations of manufactured structure accessory structures and accessory buildings (i.e., carports, ramadas, cabanas, garages, storage sheds, awnings, decks, steps, and ramps).

(2) Certifications. Inspectors of manufactured structure accessory structures and accessory buildings are required to be certified by ORS 446.250. To satisfy this mandate, the division requires that persons performing inspections or plan reviews on manufactured structure accessory structures or accessory buildings have the appropriate Oregon Code Certification under OAR 918-098-1015 or the Oregon Inspector Certification and the appropriate ICC Residential Certification as described

in OAR 918-098-1010 for the Oregon Residential Specialty Code for the specific discipline being used.

(3) Authority. Inspectors of manufactured structure accessory structures and accessory buildings may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling accessory structure and accessory building program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Complies with the Oregon Manufactured Dwelling Installation Specialty Code and all referenced standards contained therein;

(c) Issues permits and enforces the current edition of ORS Chapter 446 and OAR chapter 918, division 500;

(d) Meets the requirements of OAR 918-500-0055 for delegation; and

(e) Enforces of the current edition of the Oregon Manufactured Dwelling Installation Specialty Code and all referenced standards contained therein.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0360; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0360; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-305-0030

Other Codes or Publications that Impact Electrical Installations

Other codes and publications that impact electrical installations include, but are not limited to those listed below:

(1) Chapter 9 of the **Oregon Structural Specialty Code (OSSC)** as adopted in OAR chapter 918, division 460 relating to fire protection systems and Chapter 3 of the Oregon Residential Specialty Code as adopted in OAR chapter 918, division 480 relating to smoke alarm installations.

(2) ORS 455.420 requiring individual electric meters for dwelling units.

(3) Chapter 13 of the Oregon Structural Specialty Code as adopted in OAR chapter 918, division 460 which addresses the energy efficiency issues of motors, electric lighting, and other electric equipment; and

(4) Chapter 16 and 17 of the Oregon Structural Specialty Code as adopted in OAR chapter 918, division 460 which addresses the seismic requirements of nonstructural components and special inspection requirements.

(5) Publications and requirements of the serving utility.

(6) Public Law 101-336, the Americans with Disabilities Act, Part III; Department of Justice Regulations of Friday, July 26, 1991; 28 CFR Part 36, as amended January 1, 1995, including Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Public Law 100-430, the Fair Housing Act, and the regulations adopted thereunder.

(7) Chapter 11 of the Oregon Structural Specialty Code which relates to the Americans with Disabilities Act for mounting height requirements for electrical and communication receptacles located in affected buildings and structures.

(8) The interconnection of all net-metering facilities and solar photovoltaic systems operated as interconnected power production sources must comply with the Oregon Electrical Specialty Code as adopted in OAR 918-305-0100. In addition, the interconnection of all net-metering facilities utilizing solid-state inverters must comply with OAR 860-039 Net Metering.

(9) **Oregon Manufactured Dwelling Installation Specialty Code** and the requirements set forth in OAR chapter 918, division 500. The electrical installations must be in accordance with the requirements of the Oregon Electrical Specialty Code.

(10) The electrical portions of the installation or product standards identified in OAR 918-306-0005. These standards are informational only and are to be used to clarify code intent. They may be used as installation guides when not specifically referenced or covered in the **Oregon Electrical Specialty Code**. Examples include, but are not limited to, the electrical sections of NFPA 20, NFPA 54, NFPA 99, NFPA 101, NFPA 110, NFPA 780, and NFPA 820.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730 & 757.262

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0610; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0020; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 12-2000, f. 6-3-00, cert. ef. 7-1-00; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

ADMINISTRATIVE RULES

918-500-0000

Reasonable Notice to Interested Parties

Before the adoption, amendment, or repeal of any rule relating to the construction, inspection, installation, or alteration of manufactured dwellings or manufactured dwelling accessory buildings or structures, the Building Codes Division must give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date; and

(2) By making the notice available to persons as established under ORS 183.335(8).

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 183.335

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0005

Definitions

The following definitions apply to OAR 918, divisions 500 and 515 and are in addition to those in ORS 446.003:

(1) "Accessory Building" means an accessory building as defined in ORS 446.003(1) and specifically includes but is not limited to cabanas, ramadas, storage sheds, and garages.

(2) "Accessory Structure" means an accessory structure as defined in ORS 446.003(1) and specifically includes, but is not limited, to awnings, carports, decks, steps, and ramps.

(3) "Attached Garage" means a garage which is structurally independent of a manufactured dwelling but is joined through flashings and separated with fire-resistive construction.

(4) "Building" means any permanent building but does not include manufactured dwelling accessory buildings.

(5) "Combination Park" means a lot or tract of land which has been approved to contain both a manufactured dwelling or mobile home park and a recreation park.

(6) "DAPIA" means the Design Approval Primary Inspection Agency, either a state or private organization that has been accepted by the Secretary of HUD to evaluate and approve manufactured dwelling designs and quality control procedures.

(7) "Direct Supervision" means being physically present 85 percent of each day to provide leadership and direction on the job site to limited installers installing manufactured dwellings or cabanas.

(8) "Earthquake-Resistant Bracing System" or "ERB" means an anchoring system, bracing system, or other devices designed and constructed to protect the health and safety of the occupants of, and reducing damage to, a manufactured dwelling in the event of an earthquake.

(9) "Field Technical Service" means the clarification of technical data, including but not limited to, division interpretations, investigations, or training relating to the application of laws, rules, standards and regulations administered and enforced by the Building Codes Division.

(10) "Garage" means a structure located on a manufactured dwelling site designed for the storage of motor vehicles.

(11) "HUD" means U.S. Department of Housing and Urban Development.

(12) "Immediate Family" means father, mother, brother, sister, son, daughter, son-in-law, daughter-in-law, grandson, granddaughter, grandfather, grandmother, stepmother, stepfather, stepson, stepdaughter, brother-in-law, or sister-in-law.

(13) "Insignia" means "Insignia of Compliance" as defined in ORS 446.003.

(14) "Length of a Manufactured Dwelling" means the distance from the extreme exterior of the front wall (nearest to the drawbar and coupling mechanism) to the extreme exterior of the rear wall (at the opposite end of the home) where such walls enclose living or other interior space and such distance includes expandable rooms but not bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments.

(15) "Maintenance of Equipment" means performing routine tasks such as lubricating or changing filters, washers, fuses, or bulbs as necessary for the continued operation of the equipment but does not include the replacement, conversion, alteration, or addition of or to any equipment.

(16) "Manufacturer's Representative" means an employee, dealer, or person authorized by a manufacturer through contract to act on behalf of the manufacturer.

(17) "Minor Repair" means a simple repair such as replacing broken glass, fittings, devices, or fixtures, using approved component parts but does not include the repair or replacement of major portions of the struc-

tural, plumbing, electrical, or mechanical system or conversions, alterations, or additions.

(18) "Model" means an individual manufactured dwelling as designated by the manufacturer, intended to be manufactured with a specific floor plan, structural components, and the type, location, and installation of plumbing, mechanical and electrical equipment in accordance with the plans submitted to the Design Approval Primary Inspection Authority.

(19) "Notice of Violation" means written notification by the division stating the manufactured dwelling or equipment may not be used, rented, leased, or sold or offered for rent, lease, or sale due to violations of ORS chapter 446 or the appropriate building code or standard.

(20) "One Year," relating to experience qualifications, means 1,600 hours of work experience, 45 or more credit hours of schooling in the quarter system, or 30 or more credit hours of schooling in the semester system.

(21) "Porch" means an outside walking area having the floor elevated more than eight inches (20 cm) above grade.

(22) "Ramada" means a stationary structure having a roof extending over a manufactured structure that may also extend over a patio or parking space for a motor vehicle, and is used principally for protection from snow, sun or rain.

(23) "Repair" means the reconstruction or renewal of any part of an existing manufactured dwelling or piece of equipment for the purpose of its maintenance.

(24) "Replacement In Kind" means replacing equipment or accessories with approved like equipment or accessories, such as switches, thermostats, fittings, elements, or motors, but does not include the replacement of major portions of the structural, plumbing, electrical, or mechanical system.

(25) "Single-Family Dwelling" means a manufactured dwelling used by an individual or two or more persons related by blood or marriage or a group of not more than ten persons not related by blood or marriage living together. When located in a labor camp as defined in OAR chapter 437, single-family dwelling includes manufactured dwellings with not more than five bedrooms, used to house up to ten persons not related by blood or marriage.

(26) "Stand" means that area of the manufactured dwelling site which has been reserved for the placement of a manufactured dwelling or accessory structure.

(27) "Structure" means that which is built or constructed.

(28) "Underfloor Enclosure" means the perimeter skirting, foundation wall or retaining wall used to enclose the underfloor area of a manufactured dwelling.

(29) "Utility Connection" means:

(a) Installation and connection of the manufactured dwelling electrical feeders to the utility termination (electrical service);

(b) Installation and connection of the manufactured dwelling drain (building drain) to the sewer utility termination (building sewer);

(c) Installation and connection of the manufactured dwelling water distribution system to the water utility termination (building supply); and

(d) Installation and connection of the manufactured dwelling fuel gas distribution system to the gas utility termination.

(30) "Utility Termination" means:

(a) The electrical service equipment provided on a lot for the manufactured dwelling utility connection;

(b) The building sewer provided on a lot for the manufactured dwelling utility connection; and

(c) The building water supply provided on a lot for the manufactured dwelling utility connection.

(31) "Visual Inspection" means an inspection by the division of the visible portions of completed construction for the purpose of identifying code violations or approving and issuing an insignia of compliance.

(32) "Width of a Manufactured Dwelling" means the distance between the extreme exterior of two opposite walls enclosing living or other interior space and including expandable rooms but not bay windows, porches, wall and roof extensions, or other attachments.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.240

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 31-1991(Temp), f. 9-25-91, cert. ef. 9-30-91; BCA 5-1992, f. & cert. ef. 3-23-92; BCA 10-1992, f. 6-1; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2002, f. 1-28-02, cert. ef. 4-1-02; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0010

Objective

(1) The provisions of OAR 918, divisions 500 and 515 apply to the design, manufacture, installation, alteration, licensing of installers,

ADMINISTRATIVE RULES

handling and storage of equipment, and manufactured dwellings rented, leased, sold, installed, or offered for rent, lease, or sale in Oregon as authorized by ORS chapter 446.

(2) A dealer subject to the requirements of OAR 918, division 500, must also comply with OAR 918, division 550 and OAR 441-446-0100 through 441-446-0300.

Stat. Auth.: ORS, 446.160, 446.230, 446.240, 455.010 - 455.130
Stats. Implemented: ORS 446.003 - 446.200, 446.225 - 446.423, 446.430 - 446.440 & 446.990
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0035

Additional Requirements

(1) The federal Manufactured Home Construction and Safety Standard (24 CFR 3280) in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 is the state of Oregon's minimum construction and safety standard for manufactured dwellings.

(2) Where the design, construction, alteration, or repair of a manufactured dwelling is not covered by the minimum safety and construction standards of these rules or the **Oregon Manufactured Dwelling Installation Specialty Code**, the requirements in the Oregon Residential Specialty Code apply.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.185
Stats. Implemented: ORS 446.185
Hist.: BCD 5-1998, f. 2-10-98, cert. ef. 7-1-98; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0040

Disclosure Regarding Permissible Uses, Roof Snow Loads, and Anchoring

(1) Dealers and distributors selling manufactured homes for installation in Oregon must present each potential buyer of a new manufactured home with a division disclosure statement to read and sign prior to the completion of the sales contract of any new manufactured home. Prior to presenting disclosures to potential buyers and prior to any sale, dealers and distributors must complete the disclosure in writing indicating the date, dealer's or distributor's name, address, and Department of Consumer and Business Services dealer license number. Dealers and distributors must give one signed copy of the disclosure to the buyer and retain one copy in the dealer's or distributor's files for not less than five years from the date of sale. Copies of signed disclosures must be made available to the division upon request.

(2) Dealers or distributors may reprint the division's disclosure form or include the division's disclosure statement within their own sales contract. If a dealer or distributor prints its own disclosure, the content must be identical to the division's disclosure statement and must not be less than 11 point type size.

(3) Dealers and distributors are responsible for maintaining accurate records and filing those reports where required by the federal Manufactured Housing Procedural Regulations (24 CFR 3282), ORS chapter 446 and OAR chapter 918, divisions 500 and 515.

[NOTE: Disclosure form is available from the division and can be found on the division Web site at <<http://www.bcd.oregon.gov>>.]

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.260
Stats. Implemented: ORS 446.260
Hist.: BCD 4-1998, f. 2-10-98, cert. ef. 7-1-98; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0055

Municipal Authority

(1) When the division delegates the authority to perform plan reviews, issue permits, and perform inspections for alterations and installations of manufactured dwellings and accessory buildings and structures to a local government as provided by ORS 446.250, the delegation includes the obligation to comply with all applicable laws, rules, standards, and codes including collection and remittance to the division of state fees and surcharges.

(2) Failure to comply with all applicable laws, rules, and codes constitute failure to consistently act in the public interest or to carry out the duties assumed by local government, and must be enforced under the provisions of ORS 446.253 and 446.255.

Stat. Auth.: ORS 446.253
Stats. Implemented: ORS 446.250 & 455.150
Hist.: BCA 11-1991(Temp), f. 4-30-91, cert. ef. 5-1-91; BCA 23-1991, f. 7-2-91, cert. ef. 7-5-91; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94;

BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0100

General Fees

The following fees apply to the division and do not apply to municipalities. Municipalities who have been delegated the manufactured dwelling alteration program by the division may establish their own fee schedule or adopt the division's fee schedule through local ordinance.

(1) Inspection Fee: \$55 for an inspection requiring one hour or less, and \$27.50 for every additional 30 minutes or fraction thereof exceeding one hour, including travel time. Mileage must be paid at the rate established by the Oregon Department of Administrative Services.

(2) Field Technical Service Fee: \$55 for service requiring one hour or less, and \$27.50 for every additional 30 minutes or fraction thereof exceeding one hour, including travel time. Mileage must be paid at the rate established by the Oregon Department of Administrative Services.

(3) Out-of-State Inspection or Field Technical Service Fee: In addition to the hourly charges of sections (1) and (2) of this rule, the division must be reimbursed for the actual cost based on published air fare or equivalent, plus required surface transportation and cost for food and lodging consistent with the allowances established by the Oregon Department of Administrative Services for authorized state employee travel.

(4) Hourly Re-inspection Fee: Same fee schedule as noted in sections (1), (2), and (3) of this rule.

(5) Change of Manufacturer's Name, Ownership or Address Fee: \$20 for each change.

(6) Insignia Fee: \$50 per insignia.

(7) Replacement Insignia: \$50 per insignia.

(8) Alteration Permit Fees:

(a) Alteration Inspection Fee: \$125 per inspection including insignia of compliance;

(b) Alternate Construction Inspection Fee: \$55 per hour including travel time but not to exceed \$300 for any one manufactured home; or

(c) Single Visual Inspection Fee: \$125 per inspection.

(9) Installation Certification Tag: \$8 per tag.

(10) Manufacturer Registration Fee: \$100 per facility.

(11) Manufacturer Annual Registration Renewal Fee: \$20 per facility.

(12) Manufactured Dwelling Inplant Inspection Fee: \$42.50 per floor inspected, and must be paid monthly. A maximum of four floor overlap inspections may be performed without charge during each regularly scheduled complete inplant inspection. The fee for re-inspections and additional overlap inspections may be charged at the rate for each floor or at the rate per hour, whichever is less.

(13) Installer License Program Hitch Fee: \$4 per floor produced in Oregon, and must be paid monthly.

(14) Manufactured Dwelling Label or Tag Handling Fee: \$2 per floor.

(15) Plan Review Fee: \$55 for non-structural plan review requiring one hour or less, and \$27.50 for every additional 30 minutes or fraction thereof exceeding one hour.

(16) Structural Plan Review Fee: \$70 for plan review requiring one hour or less; \$35 for every 30 minutes or fraction thereof exceeding one hour.

(17) Manufactured Dwelling Installer License and Examination Fee: \$55.

(18) Education Provider Application Fee: \$55.

(19) Manufactured Dwelling Limited Installer and Limited Skirting Installer License Fee: \$55.

(20) Manufactured Dwelling Installer and Educational Provider Re-examination Fee: \$40.

(21) Manufactured Dwelling Temporary Limited Installer License Fee: \$10.

(22) Installer, Limited Installer and Limited Skirting Installer License Two-Year Renewal Fee: \$80.

(23) Manufactured Dwelling Accessory Building or Structure Installation Permit Fees: The fees are those published in the Oregon Residential Specialty Code.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.176
Stats. Implemented: ORS 446.176
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 9-1991(Temp), f. 4-24-91, cert. ef. 7-1-91; BCA 34-1991, f. 10-23-91, cert. ef. 10-31-91; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 1-1993, f. & cert. ef. 1-4-93; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 23-1994, f. 10-26-94, cert. ef. 11-18-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 13-1996, f. & cert. ef. 7-1-96; BCD 11-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 23-1998, f. 11-9-98, cert. ef. 11-15-98; BCD 15-2000(Temp), f. 8-2-00, cert. ef. 10-1-00 thru 3-29-01; BCD 1-2001, f. 1-24-01, cert. ef. 2-1-01; BCD 15-2005, f. & cert. ef. 7-5-05; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

ADMINISTRATIVE RULES

918-500-0105

Installation Permit Fees

The following fees apply to the division and do not apply to municipalities. Municipalities who have been delegated the manufactured dwelling installation program by the division may establish their own fee schedule or adopt the division's fee schedule through local ordinance.

(1) Manufactured Dwelling and Cabana Installation Permit Fee: \$160 per installation. This permit fee includes review of the plot plan, the installation inspection and the final inspection. This permit fee does not include retaining walls over four feet high or basement construction under a manufactured dwelling.

(2) Earthquake-Resistant Bracing System Installation Permit Fee: \$110 per installation. This permit fee is only charged when the earthquake-resistant bracing (ERB) system is not part of the original manufactured dwelling installation.

(3) Manufactured Dwelling Retaining Wall (if over 48 inches) or Basement Permit Fees: The fees are those published in the Oregon Residential Specialty Code.

(4) Manufactured Dwelling, Cabana, and ERB Installation Reinspection Fee: \$110 per inspection.

(5) State Code Development and Training and Monitoring Fee: \$30:

(a) This fee is in addition to all other fees and charges and must be paid by all purchasers of manufactured dwelling or cabana installation permits regardless of whether the permit is issued by the state or a municipality;

(b) If the installation permit is issued by a municipality, this fee must be collected and remitted to the division in the same manner as required by ORS 455.220(2) for surcharges collected by municipalities.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.176

Hist.: BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 11-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 23-1998, f. 11-9-98, cert. ef. 11-15-98; BCD 15-2000(Temp), f. 8-2-00, cert. ef. 10-1-00 thru 3-29-01; BCD 1-2001, f. 1-24-01, cert. ef. 2-1-01; BCD 6-2001(Temp), f. 6-15-01, cert. ef. 7-1-01 thru 12-27-01; BCD 14-2001, f. 10-15-01, cert. ef. 11-1-01; BCD 1-2002, f. 1-28-02, cert. ef. 4-1-02; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0110

Additional Fees

(1) When the division determines that a person has failed to obtain required inspections, permits, labels, insignias, tags, or plan reviews, which requires the division staff to work outside normal business hours, the person may be charged additional fees as described in sections (4) and (5) of this rule.

(2) Persons who sell or ship manufactured dwellings or equipment known to be out of compliance or that require inspections or reinspections prior to selling or shipment, that require division staff to work outside normal business hours, may be charged additional fees as described in sections (4) and (5) of this rule.

(3) Installers failing to leave a copy of the manufacturer's installation manual when required, failing to attach an installation certification tag or failing to respond to a correction notice are subject to a reinspection fee required under section (6) of this rule.

(4) Persons requesting or requiring inspections or field technical service outside the normal business hours of the division are charged fees at 1 and 1/2 times the amounts shown in OAR 918-500-0100 except for travel expenses.

(5) Persons requesting or requiring inspections or field technical service on recognized state holidays are charged two times the amounts shown in OAR 918-500-0100 except for travel expenses.

(6) Persons requesting inspections when work is not ready for inspection, or causing an inspector to make an additional trip for failure to make corrections or failure to notify the division of corrections are charged reinspection fees as described in OAR 918-500-0100(4).

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.176

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0300

Manufacturer Registration

(1) All manufactured dwelling manufacturers who are located in or who ship into Oregon must register with the division.

(2) Manufacturing facility registration must be renewed by January 1 of each year by complying with the renewal notice sent by the division.

(3) A current copy of each manufacturing facility's **Quality Assurance Manual, Installation Manual, Home Owner's Manual,** and

Warranty Provisions must accompany each application for registration and renewal.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.230

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0310

Manufacturer Certification

All manufacturers of manufactured dwellings must be certified by the division or other approved HUD primary inspection agency, pursuant to the **Federal Manufactured Home Procedural and Enforcement Regulations** (24 CFR Section 3282.362), and meet the requirements for registration in OAR 918-500-0300.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.225

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0320

Change of Ownership

If there is a change of ownership of a manufactured dwelling manufacturer, the new owner must, within ten days of the date of change, register with the division pursuant to OAR 918-500-0300..

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.230

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0330

Change of Name, Address or Location

When a manufacturer changes its name, address, or location, the manufacturer must notify the division in writing within ten days of the date of change. The notice must be accompanied by an Application for Manufacturer Registration, together with the fee.

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.230

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0340

Production Discontinuance

When a manufactured dwelling manufacturer discontinues production, the manufacturer must return all unused insignia of compliance to the division.

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.230

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0400

Required Inspection

(1) A person may not manufacture, transport, rent, lease, or sell or offer for rent, lease, or sale a new manufactured dwelling without requesting an inspection from the division if any of the following conditions exist:

(a) The manufactured dwelling has been altered by the manufacturer or dealer before or at the time of sale to the first consumer but has not been approved by the division;

(b) The manufactured dwelling has left the manufacturer's facility under a "Notice of Violation" or "Red Tag" condition; or

(c) Violations noted in an inplant inspection report have not been corrected through the inspection process.

(2) When inspections reveal that a manufacturer is not manufacturing structures according to their approved design or to the Federal Construction and Safety Standard, and the manufacturer has been provided with a written report identifying specific provisions of the design or the standard that have been in violation, and the manufacturer continues to manufacture structures in violation, the division may withhold or remove insignia, increase the frequency of inspections, or provide training.

(3) To facilitate required inplant and field inspections, a manufacturer may not construct a manufactured dwelling under an alternate construction method according to the federal Manufactured Home Procedural and Enforcement Regulations (24 CFR Section 3282.14) without first notifying the division in writing and supplying a copy of the alternate construction method approval from HUD.

ADMINISTRATIVE RULES

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.176 & 446.230
Stats. Implemented: ORS 446.155
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0410

Inspection Request

- (1) Requests for inspection from a manufacturer must:
 - (a) Be made to the division by mail, electronic mail, phone, or fax transmittal, and received at least five working days prior to the desired time of inspection; and
 - (b) Indicate the serial number of the manufactured dwelling to be inspected. Inspection fees must be paid by the manufacturer within 30 days of the billing date.
- (2) Requests for inspection from a dealer must:
 - (a) Be made on forms supplied by the division, and received at least five working days prior to the desired date of inspection;
 - (b) Indicate the location, make, model, and serial number of the manufactured dwelling; and
 - (c) Be accompanied by the minimum inspection fees required by OAR 918-500-0100 and 918-500-0110. All additional inspection fees are payable upon completion of each inspection.
- (3) All work must be accessible for inspection by the division.
- (4) Occupancy may not prevent the physical inspection of manufactured dwelling alterations, repairs, or installations.

Stat. Auth.: ORS 446.176 & 446.230
Stats. Implemented: ORS 446.155
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0420

Notice of Violations

- (1) When an inspection reveals that a manufactured dwelling, installation, or the equipment violates a provision of ORS chapter 446, the HUD Standard, the Oregon Manufactured Dwelling Installation Specialty Code or these rules, the division may serve upon the dealer, distributor, installer, contractor, manufacturer, or agent thereof a copy of the inspection report giving details of the violations. The division may also post a Notice of Violation on the manufactured dwelling or equipment.
- (2) Violations must be corrected within 30 days from the date of such notice or at a later date, if approved by the division.
- (3) If the violations are not corrected in the allotted time, the division may withdraw any previously issued insignia of compliance or certification tags.
- (4) Within 30 days of the date of notice, the recipient of a Notice of Violation or inspection report must inform the division in writing of the action taken to correct the violations. Persons failing to reply to the division within 30 days may be subject to the reinspection fees in OAR 918-500-0100(4) and those civil penalties described in ORS 446.271, 446.416 and 446.990. A manufactured dwelling subject to a Notice of Violation may not be transported without division approval.
- (5) When a Notice of Violation has been posted on the manufactured dwelling or equipment, the notice may not be removed until authorized by the division. A Notice of Violation may be removed only by the division or a person authorized by the division.

EXCEPTION: If a Notice of Violation or inspection report has been posted on a manufactured dwelling while in storage and the violations noted were only related to the storage conditions, the manufactured dwelling may be moved to the manufactured dwelling site without notification to or approval from the division. Under these conditions only, the dealer, distributor, or manufacturer may remove the Notice of Violation from the manufactured dwelling.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.176 & 446.230
Stats. Implemented: ORS 446.160
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2002, f. 1-28-02, cert. ef. 4-1-02; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0430

Field Technical Service

- Any person may request field technical service by submitting the request in writing to the division; however, the division may deny the request if budget or staffing levels are not sufficient to provide the service.
- Stat. Auth.: ORS 446.176 & 446.230
Stats. Implemented: ORS 446.230
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0450

Insignia and Label Requirements

- (1) All manufactured dwellings constructed on or after June 15, 1976, must bear an insignia of compliance.
- (2) Recreational park trailers, as defined in OAR 915-525-0005, may be dual labeled by the manufacturer at the time of initial construction as both a recreational park trailer and a manufactured home if the manufacturer meets all the requirements of OAR chapter 918, divisions 500 and 525, or where the requirements are different, to the more stringent of the two requirements.
- (3) Factory built homes may be dual labeled by the manufacturer at the time of initial construction as both a manufactured home and a prefabricated structure if the manufacturer meets all the requirements of 24 CFR 3280 and 3282 and the Oregon Residential Specialty Code, or where the requirements are different, to the more stringent of the two requirements.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.176 & 446.230
Stats. Implemented: ORS 446.170
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0470

Denial of Insignia

- (1) If the division, after inspection, determines that a manufacturer is not building manufactured dwellings or equipment according to approved plans, the HUD Standards, or to the minimum safety standards approved by the division, and after notification continues to build manufactured dwellings or equipment in violation of ORS chapter 446 and these rules, applications for new insignia may be denied and all previously issued insignia must be returned to or removed by the division. Upon proof of compliance, satisfactory to the division, the manufacturer may resubmit an application for insignia.
- (2) The division may deny all applications for insignia from a manufacturer who is delinquent more than 45 days in paying the fees prescribed in these rules.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.176 & 446.230
Stats. Implemented: ORS 446.170
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0510

Standards for the Installation of Manufactured Dwellings

- (1) The **Oregon Manufactured Dwelling Installation Specialty Code, 2010 Edition**, and those standards referenced within are adopted as the division standards for the installation of manufactured dwellings.
- (2) When a municipality's rules, regulations, standards, ordinances, or codes refer to the **Oregon Manufactured Dwelling Standard or the Oregon Manufactured Dwelling and Park Specialty Code**, it means those documents are referring to the Oregon Manufactured Dwelling Installation Specialty Code and the rules adopted in OAR chapter 918, division 500. This rule does not apply to OAR 918-600-0010.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.185, 446.230, 455.020, 455.110
Stats. Implemented: ORS 446.225
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 14-1995, f. 9-15-95, cert. ef. 1-1-96; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1996(Temp), f. & cert. ef. 1-12-96; BCD 12-1996, f. & cert. ef. 7-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2002, f. 1-28-02, cert. ef. 4-1-02; Renumbered from 918-500-0020, BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0520

Amendments to the Manufactured Dwelling Installation Specialty Code

- The **Oregon Manufactured Dwelling Installation Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.185, 455.020, 455.110
Stats. Implemented: ORS 455.110
Hist.: BCD 3-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 9-2007(Temp), f. & cert. ef. 8-21-07 thru 2-17-08; Administrative correction 3-20-08; Renumbered from 918-500-0021, BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0530

Alternate Uses

- Manufactured dwellings are constructed, approved, and intended for use as detached single-family dwellings. However, manufactured dwellings

ADMINISTRATIVE RULES

may be used as other than detached single-family dwellings provided the manufactured dwelling remains in compliance with the federal Manufactured Home Construction and Safety Standards (24 CFR 3280), is installed according to the Oregon Manufactured Dwelling Installation Specialty Code prior to occupancy, and complies with applicable requirements of these rules.

(1) Manufactured dwellings may be used as temporary sales offices provided the manufactured dwelling:

(a) Does not have any design, construction, transportation, fire and life safety, plumbing, mechanical, or electrical alterations made to it to accommodate the temporary sales office use;

(b) Has a 36 inch wide by 80 inch high exit door;

(c) Is continuously offered for sale to the public as a manufactured dwelling during the office use;

(d) Has a certificate of occupancy issued by the municipality prior to occupancy; and

(e) Is accessible to employees, the public, and persons with disabilities prior to use in accordance with the Oregon Structural Specialty Code in all the following areas:

(A) All rooms and all floor levels within the manufactured dwelling that will be used for office use, such as bedrooms, dens, living rooms, family rooms, foyers, entry ways, and hallways must be accessible.

(B) Bathrooms must contain a water closet and a lavatory and must be made accessible. Only one bathroom is required to be accessible if the bathroom is properly marked as a unisex facility and provided with a privacy lock. Bathtubs and showers are not required to be accessible if they are not part of the regular office function.

(C) Areas that are not a part of the regular office function, such as the kitchen, utility room, and unused cabinets or clothes closets are not required to be accessible.

(D) One main entry door is required to be accessible. Secondary exterior doors are not required to be accessible. Interior doors that are part of the regular office function must be accessible.

(E) Appropriate signage must be provided in all accessible areas, both inside and outside of the office.

(F) When provided, drinking fountains, public telephones, furnishings, and similar equipment must be accessible.

(G) Accessibility from the public way up to the main entry door must be provided;

(H) An accessible parking area must be provided near the main entry.

(2) A portion of a manufactured dwelling may be used for an in-home business provided:

(a) The business portion of the manufactured dwelling is restricted to one room only, not including a bathroom, entry, or foyer;

(b) The remainder of the manufactured dwelling is used as a single-family dwelling by the same person using it as a business;

(c) The manufactured dwelling has one 36 inch wide by 80 inch high door exiting to the exterior from the business portion of the manufactured dwelling;

(d) The type of business and location is approved by the municipality prior to installation or occupancy;

(e) The business portion of the manufactured dwelling is accessible to persons with disabilities when the business is open to the public or has employees other than family members using the business space; and

(f) The manufactured dwelling has a certificate of occupancy issued by the municipality prior to occupancy.

(3) Manufactured dwellings may be used for farm worker housing provided the manufactured dwelling:

(a) Is located in a labor camp as defined in OAR chapter 437 and consists of:

(A) Not more than six manufactured dwellings on a lot, parcel, or aggregation of lots or parcels; or

(B) Four or more manufactured dwellings in a manufactured dwelling park, a mobile home park, a temporary manufactured dwelling park, or a combination park.

(b) Is not occupied by more than ten persons not related by blood or marriage;

(c) Has a maximum of five bedrooms;

(d) Is accessible to persons with disabilities, if an affected building;

(e) Conforms to the Oregon Occupational Safety and Health Code, OAR chapter 437; and

(f) Has a certificate of occupancy issued by the municipality prior to occupancy.

(4) Up to six manufactured dwellings may be placed on a single lot, parcel, or aggregation of lots or parcels and adjoined to give the appearance and economy of multi-family housing provided:

(a) Plans showing the adjoined structures are submitted to and approved by the division to verify compliance with the federal Manufactured Home Construction and Safety Standards (24 CFR 3280), the federal Manufactured Home Procedural Regulations (24 CFR 3282), the Oregon Manufactured Dwelling Installation Specialty Code, and these rules;

(b) Land use approval has been granted by the municipality;

(c) Division-approved plans are submitted to and approved by the municipality prior to installation permits being issued;

(d) Each manufactured dwelling is used only as a single-family dwelling;

(e) Fire separation is provided at the wall separating each manufactured dwelling according to the Oregon Residential Specialty Code;

(f) Adjoined structures located on the property have fire-resistive protection of exterior walls and openings according to the Oregon Structural Specialty Code, Sections 602 and 704.8;

(g) Each manufactured dwelling is structurally independent of an adjacent manufactured dwelling. However, two manufactured dwellings may be supported by a common foundation wall adequately sized to support both structures;

(h) Each electrical, plumbing, heating, and mechanical system within a manufactured dwelling is independent of the systems within adjacent manufactured dwellings; and

(i) The manufactured dwellings are joined only by flashing and weather resistant roofing materials.

(5) Manufactured dwellings accommodating not more than 10 persons may be used as lodging houses, congregate residences, adult foster homes, or family day care (Group R Occupancies) provided the manufactured dwelling:

(a) Meets all applicable requirements of the Oregon Structural Specialty Code;

(b) If an affected building, must be accessible to persons with disabilities;

(c) Has a minimum of two 36 inch wide by 80 inch high exit doors located remote from each other, exiting to the exterior of the manufactured dwelling;

(d) Has a minimum of two bathrooms;

(e) Meets the minimum setback requirements of the Oregon Residential Specialty Code;

(f) Has the occupancy and its location approved by the municipality prior to installation or occupancy; and

(g) Has a certificate of occupancy issued by the municipality prior to occupancy.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.003, 446.055, 446.155, 446.185, 446.225, 446.245, 455.020, & 455.380

Hist.: BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0540

Certificate of Occupancy and Change of Occupancy

(1) A certificate of occupancy is not required for a manufactured dwelling used for single-family dwelling occupancy. A certificate of occupancy may be required as specified in these rules or when the intended use changes as described in OAR 918-500-0530.

(2) To convert a manufactured dwelling to another occupancy type or use not specifically addressed in these rules, a person must:

(a) Apply to the municipality for a change of occupancy;

(b) If required by the municipality, apply for a change in land use;

(c) Bring the manufactured dwelling into conformance with the appropriate Oregon specialty codes for the new use and occupancy;

(d) Make it accessible for persons with disabilities, if accessibility is required by the new use or occupancy;

(e) Ensure that persons converting the manufactured dwelling have the appropriate state licenses and registrations required to perform such work;

(f) Return any federal or state labels or insignias attached to the manufactured dwelling to the division before the change in use or occupancy; and

(g) Obtain a certificate of occupancy from the municipality, if required.

(3) Manufactured dwellings used for other than residential, temporary sales offices, or in-home businesses that are affected buildings under the

ADMINISTRATIVE RULES

Americans with Disabilities Act must be accessible according to the requirements of the Oregon Structural Specialty Code.

(4) When a manufactured dwelling is sold “as is” or “with all faults” and is intended to be used as a non-regulated structure, such as an agricultural use, the owner must remove all appliances, all plumbing fixtures in the kitchen and baths, and must return any federal or state insignias or labels to the division.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.155, 446.245, 446.253, 455.055
Hist.: BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0550

Warranty Work

Permits are not required for manufacturer’s warranty work on manufactured dwellings as per the Manufactured Home Procedural and Enforcement Regulations (24 CFR 3282) when completed by the manufacturer or the manufacturer’s representative.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.185 & 446.225
Hist.: BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0560

Siting Without Insignia

Insignias of compliance are not required to site a manufactured dwelling, unless the requirement is provided by the municipality.

Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.170
Hist.: BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0570

Insignias and Labels

(1) No person may remove, destroy, alter, or cover an insignia of compliance except as permitted by these rules. Insignias may be removed by the division or a municipality when a manufactured dwelling bearing an insignia is found to be in violation of ORS 446.155, the Manufactured Dwelling Installation Specialty Code, these rules, or is determined to be a dangerous structure. When the division or a municipality removes an insignia, it must provide the owner or occupant with an inspection report listing the violations.

(2) An insignia may be removed and reinstalled by the homeowner or contractor when a manufactured dwelling is being re-sided.

(3) HUD certification labels or state insignias of compliance are not required to be removed from a manufactured dwelling as a result of alterations, as long as the alterations conform to the requirements of these rules and, when required, have been permitted, inspected, and approved by the division or a municipality.

(4) Manufactured dwellings damaged beyond repair as a result of flood, fire, earthquake, mishap in transit, or any other reason must have the insignias of compliance removed and returned to the division.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.155, 446.170, 446.245, & 446.253
Hist.: BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0580

Alterations

(1) Alterations to manufactured dwellings include, but are not limited to any change, addition, alteration, repair, conversion, replacement, modification, refurbishing, re-manufacturing, or removal of any part of the manufactured dwelling or manufactured dwelling equipment.

(2) The following alterations are exempt from permits but are not exempt from the requirements of these rules or the **Manufactured Dwelling Installation Specialty Code**:

- (a) Minor repairs with approved component parts;
- (b) Conversion of listed fuel burning appliances in accordance with the terms of their listing;
- (c) Adjustment and maintenance of equipment; and
- (d) Replacement of equipment or accessories in kind.

(3) Alteration work on manufactured dwellings must conform to or may exceed the federal or state code in effect at the time of original manufacture.

(4) Alterations before or at the time of sale to the first consumer performed or arranged by the manufacturer, dealer, or distributor must:

- (a) Conform to the federal Manufactured Home Construction and Safety Standards (24 CFR 3280), the manufacturer’s DAPIA approved plans, these rules; and

(b) Be inspected by the division, with the exception of certain site installed mechanical equipment identified in these rules.

(5) The following site installed mechanical equipment must be inspected by the municipality according to the Oregon Manufactured Dwelling Installation Specialty Code. Site installed mechanical equipment includes, but is not limited to:

(a) Solid fuel burning appliances, wood stoves and fireplaces listed or approved for manufactured dwellings or mobile home use, and listed pellet-fired appliances;

(b) Listed heat pumps; and

(c) Listed air conditioners.

(6) Solid fuel-burning devices, wood or pellet burning, as defined in ORS 468A.485, must be installed according to the device manufacturer’s installation instructions and to the applicable requirements in these rules. Solid fuel burning devices must be certified as required by the Oregon Department of Environmental Quality pursuant to ORS 468A.460 to 468A.480.

NOTE: Listed or approved fuel burning appliances must be installed to provide for the complete separation of the combustion system from the interior atmosphere of the manufactured dwelling.

(7) Alterations to manufactured dwellings after the initial sale to the first consumer must conform to the following:

(a) The code that was in effect at the time of original manufacture;

(b) The equivalent provisions of the Oregon Residential Specialty Code;

(c) The **1972 edition of ANSI A119.1 Standard for Mobile Homes and the 1971 edition of the National Electrical Code NFPA 70** for manufactured dwellings constructed prior to June 1976; or

(d) In cases where the original manufacture date cannot be determined or where it is impractical for the manufactured dwelling to conform to the strict letter of the code, a municipality may accept methods or materials that are substantially equivalent to the code. Engineering may be required to substantiate equivalency if structural components of the manufactured dwelling have been altered or replaced.

(8) Unless specified otherwise, alterations may not take a manufactured dwelling out of compliance with the federal Manufactured Home Construction and Safety Standards (24 CFR 3280), the **Oregon Manufactured Dwelling Installation Specialty Code**, and these rules.

(9) The following applies to any alteration of a manufactured dwelling:

(a) The installation or alteration of fuel burning appliances must conform with the federal Manufactured Home Construction and Safety Standards (24 CFR 3280), the Oregon Manufactured Dwelling Installation Specialty Code, and these rules.

(b) Energy conservation standards are not required to be increased to the levels of the state energy code.

(c) Roof live load capabilities are not required to be increased unless specifically required in these rules.

(10) Re-roofing must conform to the following:

(a) Existing roofing material and underlayment must be removed prior to installing new roofing material; and

(b) Damaged or defective rafters, trusses, or sheathing must be repaired or replaced before installing new roofing material.

(11) Two or more manufactured dwellings may be joined together to enlarge the total gross floor area of a manufactured dwelling provided:

(a) The joined manufactured dwellings are used only as a single-family dwelling;

(b) Each manufactured dwelling is installed according to the Oregon Manufactured Dwelling Installation Specialty Code;

(c) The manufactured dwellings are joined only by flashing and weather resistant roofing materials; and

(d) Fire separation between the joined manufactured dwellings is not required.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.160
Stats. Implemented: ORS 446.003, 446.155, 446.180, 446.225, 446.245, 468A.460
Hist.: BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-500-0590

Smoke Alarms

Manufactured dwellings must have approved operating smoke alarms installed and located according to the following:

(1) At the time of initial sale and installation, a new manufactured dwelling must have operating smoke alarms installed complying with the federal **Manufactured Home Construction and Safety Standards** (24 CFR 3280).

ADMINISTRATIVE RULES

(2) After the initial sale or installation, a manufactured dwelling must have approved operating smoke alarms according to the following:

(a) When a manufactured dwelling is relocated to or within a manufactured dwelling park, mobile home park, or combination park, as required by ORS 90.740;

(b) When a manufactured dwelling is being altered or repaired to the degree that a permit is required;

(c) When a manufactured dwelling is being installed on a site as a secondary installation;

(d) When a manufactured dwelling is being sold or offered for sale, as required by ORS 479.260(2);

(e) When a manufactured dwelling is being rented, leased, or offered for rent or lease, as required by ORS 479.270;

(f) When a visual inspection is being performed on a manufactured dwelling by the division; and

(g) Prior to an Oregon insignia of compliance being issued by the division.

(3) Unless specified otherwise, smoke alarms must be installed according to the device manufacturer's instructions and located according to the following:

(a) In the living area remote from the kitchen and cooking appliances;

(b) In each room designated for sleeping;

(c) In the corridor or area giving access to sleeping areas; and

(d) On each additional level where sleeping areas are located.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.160 & 446.155

Stats. Implemented: ORS 90.740, 446.185, 446.225, 455.412, 479.260, 479.270

Hist.: BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0010

License Exceptions

(1) Except as otherwise provided in this rule, no individual is required to obtain a license to install a manufactured dwelling, cabana, skirting, tie-downs, or ERBs when the manufactured dwelling or cabana being installed is owned by the same individual or a member of the individual's immediate family, the manufactured dwelling or cabana is not intended for sale, exchange, lease or rent, and the individual makes no more than one such installation within a 12-month period.

(2) Except as otherwise provided in this rule, the owner is not required to obtain a license for maintenance, repair, or correction on a manufactured dwelling or cabana installation.

(3) Except as otherwise provided in this rule, no license is required for the installation of manufactured dwelling accessory buildings or structures such as ramadas, garages, carports, awnings, porches, steps, tool sheds, or storage sheds.

(4) Except as otherwise required by this rule, no person installing additional perimeter blocking under a manufactured dwelling or cabana for the exclusive support of awnings, carports, or roof additions is required to be licensed.

(5) Except as otherwise required by this rule, no license is required for the installation of a manufactured dwelling or cabana when the manufactured dwelling or cabana is installed temporarily on a dealer's, distributor's, or manufacturer's sales or storage lot or at a show and is not occupied or intended to be occupied. This exemption does not include those manufactured dwellings and cabanas installed in manufactured dwelling parks, mobile home parks, or manufactured dwelling subdivisions.

(6) Except as otherwise required by this rule, no license is required for excavating, concrete flat work, drywall, or carpet laying.

(7) Except as otherwise required by this rule, no manufactured dwelling installation license is required for plumbing or electrical work when the person doing the work is an Oregon licensed plumber or electrician respectively.

(8) Except as otherwise required by this rule, no license is required for manufacturers performing maintenance, repairs, or corrections to an installation for the purpose of customer service.

(9) Nothing contained in the exceptions listed in this rule exempt a person from necessary licensure with the Oregon Construction Contractors Board.

(10) The licensing exceptions established by this rule do not exempt the work performed from complying with ORS chapter 446 and the rules and standards adopted thereunder.

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.230

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 15-1995, f. 9-15-95, cert. ef. 1-1-96; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0020

Minimum Requirements of Educational Provider

All manufactured dwelling installation education and continuing education classes used to satisfy the requirements of this rule must be approved by the division. All instructors teaching required manufactured dwelling installation education and continuing education classes must be employees of the division or approved educational providers. To be approved as an educational provider for manufactured dwelling installers, limited installers, limited skirting installers, and installation inspectors, an individual must meet the following requirements:

(1) Have a minimum of 3,200 hours experience in one or more of the following areas:

(a) As a supervisor of manufactured dwelling installations;

(b) As a supervisor of manufactured dwelling service or repair;

(c) As a supervisor in the building construction industry;

(d) In design work related to the building construction industry;

(e) As an Oregon-certified manufactured dwelling installation inspector;

(f) Completion of a two-year educational institution program in a construction-related field that is recognized by the division; or

(g) Any combination of experience or education from subsections (a) through (f) of this section totaling 3,200 hours.

(2) Have successfully completed the following:

(a) Attendance at a division-approved manufactured dwelling and cabana installation education program; and

(b) Received a passing grade of 90 percent on the division-approved examination covering ORS chapter 446, OAR 918, divisions 500 and 515, and the **Oregon Manufactured Installation Specialty Code**.

(3) The applicant must provide to the division the following:

(a) A copy of a personal photo identification with submittal of any division application;

(b) A completed division application;

(c) The required application fee; and

(d) A class curriculum for division approval.

(4) Verification of experience must be submitted in the form of signed statements by past or present employers, or other verification acceptable to the division. Verification may not be provided by a member of the applicant's immediate family, by a live-in companion, or by any person dependent upon the applicant. The division may contact any person to verify experience of an applicant.

(5) Licensed manufactured dwelling installers and certified manufactured dwelling installation inspectors are not required to show evidence of section (4) of this rule.

(6) Personal photo identification is required for admission to all required manufactured dwelling installation examinations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.395

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 8-2005, f. & cert. ef. 4-1-05; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0030

Course Curriculum Requirements for Educational Provider Training

(1) The course curriculum shall be submitted to the division for approval and shall include a detailed description of course content and materials.

(2) The course curriculum for manufactured dwelling installers, limited installers, and manufactured dwelling installation inspectors must, at a minimum, include the following areas of training:

(a) Definitions, as provided in the **Oregon Manufactured Dwelling Installation Specialty Code**;

(b) License and registration requirements;

(c) Permits and penalties;

(d) Installer and limited installer qualifications;

(e) Location and stand of manufactured dwellings and cabanas;

(f) Foundation systems;

(g) Structural connections;

(h) Anchoring systems;

(i) Electrical utility, crossover, and fixture connections;

(j) Plumbing utility, crossover, and fixture connections;

(k) Mechanical crossover and appliance connections;

(l) Fuel gas utility, crossover, and appliance connections;

(m) Fire protection and separation;

(n) Underfloor enclosures, access, and ventilation;

(o) Alternate manufactured dwelling uses;

ADMINISTRATIVE RULES

- (p) Accessory buildings and structures; and
 - (q) Alterations, repairs, and additions.
- (3) The course curriculum for manufactured dwelling skirting installers must, at a minimum, include the following areas of training:

(a) Definitions, as provided in the **Oregon Manufactured Dwelling Installation Specialty Code**;

- (b) License and registration requirements;
- (c) Permits and penalties;
- (d) Skirting installer qualifications;
- (e) Foundation systems;
- (f) Perimeter support;
- (g) Anchoring systems;
- (h) Underfloor enclosures;
- (i) Plumbing and electrical access;
- (j) Underfloor vapor retarders;
- (k) Underfloor access and ventilation;
- (l) Appliance venting;
- (m) Carport and awning support;
- (n) Attached garages and cabanas;
- (o) Home access and egress;
- (p) Underfloor fire protection and separation; and
- (q) Accessory buildings and structures.

(4) Within 30 days of notification of any change in course curriculum requirements adopted by the division, the provider must submit a revised curriculum to the division for approval.

(5) The provider shall notify the division in writing seven days prior to each class, indicating the time, date, and location of the class. Division or board representatives may be permitted to audit any class, without fee or cost for entry.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.176, 446.400 & 446.405
Stats. Implemented: ORS 446.395
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2002, f. 1-28-02, cert. ef. 4-1-02; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0110

Requirements for Installer License

(1) To be licensed as a manufactured dwelling installer, an applicant must meet the following minimum experience requirements:

- (a) 1,600 hours experience as a manufactured dwelling installer in another state or 1,600 hours experience as an Oregon licensed limited installer or limited skirting installer;
- (b) 3,200 hours experience servicing or repairing manufactured dwellings;
- (c) 3,200 hours experience in the construction of manufactured dwellings;
- (d) 3,200 hours experience as a building construction supervisor;
- (e) 1,600 hours experience as an active Oregon certified manufactured dwelling installation inspector;
- (f) Completion of a one year college program in a construction related field which is recognized by the board; or
- (g) Any combination of experience or education from subsections (a) through (f) of this section totaling 3,200 hours.

(2) In addition to the requirements in section (1) of this rule, applicants must have:

- (a) Attended a division-approved manufactured dwelling installation education program; and
- (b) Received a passing grade of 75 percent on the division approved examination.

(3) Verification of experience must be submitted in the form of signed statements by past or present employers. Verification may not be provided by a member of the applicant's immediate family, by a live-in companion, or by any person dependent upon the applicant. The division may contact any person to verify experience of an applicant.

(4) In addition to the completed application form and application fee, an applicant must provide personal photo identification for admission to all required manufactured dwelling examinations and with submittal of the division's license application.

Stat. Auth.: ORS 446.176, 446.400 & 446.405
Stats. Implemented: ORS 446.395
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 8-2005, f. & cert. ef. 4-1-05; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0150

Installer Responsibilities and Limits

- (1) An installer must:
 - (a) Work for a business with a valid Construction Contractors Board license; or
 - (b) The installer is a business with a valid Construction Contractors Board license.
- (2) Work covered by an installer's license is limited to:
 - (a) Preparing the site and stand for the installation of the manufactured dwelling or cabana;
 - (b) Installing manufactured dwellings, cabanas, skirting, underfloor vapor retarder, ventilation, access, and temporary steps;
 - (c) Installing the support, tie-down, ERB's, and the structural connections for manufactured dwellings and cabanas;
 - (d) Providing setbacks, clearances, and fire life and safety protection;
 - (e) Providing plumbing and electrical utility connections;
 - (f) Providing plumbing, electrical, and mechanical crossover, appliance, and fixture connections of and to the manufactured dwelling or cabana as permitted by these rules;
 - (g) Install appliance exhaust ducts and terminations when required;
 - (h) Performing plumbing, mechanical, and electrical tests when required; and
 - (i) Serving as the supervisor of individuals licensed by the division as limited installers.

(3) An installer must, at a minimum:

- (a) Assure the manufactured dwelling or cabana stand is in compliance with the Oregon Manufactured Dwelling Installation Specialty Code prior to the installation of the manufactured dwelling or cabana;
- (b) Assure all setbacks, clearances, and fire life and safety installations are in compliance with the Oregon Manufactured Dwelling Installation Specialty Code;
- (c) Perform electrical and plumbing tests if the respective plumbing and electrical connections were made by the installer;
- (d) Close and secure all access panels and covers on or under the manufactured dwelling or cabana;
- (e) Assure the underfloor dryer and range exhaust ducts are roughed in if the manufactured dwelling is equipped with or provides for the installation of such an appliance requiring exhaust ducts;
- (f) Assure that all doors and windows are adjusted, secured in place, and operational;
- (g) Assure all ship-loose flue vents and chimneys are installed, secured in place, and capped according to their listing;
- (h) Where the installer also installs the skirting, comply with OAR 918-515-0490(1);
- (i) Affix a certification tag to each manufactured dwelling or cabana installed;
- (j) Complete all reporting and application forms required by these rules; and
- (k) Leave the manufacturer's installation instructions at the installation site to be available at the time of the inspection if used for any part of the installation;
- (l) Assure all portions of the manufactured dwelling installation performed by the installer are in compliance with the Oregon Manufactured Dwelling Installation Specialty Code ; and
- (m) Correct all applicable nonconformances within 30 days of receipt of a correction notice .

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.176, 446.400 & 446.405
Stats. Implemented: ORS 446.395
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2002, f. 1-28-02, cert. ef. 4-1-02; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0300

Requirements for Installer Certification Tags

(1) Licensed manufactured dwelling installers and limited skirting installers installing manufactured dwellings, cabanas, tie-downs, ERB's, and skirting shall affix a division-issued certification tag to the manufactured dwelling, cabana, or skirting upon completion of the installation, and prior to inspection .

(2) Certification tags may be purchased in bulk by licensed installers, manufactured dwelling dealers, and limited skirting installers. An application to purchase certification tags must be submitted to the division in duplicate and accompanied by the appropriate tag fee.

(3) Only licensed installers and licensed limited skirting installers may be assigned certification tags by the dealer or division. Certification

ADMINISTRATIVE RULES

tags may only be affixed by licensed installers and licensed limited skirting installers upon completion of the installation.

(4) The person purchasing certification tags from the division is responsible for their security, use, and reporting.

(5) The division may sell a maximum two-month supply of certification tags to a manufactured dwelling dealer based on monthly installations and certification tag reports submitted to the division.

(6) The division or a manufactured dwelling dealer may issue a maximum of 30 certification tags to an installer at one time and a maximum of 30 certification tags to a limited skirting installer at one time.

(7) Certification tags assigned to licensed installers and limited skirting installers can only be transferred by the division.

(8) If an installer or limited skirting installer license is suspended, revoked, or expires, all unused certification tags assigned to that person must be returned to the division.

(9) If a manufactured dwelling dealer is no longer in business or changes ownership, all unused certification tags assigned to the original dealer must be returned to the division.

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.240

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0330

Denial of Certification Tags

The division may deny any request for certification tags when:

(1) An inspection reveals that a manufactured dwelling, cabana, skirting, tie-down, or ERB installation is not installed according to the Oregon Manufactured Dwelling Installation Specialty Code, and no corrective action is taken by the installer as required by OAR 918-515-0150(2)(m);

(2) An installer's license or limited skirting installer's license has expired, or been suspended or revoked;

(3) There is evidence of certification tag misuse as described in these rules;

(4) An installer, limited skirting installer, or manufactured dwelling dealer has failed to report the use of installer certification tags within 60 days of their use; or

(5) An installer, limited skirting installer, or manufactured dwelling dealer has a supply of unused and unreported certification tags exceeding the quantities allowed in OAR 918-515-0300(5) and (6).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.395

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0350

Issuance and Possession of License

(1) A manufactured dwelling installer license, limited installer license, temporary limited installer license, and limited skirting installer license are issued to the individual named on the application and is not transferable.

(2) The licensee must physically possess the license and one photo identification when at a job site.

(3) The licensee must provide satisfactory evidence of being licensed when requested to by the division or municipality.

(4) The licensee must notify the division in writing within 30 days of any address change.

Stat. Auth.: ORS 446.400 & 446.405

Stats. Implemented: ORS 446.400 & 446.405

Hist.: BCD 19-1995, f. 12-25-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0360

License Renewal

(1) Licenses issued under ORS chapter 446 and 918-515-0480 expire on January 1 of the second year following issuance.

(2) An application for renewal of a current license must provide:

(a) Evidence of continuing education credits; and

(b) The required renewal fees as set forth in OAR 918-500-0100.

(3) 45 days prior to license expiration, the division mails each licensee a license renewal application.

(4) A license renewal application must be submitted to the division prior to the expiration date of the license. Persons wishing to apply for a license after their license has expired must reapply for a new license and meet all requirements of a new applicant. The division is not responsible for

notification if the licensee has changed addresses without notifying the division within 30 days of the address change.

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.400 & 446.405

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; Renumbered from 918-515-0130; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0370

License Suspension and Revocation

(1) The director may suspend or revoke a manufactured dwelling installer license, limited installer license, or limited skirting installer license issued by the division.

(2) The basis for such suspension or revocation of a license may include violations to applicable statutes, rules, standards, or the following:

(a) Failure to submit required reports and applications on time to the division;

(b) Failure to provide direct supervision of limited installers;

(c) Allowing a limited installer to perform work outside the scope of a limited installer license;

(d) Hiring unlicensed persons to perform installation work;

(e) Allowing installation work to be conducted on a site where no manufactured dwelling installation permits have been issued;

(f) Failure to affix certification tags upon completion of the installation, if required;

(g) Failure to complete corrective action when required by the division or municipality;

(h) Failure to complete required continuing education classes; and

(i) Failure to renew the license prior to expiration.

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.400

Hist.: BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0480

Requirements for Limited Skirting Installer License

To be licensed as a limited skirting installer, an applicant must:

(1) Provide personal identification;

(2) Submit a completed application, together with the fee required in OAR 918-500-0100; and

(3) Attend a division-approved manufactured dwelling installation education program.

Stat. Auth.: ORS 183.325 - 410, 446.400, 446.405, 455.130 & 455.610

Stats. Implemented: ORS 446.400 & 446.405

Hist.: BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0485

Limited Skirting Installer Responsibilities and Limits

(1) A limited skirting installer must:

(a) Work for a business with a valid Construction Contractors Board License; or

(b) Be a business with a valid Construction Contractors Board license.

(2) Work covered by a limited skirting installers license is limited to:

(a) Installation of manufactured dwelling and cabana skirting, temporary steps, underfloor vapor retarder, ventilation, tie-downs, perimeter foundation supports, appliance exhaust terminations, and underfloor skirting access;

(b) Affixing a certification tag to the manufactured dwelling or cabana skirting;

(c) Completing all reports and application required by the division and these rules;

(d) Serving as the supervisor of individuals licensed by the division as limited installers; and

(e) Any work described in OAR 918-515-0150 when under the direct supervision of a licensed installer.

Stat. Auth.: ORS 183.325 - 410, 446.400, 446.405, 455.130 & 455.610

Stats. Implemented: ORS 446.400 & 446.405

Hist.: BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-515-0490

Limited Skirting Installer Responsibilities to Consumer

A limited skirting installer must, at a minimum:

(1) Install the skirting, underfloor skirting access, underfloor ventilation, and underfloor dryer and range exhaust ducts and terminations through the skirting when required;

(2) Ensure all work performed is in compliance with the **Oregon Manufactured Dwelling Installation Specialty Code**;

ADMINISTRATIVE RULES

(3) Affix a certification tag to each manufactured dwelling or cabana on which skirting has been installed.

(4) Complete all reporting and application forms required by OAR 918-515-0300, 918-515-0340, and 918-515-0360.

(5) Notify the division or municipality upon completion of the installation work; and

(6) Correct all nonconforming skirting installations within 30 days of receipt of a correction notice from the division or municipality.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325 - 410, 446.400, 446.405, 455.130 & 455.610
Stats. Implemented: ORS 446.400 & 446.405
Hist.: BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-525-0042

Amendments to the Adopted Minimum Safety Standards

(1) Amend NFPA 1192 as follows:

(a) Amend Section 5.4 Fuel-Burning Appliances by adding the following language after Section 5.4.1. "Solid-fuel-burning appliances and unvented room heaters shall not be installed in recreational vehicles, except where specifically permitted in these rules."

(b) Amend Section 6.2 Minimum Means of Escape by adding subsection 6.2.1.3. "6.2.1.3. Each bedroom or separate designated area for sleeping shall be required to have a means of escape to the exterior of the vehicle. For the purposes of this code, a bedroom or separate designated area for sleeping means an area separated from the main living and cooking area by a wall or partition. The means of escape may be an outside window, outside door, or roof hatch sized in accordance with 6.2.5."

(2) The following amendments apply to recreational park trailers over 8-1/2 feet wide in the travel mode.

(a) Amend ANSI 119.5 as follows:

(A) Amend Chapter 1 by inserting the following language after Section 1-5.

(i) Each loft area shall have a minimum of one electrical light fixture and a convenience receptacle.

(ii) Each enclosed stairway shall have a light fixture that is controlled by switches from both the top and the bottom of the stairway. The light fixture in subparagraph (i) of this rule may be used to serve this purpose.

(B) Amend Chapter 2 by inserting the following language after Section 2-1. "Recreational park trailers shall not be equipped with gasoline or diesel fuel storage, transfer or dispensing systems as identified in NFPA 1192, Section 5.11."

(C) Amend Section 2-6 Fuel-Burning Appliances by inserting the following language after Section 2-6.1. "Wood-burning stoves, wood-burning fireplaces and pellet fired appliances may be installed if they are approved and listed for manufactured home use and installed according to the manufacturer's installation instructions."

(b) Amend NFPA 70 Article 552.43(A) by inserting the following language after paragraph (A). "Recreational park trailers over 8-1/2 feet wide in the travel mode may have up to two listed power supply cords for the electrical feeders."

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325 - 183.410 & 446.003 - 446.285
Stats. Implemented: ORS 446.185
Hist.: BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

918-600-0010

Scope

These rules and the **Oregon Manufactured Dwelling and Park Specialty Code, 2002 Edition**, including amendments adopted effective April 1, 2005 establish minimum safety standards for the design and construction of mobile home and manufactured dwelling parks in accordance with ORS chapter 446.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 446.095 & 446.100
Stats. Implemented: ORS 446.062
Hist.: DC 66, f. & ef. 1-20-76; DC 3-1979, f. 1-5-79, ef. 2-1-79; DC 12-1982, f. 3-17-82, ef. 3-18-82; Renumbered from 814-028-0010; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2002, f. 1-28-02, cert. ef. 4-1-02; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10

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

Rule Caption: Health Insurance Public Rate Review and Confidentiality of Filing Documents.

Adm. Order No.: ID 5-2010

Filed with Sec. of State: 2-16-2010

Certified to be Effective: 2-16-10

Notice Publication Date: 11-1-2009

Rules Adopted: 836-053-0000, 836-053-0471, 836-053-0475

Rules Amended: 836-053-0465, 836-053-0780, 836-053-0910

Subject: These rules implement provisions enacted by the 2009 Legislative Assembly pertaining to the review of proposed schedule or table of premium rates filed for health benefit plans for small employers, individual health benefit plans and portability health benefit plans. The rules clarify the public process established by the Legislative Assembly for these filings and for individual and small employer group plans, specify the materials that must be submitted in a schedule or table of premium rate filing. The rules specify that all materials are available to the public for review. For those filings, the rules also provide clarification of the factors the Director of the Department of Consumer and Business Services will consider in approving, disapproving or modifying the proposed rates and for approving the amount of an increase or decrease in administrative expenses that may be included in a rate.

Rules Coordinator: Sue Munson—(503) 947-7272

836-053-0000

Statutory Authority and Implementation

(1) OAR 836-053-0471 and 836-053-0475 are adopted under the authority of ORS 731.244, 743.018, 743.019 and 743.020, to aid in giving effect to provisions of ORS Chapters 742 and 743 relating to the filing of rates and policy forms with the Director. The requirements of OAR 836-053-0471 and 836-053-0475 are in addition to any other requirements established by statute or by rule or bulletin of the Department.

(2) OAR 836-053-0471 and 836-053-0475 apply to the following rate filings submitted or resubmitted to the Director on or after April 1, 2010:

(a) Health benefit plans for small employers;

(b) Individual health benefit plans.

Stat. Auth.: ORS 743.018, 743.019, 743.020
Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730, 743.767

Hist.: ID 5-2010, f. & cert. ef. 2-16-10

836-053-0465

Rating for Individual Health Benefit Plans

(1) Individual health benefit plans shall be rated in accordance with the geographic areas specified in OAR 836-053-0065. A carrier shall file a single geographic average rate (GAR) for each health benefit plan that is offered to individuals within a geographic area. The GAR must be determined on a pooled basis and the pool shall include all of the carrier's business in the Oregon individual market.

(2) The variation in geographic average rates among different individual health benefit plans offered by a carrier must be based solely on objective differences in plan design or coverage. The variation shall not include differences based on the risk characteristics or claims experience of the actual or expected enrollees in a particular plan.

(3) A carrier shall implement premium rate increases for an individual health benefit plan in a consistent manner for all enrollees in the plan. A carrier may use either of the following methods to schedule premium rate increases for all enrollees in a plan:

(a) A rolling schedule that is based on the anniversary of the date coverage is issued to each enrollee or on another anniversary date established by the carrier; or

(b) A fixed schedule that applies concurrently to all enrollees in a plan. If a fixed schedule is used, a carrier may adjust an enrollee's premium during the rating period if the enrollee moves into a higher age bracket or has a change in family composition.

(4) A carrier shall file its geographic average rates for individual health benefit plans in accordance with the rate filing requirements of OAR 836-053-0471 and 836-053-0910.

(5) A carrier may use the same geographic average rate for multiple rating areas.

(6) A carrier shall offer its insureds the opportunity to pay premium on a monthly basis for an individual health benefit plan in addition to any other mode offered by the carrier.

Stat. Auth.: ORS 731.244, 743.019, 743.020, 743.769
Stats. Implemented: ORS 743.766 - 743.769, 746.015 & 746.240
Hist.: ID 12-1996, f. & cert. ef. 9-23-96; Renumbered from 836-053-0420, ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 7-2001(Temp), f. 5-30-01, cert. ef. 5-31-01 thru 11-16-01; ID 14-2001, f. & cert. ef. 11-20-01; ID 5-2010, f. & cert. ef. 2-16-10

ADMINISTRATIVE RULES

836-053-0471

Required Materials for Rate Filing for Individual or Small Employer Health Benefit Plans

(1) Every insurer that offers a health benefit plan for small employers or an individual health benefit plan covering an Oregon resident shall file the information specified in subsections (2) and (3) of this rule when the insurer files with the director a schedule or table of premium rates for approval.

(2) A schedule or table of base premium rates filed under subsection (1) of this section shall include sufficient information and data to allow the director to consider the factors set forth in ORS 743.018(4) and (5). The filing shall include all of the following separately set forth and labeled as indicated:

(a) A filing description.

(A) Label: FILING DESCRIPTION.

(B) The filing description shall be submitted in the form of a cover letter. The filing description must provide a summary of the reasons an insurer is requesting a rate change and the minimum and maximum rate impact to all groups or members affected by the rate change, including the anticipated change in number of enrollees if the proposed premium rate is approved. The description also must include the name and contact information of the filer and a description of any significant changes the insurer is making to the following:

(i) Rating factor changes;

(ii) Plan modification or discontinuance; and

(iii) Benefit or administration changes.

(b) A rate filing summary.

(A) Label: RATE FILING SUMMARY.

(B) This summary must explain the filing in a manner that allows consumers to understand the rate change. The summary shall be in accordance with the form established in Exhibit 1 or Exhibit 2 to this rule. The information contained in this summary must match the information provided elsewhere in the filing.

(c) An actuarial memorandum.

(A) Label: ACTUARIAL MEMORANDUM.

(B) This memorandum must include all of the following:

(i) A description of the benefit plan and a quantification of any changes to the benefit plan as set forth in paragraph (2) (j) of this rule.

(ii) A discussion of assumptions, factors, calculations, rate tables and any other information pertinent to the proposed rate.

(iii) A description of any changes in rating methodology supported by sufficient detail to permit the department to evaluate the effect on rates and the rationale for the change.

(iv) The range of rate impact to groups or members including the distribution of the impact on members.

(v) Signature of and date that a qualified actuary reviewed the rate filing.

(d) Rate tables and factors.

(A) Label: RATE TABLES AND FACTORS.

(B) The insurer must include base and geographic average rate tables, identify factors used by the insurer in developing the rates and explain how the information is used in the development of rates. The rate tables and factors must include a table of rating factors reflecting ages of employees and dependents and geographic area. If base rates are not provided by rating tier, the rate tier tables also must be provided.

(C) The document must indicate whether the rate increases are the same for all policies. The document must clearly explain how the rate increases apply to different policies including the entire distribution of rate changes and the average of the highest and lowest rates resulting from the application of other rating factors.

(D) The geographic average rate table must include family type, geographic area and the average of the highest and lowest rates resulting from the application of other rating factors.

(E) The rate tables must contain at a minimum the base rates for each available plan. This document must include information that would permit the determination of rates for each benefit plan, each age bracket, each geographic area, each rate tier and any other variable used to determine rates. If the rates vary more frequently than annually, separate rates must either be provided for each effective date of change or information provided to permit their determination and the justification for such variation in rates.

(F) If the filing is for a health benefit plan issued to a small employer, the insurer also shall include the following factors if applied by the insurer as allowed under ORS 743.737:

(i) Contribution;

(ii) Level of participation;

(iii) Tobacco usage;

(iv) Participation in wellness programs;

(v) Duration of coverage in force; and

(vi) Any adjustment to reflect expected claims experience, which may not exceed the limits established in ORS 743.737.

(c) Plan relativities.

(A) Label: PLAN RELATIVITIES.

(B) This document must explain the presentation of rates for each benefit plan, explain the methodology of how the benefit plan relativities were developed and demonstrate the comparison and reasonableness of benefits and costs between plans.

(f) A description of the development of the proposed rate change or base rate.

(A) Label: DEVELOPMENT OF RATE CHANGE OR BASE RATE.

(B) This document is the core of the rate filing and must explain how the proposed rate or rate change was calculated. The calculation must be based on generally accepted actuarial rating principles for rating blocks of business and should provide sufficient detail to allow reasonable review. The development of rate change or base rate also should include actual or expected membership information and identify a proposed loss ratio for the rating period. A rate renewal calculation must begin with an assumed experience period of at least one year ending within the immediately preceding year, or, if more recent data is available for one-year period that concludes with the most recent period for which data is available. The total premium earned during the experience period should be adjusted to yield premium adjusted to current rates. A projection is made of premiums and claims for the period during which the proposed rates are to be effective. Claims for a renewal projection should reflect an assumed medical trend rate as well as other expected changes in claims cost, including but not limited to the impact of benefit changes or provider reimbursement.

(g) Trend information and projection.

(A) Label: TREND INFORMATION AND PROJECTION.

(B) This document must describe how the assumed future growth of medical claims (the medical trends rate) was developed based on generally accepted actuarial principles. The trend document also must include historical monthly average claim costs for at least the immediately preceding two years when applicable. If the carrier's structure does not include claims cost, the carrier shall submit this information based on allocated costs.

(h) Premium retention.

(A) Label: PREMIUM RETENTION.

(B) This document must include a description of retention. As used in this paragraph, "retention" means the amount to be retained by the insurer to cover all of the insurer's non-claim costs including expected profit or contribution to surplus for a nonprofit entity. Retention must be reported on a percentage of premium basis.

(i) Worksheet for Individual Health Benefit Plan Rates (if applicable).

(A) Label: WORKSHEET FOR INDIVIDUAL HEALTH BENEFIT PLAN RATES.

(B) This standardized schedule for individual health benefit plan rates must include earned premiums, incurred claims and membership totals for the past five years on an annual basis as well as accumulated to the current date. The same elements must be projected and reported for each of the next three years. If an active life reserve has been established, that reserve also should be included.

(j) Changes to covered benefits or health benefit plan design.

(A) Label: COVERED BENEFIT OR PLAN DESIGN CHANGES.

(B) This document must explain benefit and administrative changes with rating impact, including covered benefit level changes, member cost-sharing changes, elimination of plans, implementation of new plan designs, provider network changes, new utilization or prior authorization programs, changes to eligibility requirements, changes to exclusions, or any other change in the plan offerings that impacts costs or coverage provided.

(k) Changes in the insurer's health care cost containment and quality improvement efforts.

(A) Label: COST CONTAINMENT AND QUALITY IMPROVEMENT EFFORTS.

(B) This document must explain any changes the insurer has made in its health care cost containment efforts and quality improvement efforts since the insurer's last rate filing for the same category of health benefit plan. Significant new health care cost containment initiatives and quality improvement efforts should be described and an estimate made of potential savings together with an estimated cost or savings for the projection period. The insurer shall provide information about whether the cost containment initiatives reduce costs by eliminating waste, improving efficiency, by improving health outcomes through incentives, or by elimination or reduc-

ADMINISTRATIVE RULES

tion of covered services or reduction in the fees paid to providers for services.

(I) Information about the insurer's financial position.

(A) Label: INSURER'S FINANCIAL POSITION.

(B) This document must include information about the insurer's financial position, including but not limited to profitability, surplus, reserves and investment earnings. This document also must include a discussion of whether the proposed change in the premium rate is necessary to maintain the insurer's solvency or to maintain rate stability and prevent excessive rate increases for the line of business in the future. In providing this information, the insurer may reference documents filed with the department as part of the annual statement or other requisite filings. The referenced material must be available to the public.

(m) Certification of compliance.

(A) Label: CERTIFICATION OF COMPLIANCE.

(B) The certificate must comply with OAR 836-010-0011 and must certify that the filing complies with Oregon statutes, rules, product standards and filing requirements.

(n) Third party filer's letter of authorization (if applicable).

(A) Label: THIRD PARTY AUTHORIZATION.

(B) If the filing is submitted by a person other than the insurer, the filing must include a letter from the insurer that authorizes the third party to submit and correspond with the department on matters pertaining to the rate filing.

(3)(a) For each schedule or table of premium rates filed, the insurer shall separately include a statement of administrative expenses for the line of business and complete the chart displaying the five-year trend of administrative costs included as Exhibit 3 to this rule. The chart must break down the insurer's administrative expenses relating to:

(A) Salaries, wages, employment taxes and other benefits;

(B) Commissions;

(C) Cost depreciations including but not limited to depreciation for equipment, software or furniture;

(D) Rent or occupancy expenses;

(E) Marketing and advertising;

(F) General offices expenses, including but not limited to sundries, supplies, telephone, printing and postage;

(G) Third party administration expenses or fees or other group service expense or fees;

(H) Legal fees and expenses and other professional or consulting fees;

(I) Other taxes, licenses and fees; and

(J) Travel expenses.

(b) The statement of administrative expenses required under this subsection must include:

(A) As set forth in Exhibit 3, a statement of administrative expenses on a per member per month basis set forth separately for claim-related and non-claim expenses;

(B) As set forth in Exhibit 3, an explanation of the basis for any proposed premium rate increase or decrease related to changes in the administrative expenses of the insurer; and

(C) An explanation of how the insurer allocates administrative expenses for the filed line of business.

(4)(a) Within 10 days after receiving a proposed table or schedule of premium rate filing, the director shall:

(A) Determine whether the proposed table or schedule of premium rate filing is complete. If the director determines that a filing is complete, the director shall review the proposed schedule or table of premium rate in accordance with ORS 742.003, 742.005, 742.007 and 743.018. If the director determines that the filing is not complete, the director shall notify the insurer in writing that the filing is deficient and give the insurer an opportunity to provide the missing information.

(B) If the filing is complete, the director shall open the 30-day public comment period. For purposes of determining the beginning of the public comment period, the date the carrier files a proposed schedule or table of premium rates shall be the date the director determines that the filing is complete.

(b) The director shall issue a decision approving, disapproving or modifying the proposed table or schedule of premium rate filing within 10 days after the close of the public comment period.

(5) The director shall post on the Insurance Division website all materials submitted under subsections (2) and (3) of this rule at the beginning of the public comment period.

Stat. Auth.: ORS 743.018, 743.019, 743.020

Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730, 743.767

Hist.: ID 5-2010, f. & cert. ef. 2-16-10

836-053-0475

Approval, Disapproval or Modification of Premium Rates for Individual or Small Employer Health Benefit Plan

(1) The materials submitted under OAR 836-053-0471 shall include sufficient information to allow the director to evaluate the proposed schedule or table of premium rates for approval, disapproval or modification. After conducting an actuarial review of the rate filing, the director may approve a proposed premium rate for a health benefit plan for small employers or for an individual health benefit plan if, in the director's discretion, the proposed rates meet the requirements of ORS 742.003, 742.005, 742.007 and 743.018.

(2) The director may approve reasonable increases or decreases in administrative expenses supported by the information provided under OAR 836-053-0471. In addition to the materials submitted under OAR 836-053-0471, in order to determine whether the proposed increase or decrease in administrative expenses is reasonable, the director may consider the cost of living for the previous calendar year, based on the Producer Price Index for Direct Health and Medical Insurance Carriers Industry, as published by the Bureau of Labor Statistics of the United States Department of Labor.

Stat. Auth.: ORS 743.018, 743.019, 743.020

Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.730, 743.767

Hist.: ID 5-2010, f. & cert. ef. 2-16-10

836-053-0780

Rating for Portability Health Benefit Plans

(1) Portability health benefit plans shall be rated in accordance with the geographic areas specified in OAR 836-053-0065. A carrier shall file a single geographic average rate (GAR) for each health benefit plan that is offered to eligible individuals within a geographic area. The GAR must be determined on a pooled basis in accordance with ORS 743.760.

(2) Except for portability health benefit plans issued in accordance with ORS 743.761, the variation in geographic average rates between a carrier's portability health benefit plans and the carrier's group health benefit plans must be based solely on objective differences in plan design or coverage. The variation shall not include differences based on the risk characteristics or claims experience of the actual or expected enrollees in a particular plan.

(3) For portability health benefit plans issued in accordance with ORS 743.761, the premium rates that apply to portability policyholders in the individual health benefit plan shall be identical to the rates that apply to non-portability policyholders.

(4) A carrier shall implement premium rate increases for a portability health benefit plan in a consistent manner for all policyholders in the plan. A carrier may use either of the following methods to schedule premium rate increases for all policyholders in a plan:

(a) A rolling schedule that is based on the anniversary of the date coverage is issued to each policyholder or on another anniversary date established by the carrier; or

(b) A fixed schedule that applies concurrently to all policyholders in a plan. If a fixed schedule is used, a carrier may adjust a policyholder's premium during the rating period if the policyholder moves into a higher age bracket or has a change in family composition.

(5) A carrier shall file its geographic average rates for portability health benefit plans in accordance with the rate filing requirements of ORS 836-053-0910.

(6) A carrier may use the same geographic average rate for multiple rating areas.

(7) A carrier shall submit with a filing under OAR 836-053-0910 (4) for a portability health benefit plan a rate filing summary that explains the filing in a manner that allows consumers to understand the rate change and how it may impact them. The summary shall be in accordance with the form established in **Exhibit 1** or **Exhibit 2** to this rule or in other substantively similar wording. The information contained in this summary must match the information provided elsewhere in the filing.

(8)(a) Within 10 business days after receiving a proposed table or schedule of premium rate filing, the director shall:

(A) Determine whether the proposed table or schedule of premium rate filing is complete. If the director determines that a filing is complete, the director shall review the proposed schedule or table of premium rate in accordance with ORS 742.003, 742.005, 742.007 and 743.018. If the director determines that the filing is not complete, the director shall notify the carrier in writing that the filing is deficient and give the insurer an opportunity to provide any missing information.

(B) If the filing is complete, the director shall open the 30-day public comment period. For purposes of determining the beginning of the public

ADMINISTRATIVE RULES

comment period, the date the carrier files a proposed schedule or table of premium rates shall be the date the director determines that the filing is complete.

(b) The director shall issue a decision approving, disapproving or modifying the proposed premium rate within 10 days after the close of the public comment period.

(9) The director shall post all materials submitted as part of the proposed schedule or table of premium rates filing at the beginning of the public comment period.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 731.244, 743.019, 743.020

Stats. Implemented: ORS 743.019, 743.020, 743.731, 743.760

Hist.: ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 5-2010, f. & cert. ef. 2-16-10

836-053-0910

Rate Filing

(1) A carrier shall file with the Director:

(a) The appropriate checklists and certification statements, as established in OAR 836-010-0011; and

(b) For portability health benefit plans, an actuarial demonstration of the basis for the differences in the geographic average rates of the various plans offered in the marketplace. This demonstration shall be certified by a member of the American Academy of Actuaries both at the initial submission and subsequently when the rate relativities between plans are changed.

(c) For health benefit plans for small employers and for individual health benefit plans, the materials set forth in OAR 836-053-0471.

(2) A carrier shall not offer a subject health benefit plan until the Director has determined that the filed geographic average rate meets the applicable statutory requirements.

(3) An approved geographic average rate shall not be modified by a carrier until the Director has determined that the filed modification meets the applicable statutory requirements.

(4) Rate filings pursuant to requirements specified in OAR 836-010-0011, 836-010-0021 and 836-053-0471 for any of the following health benefit plans subject to ORS 743.730 to 743.773 must be submitted to the Director in electronic format:

(a) Health benefit plans for small employers.

(b) Portability health benefit plans.

(c) Individual health benefit plans.

(5) Forms of acceptable electronic filing format under section (4) of this rule are:

(a) Filings submitted using the National Association of Insurance Commissioner's System for Electronic Rate and Form Filings (SERFF); or

(b) Filings with documentation attached in pdf format that is under 3MB in size. For the purpose of this subsection, each filing requirement, such as an exhibit, an actuarial memorandum or a certificate of compliance, must be in a separate pdf format under 3MB in size. These filings may be submitted via email with documents attached in pdf format, or the filings may be submitted on a compact disc (CD) with documents attached in pdf format. If submitting via email, the combined size of the email plus attached documents being transmitted must be less than four megabytes.

(6) Contents of rate filings described in section (4) of this rule and rate filing summaries described in OAR 836-053-0471 and 836-053-0780(7) will be posted for public inspection on the Oregon Insurance Division website.

(7) Sections (4) to (6) of this rule, as amended, apply to a rate filing made on or after April 1, 2010.

Stat. Auth.: ORS 731.244, 743.019, 743.020

Stats. Implemented: ORS 743.019, 743.020, 743.730 - 743.773

Hist.: ID 13-1996(Temp), f. & cert. ef. 9-23-96; ID 2-1997, f. & cert. ef. 3-28-97; ID 5-1998, f. & cert. ef. 3-9-98, Renumbered from 836-053-0185; ID 13-2007(Temp), f. & cert. ef. 12-21-07 thru 5-10-08; Administrative correction 5-20-08; ID 8-2008, f. & cert. ef. 6-18-08; ID 5-2010, f. & cert. ef. 2-16-10

Rule Caption: Extending Continuation of Health Benefit Plans and Eligibility for Federal Subsidy through March 31, 2010.

Adm. Order No.: ID 6-2010(Temp)

Filed with Sec. of State: 3-10-2010

Certified to be Effective: 3-10-10 thru 6-18-10

Notice Publication Date:

Rules Amended: 836-053-0855, 836-053-0860, 836-053-0865

Rules Suspended: 836-053-0855(T), 836-053-0860(T), 836-053-0865(T)

Subject: This rulemaking amends temporary rules adopted December 22, 2009 to reflect changes necessary to reflect changes to and

an extension of the federal subsidy program until March 31, 2010. These amendments to the rules are necessary to correctly align the state continuation program with the federal provisions, which provide a subsidy for Oregonians who continue their health insurance coverage in the state continuation program.

Oregonians who lose their jobs have two options to continue coverage under their group health plan. If their former employer has twenty or more workers, they are eligible under the Consolidated Omnibus Budget Reconciliation Act (COBRA). If their former employer has fewer than twenty workers, they are eligible under Oregon's state continuation law. In February 2009, the federal economic stimulus package extended a 65 percent subsidy for up to nine months of coverage. Recognizing the need for changes to state law to allow Oregonians to obtain the full advantage of the federal subsidy, the 2009 Oregon Legislative Assembly enacted House Bill 2433, which extended the period of eligibility for state continuation coverage from six to nine months and allows the Director of the Department of Consumer and Business Services to adopt rules as necessary to allow Oregonians to take full advantage of the benefits provided by the federal law including additional extensions of the period of eligibility to match future extensions or changes in the federal subsidy or COBRA program. On December 19, 2009, President Obama signed HR 3326, the Fiscal Year 2010 Defense Appropriations Act, which extended eligibility for COBRA benefits to February 28, 2010 and the duration of the subsidy to 15 months. In response to that federal Act, the Division adopted temporary rules to match extensions of the federal benefits included in HR 3326. A new federal act, HR 4691 now extends the eligibility period for the American Recovery and Reinvestment Act premium subsidy for an additional 31 days (through March 31, 2010) and clarifies eligibility for the subsidy resulting from an involuntary termination of employment that follows a period of reduction in hours of work that caused an individual to lose health benefits under a group health benefit plan. These temporary rules make the same changes to the state continuation program allowing Oregonians enrolled in the state continuation plans to receive the maximum subsidy provided by the federal law.

Rules Coordinator: Sue Munson—(503) 947-7272

836-053-0855

Definitions

As used in OAR 836-053-0850 to 836-053-0885:

(1) "American Recovery and Reinvestment Act of 2009" means the Public Law 111-5 as amended by the Fiscal Year 2010 Defense Appropriations Act (HR 3326), and as further amended by the Temporary Extension Act of 2010 (HR 4691).

(2) "Certificate holder" means any covered employee or qualified beneficiary who:

(a) Is eligible for continuation coverage because the employee is no longer eligible for coverage under group health plan due to reduction of hours of employment or termination of employment;

(b) Elects continuation coverage;

(c) Is subject to a qualifying event; and

(d) Is considered an assistance eligible individual under the American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

(3) "Involuntary termination" means a qualifying event in which the employer determines, based on a reasonable interpretation of the description of an assistance eligible individual under the American Recovery and Reinvestment Act of 2009 and administrative guidance provided under the American Recovery and Reinvestment Act of 2009, that the qualifying event with respect to state continuation coverage for an individual was involuntary termination of a covered employee's employment, and the employer maintains supporting documentation of the determination, including an attestation by the employer of involuntary termination with respect to the covered employee.

(4) "Covered employee" means a certificate holder who has been insured continuously under a policy or similar predecessor policy during the three-month period ending on the date of the termination of employment or membership.

(5)(a) "Qualified beneficiary" means a covered employee under a group health plan or any other individual who, on the day before the qualifying event for that employee, is a beneficiary under that plan as the spouse of the covered employee or as the dependent child of the employee, includ-

ADMINISTRATIVE RULES

ing a child born or placed for adoption after the qualifying event or during the period the covered employee is eligible for continuation coverage.

(b) An individual is not a qualified beneficiary if:

(A) The individual is eligible for Federal Medicare coverage.

(B) The individual is eligible for any other group health plan. This limitation does not apply to coverage consisting only of:

(i) Dental, vision, counseling, or referral services;

(ii) Coverage under a health flexible spending arrangement as defined in section 106(c)(2) of the Internal Revenue Code of 1986; or

(iii) Treatment that is furnished in an on-site medical facility maintained by an employer.

(C) An individual is not a qualified beneficiary only for purposes of receiving a premium subsidy if the individual is a domestic partner.

(6) "Qualifying event" means:

(a) An involuntary termination of employment during the period beginning September 1, 2008 and ending March 31, 2010; or

(b) On or after March 2, 2010 and before April 1, 2010, a reduction of hours that results in a loss of coverage under a group health insurance policy.

(7)(a) "Transition period" means, with respect to any assistance eligible individual, any period of coverage if:

(A) The involuntary termination that was the qualifying event occurred before December 19, 2009; and

(B) The subsidy allowed under the American Recovery and Reinvestment Act of 2009 applies to such period due to the extension of the state continuation period to 15 months.

(b) Any period of time during the transition period for which the assistance eligible individual pays the applicable premium under OAR 836-053-0865(9) shall be treated as a period of coverage for which timely payment of premium was paid, irrespective of any failure to timely pay the applicable premium for such period.

Stat. Auth.: ORS 731.244, 743.610 & 2009 OL Ch. 73 (HB 2433)

Stats. Implemented: ORS 743.610 & 2009 OL Ch. 73 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10; ID 3-2010(Temp), f. & cert. ef. 1-8-10 thru 6-18-10; ID 6-2010(Temp), f. & cert. ef. 3-10-10 thru 6-18-10

836-053-0860

Notification

(1) An insurer subject to the requirements of ORS 743.610 and Chapter 73, Oregon Laws 2009 (Enrolled House Bill 2433) shall provide a notice explaining continuation of benefits directly to individuals losing group coverage, for any reason other than group replacement of coverage, within 10 days following the date of any administrative action taken by an insurer to initiate or document the loss of coverage.

(2) The insurer providing the notice required under section (1) of this rule shall include in the notice at least the following information:

(a) Contact information for the employee to reach the insurer;

(b) Forms and instructions about how to complete and return the forms and to whom (i.e., going through employer or direct to insurer);

(c) A clear statement explaining availability of premium subsidy;

(d) Premium information or directions for determining the premium amount for each qualified beneficiary and instructions for submitting the premium;

(e) A clear statement about who is eligible to continue coverage;

(f) Information about how to enroll in different coverage if allowed by the employer;

(g) Instructions about the employee's responsibility to notify the insurer if the employee becomes ineligible for the subsidy; and

(h) Instructions about how to appeal denials for treatment as a certificate holder.

(3)(a) In the case of an individual who was an assistance eligible individual at any time on or after October 31, 2009, or experiences a qualifying event (consisting of termination of employment) relating to state continuation coverage on or after October 31, 2009, the insurer shall provide, no later than February 17, 2010, an additional notification consisting of the following:

(A) A qualifying event means involuntary termination of employment during the period of September 1, 2008 and ending February 28, 2010;

(B) Assistance eligible individuals are eligible to continue coverage for a period of fifteen months beginning with the coverage month first following the qualifying event;

(C) A transition period exists for assistance eligible individuals who became eligible for a premium subsidy under the American Recovery and Reinvestment Act of 2009 before December 19, 2009 and whose state continuation coverage has now been extended to fifteen months due to availability of the subsidy for that period of time;

(D) Assistance eligible individuals who did not timely pay the premium for any period of coverage during their transition period may now pay premiums retroactively in accordance with OAR 836-053-0865(9).

(b) In the case of a qualifying event occurring after December 19, 2009, the insurer shall provide notification consistent with this rule.

(4) In the case of an assistance eligible individual who did not timely pay the premium for any period of coverage during the individual's transition period the insurer shall provide to the individual, within the first 60 days of the start of the individual's transition period, an additional notification. The additional notification shall include the information required in section (3) of this rule and information on the ability to make retroactive premium payments in accordance with OAR 836-053-0865(9) with respect to the transition period of the individual in order to maintain state continuation coverage.

(5) In the case of an individual described in OAR 836-053-0865(11), the insurer involved shall provide, within 10 days following the date of an individual's involuntary termination of employment, an additional notification described in OAR 836-053-0860(2), including information on the provisions of 836-053-0865(11).

(6) In the case of an individual for whom the qualifying event occurred on or after March 1, 2010 and before March 10, the insurer involved shall provide the notice required under section (1) and (2) of this rule no later than March 21, 2010.

Stat. Auth.: ORS 731.244, 743.610 & 2009 OL Ch. 73 (HB 2433)

Stats. Implemented: ORS 743.610 & 2009 OL Ch. 73 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10; ID 3-2010(Temp), f. & cert. ef. 1-8-10 thru 6-18-10; ID 6-2010(Temp), f. & cert. ef. 3-10-10 thru 6-18-10

836-053-0865

Provisions Relating to Premium Subsidy for State Continuation Coverage

(1) In order to maximize the benefit to Oregonians under the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5), certain qualified beneficiaries are eligible for:

(a) Premium subsidy for continuation of coverage;

(b) An opportunity to elect continuation of coverage that is in addition to the period allowed under ORS 743.610(5);

(c) Continuation of coverage for a period of time that exceeds the period allowed under ORS 743.610(7)(a); and

(d) An option to enroll in different coverage if the employer permits certificate holders to elect enrollment in different coverage.

(2) After receiving the attestation from an employer stating that the employee meets the requirements of a certificate holder and the date of the qualifying event, an insurer is required to accept timely payment of the certificate holder's 35 percent share of the total premium as full payment of the premium and process claims as though 100 percent of the total premium due has been paid.

(3)(a) The following certificate holders qualify for a second opportunity to elect continuation of coverage if the group health plan remains in effect:

(A) Certificate holders who did not elect to continue coverage during the period allowed under ORS 743.610(5) prior to April 28, 2009; and

(B) Certificate holders who elected continuation coverage during the period allowed under ORS 743.610(5) but whose continuation coverage ended for any reason prior to April 28, 2009;

(b) Within 31 calendar days after the insurer provides the notice required under OAR 836-053-0860(1), certificate holders who received the notice under paragraph (a) of this section must return the following items according to instructions provided by the insurer:

(A) Completed forms for electing state continuation coverage and requesting treatment as a certificate holder;

(B) The individual's tax identification number;

(C) Form for Switching State Continuation Coverage Benefit Options, if offered; and

(D) The initial premium if required.

(c) Certificate holders who became eligible on or after September 1, 2008 and prior to April 28, 2009 are eligible to continue coverage while the group health plan remains in effect, and upon timely payment of their portion of the premium, for 15 months of continuation coverage beginning with the coverage month first following the qualifying event.

(d) The effective date for continuation coverage issued in response to a second election of coverage will be the later of the first day of the coverage month on or after February 17, 2009 or the first day of the coverage month first following the qualifying event.

(4)(a) Within 31 calendar days after the insurer provides the notice required under OAR 836-053-0860(1), certificate holders who become

ADMINISTRATIVE RULES

eligible on or after April 28, 2009 must return the following items according to any instructions provided by the insurer:

(A) Forms for electing state continuation coverage and requesting treatment as a certificate holder;

(B) The individual's tax identification number;

(C) The form for switching state continuation coverage benefit options, if offered; and

(D) The initial premium, if required.

(b) A certificate holder who becomes eligible on or after April 28, 2009 is eligible to continue coverage for a period of 15 months beginning with the coverage month first following the qualifying event. However, the premium subsidy available to the individual shall not exceed any period of limitation specified in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)

(5) A certificate holder may elect to enroll in different coverage as described in section (1) (d) of this rule if:

(a) The employer permits certificate holders to enroll in different coverage;

(b) The premium for the different coverage does not exceed the premium for coverage in which the certificate holder was enrolled at the time of the qualifying event;

(c) The different coverage in which the individual elects to enroll is coverage that is also offered to the active employees of the employer at the time the individual makes the election; and

(d) The different coverage is not:

(A) Coverage that provides only dental, vision, counseling or referral services, or a combination of such services;

(B) A flexible spending arrangement as defined in section 106(c) (2) of the Internal Revenue Code of 1986; or

(C) Coverage that provides coverage for services or treatments furnished in an on-site medical facility maintained by the employer and that consists primarily of first-aid services, prevention and wellness care or similar care, or a combination of such care.

(6) The period of time beginning on the date of the qualifying event and ending with the effective date of continuation coverage shall be disregarded for purposes of determining periods of creditable coverage under ORS 743.754, 743.737, and 743.766.

(7) A premium subsidy is not available to a certificate holder who becomes eligible for coverage under any other group health plan or Medicare. An individual paying a reduced premium for continuation coverage as described in this section must promptly notify the insurer if they become eligible for other group health plan coverage or Medicare.

(8) Certificate holders who elected continuation on or after September 1, 2008 and prior to April 28, 2009, are eligible to continue coverage while the group health plan remains in effect, and upon timely payment of their portion of the premium, for a period of 15 months beginning with the coverage month first following the qualifying event.

(9) In the case of any premium for a period of coverage during an assistance eligible individual's transition period, the individual shall be treated for purposes of any state continuation provision as having timely paid the amount of such premium if:

(a) The individual was covered under the state continuation coverage to which the premium relates for the period of coverage immediately preceding the transition period; and

(b) The individual pays the individual's 35 percent share of the total premium:

(A) Not later than February 17, 2010; or

(B) If the transition period extends beyond February 17, 2010, not later than 30 days after the date notification required under OAR 836-053-0860(4) is provided to the individual.

(10) In the case of an assistance eligible individual who pays, with respect to any period of state continuation coverage during the individual's transition period, the full premium amount for such coverage, the insurer shall:

(a) Make a reimbursement payment to the individual for the amount of premium paid in excess of the 35 percent share of the total premium; or

(b) Provide credit to the individual for the amount in a manner that reduces one or more subsequent premium payments that the individual is required to pay for the coverage involved.

(11)(a) For the purposes of the state continuation provisions under ORS 743.610, in the case of an individual who did not make, or who made and discontinued, an election of state continuation coverage on the basis of the reduction of hours of employment, the involuntary termination of employment of the individual on or after March 2, 2010 shall be treated as a qualifying event.

(b) In any case of an individual referred to in subsection (a) of this section, the period of the individual's continuation coverage shall be determined as though the qualifying event were the reduction of hours of employment.

(c) Nothing in this section shall be construed as requiring an individual referred to in subsection (a) of this section to make a payment for state continuation coverage between the reduction of hours and the involuntary termination of employment.

(d) The period of time beginning on the date of the qualifying event described in this section and ending with the effective date of continuation coverage shall be disregarded for purposes of determining periods of creditable coverage under ORS 743.754, 743.737, and 743.766.

(e) The provisions of this section apply to individuals who are assistance eligible individuals on the basis of a qualifying event consisting of a reduction of hours occurring during the period that begins with September 1, 2008, and ends with March 31, 2010, followed by an involuntary termination of employment that occurred on or after March 2, 2010 and before April 1, 2010.

Stat. Auth.: ORS 731.244, 743.610 & 2009 OL Ch. 73 (HB 2433)

Stats. Implemented: ORS 743.610 & 2009 OL Ch. 73 (HB 2433)

Hist.: ID 2-2009(Temp), f. & cert. ef. 4-28-09 thru 10-24-09; ID 8-2009, f. & cert. ef. 10-23-

09; ID 13-2009(Temp), f. & cert. ef. 12-23-09 thru 6-18-10; ID 3-2010(Temp), f. & cert. ef.

1-8-10 thru 6-18-10; ID 6-2010(Temp), f. & cert. ef. 3-10-10 thru 6-18-10

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

Rule Caption: Adopt changes to acetylene rules in general industry.

Adm. Order No.: OSHA 1-2010

Filed with Sec. of State: 2-19-2010

Certified to be Effective: 2-19-10

Notice Publication Date: 12-1-2009

Rules Adopted: 437-002-2102

Rules Amended: 437-002-0005, 437-002-0100

Subject: Oregon OSHA revised Division 2/H, General Industry/Hazardous Materials, rules which will:

- Repeal the current Acetylene rule, 1910.102, that is based on the Compressed Gas Association (CGA) Pamphlets; G-1-1966, G1.3-1959, G1.4-1966

- Adopt new rule, OAR 437-002-2102, Acetylene, that updates references to standards developing organizations (SDO standards) making them consistent with current industry practices which will improve employee safety by clarifying employer obligations, and eliminate confusing requirements.

Based on comments received at the public hearing and during the open comment period, the following are added to the new acetylene rule:

- Compliance with Compressed Gas Association (CGA) Pamphlet G-1-2009 ("Acetylene") (Compressed Gas Association, Inc., 12th ed., 2009.)

- Clarification to store and use cylinders valve end up.

- Note to allow minimal movement by hand of cylinders to get them on and off carts or pallets.

- Install reverse flow check valves and flashback arrester according to manufacturer recommendations.

Oregon OSHA also adopted the Federal OSHA revisions published in the August 11, 2009 Federal Register to 1910.6 Incorporation by reference.

Please visit OR-OSHA's web site at www.orosha.org

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

437-002-0005

Adoption by Reference

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

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

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

ADMINISTRATIVE RULES

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

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

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

(6) 29 CFR 1910.6, Incorporation by reference; published 8/11/09, FR vol. 74, no. 153, pp. 40442-40447.

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

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

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

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

Stats. Implemented: ORS 654.001 - 654.295

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

437-002-0100

Adoption by Reference

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

(1) 29 CFR 1910.101 Compressed gases (General requirements), published 3/7/96, FR vol. 61, no. 46, p. 9236.

(2) 29 CFR 1910.102 Acetylene. Repealed. Oregon OSHA Admin. Order 1-2010, f. 2/19/10, ef. 2/19/10.

(3) 29 CFR 1910.103 Hydrogen, published 12/14/07, FR vol. 72, no. 240, p. 71061.

(4) 29 CFR 1910.104 Oxygen, published 3/7/96, FR vol. 61, no. 46, p. 9237.

(5) 29 CFR 1910.105 Nitrous oxide, published 3/7/96, FR vol. 61, no. 46, p. 9237.

(6) 29 CFR 1910.106 Flammable and combustible liquids, published 9/13/05, FR vol. 70, no. 176, p. 53925.

(7) 29 CFR 1910.107 Spray finishing using flammable and combustible materials, amended with AO 3-2003, removed 1910.107, and Oregon note added, f. and ef. 4/21/03.

(8) 29 CFR 1910.108 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(9) 29 CFR 1910.109 Explosives and blasting agents, published 6/18/98, FR vol. 63, no. 117, p. 33466.

(10) 29 CFR 1910.110 Storage and handling of liquefied petroleum gases, published 12/14/07, FR vol. 72, no. 240, p. 71061.

(11) 29 CFR 1910.111 Storage and handling of anhydrous ammonia, published amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01; 12/14/07, FR vol. 72, no. 240, p. 71061.

(12) Reserved for 29 CFR 1910.112 (Reserved)

(13) Reserved for 29 CFR 1910.113 (Reserved)

(14) 29 CFR 1910.114 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(15) 29 CFR 1910.115 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(16) 29 CFR 1910.116 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9238.

(17) 29 CFR 1910.119 Process safety management of highly hazardous chemicals.

NOTE: Excepted rules adopted by reference by OR-OSHA by Admin. Order 6-1994 on 9/30/94.) Amended 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(18) 29 CFR 1910.120 Hazardous waste operations and emergency response, Interim Final Rules, amended 8/22/94, FR vol. 59, no. 161, pp. 43270-43275; 3/7/96, FR vol. 61, no. 46, p. 9238; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01; 4/3/06, FR vol. 71, no. 63, p. 16669.

(19) 29 CFR 1910.121 Reserved. Published 3/23/99, Federal Register, vol. 64, no. 55, p. 13909.

(20) 29 CFR 1910.122 Table of contents. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(21) 29 CFR 1910.123 Dipping and coating operations: Coverage and definitions. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(22) 29 CFR 1910.124 General requirements for dipping and coating operations. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(23) 29 CFR 1910.125 Additional requirements for dipping and coating operations that use flammable or combustible liquids. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

(24) 29 CFR 1910.126 Additional requirements for special dipping and coating applications. Repealed with OR-OSHA Admin. Order 9-2007, f. and ef. 12/3/07.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 19-1988, f. & ef. 11-17-88; APD 12-1989, f. & ef. 7-14-89; OSHA 22-1990, f. 9-28-90, cert. ef. 10-1-90; OSHA 3-1992, f. & cert. ef. 2-6-92; OSHA 3-1993, f. & cert. ef. 2-23-93; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 4-2002, f. & cert. ef. 5-30-02; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2004, f. & cert. ef. 9-15-04; OSHA 4-2005, f. & cert. ef. 12-14-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 9-2007, f. & cert. ef. 12-3-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 1-2010, f. & cert. ef. 2-19-10

437-002-2102

Acetylene

(1) Cylinders.

(a) Employers must ensure that the manufacturing, in-plant transfer, transportation, handling, storage, and use of acetylene in cylinders comply with this rule and the provisions of Compressed Gas Association (CGA) Pamphlet G-1-2009 ("Acetylene") (Compressed Gas Association, Inc., 12th ed., 2009).

(b) Definitions.

(A) Confined space:

(i) Large enough and configured so that an employee can bodily enter to perform assigned work.

(ii) Limited or restricted entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits).

(iii) Not designed for continuous employee occupancy.

(B) Enclosed space — Spaces that are surrounded by something, and the only openings are access openings, for example, drawers, closets, unventilated cabinets, automobile trunks, unventilated vehicle compartments, or toolboxes.

(C) Handling — Moving, connecting, or disconnecting a compressed gas container under normal conditions.

(D) PSIG (Gauge Pressure) — Pressure above or below local atmospheric pressure displayed as pounds per square inch.

(E) Secure — Arrange to prevent movement (including lashing and chaining), or a minimum of three points of contact with other cylinders or walls.

(F) Use — Withdrawing and using the gas in a non-recoverable manner for applications other than manufacturing or repackaging of compressed gasses.

(c) Acetylene Cylinders General Requirements.

(A) You must:

(i) Store and use cylinders valve end up.

NOTE: Gas suppliers and distributors may store secured containers in a horizontal position.

(ii) Secure cylinder(s) to prevent falling or movement.

(iii) Use a cylinder cart or cylinder pallet to move acetylene cylinders. **NOTE:** This rule does not apply to acetylene fill plants, handling, distribution, and maintenance processes where cylinders are tilted and rolled on their bottom edge only the minimal distance necessary to get them on and off carts or pallets.

(iv) Attach the cylinder to a pressure reducing regulator or blow back manifold before opening the cylinder valve.

(v) Remove pressure regulators before moving cylinders unless they are secured in an upright position on a cylinder cart.

(vi) Back out regulator adjusting screws before opening cylinder valves.

(vii) Protect cylinders from contact with welding spatters and cutting or burning slag.

(viii) Install reverse flow check valves and flashback arrester according to manufacturer recommendation.

(B) You must not:

(i) Drop cylinders.

(ii) Drag cylinders.

ADMINISTRATIVE RULES

- (iii) Apply a torch to the side of a cylinder.
- (iv) Hoist cylinders using lifting magnets, slings, ropes, chains, or any other device where the cylinders form a part of the carrier.
- (v) Handle cylinders so that the bottom fusible metal pressure relief device can strike an object.
- (vi) Expose any part of your body to the line of discharge of a fusible metal pressure relief device.
- (vii) Use acetylene at a pressure exceeding 15 psig.
- (viii) Exceed an acetylene withdrawal rate of one-seventh of the cylinder capacity per hour for welding, cutting, and allied processes.
- (d) Transporting Acetylene Cylinders (additional requirements).
 - (A) You must protect cylinders and attached regulators:
 - (i) From damage when being transported by any vehicle.
 - (ii) From abnormal mechanical shock that is likely to damage the cylinder, valve, or fusible metal pressure relief device.
 - (B) You must not transport cylinders in automobiles or unventilated, enclosed vehicle compartments.
- (e) Acetylene Cylinders Storage.
 - (A) You must store cylinders:
 - (i) In assigned locations.
 - (ii) In areas posted with signs prohibiting smoking and open flame.
 - (iii) In well-ventilated locations.
 - (iv) Away from heat sources.
 - (v) Where they are protected from corrosion.
 - (B) You must not store cylinders:
 - (i) Where they contact electrical welding equipment or electrical circuits.

NOTE: All high and low pressure cylinders in contact with or secured to a conductive table or column without being isolated from electrical current can become part of an electrical circuit.

- (ii) Where they can be struck by heavy objects.
- (iii) In enclosed spaces.
- (iv) In confined spaces.
- (v) Within 20 feet of oxygen unless they are separated by a noncombustible partition. Partitions must:
 - (I) Vertically extend at least 18 inches above the tallest container and not less than 5 feet.
 - (II) Laterally extend at least 18 inches beyond the sides of the containers.

(III) Have a fire resistance rating of at least one-half hour.

NOTE (paragraph (1)(e)(B)(v)) 1: Single cylinders of acetylene and oxygen can be stored secured on a cart or used adjacent to each other without a partition.

NOTE (paragraph (1)(e)(B)(v)) 2: Single cylinders of acetylene and oxygen secured at a work station without attached pressure reducing regulators are considered to be in use.

(vi) With full and empty cylinders grouped together.

NOTE (paragraph (1)(e)(B)(vi)): This does not apply to the cylinder distribution process.

(f) Connecting and Disconnecting Acetylene Cylinders for Use.

(A) You must:

- (i) Return cylinders with contaminated valves (mud, oil, grease, and similar material) to the supplier.
- (ii) Secure the cylinder(s) where it can not contact any electrical circuit or electrical welding equipment.

NOTE (paragraph (1)(f)(A)(ii)): All high and low pressure cylinders in contact with or secured to a conductive table or column without being isolated from electrical current can become part of an electrical circuit.

(iii) Inspect hoses before each shift.

(iv) Remove damaged hoses from service.

(v) Check pressurized cylinder valves, fuse plugs and all connections for leaks prior to use.

(vi) Use industry approved leak detection solution or oil free soapy water.

(vii) Notify the gas supplier of any leaking cylinder, and follow the supplier's instruction for returning the cylinder.

(viii) Back out the regulator adjusting screws before opening cylinder valves.

(ix) Close the system valves and release all gas from the regulators before removing the regulator from a cylinder.

(x) Keep the cylinder key used for opening the cylinder valve on the valve spindle when the cylinder is in use.

(B) You must not attempt to repair or alter cylinders or valves.

(2) Piped Systems.

(a) Employers must comply with Chapter 9 ("Acetylene Piping") of NFPA 51A-2006 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2006 ed., 2006).

(b) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill)

acetylene cylinders were installed prior to February 16, 2006, these employers may comply with the provisions of Chapter 7 ("Acetylene Piping") of NFPA 51A-2001 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2001 ed., 2001).

(c) The provisions of 437-002-2102(2)(b) also apply when the facilities, equipment, structures, or installation used to generate acetylene or to charge (fill) acetylene cylinders were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

(d) For additional information on acetylene piping systems, see CGA G-1.2-2006, Part 3 ("Acetylene piping") (Compressed Gas Association, Inc., 3rd ed., 2006).

(3) Generators and filling cylinders.

(a) Employer must ensure that facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders comply with the provisions of NFPA 51A-2006 ("Standard for Acetylene Charging plants") (National Fire Protection Association, 2006 ed., 2006).

(b) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were constructed or installed prior to February 16, 2006, these employers may comply with the provisions of NFPA 51A-2001 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2001 ed., 2001).

(c) The provisions of 437-002-2102(3)(b) also apply when the facilities, equipment, structures, or installation were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 1-2010, f. & cert. ef. 2-19-10

Rule Caption: Adopt federal amendments to consensus standards for personal protective equipment in general industry, agriculture, maritime activities, and forest activities.

Adm. Order No.: OSHA 2-2010

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10

Notice Publication Date: 1-1-2010

Rules Amended: 437-002-0005, 437-002-0080, 437-002-0120, 437-002-0280, 437-004-1035, 437-004-1050, 437-004-1060, 437-004-2310, 437-005-0001, 437-005-0002, 437-005-0003, 437-007-0305

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

Federal OSHA revised the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals standards concerning requirements for eye- and face-protective devices, and head and foot protection.

Federal OSHA updated the references in its regulations to reflect more recent editions of the applicable national consensus standards that incorporate advances in technology. Federal OSHA requires that PPE be safely designed and constructed for the tasks performed.

Amendments to the PPE standards include a requirement that filter lenses and plates in eye-protective equipment meet a test for transmission of radiant energy such as light or infrared.

Oregon OSHA adopted the changes in general industry and maritime activities as published in the September 9, 2009 Federal Register. The updated references are also made in Oregon OSHA's Division 4, Agriculture, and Division 7, Forest Activities.

Please visit OR-OSHA's web site at www.orsosha.org

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

437-002-0005

Adoption by Reference

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

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

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

ADMINISTRATIVE RULES

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

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

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

(6) 29 CFR 1910.6, Incorporation by reference; published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

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

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

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

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

Stats. Implemented: ORS 654.001 - 654.295

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

437-002-0080

Adoption by Reference

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

(1) 29 CFR 1910.94 Ventilation, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(2) 29 CFR 1910.95 Occupational Noise Exposure, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

NOTE: 29 CFR 1910.96 Ionizing radiation, has been redesignated to 29 CFR 1910.1096.

(3) 29 CFR 1910.97 Nonionizing radiation, published 3/7/96, FR vol. 61, no. 46, p. 9236.

(4) 29 CFR 1910.98 Effective dates, published 6/27/74, Federal Register, vol. 39, p. 23502.

(5) 29 CFR 1910.99 Sources of standards, published 3/7/96, FR vol. 61, no. 46, p. 9236.

(6) 29 CFR 1910.100 Standards organization, published 3/7/96, FR vol. 61, no. 46, p. 9236.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-1992, f. 2-6-92, cert. ef. 5-1-92; OSHA 4-1993, f. 4-1-93, cert. ef. 5-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10

437-002-0120

Adoption by Reference

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

(1) 29 CFR 1910.132 General requirements, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(2) 29 CFR 1910.133 Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(3) 29 CFR 1910.134 Respiratory protection, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(4) 29 CFR 1910.135 Occupational head protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(5) 29 CFR 1910.136 Occupational foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(6) 29 CFR 1910.137 Electrical protective equipment, published 1/31/94, FR vol. 59, no. 20, pp. 4435-7.

(7) 29 CFR 1910.138 Hand Protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362.

(8) 29 CFR 1910.139 Respiratory protection for M. tuberculosis. Removed, 12/3/03, FR vol. 68, p. 75776-75780 (OR-OSHA Admin. Order 1-2004, f. 3/26/04, ef. 7/1/04).

(9) Appendices.

(a) Appendix A — References for further information (nonmandatory).

(b) Appendix B — Nonmandatory compliance guidelines for hazard assessment and personal protective equipment selection.

These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04; OSHA 5-2004, f. & cert. ef. 11-19-04; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10

437-002-0280

Adoption by Reference

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

(1) 29 CFR 1910.251 Definitions, published 12/14/07, FR vol. 72, no. 240, p. 71061.

(2) 29 CFR 1910.252 General Requirements, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(3) 29 CFR 1910.253 Oxygen-Fuel Gas Welding and Cutting, published 12/14/07, FR vol. 72, no. 240, p. 71061.

(4) 29 CFR 1910.254 Arc Welding and Cutting, published 9/13/05, FR vol. 70, no. 176, p. 53925.

(5) 29 CFR 1910.255 Resistance Welding, published 4/11/90, Federal Register, vol. 55, no. 70, pp. 13710-13711.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 232-1990, f. 9-28-90, cert. ef. 12-1-90; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 4-2005, f. & cert. ef. 12-14-05; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 2-2010, f. & cert. ef. 2-25-10

437-004-1035

Eye and Face Protection

(1) General requirements.

(a) Provide and require the use of eye or face protection that protects employees from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases and vapors or potentially harmful light radiation.

(b) If an employee wears prescription lenses while doing work that involves eye hazards, they must wear eye protection that has the prescription. Otherwise, they must wear protection over the prescription lenses without disturbing the proper position of the prescription lenses or the protective lenses.

(c) Employees must use eye protection with side protection when there is a hazard from flying objects. Detachable side protectors (e.g., clip-on or slide-on side shields) are acceptable.

(d) Eye and face protection equipment must be clean and in good repair.

(2) Criteria for protective eye and face devices.

(a) Protective eye and face protection devices must comply with any of the following consensus standards:

(A) ANSI Z87.1-2003, "American National Standard Practices for Occupational and Educational Eye and Face Protection;"

(B) ANSI Z89.1-1997, "American National Standard for Industrial Head Protection;"

(C) ANSI Z89.1-1986, "American National Standard for Personnel Protection – Protective Headwear for Industrial Workers – Requirements."

NOTE: The Oregon OSHA Resource Center has copies for public review at 350 Winter Street NE, Salem OR 97309-0405.

(b) Protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the consensus standards will be deemed to be in compliance with the requirements of this section.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 2-2010, f. & cert. ef. 2-25-10

ADMINISTRATIVE RULES

437-004-1050

Head Protection

(1) General requirements. Wear protective helmets (hardhat) when working in areas where there is a potential for injury to the head from falling or flying objects.

(2) Criteria for protective headwear.

(a) Head protection must comply with any of the following consensus standards:

(A) ANSI Z89.1-2003, "American National Standard for Industrial Head Protection;"

(B) ANSI Z89.1-1997, "American National Standard for Industrial Head Protection;" or

(C) ANSI Z89.1-1986, "American National Standard for Personnel Protection — Protective Headwear for Industrial Workers — Requirements."

NOTE: The Oregon OSHA Resource Center has copies for public review at 350 Winter Street NE, Salem OR 97309-0405.

(b) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(c) Employees who work close to moving parts of power-driven machinery or sources of ignition and whose hair is long enough to be caught in it or be ignited, must wear caps or other head covering that completely restrains the hair.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 2-2010, f. & cert. ef. 2-25-10

437-004-1060

Hand and Foot Protection

(1) General requirements. Wear protective footwear when working where there is a danger of foot injuries due to falling or rolling objects, objects piercing the sole or electrical hazards.

(2) Criteria for protective footwear.

(a) Protective footwear must comply with any of the following consensus standards:

(A) ASTM F-2412-2005, "Standard Test Methods for Foot Protection;" and ASTM F-2413-2005, "Standard Specification for Performance Requirements for Protective Footwear;"

(B) ANSI Z41-1999, "American National Standard for Personal Protection — Protective Footwear;" or

(C) ANSI Z41-1991, "American National Standard for Personal Protection — Protective Footwear."

NOTE: The Oregon OSHA Resource Center has copies for public review at 350 Winter Street NE, Salem OR 97309-0405.

(b) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

NOTE: Look for ANSI compliance information on the shoe, the box or tags.

(3) Wear special types or designs of shoes, steel-toed boots, or foot guards where conditions exist that make their use necessary for worker safety.

(4) Wear leggings or high boots of leather, rubber or other suitable material to protect legs from the hazards of hot substances, chemical spills, brush, sharp tools or other hazards. Do not wear leather or other absorbent materials to protect against chemical hazards.

(5) Do not wear or provide defective footwear or footwear that is ineffective in preventing or limiting injury if conditions may cause foot injuries.

(6) Employers must select and require employees to use appropriate hand protection when the work exposes employees' hands to hazards such as those from skin absorption of harmful substances; severe cuts or lacerations; severe abrasions; punctures; chemical burns; thermal burns and harmful temperature extremes.

(7) Do not wear gloves near moving parts or machines that might catch them.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 2-2010, f. & cert. ef. 2-25-10

437-004-2310

General Requirements

(1) Scope. This subdivision applies to agricultural welding, except the following types for which Subdivision 2/Q applies:

(a) Production type or amount of welding.

(b) Welding in confined spaces like tanks, vats, pits, or those defined in Subdivision 4/J, OAR 437-004-1250(1). This section (4/Q) covers some confined space welding topics. In those cases, follow this section in addition to the rules in Subdivision 2/Q.

(c) Welding with toxic or dangerous coatings or fluxes. This includes manganese, lead, zinc, cadmium, mercury, beryllium, or fluorine compounds.

(d) Welding or heating galvanized materials.

(2) Definition. Welder and welding operator is any operator of electric or gas welding and cutting equipment.

(3) Fire prevention and protection.

(a) Basic precautions. The basic precautions for fire prevention in welding or cutting work are:

(A) Fire hazards. Move either the object you are welding or cutting or any movable fire hazards in the area to a safe place.

(B) Guards. If you can move neither of the above, then use guards to confine the heat, sparks and slag to protect the immovable fire hazards.

(b) Special precautions. When the work falls within the scope of (3)(a)(B) above, additional precautions may be necessary:

(A) Combustible material. Wherever there are floor openings or cracks in the flooring, close them or take precautions so that sparks will not drop through to combustible materials on the floor below. Use the same precautions with cracks or holes in walls, open doorways and open or broken windows.

(B) Fire extinguishers. Keep appropriate fire extinguishing equipment ready for use.

(4) Before beginning. Before beginning, block portable equipment to prevent accidental movement.

(5) Welding or cutting containers.

(a) Clean first. Do not weld, use a torch or do abrasive cutting or other hot work on drums, barrels, tanks or other containers until they have been cleaned so that there are no flammable materials present or any substances that when subjected to heat, might produce flammable or toxic vapors. Disconnect and/or blank any pipe lines or connections to the drum or vessel.

(b) Test often. Use testing equipment prior to and frequently during the welding, torch or abrasive cutting or other hot work to insure that the container is free and remains free of flammable or toxic vapors.

(c) Vent and purge. Vent all hollow spaces, cavities or containers to air or allow gases to escape before preheating, cutting or welding.

(6) Protection of personnel.

(a)(A) General.

(B) Cable. Put welding cable and other equipment so that it is clear of passageways, ladders and stairways.

(b) Eye protection.

(A) Selection.

(i) Use helmets or hand shields when arc welding or arc cutting, excluding submerged arc welding. Helpers or attendants must use proper eye protection.

(ii) Use goggles or other suitable eye protection when gas welding or oxygen cutting. Spectacles without side shields, with suitable filter lenses are acceptable for gas welding on light work, for torch brazing or for inspection.

(iii) All operators and attendants of resistance welding or resistance brazing equipment must use transparent face shields or goggles, depending on the particular job, to protect their faces or eyes.

(iv) Provide suitable goggles for brazing work not covered in (6)(b)(A)(i) through (6)(b)(A)(iii) above.

(B) Specifications for protectors.

(i) Helmets and hand shields must be an insulator for heat and electricity. Helmets, shields and goggles must not be flammable and must withstand sterilization.

(ii) Wear helmets and hand shields to protect the face, neck and ears from direct radiant energy from the arc.

(iii) "Lift front" welders' helmets must have a stationary safety glass on the inside of the frame next to the eyes to protect the welder from flying particles when the front is up. Where lens containers do not permit the use of safety glass, wear safety goggles.

(iv) When not using the "lift front" helmet with three glasses or when using the flat type helmet, wear other spectacle-type safety goggles in addition to the filter lens and cover glass.

(v) Use vented goggles to prevent fogging of the lenses as much as practicable.

(vi) Lenses must be tempered glass, substantially free from scratches, air bubbles, waves and other flaws.

ADMINISTRATIVE RULES

(vii) Lenses must have permanent distinctive markings to show the source and shade.

NOTE: The following is a guide for the selection of the proper shade numbers. These recommendations may vary to meet the individual's needs.

Selection guide.

(viii) Filter lenses must meet the test for transmission of radiant energy prescribed by any of the consensus standards listed below:

(I) ANSI Z87.1-2003, "American National Standard Practice for Occupational and Educational Eye and Face Protection;"

(II) ANSI Z87.1-1989 (R-1998), "American National Standard Practice for Occupational and Educational Eye and Face Protection;" or

(III) ANSI Z87.1-1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection."

NOTE: The Oregon OSHA Resource Center has copies for public review at 350 Winter Street NE, Salem OR 97309-0405.

(c)(A) Protective clothing. Protect employees exposed to the hazards created by welding, cutting or brazing with personal protective equipment according to 4/I, OAR 437-004-1005.

(B) Material. Do not wear clothing that is easily ignited or highly flammable, like that made from synthetic materials.

(d) Work in confined spaces.

(A) General. Where a welder must enter a confined space, follow the rules for confined space work elsewhere in this Subdivision, 4/Q, and in 4/I, 437-004-1250.

(B) Ventilation. Ventilation is a prerequisite to work in confined spaces. For ventilation requirements see OAR 437-004-2310(7).

(C) Securing cylinders and machinery. When welding or cutting is done in any confined space, the gas cylinders and welding machines must be left on the outside. Before starting, block heavy portable equipment wheels to prevent accidental movement.

(D) Electrode removal. When you stop arc welding for a period of time, like lunch or overnight, remove all electrodes from the holders and turn the machine off.

(E) Gas cylinder shutoff. When you stop gas welding or cutting for a period of time, like lunch or overnight, close the torch valves and shut off the gas supply to the torch at a point outside the confined area.

(7) Health protection and ventilation.

(a) General. Use general ventilation or a local exhaust system to keep the amount of toxic fumes, gases, or dusts below the limits in 4/Z, 437-004-9000.

(b)(A) Ventilation for general welding and cutting.

(B) General. Use mechanical ventilation when welding or cutting on metals not covered in (7)(e) through (7)(h) below. (For specific materials, see the ventilation requirements of (7)(e) through (7)(h) below.)

(i) In a space of less than 10,000 cubic feet (284 m³) per welder.

(ii) In a room having a ceiling height of less than 16 feet (5 m).

(iii) In confined spaces or where the welding space contains partitions, balconies or other structural barriers to the extent that they significantly obstruct cross ventilation.

(c)(A) Local exhaust hoods and booths. Mechanical local exhaust ventilation may be by means of either of the following:

(B) Hoods. Place movable hoods as close as practical to the work and with enough airflow for a velocity in the direction of the hood of 100 linear feet (30 m) per minute in the welding zone. The rates of ventilation to get this control velocity using a 3-inch (7.6 cm) wide flanged suction opening are in the following table: [Tables not included. See ED. Note.]

(d) Ventilation in confined spaces.

(A) Air replacement. Ventilate all welding and cutting in confined spaces to prevent the build-up of toxic materials or possible oxygen deficiency. This applies not only to the welder but also to helpers and other people in the area. Air replacing the withdrawn air must be clean and respirable.

(B) Airline respirators. Where it is impossible to provide such ventilation, use air-line respirators or hose masks approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health.

(C) Self-contained units. In areas immediately dangerous to life or health (IDLH), use self-contained breathing equipment. Use breathing equipment approved by the National Institute for Occupational Safety and Health.

(D) Outside helper. When welding in confined spaces and where welders and helpers use hose masks, hose masks with blowers or self-contained breathing equipment approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, a worker must be on the outside of the confined space to insure the safety of those working within.

(E) Oxygen for ventilation. Never use oxygen for ventilation.

(e) Cleaning compounds.

(A) Manufacturer's instructions. In the use of cleaning materials, because of their possible toxicity or flammability, follow appropriate precautions such as manufacturer's instructions.

(B) Degreasing. Degreasing and other cleaning involving chlorinated hydrocarbons must be where no vapors will reach or be drawn into the atmosphere surrounding any welding operation. In addition, keep trichloroethylene and perchlorethylene out of atmospheres penetrated by the ultraviolet radiation of gas-shielded welding operations.

(f) Preservative coatings.

(A) Test first. Before welding, cutting or heating on any surface covered by a preservative coating whose flammability is unknown, a competent person must test to determine its flammability.

(B) Strip if needed. Prevent ignition of highly flammable hardened preservative coatings. When coatings are known to be highly flammable, strip them from the area to be heated to prevent ignition.

(g) Toxic preservative coatings.

(A) Enclosed spaces. In enclosed spaces, strip all surfaces covered with toxic preservatives of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees must use a respirator that protects them from toxic vapors.

(B) Strip if needed. Remove the preservative coatings a sufficient distance from the area to be heated to ensure that the temperature of the unstripped metal will not increase appreciably. Artificial cooling of the metal surrounding the heated area is acceptable to limit the size of the area you must clean.

(h) Cutting of stainless steels. Oxygen cutting, using either a chemical flux or iron powder or gas-shielded arc cutting of stainless steel, must include mechanical ventilation adequate to remove the fumes.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 2-2010, f. & cert. ef. 2-25-10

437-005-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1915, in the Federal Register:

(1) Subdivision A:

(a) 29 CFR 1915.1. Purpose and authority, published 4/20/82, Federal Register (FR) vol. 47, p. 16984.

(b) 29 CFR 1915.2. Scope and application, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.3. Responsibility, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.4. Definitions, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.5. Incorporation by reference, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(f) 29 CFR 1915.6. Commercial diving operations, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.7. Competent person, published 7/25/94, FR vol. 59, p. 37856.

(h) 29 CFR 1915.9. Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2) Subdivision B:

(a) 29 CFR 1915.11. Scope, application and definitions applicable to this Subpart, published 7/25/94, FR vol. 59, p. 37857.

(b) 29 CFR 1915.12. Precautions before entering confined and enclosed spaces and other dangerous atmospheres, published 3/16/95, FR vol. 60, no. 51, p. 14218.

(c) 29 CFR 1915.13. Cleaning and other cold work, published 7/25/94, FR vol. 59, p. 37859.

(d) 29 CFR 1915.14. Hot work, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.15. Maintenance of safe conditions, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.16. Warning signs and labels, published 7/25/94, FR vol. 59, p. 37861.

Appendix A to Subpart B published 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix B to Subpart B published 7/25/94, FR vol. 59, p. 37816.

(3) Subdivision C:

ADMINISTRATIVE RULES

- (a) 29 CFR 1915.31. Scope & application of subdivision, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.32. Toxic cleaning solvents, published 5/24/96, FR vol. 61, no. 102, p. 26351.
- (c) 29 CFR 1915.33. Chemical paint & preservative remover, published 5/24/96, FR vol. 61, no. 102, p. 26351.
- (d) 29 CFR 1915.34. Mechanical paint removers, published 5/24/96, FR vol. 61, no. 102, p. 26351.
- (e) 29 CFR 1915.35. Painting, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (f) 29 CFR 1915.36. Flammable liquids, published 4/20/82, FR vol. 47, p. 16984.
- (4) Subdivision D:
- (a) 29 CFR 1915.51. Ventilation & protection in welding, cutting and heating, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.52. Fire prevention. REMOVED 9/15/04, FR vol. 69, p. 55667.
- (c) 29 CFR 1915.53. Welding, cutting and heating of hollow metal containers & structure not covered by 1915.12, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (d) 29 CFR 1915.55. Gas welding & cutting, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.56. Arc welding and cutting, published 4/20/82, FR vol. 47, p. 16984.
- (f) 29 CFR 1915.57. Uses of fissionable material in ship repairing and shipbuilding, published 4/20/82, FR vol. 47, p. 16984.
- (5) Subdivision E:
- (a) 29 CFR 1915.71. Scaffolds or staging, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.72. Ladders, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.73. Guarding of deck openings and edges, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (d) 29 CFR 1915.74. Access to vessels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (e) 29 CFR 1915.75. Access to and guarding of dry docks and marine railways, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (f) 29 CFR 1915.76. Access to cargo spaces and confined spaces, published 4/20/82, FR vol. 47, p. 16984.
- (g) 29 CFR 1915.77. Working surfaces, published amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (6) Subdivision F:
- (a) 29 CFR 1915.91. Housekeeping, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.92. Illumination, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.93. Utilities, published 4/20/82, FR vol. 47, p. 16984.
- (d) 29 CFR 1915.94. Work in confined or isolated spaces, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.95. Ship repairing and shipbuilding work on or in the vicinity of radar and radio, published 6/7/89, FR vol. 54, p. 24334.
- (f) 29 CFR 1915.96. Work in or on lifeboats, published 8/24/87, FR vol. 52, p. 31886.
- (g) 29 CFR 1915.97. Health and sanitation, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (h) 29 CFR 1915.98. First aid, published 4/20/82, FR vol. 47, p. 16984.
- NOTE:** 29 CFR 1915.99. Hazard Communication, was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.
- (i) 29 CFR 1915.100. Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.
- (7) Subdivision G:
- (a) 29 CFR 1915.111. Inspection, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.112. Ropes, chains and slings, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.113. Shackles and hooks, published 9/29/86, FR vol. 51, p. 34562.
- (d) 29 CFR 1915.114. Chain falls and pull lifts, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.115. Hoisting and hauling equipment, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (f) 29 CFR 1915.116. Use of gear, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (g) 29 CFR 1915.117. Qualifications of operators, published 4/20/82, FR vol. 47, p. 16984.
- (h) 29 CFR 1915.118. Tables, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (8) Subdivision H:
- (a) 29 CFR 1915.131. General precautions, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.132. Portable electric tools, published 4/20/82, FR vol. 47, p. 16984.
- (c) 29 CFR 1915.133. Hand tools, published 4/20/82, FR vol. 47, p. 16984.
- (d) 29 CFR 1915.134. Abrasive wheels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (e) 29 CFR 1915.135. Powder actuated fastening tools, published 5/24/96, FR vol. 61, no. 102, p. 26351.
- (f) 29 CFR 1915.136. Internal combustion engines other than ship's equipment, published 4/20/82, FR vol. 47, p. 16984.
- (9) Subdivision I:
- (a) 29 CFR 1915.151. Scope, application and definitions, published 5/24/96, FR vol. 61, no. 102, p. 26352.
- (b) 29 CFR 1915.152. General requirements, published 11/15/07, FR vol. 72, no. 220, p. 64342.
- (c) 29 CFR 1915.153. Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (d) 29 CFR 1915.154. Respiratory protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (e) 29 CFR 1915.155. Head protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (f) 29 CFR 1915.156. Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.
- (g) 29 CFR 1915.157. Hand and body protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (h) 29 CFR 1915.158. Lifesaving equipment, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (i) 29 CFR 1915.159. Personal fall arrest systems (PFAS), published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (j) 29 CFR 1915.160. Positioning device systems, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix A to Subpart I, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix B to Subpart I, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (10) Subdivision J:
- (a) 29 CFR 1915.161. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.162. Ship's boilers, published 4/20/82, FR vol. 47, p. 16984.
- (c) 29 CFR 1915.163. Ship's piping systems, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (d) 29 CFR 1915.164. Ship's propulsion machinery, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.165. Ship's decking machinery, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (11) Subdivision K:
- (a) 29 CFR 1915.171. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.172. Portable air receiver and other unfired pressure vessels, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.173. Drums and containers, published 4/20/82, FR vol. 47, p. 16984.
- (12) Subdivision L: 29 CFR 1915.181. Electrical circuits and distribution boards, published 7/3/02, FR vol. 67, no. 128, p. 44541.
- (13) Subdivisions M–O (Reserved).
- (14) Subdivision P:
- (a) 29 CFR 1915.501. General provisions, published 9/15/04, FR vol. 69, p. 55667.
- (b) 29 CFR 1915.502. Fire safety plan, published 9/15/04, FR vol. 69, p. 55667.
- (c) 29 CFR 1915.503. Precautions for hot work, published 9/15/04, FR vol. 69, p. 55667.
- (d) 29 CFR 1915.504. Fire watches, published 9/15/04, FR vol. 69, p. 55667.
- (e) 29 CFR 1915.505. Fire response, published 10/17/06, FR vol. 71, no. 200, p. 60843.
- (f) 29 CFR 1915.506. Hazards of fixed extinguishing systems on board vessels and vessel sections, published 9/15/04, FR vol. 69, p. 55667.
- (g) 29 CFR 1915.507. Land-side fire protection systems, published 10/17/06, FR vol. 71, no. 200, p. 60843.

ADMINISTRATIVE RULES

(h) 29 CFR 1915.508. Training, published 9/15/04, FR vol. 69, p. 55667.

(i) 29 CFR 1915.509. Definitions applicable to this subpart, published 9/15/04, FR vol. 69, p. 55667.

Appendix A to Subpart P, published 9/15/04, FR vol. 69, p. 55667.

(15) Subdivision Q–Y (Reserved).

(16) Subdivision Z:

(a) 29 CFR 1915.1000. Air Contaminants, published 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.1001. Asbestos, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

Appendix A to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix B to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix C to 1915.1001, published 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix D to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix E to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix F to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix G to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix H to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix I to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix J to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix K to 1915.1001, published 6/29/95, FR vol. 60, p. 33972.

Appendix L to 1915.1001, published 8/23/96, FR vol. 61, p. 43454.

(c) 29 CFR 1915.1002. Coal tar pitch volatiles; interpretation of term, published 6/20/96, FR vol. 61, p. 31427.

(d) 29 CFR 1915.1003. 13 Carcinogens (4 Nitrophenyl, etc.), published 6/20/96, FR vol. 61, p. 31427.

(e) 29 CFR 1915.1004. alpha Naphthylamine, published 6/20/96, FR vol. 61, p. 31427.

(f) 29 CFR 1915.1005. (Reserved)

(g) 29 CFR 1915.1006. Methyl chloromethyl ether, published 6/20/96, FR vol. 61, p. 31427.

(h) 29 CFR 1915.1007. 3,3'-Dichlorobenzidene (and its salts), published 6/20/96, FR vol. 61, p. 31427.

(i) 29 CFR 1915.1008. bis Chloromethyl ether, published 6/20/96, FR vol. 61, p. 31427.

(j) 29 CFR 1915.1009. beta Naphthylamine, published 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1915.1010. Benzidine, published 6/20/96, FR vol. 61, p. 31427.

(l) 29 CFR 1915.1011. 4 Aminodiphenyl, published 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1915.1012. Ethyleneimine, published 6/20/96, FR vol. 61, p. 31427.

(n) 29 CFR 1915.1013. beta Propiolactone, published 6/20/96, FR vol. 61, p. 31427.

(o) 29 CFR 1915.1014. 2 Acetylaminofluorene, published 6/20/96, FR vol. 61, p. 31427.

(p) 29 CFR 1915.1015. 4 Dimethylaminoazobenzene, published 6/20/96, FR vol. 61, p. 31427.

(q) 29 CFR 1915.1016. N Nitrosodimethylamine, published 6/20/96, FR vol. 61, p. 31427.

(r) 29 CFR 1915.1017. Vinyl chloride, published 6/20/96, FR vol. 61, p. 31427.

(s) 29 CFR 1915.1018. Inorganic arsenic, published 6/20/96, FR vol. 61, p. 31427.

(t) 29 CFR 1915.1020 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, p. 31427.

(u) 29 CFR 1915.1025. Lead, published 6/20/96, FR vol. 61, p. 31427.

(v) 29 CFR 1915.1026 Chromium (VI), published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(w) 29 CFR 1915.1027. Cadmium, published 6/20/96, FR vol. 61, p. 31427.

(x) 29 CFR 1915.1028. Benzene, published 6/20/96, FR vol. 61, p. 31427.

(y) 29 CFR 1915.1030. Bloodborne pathogens, published 6/20/96, FR vol. 61, p. 31427.

(z) 29 CFR 1915.1044. 1,2 dibromo 3 chloropropane, published 6/20/96, FR vol. 61, p. 31427.

(aa) 29 CFR 1915.1045. Acrylonitrile, published 6/20/96, FR vol. 61, p. 31427.

(bb) 29 CFR 1915.1047. Ethylene oxide, published 6/20/96, FR vol. 61, p. 31427.

(cc) 29 CFR 1915.1048. Formaldehyde, published 6/20/96, FR vol. 61, p. 31427.

(dd) 29 CFR 1915.1050. Methylenedianiline, published 6/20/96, FR vol. 61, p. 31427.

(ee) 29 CFR 1915.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619.

(ff) 29 CFR 1915.1120 Access to employee exposure and medical records has been redesignated to §1915.1020.

NOTE: 29 CFR 1915.99, Hazard Communication was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.

(gg) 29 CFR 1915.1200. Hazard communication, published 6/20/96, FR vol. 61, p. 31427.

(hh) 29 CFR 1915.1450. Occupational exposure to hazardous chemicals in laboratories, published 6/20/96, FR vol. 61, p. 31427.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 19-1993, f. & cert. ef. 12-29-93; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 2-1995, f. & cert. ef. 1-25-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 4-2001, f. & cert. ef. 2-5-01; OSHA 4-2003, f. & cert. ef. 5-6-03; OSHA 8-2004, f. & cert. ef. 12-30-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 1-2007, f. 1-9-07 cert. ef. 1-16-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10

437-005-0002

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1917, in the Federal Register:

(1) Subdivision A:

(a) 29 CFR 1917.1 Scope and applicability, published 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1917.2 Definitions, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.3 Incorporation by reference, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(d) 29 CFR 1917.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp.75568-75589.

(2) Subdivision B:

(a) 29 CFR 1917.11 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40196.

(b) 29 CFR 1917.12 Slippery conditions, published 7/5/83, FR vol. 48, p. 30909.

(c) 29 CFR 1917.13 Slings, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(d) 29 CFR 1917.14 Stacking of cargo and pallets, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.15 Coopering, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.16 Line handling, published 7/5/83, FR vol. 48, p. 30909.

(g) 29 CFR 1917.17 Railroad facilities, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(h) 29 CFR 1917.18 Log handling, published 7/5/83, FR vol. 48, p. 30909.

(i) 29 CFR 1917.19 Movement of barges and rail cars, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.20 Interference with communications, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(k) 29 CFR 1917.21 Open fires, published 7/5/83, FR vol. 48, p. 30909.

(l) 29 CFR 1917.22 Hazardous cargo (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909.

(m) 29 CFR 1917.23 Hazardous atmospheres and substances (see 1917.2(p)), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(n) 29 CFR 1917.24 Carbon monoxide, published 7/25/97, FR vol. 62, no. 143, p. 40197.

(o) 29 CFR 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives (see 1917.2(p)), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(p) 29 CFR 1917.26 First aid and lifesaving facilities, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(q) 29 CFR 1917.27 Personnel, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(r) 29 CFR 1917.28 Hazard communication (see also §1917.1(a)(2)(vi)), published 7/25/97, FR vol. 62, no. 143, p. 40198.

ADMINISTRATIVE RULES

(s) 29 CFR 1917.29 Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

(t) 29 CFR 1917.30 Emergency action plans, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(3) Subdivision C:

(a) 29 CFR 1917.41 House falls, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.42 Miscellaneous auxiliary gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.43 Powered industrial trucks, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.44 General rules applicable to vehicles, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1917.45 Cranes and derricks (see also §1917.50), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1917.46 Load indicating devices, published 7/25/97, FR vol. 62, no. 143, p. 40199.

(g) 29 CFR 1917.47 Winches, published 7/5/83, FR vol. 48, p. 30909.

(h) 29 CFR 1917.48 Conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40200.

(i) 29 CFR 1917.49 Spouts, chutes, hoppers, bins, and associated equipment, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.50 Certification of marine terminal material handling devices (see also Mandatory Appendix IV, Part 1918 of this chapter), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.51 Hand tools, published 7/5/83, FR vol. 48, p. 30909.

(4) Subdivision D:

(a) 29 CFR 1917.70 General, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.71 Terminals handling intermodal container or roll on roll off operations, published 12/10/08, FR vol. 73, no. 238, pp. 75246-75290.

(c) 29 CFR 1917.72 (Reserved).

(d) 29 CFR 1917.73 Terminal facilities handling menhaden and similar species of fish (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(5) Subdivision E:

(a) 29 CFR 1917.91 Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(b) 29 CFR 1917.92 Respiratory protection, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.93 Head protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(d) 29 CFR 1917.94 Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(e) 29 CFR 1917.95 Other protective measures, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1917.96 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(6) Subdivision F:

(a) 29 CFR 1917.111 Maintenance and load limits, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.112 Guarding of edges, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.113 Clearance heights, published 7/5/83, FR vol. 48, p. 30909.

(d) 29 CFR 1917.114 Cargo doors, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.115 Platforms and skids, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.116 Elevators and escalators, published 7/13/84, FR vol. 49, p. 28551.

(g) 29 CFR 1917.117 Manlifts, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(h) 29 CFR 1917.118 Fixed ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(i) 29 CFR 1917.119 Portable ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1917.120 Fixed stairways, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.121 Spiral stairways, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(l) 29 CFR 1917.122 Employee exits, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(m) 29 CFR 1917.123 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40201.

(n) 29 CFR 1917.124 Dockboards (car and bridge plates), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(o) 29 CFR 1917.125 Guarding temporary hazards, published 7/5/83, FR vol. 48, p. 30909.

(p) 29 CFR 1917.126 River banks, published 7/25/97, FR vol. 62, no. 143, p. 40201.

(q) 29 CFR 1917.127 Sanitation, published 7/5/83, FR vol. 48, p. 30909.

(r) 29 CFR 1917.128 Signs and marking, published 7/5/83, FR vol. 48, p. 30909.

(7) Subdivision G:

(a) 29 CFR 1917.151 Machine guarding, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1917.152 Welding, cutting and heating (hot work) (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.153 Spray painting (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.154 Compressed air, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.155 Air receivers, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.156 Fuel handling and storage, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1917.157 Battery charging and changing, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1917.158 Prohibited operations, published 7/5/83, FR vol. 48, p. 30909.

These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09; OSHA 2-2010, f. & cert. ef. 2-25-10

437-005-0003

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1918, in the Federal Register:

(1) Subdivision A:

(a) 29 CFR 1918.1 Scope and application, published 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1918.2 Definitions, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.3 Incorporation by reference, published 9/9/09, FR vol. 74, no. 173, pp. 46350-46361.

(d) 29 CFR 1918.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2) Subdivision B: 29 CFR 1918.11 Gear certification (see also §§1918.2 and 1918.51), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(3) Subdivision C:

(a) 29 CFR 1918.21 General requirements, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.22 Gangways, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.23 Jacob's ladders, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.24 Fixed and portable ladders, published 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1918.25 Bridge plates and ramps (see also §1918.86), published 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.26 Access to barges and river towboats, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(4) Subdivision D:

(a) 29 CFR 1918.31 Hatch coverings, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.32 Stowed cargo and temporary landing surfaces, published 7/25/97, FR vol. 62, no. 143, p. 40202.

ADMINISTRATIVE RULES

- (c) 29 CFR 1918.33 Deck loads, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.34 Other decks, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.35 Open hatches, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (f) 29 CFR 1918.36 Weather deck rails, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (g) 29 CFR 1918.37 Barges, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (5) Subdivision E:
- (a) 29 CFR 1918.41 Coaming clearances, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (b) 29 CFR 1918.42 Hatch beam and pontoon bridles, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.43 Handling hatch beams and covers, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (6) Subdivision F:
- (a) 29 CFR 1918.51 General requirements (see also §1918.11 and Appendix III of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (b) 29 CFR 1918.52 Specific requirements, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.53 Cargo winches, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.54 Rigging gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (e) 29 CFR 1918.55 Cranes (see also §1918.11), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (7) Subdivision G:
- (a) 29 CFR 1918.61 General (see also Appendix IV of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (b) 29 CFR 1918.62 Miscellaneous auxiliary gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.63 Chutes, gravity conveyors and rollers, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.64 Powered conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.65 Mechanically powered vehicles used aboard vessels, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.66 Cranes and derricks other than vessel's gear, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (g) 29 CFR 1918.67 Notifying ship's officers before using certain equipment, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.68 Grounding, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (i) 29 CFR 1918.69 Tools, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (j) 29 CFR 1918.70–1918.80 (Reserved).
- (8) Subdivision H:
- (a) 29 CFR 1918.81 Slings, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.82 Building drafts, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (c) 29 CFR 1918.83 Stowed cargo, tiering and breaking down, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (d) 29 CFR 1918.84 Bulling cargo, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.85 Containerized cargo operations, published 12/10/08, FR vol. 73, no. 238, pp. 75246-75290.
- (f) 29 CFR 1918.86 Roll-on roll-off (Ro-Ro) operations (see also §1918.25), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (g) 29 CFR 1918.87 Ship's cargo elevators, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.88 Log operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (i) 29 CFR 1918.89 Handling hazardous cargo (see also §§1918.2 and 1918.99), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (9) Subdivision I:
- (a) 29 CFR 1918.90 Hazard communication (see also §1918.1(b)(4)), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (b) 29 CFR 1918.91 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (c) 29 CFR 1918.92 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40202.

- (d) 29 CFR 1918.93 Hazardous atmospheres and substances (see also §1918.2(j)), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (e) 29 CFR 1918.94 Ventilation and atmospheric conditions (see also §1918.2), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.95 Sanitation, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (g) 29 CFR 1918.96 Maintenance and repair work in the vicinity of longshoring operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (h) 29 CFR 1918.97 First aid and lifesaving facilities (see also Appendix V of this part), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (i) 29 CFR 1918.98 Qualifications of machinery operators and supervisory training, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (j) 29 CFR 1918.99 Retention of DOT markings, placards and labels, published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (k) 29 CFR 1918.100 Emergency action plans, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (10) Subdivision J:
- (a) 29 CFR 1918.101 Eye and face protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350–46361.
- (b) 29 CFR 1918.102 Respiratory protection, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (c) 29 CFR 1918.103 Head protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350–46361.
- (d) 29 CFR 1918.104 Foot protection, published 9/9/09, FR vol. 74, no. 173, pp. 46350–46361.
- (e) 29 CFR 1918.105 Other protective measures, published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (f) 29 CFR 1918.106 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.
- (11) Appendix I — Cargo Gear Register and Certificates (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (12) Appendix II — Tables for Selected Miscellaneous Auxiliary Gear (Mandatory), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (13) Appendix III — The Mechanics of Conventional Cargo Gear (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- (14) Appendix IV — Special Cargo Gear (Mandatory), published 6/30/00, FR vol. 65, no. 127, p. 40938.
- (15) Appendix V — Basic Elements of a First Aid Training Program (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.
- These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.
- Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09; OSHA 2-2010, f. & cert. ef. 2-25-10

437-007-0305

Head Protection

(1) Where there is potential for head injury from falling or flying objects, the employer must provide and require the use of head protection (hard hats) that comply with any of the following consensus standards:

(a) ANSI Z89.1-2003, "American National Standard for Industrial Head Protection;"

(b) ANSI Z89.1-1997, "American National Standard for Industrial Head Protection;" or

(c) ANSI Z89.1-1986, "American National Standard for Personnel Protection — Protective Headwear for Industrial Workers — Requirements."

NOTE: The Oregon OSHA Resource Center has copies for public review at 350 Winter Street NE, Salem OR 97309-0405.

EXCEPTION: Employees working in or under a vehicle cab or canopy are excluded from wearing a hard hat while in, or under, a vehicle.

(2) The employer must replace, at no cost to the employee, head protection (hard hat) that is no longer serviceable because of reasonable wear and tear.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2010, f. & cert. ef. 2-25-10

Department of Corrections Chapter 291

Rule Caption: Imposition of Administrative Sanctions/ Interventions on Transitional Leave Inmates.

ADMINISTRATIVE RULES

Adm. Order No.: DOC 2-2010
Filed with Sec. of State: 2-24-2010
Certified to be Effective: 2-24-10
Notice Publication Date: 11-1-2009
Rules Amended: 291-058-0046

Subject: Amendment of this rule is necessary to allow inmates on transitional leave from an Alternative Incarceration Program to receive jail as an administrative sanction to address violation of conditions of supervision.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-058-0046

Imposition of Administrative Sanctions/Interventions on Transitional Leave Inmates

(1) The process to impose administrative sanctions or interventions on inmates on short-term transitional leave shall be the same as for offenders on probation, parole, post-prison supervision, and compact cases with the restrictions listed in subsections (2) through (9) below.

(2) Only violations in the “System Response”; “Behavior Level 1”; and “Behavior Level 2” columns on the Administrative Sanctions Sanctioning Grid (Attachment A) shall be addressed with an administrative sanction or intervention response.

(3) Violations found to be in the “Behavior Level 3” of Attachment A shall be addressed in accordance with the Department’s rule on Short-Term Transitional Leaves, Emergency Leaves and Supervised Trips, specifically OAR 291-063-0036(2) and (3).

(4) If the indicated level of sanction response is considered to be insufficient to address the seriousness of the violation behavior, a higher level of sanction, up to and including returning the inmate to a Department of Corrections facility, may be imposed only after consultation and agreement of the unit supervisor.

(a) For revocation recommendations under this section, an inmate may be returned to the releasing institution only after consultation with the unit supervisor and the agreement of the institution functional unit manager or designee.

(b) For revocations, supervising officers shall use the process outlined in subsection (3) above.

(5) Section 3 Crime Seriousness/Criminal History Grid (1, 2, 3, 4C-4I, 5G-5I) on Attachment A shall be used for all inmates on short-term transitional leave regardless of where they would be placed on the Sentencing Guidelines Grid.

(6) The maximum number of units available for short-term transitional leave violations shall be determined by the process outlined in 291-058-0045 with the above listed limitations in subsections (2) and (3) above.

(7) Use of jail sanctions for inmates on 90-day transitional leave from an Alternative Incarceration Program (AIP) must be agreed upon by both Department of Corrections and the local county. A jail sanction cannot exceed three days. Credit for sanction units for work crew, community service, restitution or work release centers, and house arrest shall be distributed according to Attachment B.

(8) Sanction reports shall be forwarded to the releasing institution. The institution functional unit manager or designee shall have the override authority of other releasing authorities. The sanction report shall be submitted via FAX transmittal or electronically the same day the sanction is imposed. The institution functional unit manager or designee may override the given sanction at any time without time limitations.

(9) The Notice of Rights form (CD 1497) developed specifically for violations of short-term transitional leave shall be utilized when serving the Notice of Rights to the inmate.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 8-2009, f. & cert. ef. 5-29-09; DOC 16-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; DOC 2-2010, f. & cert. ef. 2-24-10

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Rule Caption: Active and Inactive Probation.

Adm. Order No.: DOC 3-2010
Filed with Sec. of State: 2-24-2010
Certified to be Effective: 2-24-10
Notice Publication Date: 12-1-2009

Rules Adopted: 291-206-0005, 291-206-0010, 291-206-0015, 291-206-0020, 291-206-0025, 291-206-0030

Subject: The 2009 Legislative Assembly enacted Oregon Laws 2009, chapter 660 (House Bill 3508). HB 3508 allows a person convicted of a felony and sentenced to probation under the rules of the Oregon Criminal Justice Commission to be eligible for a reduction in the period of active probation for compliance with the conditions of probation and the person’s supervision plan. The Department is required to adopt rules to carry out these provisions.

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: It is the policy of the Department of Corrections that offenders sentenced to probation may be considered 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.

(a) An offender may be placed on inactive probation supervision only after serving a minimum period of active probation supervision.

(b) An offender placed on inactive probation supervision may be returned to active supervision for violations of conditions of supervision when the inactive status is no longer in the offender’s best interest or the best interest of safety of 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

291-206-0010

Definitions

(1) Active 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) Inactive Supervision: Supervision in which the offender remains under supervision; however, there is no direct supervision by a supervising officer and no requirement of regular reporting. The general and special conditions of supervision shall remain in effect with the following exceptions:

(a) There are no additional supervision fees; and

(b) Special conditions specifically deleted by the court.

(c) The offender remains subject to arrest by a supervising officer for violation of conditions of supervision and return to active supervision at any time until expiration of the sentence. Sections (a) and (b) above do not apply to those offenders being supervised in another state via Interstate Compact. Those offenders remain on active probation supervision.

(4) Offender: Any person under supervision who is on parole, post prison supervision, transitional leave, local control or probation status. These rules apply to offenders sentenced to probation.

(5) Supervising Officer: A parole and probation officer.

(6) 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
Hist.: DOC 3-2010, f. & cert. ef. 2-24-10

291-206-0015

Period of Active Probation Supervision

(1) Notwithstanding subsections (2) and (3) of this section, 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;

ADMINISTRATIVE RULES

(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 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.

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

291-206-0020

Inactive Supervision

(1) Upon completion, or anytime after the completion, of the minimum period of active supervision as authorized in OAR 291-206-0015, the parole and probation officer responsible for supervising the offender or designee must request that the supervisory authority 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, if the offender has substantially complied with the conditions of probation, their supervision plan, and has paid any court ordered restitution or compensatory fine.

(2) When an offender is on inactive supervision or is being supervised via Interstate Compact, the general and special conditions of supervision shall remain in effect with the following exceptions for those offenders being supervised in the State of Oregon:

(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.

(3) There is no direct supervision by a supervising officer and no requirement for regular reporting. This does not apply to those being supervised via Interstate Compact;

(4) An offender requesting to leave the State of Oregon to reside in another state while on inactive supervision must go 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

291-206-0025

Return to Active Supervision

(1) An offender is 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 the inactive status is no longer in the offender's best interest or the best interest or safety 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 parole and probation 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 supervision status 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 inactive status is no longer in the offender's best interest or the best interest or safety of the community.

(5) When an offender is returned to active probation supervision status, all general conditions plus all previously imposed special conditions shall be in effect.

(6) Once returned to active probation supervision, the parole and probation officer may place the offender on inactive supervision when the offender has substantially complied with the conditions of probation, their supervision plan, or active supervision is no longer 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

291-206-0030

Sentence Expiration

(1) During the pendency of any violation proceedings, the running of the supervision period and the sentence is stayed, and the court has jurisdiction over the offender until the proceedings are resolved.

(2) These rules shall not preclude more than one renewal of active probation supervision; however, a renewal of active probation supervision may not exceed the supervision term imposed by the sentencing court under the rules of the Oregon Criminal Justice Commission and applicable laws.

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

Department of Environmental Quality

Chapter 340

Rule Caption: This rulemaking repeals state regulations that duplicate federal transportation conformity rules.

Adm. Order No.: DEQ 2-2010

Filed with Sec. of State: 3-5-2010

Certified to be Effective: 3-5-10

Notice Publication Date: 11-1-2009

Rules Amended: 340-200-0040, 340-252-0030, 340-252-0060, 340-252-0070, 340-252-0230

Rules Repealed: 340-252-0020, 340-252-0040, 340-252-0050, 340-252-0080, 340-252-0090, 340-252-0100, 340-252-0110, 340-252-0120, 340-252-0130, 340-252-0140, 340-252-0150, 340-252-0160, 340-252-0170, 340-252-0180, 340-252-0190, 340-252-0200, 340-252-0210, 340-252-0220, 340-252-0240, 340-252-0250, 340-252-0260, 340-252-0270, 340-252-0280, 340-252-0290

Subject: Transportation conformity is the process required by the Clean Air Act that limits vehicle pollution from new transportation projects to an amount that will not exceed national air quality standards. The rules establish requirements for transportation planning agencies including metro (in the Portland area), Oregon Department of Environmental Quality and several councils of government. Oregon was originally required to adopt the majority of the federal conformity rules as state regulations but that obligation was removed in 2008. This proposed rulemaking responds to the change by repealing state requirements that duplicate federal measures.

Rules Coordinator: Maggie Vandehey — (503) 229-6878

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on February 18 & 19, 2010.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

ADMINISTRATIVE RULES

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10

340-252-0030

Definitions

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and 340-200-0020 or 340-204-0010, the definition in this rule applies to this division. Terms used but not defined in this rule shall have the meaning given them by the CAA, Titles 23 and 49 U.S.C., other Environmental Protection Agency regulations, or other DOT regulations, in that order of priority.

(1) "Air pollution control agency" has the meaning given that term in section 176(c)(7)(E) of the FCAA.

(2) "Consult" or "consultation" means that the party or parties responsible for consultation as established in OAR 340-252-0060 shall provide all appropriate information necessary to making a conformity determination and, prior to making a conformity determination, except with respect to a transportation plan or TIP revision which merely adds or deletes exempt projects, consider the views of such parties and provide a timely, written response to those views. Such views and written responses shall be included in the record of decision or action.

(3) "DEQ" means the Department of Environmental Quality.

(4) "ODOT" means the Oregon Department of Transportation.

(5) "Policy level official" means elected officials, and management and senior staff level employees.

(6) "Regional air authority" means a regional air authority established pursuant to ORS 468A.105.

(7) "Scope" means "design scope" as defined in 40 CFR 93.101 when the term follows "design concept and..."

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as Adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0720; DEQ 2-2010, f. & cert. ef. 3-5-10

340-252-0060

Consultation

(1) General:

(a) This section provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Consultation shall be undertaken by MPOs, the Oregon Department of Transportation, affected local jurisdictions, and United States Department of Transportation before making conformity determinations and in developing regional transportation plans and transportation improvement programs. Consultation shall be undertaken by a lead planning agency, the Department of Environmental Quality, the Lane Regional Air Protection Agency (for actions in Lane County which are subject to this division), or any other regional air authority, and United States Environmental Protection Agency in developing applicable implementation plans.

(b) The lead planning agency, the Department of Environmental Quality, the Lane Regional Air Protection Agency for Lane County, or any other regional air authority, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development, amendment or revision (except administrative amendments or revisions) of an applicable implementation plan including, the motor vehicle emissions budget. The MPO, Oregon Department of Transportation, or any other party responsible for making conformity determinations pursuant to this rule, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any determinations of conformity under this rule. The project sponsor shall be responsible for assuring the conformity of FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under title 23.

(c) In addition to the lead agencies identified in subsection (b), other agencies entitled to participate in any interagency consultation process under OAR 340-252-0060 include the Oregon Department of Transportation, both headquarters and each affected regional or district office, each affected MPO, the Federal Highway Administration regional office in Portland and State division office in Salem, the Federal Transit Administration regional office, the Department of Environmental Quality, both headquarters and each affected regional office, any affected regional air authority, the United States Environmental Protection Agency, both headquarters and each affected regional or district office, and any other organization within the State responsible under State law for developing, submitting or implementing transportation-related provisions of an implementation plan, any local transit agency, and any city or county transportation or air quality agency.

(d) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

(A) The lead planning agency, the Department of Environmental Quality, the Lane Regional Air Protection Agency, or any other regional air authority, shall be responsible for developing:

- (i) Emissions inventories;
- (ii) Emissions budgets;
- (iii) Attainment and maintenance demonstrations;
- (iv) Control strategy implementation plan revisions; and
- (v) Updated motor vehicle emissions factors.

(B) Unless otherwise agreed to in a Memorandum of Understanding between the affected jurisdictions and the Department of Environmental Quality, the Department of Environmental Quality shall be responsible for developing the transportation control measures to be included in SIPs in nonattainment or maintenance areas, except Lane County.

(C) The Lane Regional Air Protection Agency shall be responsible for developing transportation control measures for PM10 in Lane County.

(D) The MPO shall be responsible for:

- (i) Developing transportation plans and TIPs, and making corresponding conformity determinations;
- (ii) Making conformity determinations for the entire nonattainment or maintenance area including areas beyond the boundaries of the MPO where no agreement is in effect as required by **23 CFR § 450.310(f)**;
- (iii) Monitoring regionally significant projects;
- (iv) Developing and evaluating TCMs in nonattainment and/or maintenance areas;
- (v) Providing technical and policy input on emissions budgets;
- (vi) Performing transportation modeling, regional emissions analyses and documenting timely implementation of TCMs as required for determining conformity;

ADMINISTRATIVE RULES

(vii) Distributing draft and final project environmental documents which have been prepared by the MPO to other agencies.

(E) The Oregon Department of Transportation shall be responsible for:

(i) Providing technical input on proposed revisions to motor vehicle emissions factors;

(ii) Distributing draft and final project environmental documents prepared by ODOT to other agencies;

(iii) Convening air quality technical review meetings on specific projects when requested by other agencies or, as needed;

(iv) Convening interagency consultation meetings required for purposes of making conformity determinations in non-metropolitan nonattainment or maintenance areas;

(v) Making conformity determinations in non-metropolitan nonattainment or maintenance area.

(F) The project sponsor shall be responsible for:

(i) Assuring project level conformity including, where required by this rule, localized air quality analysis;

(ii) Distributing draft and final project environmental documents prepared by the project sponsor to other agencies.

(G) The Federal Highway Administration and Federal Transit Administration shall be responsible for assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and **40 CFR § 93.105**.

(H) United State Environmental Protection Agency shall be responsible for:

(i) Reviewing and approving updated motor vehicle emissions factors; and

(ii) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(I) Any agency, by mutual agreement with another agency, may take on a role or responsibility assigned to that other agency under this rule.

(J) In metropolitan areas, any state or local transportation agency, or transit agency shall disclose regionally significant projects to the MPO standing committee established under OAR 340-252-0060(2)(b) in a timely manner.

(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to the MPO annually on or before July 1.

(iii) In the case of any regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of 40 CFR §93.121.

(K) In non-metropolitan areas, any state or local transportation agency, or transit agency shall disclose regionally significant projects to Oregon Department of Transportation in a timely manner.

(i) Such disclosure shall be made no later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to Oregon Department of Transportation as requested. Requests for disclosure shall be made in writing to any affected state or local transportation or transit agency.

(2) Interagency consultation: specific processes.

(a) State Implementation Plan development.

(A) It shall be the affirmative responsibility of the Department of Environmental Quality, the Lane Regional Air Protection Agency, or any other regional air authority with the responsibility for preparing or revising a State Implementation Plan, except for administrative amendments or revisions, to initiate the consultation process by notifying other participants and convening a working group made up of representatives of each affected agency in the consultation process including representatives of the public, as appropriate. Such working group shall be chaired by a representative of the convening agency, unless the group by consensus selects another chair. The working group shall make decisions by majority vote. Such working group shall begin consultation meetings early in the process of decision on the final SIP, and shall review drafts of the final SIP, the emissions budget, and major supporting documents, or appoint the representatives or agencies that will review such drafts. Such working group shall be made up of policy level officials, and shall be assisted by such technical committees or technical engineering, planning, public works, air quality, and administrative staff from the member agencies as the working group deems appropriate. The chair, or his/her designee, shall set the agenda for meetings and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(B) Regular consultation on development or amendment of an implementation plan shall include meetings of the working group at regularly scheduled intervals, no less frequently than quarterly. In addition, technical meetings shall be convened as necessary.

(C) Each lead agency with the responsibility for preparing the SIP subject to the interagency consultation process, shall confer through the working group process with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, consider the views of each such agency and respond to substantive comments in a timely, substantive written manner prior to making a recommendation to the Environmental Quality Commission for a final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(D) The working group may appoint subcommittees to address specific issues pertaining to SIP development. Any recommendations of a subcommittee shall be considered by the working group.

(E) Meetings of the working group shall be open to the public. The agency with the responsibility of preparing the SIP shall provide timely written notification of working group meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(b) Metropolitan Areas. There shall be a standing committee for purposes of consultation required under this rule by an MPO. The standing committee shall advise the MPO. The committee shall include representatives from state and regional air quality planning agencies and State and local transportation and transit agencies. The standing committee shall consult with the United States Environmental Protection Agency and the United States Department of Transportation. If not designated by committee bylaws, the standing committee shall select its chair by majority vote.

(A) For MPOs designated prior to the effective date of this rule, the following standing committees are designated for purposes of interagency consultation required by this rule:

(i) Lane Council of Governments: Transportation Planning Committee;

(ii) Salem-Keizer Area Transportation Study: Technical Advisory Committee;

(iii) Metro: Transportation Policy Alternatives Committee;

(iv) Rogue Valley Council of Governments: Technical Advisory Committee.

(B) Any MPO designated an air quality nonattainment or maintenance area subsequent to the effective date of this rule shall establish a standing committee to meet the requirements of this rule.

(C) The standing committee shall hold meetings at least quarterly. The standing committee shall make decisions by majority vote.

(D) The standing committee shall be responsible for consultation on:

(i) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis, in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel;

(ii) Determining whether a project's design concept and scope have changed significantly since the plan and TIP conformity determination;

ADMINISTRATIVE RULES

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by 40 CFR § 93.113 whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by 40 CFR § 93.123, projects located at sites in PM₁₀ or PM_{2.5} nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ or PM_{2.5} hot-spot analysis;

(vi) Forecasting vehicle miles traveled, and any amendments thereto;

(vii) Making a determination, as required by 40 CFR § 93.121, whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(viii) Determining whether the project sponsor or MPO has demonstrated that the requirements of 40 CFR § 93.116, 40 CFR § 93.118, and 40 CFR § 93.119 are satisfied without a particular mitigation or control measure, as provided in 40 CFR § 93.125;

(ix) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR § 93.104;

(x) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment or maintenance areas or air basins;

(xi) Assuring that plans for construction of regionally significant projects which are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed to the MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed;

(xii) The design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys);

(xiii) Development of transportation improvement programs;

(xiv) Development of regional transportation plans;

(xv) Establishing appropriate public participation opportunities for project-level conformity determinations required by this division, in the manner specified by **23 CFR Part 450**; and

(xvi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR § 93.126 and 40 CFR § 93.127.

(E) The chair of each standing committee, or his/her designee, shall set the agenda for all meetings. The chair of each standing committee shall assure that all agendas, and relevant documents and information are supplied to all participants in the consultation process in a timely manner prior to standing committee meetings which address any issues described in paragraph (2)(b)(D) of this rule.

(F) Such standing committees shall begin consultation meetings early in the process of decision on the final document, and shall review all drafts of the final document and major supporting documents. The standing committee shall consult with EPA and USDOT.

(G) The MPO shall confer with the standing committee and shall consult with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. The MPO shall provide draft conformity determinations to standing committee members and shall allow a minimum of 30 days for standing committee members to comment. The 30 day comment period for standing committee members may occur concurrently with the public comment period. The MPO shall respond to substantive comments raised by a standing committee member in a timely, substantive written manner at least 7 days prior to any final decision by the MPO on such document. Such views and written response shall be made part of the record of any decision or action.

(H) The standing committee may, where appropriate, appoint a subcommittee to develop recommendations for consideration by the full committee.

(I) Meetings of the standing committee shall be open to the public. The MPO shall provide timely written notification of standing committee meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(c) An MPO, or any other party responsible for developing Transportation Control Measures, shall consult with affected parties listed in subsection (1)(c) in developing TCMs for inclusion in an applicable implementation plan.

(d) Non-metropolitan areas.

(A) In non-metropolitan areas the following interagency consultation procedures shall apply, unless otherwise agreed to by the affected parties in a Memorandum of Understanding, or specified in an applicable implementation plan:

(B) In each non-metropolitan nonattainment or maintenance area the Oregon Department of Transportation shall facilitate a meeting of the affected agencies listed in subsection (1)(c) of this rule prior to making conformity determinations to:

(i) Determine which minor arterials or other transportation projects shall be considered "regionally significant";

(ii) Determine which projects have undergone significant changes in design concept and scope since the regional emissions analysis was performed;

(iii) Evaluate whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Make a determination, as required by 40 CFR § 93.113, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identify, as required by 40 CFR § 93.123 projects located at sites in PM₁₀ or PM_{2.5} nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ or PM_{2.5} hot-spot analysis;

(vi) Confer on the forecast of vehicle miles traveled, and any amendments thereto;

(vii) Determine whether the project sponsor has demonstrated that the requirements of 40 CFR § 93.116, 40 CFR § 93.118, and 40 CFR § 93.119 are satisfied without a particular mitigation or control measure, as provided in;

(viii) Evaluate events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR § 93.104;

(ix) Assure that plans for construction of regionally significant projects which are not Federal Highway Administration/Federal Transit Administration projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed on a regular basis, and assuring that any changes to those plans are immediately disclosed.

(x) Confer on the design, schedule, and funding of research and data collection efforts and transportation model development (e.g., household/travel transportation surveys).

(xi) Establish appropriate public participation opportunities for project-level conformity determinations required by this rule in the manner specified by **23 CFR Part 450**;

(xii) Provide notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR § 93.126 and 40 CFR § 93.127; and

(xiii) Choose conformity tests and methodologies for non-metropolitan nonattainment and maintenance areas, as required by 40 CFR § 93.109.

(C) The Oregon Department of Transportation shall consult with all other agencies identified under subsection (1)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. All draft regional conformity determinations as well as, supporting documentation shall be made available to agencies with an interest in the document and those agencies shall be given at least 30 days to sub-

ADMINISTRATIVE RULES

mit comments on the draft document. Oregon Department of Transportation shall respond to substantive comments received from other agencies in a timely, substantive written manner at least 7 days prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(D) Meetings hereby required shall be open to the public. Timely written notification of any meetings relating to conformity shall be provided to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(E) If no transportation projects are proposed for the upcoming fiscal year, there is no obligation to facilitate the annual meeting required by paragraphs (2)(d)(B) & (C) of this rule.

(F) The meetings required by paragraphs (2)(d)(B) & (C) of this rule may take place using telecommunications equipment, where appropriate.

(e) An MPO or Oregon Department of Transportation shall facilitate an annual statewide meeting, unless otherwise agreed upon by Oregon Department of Transportation, Oregon Department of Environmental Quality and the MPOs, of the affected agencies listed in subsection (1)(c) to review procedures for regional emissions and hot-spot modeling.

(A) The members of each agency shall annually jointly review the procedures used by affected MPOs and agencies to determine that the requirements of 40 CFR § 93.122 are being met by the appropriate agency.

(B) An MPO or Oregon Department of Transportation shall facilitate a statewide meeting of parties listed in subsection (1)(c) of this rule to receive comment on the United States Environmental Protection Agency guidelines on hot-spot modeling, to determine the adequacy of the guidelines, and to make recommendations for improved hot-spot modeling to the United States Environmental Protection Agency Regional Administrator. Oregon Department of Environmental Quality, Lane Regional Air Protection Agency, or any other regional air authority, may make recommendations for improved hot-spot modeling guidelines to the United States Environmental Protection Agency Regional Administrator with the concurrence of Oregon Department of Transportation. Oregon Department of Transportation may make recommendations for improved hot-spot modeling guidelines to the United States Environmental Protection Agency Regional Administrator with the concurrence of the affected air quality agency (e.g., Oregon Department of Environmental Quality, Lane Regional Air Protection Agency or any other regional air authority).

(C) The MPO or Oregon Department of Transportation shall determine whether the transportation modeling procedures are in compliance with the modeling requirements of 40 CFR § 93.122. The Oregon Department of Environmental Quality or Lane Regional Air Protection Agency (in Lane County), or any other regional air authority, shall determine whether the modeling procedures are in compliance with the air quality emissions modeling requirements of 40 CFR § 93.122.

(D) The affected agencies shall evaluate and choose a model (or models) and associated methods and assumptions to be used in Hot-Spot Analyses and regional emissions analyses.

(f) The Federal Highway Administration and Federal Transit Administration will, for any proposed or anticipated transportation improvement program (TIP) or transportation plan conformity determination, provide a draft conformity determination to the Environmental Protection Agency for review and comment. The Federal Highway Administration and Federal Transit Administration shall allow a minimum of 14 days for EPA to respond. The United States Department of Transportation shall respond in writing to any significant comments raised by the Environmental Protection Agency before making a final decision. In addition, where the Federal Highway Administration and Federal Transit Administration request any new or revised information to support a TIP or transportation plan conformity determination, The Federal Highway Administration and Federal Transit Administration shall either return the conformity determination for additional consultation under subsections (2)(b) or (2)(d) of this rule, or the Federal Highway Administration and Federal Transit Administration shall provide the new information to the agencies listed in subsection (1)(c) of this rule for review and comment. Where the Federal Highway Administration and Federal Transit Administration choose to provide the new or additional information to the affected agencies listed in subsection (1)(c), the Federal Highway Administration and Federal Transit Administration shall allow for a minimum of 14 days to respond to any new or revised supporting information; the United States Department of Transportation shall respond in writing to any significant comments raised by the agencies consulted on the new or revised supporting information before making a final decision.

(g) Each agency subject to an interagency consultation process under this rule (including any Federal agency) shall provide each final document

that is the product of such consultation process, together with all supporting information that has not been the subject of any previous consultation required by this rule, to each other agency that has participated in the consultation process within 14 days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

(h) It shall be the affirmative responsibility of the agency with the responsibility for preparing a transportation plan or TIP revision which merely adds or deletes exempt projects listed in OAR 40 CFR § 93.126 to initiate the process by notifying other participants early in the process of decision on the final document and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(i) A meeting that is scheduled or required for another purpose may be used for the purposes of consultation required by this rule if the conformity consultation purpose is identified in the public notice for the meeting.

(j) It shall be the affirmative responsibility of a project sponsor to consult with the affected transportation and air quality agencies prior to making a project level conformity determination required by this rule.

(3) Resolving conflicts.

(a) Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(b) A State agency, regional air authority, or MPO has 14 calendar days to appeal a determination of conformity, SIP submittal, or other decision under this division, to the Governor after the State agency, regional air authority, or MPO has been notified of the resolution of all comments on such proposed determination of conformity, SIP submittal, or decision. If an appeal is made to the Governor, the final conformity determination, SIP submittal, or policy decision must have the concurrence of the Governor. The appealing agency must provide notice of any appeal under this subsection to the lead agency. If an action is not appealed to the Governor within 14 days, the lead agency may proceed.

(c) The Governor may delegate the role of hearing any such appeal under this section and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the State air quality agency or any local air quality agency, the State department of transportation, a State transportation commission or board, the Environmental Quality Commission, any agency that has responsibility for only one of these functions, or an MPO.

(4) Public consultation procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of **23 CFR 450.316(b)**. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in **49 CFR 7.95**. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0760; DEQ 2-2010, f. & cert. ef. 3-5-10

340-252-0070

Timeframe of Conformity Determinations

Any election by an MPO to shorten the timeframe of a conformity determination under 40 CFR 93.106(d) requires approval of the Department of Environmental Quality or the Lane Regional Air Protection Agency, as applicable. A shortened timeframe may be appropriate, for example, when projected future emissions fail to meet a Motor Vehicle Emissions Budget

ADMINISTRATIVE RULES

(MVEB) due to calculation methods that are inconsistent with the methods used to determine the MVEB. Such circumstances may exist for example, when emissions estimation methods have changed from those used to establish the MVEB.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.035
Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0770; DEQ 2-2010, f. & cert. ef. 3-5-10

340-252-0230

Written Commitments

(1) In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the transportation plan or TIP, a Metropolitan Planning Organization or the Oregon Department of Transportation may not include emissions reduction credits from any control measures that are not included in the transportation plan or TIP and that do not require a regulatory action in the regional emissions analysis unless the Metropolitan Planning Organization, Oregon Department of Transportation or Federal Highway Administration/Federal Transit Administration obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities.

(2) In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, the Federal Highway Administration/Federal Transit Administration must obtain from the project sponsor or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on the transportation plan or TIP a Metropolitan Planning Organization or Oregon Department of Transportation must ensure any project-level mitigation or control measures are included in the project design concept and Scope and are appropriately identified in the regional emissions analysis. Prior to making a project-level conformity determination, written commitments must be obtained before such mitigation or control measures are used in a project-level hot-spot analysis.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.035
Hist.: DEQ 7-1995, f. & cert. ef. 3-29-95; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-1010; DEQ 2-2010, f. & cert. ef. 3-5-10

Department of Fish and Wildlife
Chapter 635

Rule Caption: Bonneville Pool Recreational Sturgeon Fishery Closes February 21, 2010.

Adm. Order No.: DFW 13-2010(Temp)

Filed with Sec. of State: 2-16-2010

Certified to be Effective: 2-21-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: Amended rule closes the non-Indian winter recreational fishery in the Bonneville Pool to further retention of white sturgeon, effective 12:01 a.m. Sunday February 21, 2010. Attainment of the pre-season harvest guideline for white sturgeon in the Bonneville Pool is expected to occur by the closure date and time. The Dalles and John Day pools remain open per permanent rule at this time. Rule revisions are consistent with the action taken February 10, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

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 Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam 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;

(b) May 9 through June 28; and

(c) July 2 through July 5 (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 8, June 29 through July 1, and from July 6 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) During the fishing period as identified in subsection (4)(c) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(9) Effective 12:01 a.m. Sunday, February 21, 2010 the retention of white sturgeon in the Bonneville Pool is prohibited. Sport retention of white sturgeon in The Dalles and John Day pools will remain in effect per the **2010 Oregon Sport Fishing Regulations**.

(10) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(11) 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

Rule Caption: Establish 2010 Seasons and Regulations for Game Mammals.

Adm. Order No.: DFW 14-2010

Filed with Sec. of State: 2-16-2010

Certified to be Effective: 3-1-10

Notice Publication Date: 8-1-2009

Rules Amended: 635-068-0000

Subject: Establish 2010 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, Division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2010 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2010 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 49-1998, f. & cert. ef. 6-22-98; FWC 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. 12-4-03, cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. 12-21-04, cert. ef. 3-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 131-2005, f. 12-1-05, cert. ef. 3-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 125-2006, f. 12-4-06, cert. ef. 3-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 116-2007, f. 10-31-07, cert. ef. 3-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 13-2009, f. 2-19-09, cert. ef. 3-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 14-2010, f. 2-16-10, cert. ef. 3-1-10

Rule Caption: 2010 Commercial Salmon and Sturgeon Fisheries for Blind Slough and Knappa Slough Select Areas.

Adm. Order No.: DFW 15-2010(Temp)

Filed with Sec. of State: 2-19-2010

Certified to be Effective: 2-21-10 thru 6-11-10

Notice Publication Date:

Rules Amended: 635-042-0160

Subject: Amended rule sets seasons, area boundaries and gear and catch restrictions for the harvest of Chinook salmon, white sturgeon, and shad for the non-Indian commercial winter and spring fisheries in the Blind Slough and Knappa Slough select areas. Modifications are consistent with the action taken February 18, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in Blind Slough and Knappa Slough in paragraph (B). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only: Sunday nights beginning Sunday, February 21 through Sunday, March 1, 2010 (2 nights); Wednesday and Sunday nights from March 3 through March 29, 2010 (8 nights); and Sunday night April 4 (1 night).

(B) Blind and Knappa Sloughs: Monday and Thursday nights beginning Thursday, April 15 through Friday, June 11, 2010 (17 nights).

(b) The fishing areas for the winter and springs seasons are:

(A) Blind Slough are those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the period from May 3 through June 11, 2010, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above in (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches.

(B) During the spring fishery, outlined above in (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches.

(2) 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 (1)(a)(A) and (1)(a)(B) the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10

Rule Caption: 2010 Commercial Salmon and Sturgeon Fisheries for Deep River Select Area of the Columbia River.

Adm. Order No.: DFW 16-2010(Temp)

Filed with Sec. of State: 2-19-2010

Certified to be Effective: 2-22-10 thru 6-10-10

Notice Publication Date:

Rules Amended: 635-042-0180

Subject: Amended rule sets season, area boundaries and gear and catch restrictions for the harvest of Chinook salmon, white sturgeon, and shad for the non-Indian commercial winter and spring fisheries

ADMINISTRATIVE RULES

in the Deep River select area of the Columbia River. Modifications are consistent with the action taken February 18, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

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 8, 2010 (14 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. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 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

Rule Caption: 2010 Commercial Salmon and Sturgeon Fisheries for Youngs Bay Select Area of the Columbia River.

Adm. Order No.: DFW 17-2010(Temp)

Filed with Sec. of State: 2-22-2010

Certified to be Effective: 2-22-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-042-0145

Subject: Amended rule sets seasons, area boundaries and gear and catch restrictions for the harvest of salmon, white sturgeon, and shad for the non-Indian commercial winter, spring, and summer fisheries in the Youngs Bay select area of the Columbia River. Modifications

are consistent with the action taken February 18, 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 March 5 (8 nights) starting at 6:00 p.m. to 6:00 a.m. (12 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 to 6:00 a.m. 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 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 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 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. & cert. ef. 8-22-79; FWC 28-1980, f. & cert. ef. 6-23-80; FWC 42-1980(Temp), f. & cert. ef. 8-22-80; FWC 30-1981, f. & cert. ef. 8-14-81; FWC 42-1981(Temp), f. & cert. ef. 11-5-81; FWC 54-1982, f. & cert. ef. 8-17-82; FWC 37-1983, f. & cert. ef. 8-18-83; FWC 61-1983(Temp), f. & cert. ef. 10-19-83; FWC 42-1984, f. & cert. ef. 8-20-84; FWC 39-1985, f. & cert. ef. 8-15-85; FWC 37-1986, f. & cert. ef. 8-11-86; FWC 72-1986(Temp), f. & cert. ef. 10-31-86; FWC 64-1987, f. & cert. 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. &

ADMINISTRATIVE RULES

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 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

Rule Caption: Treaty Indian Winter Gillnet Season Closes in the John Day and The Dalles Pools.

Adm. Order No.: DFW 18-2010(Temp)

Filed with Sec. of State: 2-24-2010

Certified to be Effective: 2-26-10 thru 4-1-10

Notice Publication Date:

Rules Amended: 635-041-0065

Rules Suspended: 635-041-0065(T)

Subject: Amended rule closes the Treaty Indian winter season gillnet fishery in the John Day Pool effective at 6:00 p.m. on February 26, 2010 and in The Dalles Pool effective at 6:00 p.m. on March 3, 2010 when the pre-season harvest guidelines for white sturgeon harvest are projected to be met. The platform/hook-and-line fishery in the Bonneville, The Dalles, and John Day pools will continue as previously scheduled, however, white sturgeon may not be sold but those landed between 38 and 54 inches in fork length may be retained for subsistence.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, white sturgeon, walleye, catfish, bass, yellow perch and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 12 noon February 1 to 6:00 p.m. March 21, 2010.

(a) The winter gillnet fishery in the Bonneville Pool closes at 6:00 p.m. Thursday, February 11, 2010. The platform/hook-and-line fishery in the Bonneville Pool will continue as previously scheduled except that sturgeon may not be sold, but sturgeon between 38 and 54 inches in fork length

may be retained for subsistence. Chinook salmon may not be sold but may be retained for ceremonial and subsistence use.

(b) The winter gillnet fishery in the John Day Pool closes at 6:00 p.m. Friday, February 26, 2010. The platform/hook-and-line fishery in the John Day Pool will continue as previously scheduled except that sturgeon may not be sold, but sturgeon between 38 and 54 inches in fork length may be retained for subsistence use.

(c) The winter gillnet fishery in The Dalles Pool closes at 6:00 p.m. Wednesday, March 3, 2010. The platform/hook-and-line fishery in The Dalles Pool will continue as previously scheduled except that sturgeon may not be sold, but sturgeon between 38 and 54 inches in fork length may be retained for subsistence use.

(d) Salmon, steelhead, white sturgeon, walleye, shad, carp, catfish, bass and yellow perch landed during an open commercial fishing period may be sold at any time.

(e) Live release of all oversize and undersize sturgeon is required.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon 43–54 inches in fork length in The Dalles and John Day pools and white sturgeon 38–54 inches in fork length in the Bonneville Pool may be sold or kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

(6) Sales of fish caught in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River, including the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods, subject to restrictions as specified in sections (1) through (5) above, except that:

(a) Steelhead, walleye, carp, shad, catfish, bass and yellow perch caught from the Washington shore downstream of Bonneville Dam to Beacon Rock may be sold or retained for subsistence;

(b) White sturgeon caught below Bonneville Dam must be released;

(c) Dates of allowable sales are from 6:00 a.m. February 2 through 6:00 p.m. March 21, 2010. Sales may not occur on USACE property.

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. 3-30-1979, Renumbered from 635-035-0065; 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 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; 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 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; 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 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; 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 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10

Rule Caption: 2010 Recreational Spring Chinook and White Sturgeon Seasons in the Columbia River.

ADMINISTRATIVE RULES

Adm. Order No.: DFW 19-2010(Temp)

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 3-1-10 thru 8-27-10

Notice Publication Date:

Rules Amended: 635-023-0095, 635-023-0125

Rules Suspended: 635-023-0095(T)

Subject: These rule modifications set the 2010 Columbia River spring Chinook and white sturgeon seasons regulations with a description of areas, dates, and bag limits for recreational harvest of adipose fin-clipped Chinook salmon, adipose fin-clipped steelhead, white sturgeon and shad. Revisions are consistent with action taken February 18, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

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 River upstream to Willamette Falls (including 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.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 21, 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) The Columbia River upstream from Bonneville Dam:

(a) Effective 12:01 a.m. Sunday, February 21, 2010 the retention of white sturgeon in the Bonneville Pool is prohibited.

(b) Effective 12:01 a.m. Monday, March 1, 2010 the retention of white sturgeon in John Day Pool is prohibited.

(c) Sport retention of white sturgeon in The Dalles Pool will remain in effect per the 2010 Oregon Sport Fishing Regulations.

(9) Angling for sturgeon is prohibited from 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 the Washington shore from May 1 through August 31, from Highway 395 Bridge upstream to McNary Dam May 1 through July 31, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(10) 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

635-023-0125

Spring Sport Fishery

(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 Columbia River is open:

(a) From January 1 through April 18 except closed to salmon and steelhead angling on Tuesdays: March 9, 16, 23 and 30, from the mouth at Buoy 10 upstream to the I-5 Bridge;

(b) From March 1 through March 14, angling from a boat is allowed from the I-5 Bridge upstream to the I 205 Bridge and bank angling is allowed from the I-5 Bridge upstream to Bonneville Dam, except closed to salmon and steelhead angling on Tuesday, March 9.

(c) From March 18 to April 3, angling from a boat is allowed from the I-5 Bridge upstream to the I-205 Bridge and bank angling is allowed from the I-5 Bridge upstream to Bonneville Dam, three days per week (Thursday to Saturday); and

(d) From March 16 through May 31, from the Tower Island power lines upstream to McNary Dam plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines, 7 days per week.

(3) The following restrictions apply to the seasons described in section 2(a) through (2)(d) above:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) Effective March 1 to May 15, the mainstem Columbia River will be open for retention of adipose fin-clipped steelhead and shad only during days and seasons open for retention of adipose fin-clipped spring Chinook.

(c) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(d) Effective March 1, for the area downstream of Bonneville Dam, catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day, only one of which may be a Chinook. Catch limits for jacks and all other permanent regulations remain in effect as per the **2010 Oregon Sport Fishing Regulations**.

(e) Effective March 1, the daily bag limit in Oregon's Select Areas may not include more than one adipose fin-clipped Chinook when the recreational fishery in the mainstem Columbia River below the I-5 Bridge is open to retention of Chinook.

(4) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15 it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert.

ADMINISTRATIVE RULES

ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10

Rule Caption: Commercial Salmon and Sturgeon Seasons for Youngs Bay Select Area of the Columbia River Amended.

Adm. Order No.: DFW 20-2010(Temp)

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 2-26-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-042-0145

Rules Suspended: 635-042-0145(T)

Subject: The rule amendments modify start times for and length of some of the fishing periods previously authorized for the non-Indian commercial gillnet fisheries in the Youngs Bay Select Area. Modifications are to the time period from February 26 through March 5, 2010. Modifications are consistent with the action taken February 25, 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 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 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 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 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

Rule Caption: Amend rules to add Missouri to cervid part importation ban.

Adm. Order No.: DFW 21-2010(Temp)

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 2-26-10 thru 8-24-10

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Amended: 635-065-0765

Subject: This temporary rule amends rules to add Missouri to the list of state from 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 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)(A)–(D) 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, 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, f. & cert. ef. 1-25-10 thru 7-24-10; DFW 21-2010(Temp), f. & cert. ef. 2-26-10 thru 8-24-10

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Rule Caption: Establish 2010 Seasons and regulations for Game Mammals.

ADMINISTRATIVE RULES

Adm. Order No.: DFW 22-2010
Filed with Sec. of State: 3-1-2010
Certified to be Effective: 4-1-10
Notice Publication Date: 8-1-2009

Rules Amended: 635-070-0000, 635-071-0000

Subject: Establish 2010 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled “2010 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2010 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. & cert. ef. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 131-2004, f. & cert. ef. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. & cert. ef. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. & cert. ef. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 31-2009, f. & cert. ef. 3-23-09, cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 22-2010, f. & cert. ef. 3-1-10, cert. ef. 4-1-10

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled “2010 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2010 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. & cert. ef. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. & cert. ef. 12-1-05, cert. ef. 4-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. & cert. ef. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. &

cert. ef. 6-14-07; DFW 115-2007, f. & cert. ef. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 31-2009, f. & cert. ef. 3-23-09, cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 22-2010, f. & cert. ef. 3-1-10, cert. ef. 4-1-10

Rule Caption: 2010 Recreational Spring Chinook Seasons in the Columbia River.

Adm. Order No.: DFW 23-2010(Temp)

Filed with Sec. of State: 3-2-2010

Certified to be Effective: 3-2-10 thru 8-27-10

Notice Publication Date:

Rules Amended: 635-023-0125

Rules Suspended: 635-023-0125(T)

Subject: These rule modifications correct an unintended omission in the 2010 Columbia River spring Chinook season regulations with-in a description of areas and dates for recreational harvest of adipose fin-clipped Chinook salmon. Revisions are consistent with action taken February 18, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0125

Spring Sport Fishery

(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 Columbia River is open:

(a) From January 1 through April 18 except closed to salmon and steelhead angling on Tuesdays: March 9, 16, 23 and 30, from the mouth at Buoy 10 upstream to the I-5 Bridge;

(b) From March 1 through March 14, angling from a boat is allowed from the I-5 Bridge upstream to the I 205 Bridge and bank angling is allowed from the I-5 Bridge upstream to Bonneville Dam, except closed to salmon and steelhead angling on Tuesday, March 9.

(c) From March 18 to April 3, angling from a boat is allowed from the I-5 Bridge upstream to the I 205 Bridge and bank angling is allowed from the I-5 Bridge upstream to Bonneville Dam, three days per week (Thursday to Saturday); and

(d) From March 16 through May 31, from the Tower Island power lines upstream to McNary Dam plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines, 7 days per week.

(3) The following restrictions apply to the seasons described in section 2(a) through 2(d) above:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) Effective March 1 to May 15, the mainstem Columbia River, downstream of Bonneville Dam, will be open for retention of adipose fin-clipped steelhead and shad only during days and seasons open for retention of adipose fin-clipped spring Chinook.

(c) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(d) Effective March 1, for the area downstream of Bonneville Dam, catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day, only one of which may be a Chinook. Catch limits for jacks and all other permanent regulations remain in effect as per the **2010 Oregon Sport Fishing Regulations**.

(e) Effective March 1, the daily bag limit in Oregon’s Select Areas may not include more than one adipose fin-clipped Chinook when the recreational fishery in the mainstem Columbia River below the I-5 Bridge is open to retention of Chinook.

(4) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15 it is *unlawful* when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. & cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. & cert. ef. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. & cert. ef. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. &

ADMINISTRATIVE RULES

9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10

Rule Caption: Columbia River Zone 6 Treaty Indian Commercial Platform/Hook-and-line Season Closes.

Adm. Order No.: DFW 24-2010(Temp)

Filed with Sec. of State: 3-2-2010

Certified to be Effective: 3-3-10 thru 4-1-10

Notice Publication Date:

Rules Amended: 635-041-0065

Rules Suspended: 635-041-0065(T)

Subject: At the request of the Columbia River Treaty Tribes, this amended rule closes the Treaty Indian winter commercial platform/hook-and-line season in the Columbia River above Bonneville Dam and the Yakama Nation fishery down-stream of Bonneville Dam, effective at 6:00 p.m. on Wednesday, March 3, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, white sturgeon, walleye, catfish, bass, yellow perch and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 12 noon February 1 to 6:00 p.m. March 3, 2010.

(a) The winter gillnet fishery in the Bonneville Pool closes at 6:00 p.m. Thursday, February 11, 2010. The commercial platform/hook-and-line fishery in the Bonneville Pool will close at 6:00 p.m. Wednesday, March 3, 2010. Sturgeon between 38 and 54 inches in fork length may be retained for subsistence use. Chinook salmon may not be sold but may be retained for ceremonial and subsistence use.

(b) The winter gillnet fishery in the John Day Pool closes at 6:00 p.m. Friday, February 26, 2010. The commercial platform/hook-and-line fishery in the John Day Pool will close at 6:00 p.m. Wednesday, March 3, 2010. Sturgeon between 38 and 54 inches in fork length may be retained for subsistence use.

(c) The winter gillnet and the platform/hook-and-line commercial fisheries in The Dalles Pool close at 6:00 p.m. Wednesday, March 3, 2010 except that sturgeon between 38 and 54 inches in fork length may be retained for subsistence use.

(d) Salmon, steelhead, white sturgeon, walleye, shad, carp, catfish, bass and yellow perch landed during an open commercial fishing period may be sold at any time.

(e) Live release of all oversize and undersize sturgeon is required.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon 43 54 inches in fork length in The Dalles and John Day pools and white sturgeon 38 54 inches in fork length in the Bonneville Pool may be sold or kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

(6) Sales of fish caught before 6:00 p.m. March 3, 2010 in Yakama Nation tributary fisheries in the Klickitat River; Wind River; Drano Lake/Little White Salmon River; and Big White Salmon River, including the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are allowed subject to restrictions as specified in sections (1) through (5) above, except that:

(a) Steelhead, walleye, carp, shad, catfish, bass and yellow perch caught from the Washington shore downstream of Bonneville Dam to

Beacon Rock after 6:00 p.m. March 3, 2010 may not be sold or retained for subsistence;

(b) White sturgeon caught below Bonneville Dam must be released;

(c) Dates of allowable sales are from 6:00 a.m. February 2 through 6:00 p.m. March 3, 2010. Sales may not occur on USACE property.

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. 3-30-1979, Renumbered from 635-035-0065; 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 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; 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 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; 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 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-2-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; 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 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-14-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10

Rule Caption: Inseason Actions Implemented By the Federal Government for Commercial Groundfish Fisheries

Adm. Order No.: DFW 25-2010(Temp)

Filed with Sec. of State: 3-3-2010

Certified to be Effective: 3-3-10 thru 8-29-10

Notice Publication Date:

Rules Amended: 635-004-0019

Subject: Amended rule adopts federal changes to commercial, recreational and tribal management measures for the Pacific Coast groundfish fishery effective at 0001 hours (local time) February 26, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0019

Inclusions and Modifications

(1) OAR Chapter 635, Division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.**

(2) **The Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G,** provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations.**

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service, Northwest Region, Public Notice NMFS-SEA-10-02, dated February 24, 2010, announced changes to commercial, recreational and tribal management measures for the Pacific Coast groundfish fishery effective at 0001 hours (local time) February 26, 2010 including, but not limited to, changes to cumulative trip limits.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

ADMINISTRATIVE RULES

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), f. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 29-2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09; DFW 136-2009, f. 10-28-09 thru 12-31-09; DFW 138-2009(Temp), f. & cert. ef. 11-2-09 thru 12-31-09; Administrative correction 1-25-10; DFW 25-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10

Rule Caption: Amend rules related to purchasing deer, elk and spring bear tags after the tag sale deadline.

Adm. Order No.: DFW 26-2010(Temp)

Filed with Sec. of State: 3-3-2010

Certified to be Effective: 3-3-10 thru 8-29-10

Notice Publication Date:

Rules Amended: 635-065-0015

Subject: Amend rules to allow the department to sell 2009 buck/deer, elk or 2010 spring bear tags after the tag sale deadline. The hunter must provide the Department with a written affidavit certifying that the person has not yet hunted during the season for which the tag is sought.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-065-0015

General Tag Requirements and Limits

(1) **Big Game Tags:** Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

(a) One valid general season black bear tag;

(b) One valid additional general black bear tag valid in management units 20-30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid eastern additional general cougar (mountain lion) tag;

(g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in OAR 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)–(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag;

(5) Except as provided in OAR chapter 635, division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) One valid Coast First Season elk tag;

(c) One valid Coast Second Season elk tag;

(d) One valid Rocky Mountain elk - first season tag,

(e) One valid Rocky Mountain elk - second season tag;

(f) One valid elk bow tag;

(g) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(8) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(9) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(10) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception:

(a) Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the department.

(b) Notwithstanding the deadlines for tag purchases provided by rule and in the hunting regulation synopses, any person who qualifies to purchase a 2009 buck/deer or elk tag with an open season from March 3 through March 31, 2010, or a 2010 spring bear tag but fails to make the purchase by the deadline, may purchase the tag late if the person:

(A) Submits a written affidavit certifying that the person has not yet hunted during the season for which the tag is sought to the Department's Licensing Services Office;

(B) The request must be received by the Department before the end of the season for the particular tag; and

(C) In addition to the usual tag fee, pays the Department the fee of:

(i) \$6.50 for a duplicate 2009 buck/deer or elk tag;

(ii) \$12.50 (plus a \$2.00 license agent fee) for a duplicate residents 2010 spring bear tag or;

(iii) \$15.00 (plus a \$2.00 license agent fee) for a duplicate non residents 2010 spring bear tag.

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 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp) f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 66-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 106-2009(Temp), f. & cert. ef. 9-2-09 thru 3-1-10; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 26-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10

Rule Caption: Hood River Spring Chinook Sport Fishery.

Adm. Order No.: DFW 27-2010(Temp)

Filed with Sec. of State: 3-8-2010

Certified to be Effective: 4-15-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-018-0090

Rules Suspended: 635-018-0090(T)

Subject: Amended rule allows the sport harvest of adipose fin-clipped spring Chinook salmon in the Hood River beginning April 15, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2010 Oregon Sport Fishing Regulations** provide requirements for the Central 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 Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead, and adipose fin-clipped Chinook salmon from April 1 through July 31, 2010.

(a) The catch limit is two adult adipose fin-clipped salmon and five adipose fin-clipped jack salmon per day. All non-adipose fin-clipped Chinook salmon must be released unharmed.

(b) It is unlawful to continue angling from Sherars Falls downstream to the upper railroad trestle after taking a daily bag limit of two adult Chinook salmon.

ADMINISTRATIVE RULES

(3) The Hood River from the mouth to Powderdale Dam is open to angling for adipose fin-clipped Chinook salmon from April 15 through June 30, 2010.

(a) The catch limit for Chinook salmon is two adipose fin-clipped adults and five adipose fin-clipped jacks per day. All salmon that have not been adipose fin-clipped must be released unharmed.

(b) All other catch limits and restrictions remain unchanged from those listed for Hood River in the 2010 Oregon Sport Fishing Regulations.

[Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. & cert. ef. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10

Rule Caption: Close Recreational and Commercial Smelt Harvest from March 11 through March 31, 2010.

Adm. Order No.: DFW 28-2010(Temp)

Filed with Sec. of State: 3-9-2010

Certified to be Effective: 3-11-10 thru 3-31-10

Notice Publication Date:

Rules Amended: 635-023-0090, 635-042-0130

Rules Suspended: 635-023-0090(T), 635-042-0130(T)

Subject: Amended rules close the recreational and commercial smelt fishing season in the Columbia River below Bonneville Dam for a period from March 11 through March 31, 2010. Revisions are consistent with the action taken March 8, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0090

Inclusions and Modifications

(1) **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 Columbia River, Zones 1 thru 5, is open to the retention of smelt 7 days a week, 24-hours a day, through March 10, 2010 and from April 1 through December 31, 2010 with the following restrictions:

- Daily catch limit of first 10 pounds per day;
- A separate container must be used for each dipper; and
- An angling license is not required.

(d) No smelt may be harvested from 12:01 a.m. Thursday March 11 through Wednesday March 31, 2010.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02 cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; 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 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10

635-042-0130

Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River in Zones 1 through 5, except those waters of Zone 2 upstream of the markers at USCG navigation marker #16 in Deep River; those waters upstream of the outer most uplands at the mouth of the Grays River; and those waters upstream of the outer most uplands at the mouth of the Elochoman River, during the following times: Mondays and Thursdays from 7:00 a.m. to 2:00 p.m. (7 hrs.) during the period from January 1 through March 10. The commercial Columbia River mainstem smelt fish-

ADMINISTRATIVE RULES

ery is closed effective 12:01 a.m. Thursday March 11 through Wednesday March 31, 2010.

(2) It is *unlawful* to use any gear other than those listed below for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is *unlawful* to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & cert. 1-30-85; FWC 79-1986(Temp), f. & cert. 12-22-86; FWC 2-1987, f. & cert. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 125-2007(Temp), f. 11-29-07, cert. ef. 12-1-07 thru 5-28-08; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 20-2009, f. & cert. ef. 2-26-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 10-2010(Temp), f. 2-4-10, cert. ef. 2-8-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10

Rule Caption: Commercial Salmon and Sturgeon Fisheries for Tongue Point Basin and South Channel Select Areas.

Adm. Order No.: DFW 29-2010(Temp)

Filed with Sec. of State: 3-9-2010

Certified to be Effective: 4-19-10 thru 6-12-10

Notice Publication Date:

Rules Amended: 635-042-0170

Subject: Amended rule sets seasons, area boundaries and gear and catch restrictions for the harvest of Chinook salmon, white sturgeon, and shad for the non-Indian commercial winter and spring fisheries in the Tongue Point Basin and South Channel select areas of the Columbia River. Modifications are consistent with the action taken February 18, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0170

Tongue Point Basin and South Channel

(1) Tongue Point includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island (new spring lower dead-line), a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island due westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy "7" thence to a marker on the southwest end of Lois Island upstream to an upper boundary

line from a marker on Settler Point northwesterly to the flashing red USCG marker "10" thence northwesterly to a marker on Burnside Island defining the terminus of South Channel.

(3)(a) Salmon, shad and white sturgeon may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(b) Spring Season: Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. (12 hours) beginning Monday, April 19 through Friday, June 11, 2010 (16 nights).

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches. While fishing during the seasons described in this rule, gillnets up to 250 fathoms in length may be stored on boats.

(5) 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 section (3)(a) above, 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 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 76-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 44-2008(Temp), f. 4-25-08, cert. ef. 4-28-08 thru 10-24-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 29-2010(Temp), f. 3-9-10, cert. ef. 4-19-10 thru 6-12-10

Rule Caption: Open Periods for Youngs Bay Select Area Commercial Fisheries Modified.

Adm. Order No.: DFW 30-2010(Temp)

Filed with Sec. of State: 3-11-2010

Certified to be Effective: 3-14-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-042-0145

Rules Suspended: 635-042-0145(T)

Subject: Amended rule modifies seasons from previously adopted open times to provide additional harvest opportunities in the non-Indian commercial winter and spring fisheries by extending the winter season in the Youngs Bay select area of the Columbia River. Modifications are consistent with the action taken February 18, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

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 March 5 (8 nights) starting at 6:00 p.m. to 6:00 a.m. (12 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 to 6:00 a.m. Thursday March 11, 2010 (12 hours); 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 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 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 21 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. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; FWC 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; FWC 14-1998, f. & cert. ef. 3-3-98; FWC 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; FWC 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; FWC 67-1998, f. & cert. ef. 8-24-98; FWC 10-1999, f. & cert. ef. 2-26-99; FWC 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; FWC 55-1999, f. & cert. ef. 8-12-99; FWC 9-2000, f. & cert. ef. 2-25-00; FWC 42-2000, f. & cert.

ef. 8-3-00; 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

Rule Caption: Establish 2010 Seasons and regulations for Game Mammals.

Adm. Order No.: DFW 31-2010

Filed with Sec. of State: 3-12-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 8-1-2009

Rules Amended: 635-070-0000, 635-071-0000

Subject: Establish 2010 hunting regulations for game mammals, including season dates, location of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated into OAR Chapter 635, Division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2010 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2010 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

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

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

ADMINISTRATIVE RULES

Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 31-2009, f. 3-23-09, cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 22-2010, f. 3-1-10, cert. ef. 4-1-10; DFW 31-2010, f. 3-12-10, cert. ef. 4-1-10

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "2010 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2010 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 31-2009, f. 3-23-09, cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 22-2010, f. 3-1-10, cert. ef. 4-1-10; DFW 31-2010, f. 3-12-10, cert. ef. 4-1-10

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

Adm. Order No.: DFW 32-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 2-1-2010

Rules Adopted: 635-011-0170

Rules Amended: 635-004-0005, 635-004-0009, 635-004-0016, 635-039-0080, 635-039-0085

Subject: The adopted rule makes sport fishing regulations consistent with commercial rules and federal rules which prohibit the taking of green sturgeon (*Acipenser medirostris*) at all times and in all waters of the state. Modifications to commercial Pacific sardine harvest specifications and sport Pacific halibut regulations for 2010 conform to 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**), latest Vol. and No. when available 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 and 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

635-004-0009

Halibut Seasons

The Pacific halibut commercial seasons in Oregon are 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, to the extent they are consistent with **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996)**, latest Vol. and No. when available 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

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

635-011-0170

Green Sturgeon

It is *unlawful* to take green sturgeon (*Acipenser medirostris*) for sport purposes at all times and in all waters of the state.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 32-2010, f. & cert. ef. 3-15-10

635-039-0080

Purpose and Scope

(1) The purpose of division 39 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 39 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

ADMINISTRATIVE RULES

division 11 and division 39 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 and (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), latest Vol. and No.** when available 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

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 39 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)** latest Vol. and No. when available as amended by Federal Regulations. Therefore, persons must consult the Federal Regulations in addition to division 39 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

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Rule Caption: Oregon Terminal Area and Ocean Sport Salmon Fisheries to Remain Closed.

Adm. Order No.: DFW 33-2010(Temp)

Filed with Sec. of State: 3-12-2010

Certified to be Effective: 3-15-10 thru 9-10-10

Notice Publication Date:

Rules Amended: 635-013-0009

Subject: Amended rule keeps closed all Oregon ocean sport salmon fisheries previously scheduled to open on March 15, 2010. Rule modifications are consistent with action taken by the National Marine

Fisheries Service (NMFS), in consultation with the Pacific Fishery Management Council (PFMC).

Rules Coordinator: Therese Kucera—(503) 947-6033

635-013-0009

Tillamook Terminal Area Ocean Fishery

(1) In addition to the open seasons prescribed in OAR 635-013-0004 there are open seasons for chinook salmon in the areas described in Sections (2) and (3) of this rule.

(2) The Pacific Ocean waters inside an area south of Twin Rocks (45°35'54" N. Lat.) and north of Pyramid Rock (45°29'48" N. Lat.) and seaward three nautical miles offshore are open for chinook salmon September 1 through November 15.

(3) A rectangular area offshore is restricted to retention of fin-clipped chinook salmon during any authorized ocean salmon seasons from May 1 through July 31. This rectangular area extends from twin Rocks (45°35'54" N. Lat.) to Pyramid Rock (45°29'48" N. Lat.) inside the 15 fathom depth contour.

(4) During the open season for adipose fin-clipped coho salmon in the ocean, the Terminal Area and the rectangular Control Zone described in sections (2) and (3) of this rule are open to angling for salmon consistent with federal sport salmon management measures for the area from Cape Falcon to Humbug Mountain.

(5) During the period August 1–December 31, in the area described in sections (2) and (3), no more than two adult salmon may be retained per day, no more than four adult chinook salmon may be retained in any seven consecutive days, and no more than 10 adult chinook salmon may be retained per season. Adult chinook salmon catch limits include, in aggregate, salmon taken in Tillamook, Nehalem, and Nestucca bays and tributaries (see OAR 635-014-0090). For purposes of this rule, adult salmon are chinook having a length greater than 24 inches.

(6) No more than two single-point, single-shank barbless hooks are required in the ocean adipose fin-clipped coho salmon fishery and in the ocean outside the Terminal Area at all times.

Stat. Auth.: ORS 496.138, 496.146, & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 45-1983(Temp), f. & ef. 9-16-84; FWC 57-1984(Temp), f. & ef. 9-15-84; FWC 64-1984(Temp), f. & ef. 9-21-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; Administrative correction 1-23-09; DFW 27-2009(Temp), f. 3-11-09, cert. ef. 3-15-09 thru 9-10-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; Administrative correction 1-25-10; DFW 33-2010(Temp), f. 3-12-10, cert. ef. 3-15-10 thru 9-10-10

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Department of Human Services, Addictions and Mental Health Division: Addiction Services Chapter 415

Rule Caption: Revise and Integrate Regulations for the Provision of Addictions and Mental Health Services and Supports.

Adm. Order No.: ADS 1-2010

Filed with Sec. of State: 3-4-2010

Certified to be Effective: 3-4-10

Notice Publication Date: 9-1-2009

Rules Repealed: 415-051-0000, 415-051-0010, 415-051-0015, 415-051-0020, 415-051-0025, 415-051-0030, 415-051-0035, 415-051-0037, 415-051-0040, 415-051-0045, 415-051-0050, 415-051-0055, 415-051-0057, 415-051-0060, 415-051-0065, 415-051-0067, 415-051-0069, 415-051-0072, 415-051-0075, 415-051-0077, 415-051-0090, 415-051-0100, 415-051-0105, 415-051-0110, 415-051-0130, 415-051-0140, 415-051-0155, 415-051-0165

Subject: These rules prescribe minimum standards for the services and supports provided by addictions and mental health providers

ADMINISTRATIVE RULES

& cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

approved by the Department of Human Services, Addictions and Mental Health (AMH) Division. These rules:

(1) Promote recovery, resiliency, wellness, independence and safety for individuals receiving addictions and mental health services and supports;

(2) Specify standards for services and supports that are person-directed, youth guided, family-driven, culturally competent, trauma-informed and wellness-informed; and

(3) Promote functional and rehabilitative outcomes for individuals throughout a continuum of care that is developmentally appropriate.

Rules Coordinator: Richard Luthe—(503) 947-1186

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

Rule Caption: Update the “Medicaid Payments” rules to reflect changes made by the “Integrated Services and Supports” Rule.

Adm. Order No.: MHS 2-2010(Temp)

Filed with Sec. of State: 3-4-2010

Certified to be Effective: 3-4-10 thru 8-28-10

Notice Publication Date:

Rules Amended: 309-016-0000, 309-016-0005, 309-016-0010, 309-016-0015, 309-016-0020, 309-016-0030, 309-016-0035, 309-016-0040, 309-016-0070, 309-016-0072, 309-016-0075, 309-016-0077, 309-016-0080, 309-016-0085, 309-016-0088, 309-016-0095, 309-016-0100, 309-016-0102, 309-016-0105, 309-016-0110, 309-016-0115, 309-016-0120, 309-016-0140, 309-016-0220

Rules Suspended: 309-016-0027, 309-016-0130, 309-016-0150, 309-016-0160, 309-016-0170, 309-016-0180, 309-016-0190, 309-016-0200, 309-016-0210, 309-016-0230, 309-016-0300, 309-016-0310, 309-016-0320, 309-016-0330, 309-016-0340, 309-016-0350, 309-016-0360, 309-016-0370, 309-016-0380, 309-016-0390, 309-016-0400, 309-016-0410, 309-016-0420, 309-016-0430, 309-016-0440, 309-016-0450

Subject: The Addictions & Mental Health Division is proposing to update the “Medicaid Payments” rules to reflect changes made to service delivery by the new “Integrated Services & Supports” Rule (ISSR), which is being developed in conjunction with this rule revision.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-016-0000

Purpose and Scope

(1) Purpose. These rules:

(a) Prescribe general standards for the provision of rehabilitative mental health Medicaid services to individuals eligible for payment under Title XIX (Medicaid) of the Social Security Act, Section 1905(a)(13) and Federal Regulations at 42 CFR 440.130(3)(d);

(b) Define procedures for billing the Addictions and Mental Health (AMH) Division for rehabilitative mental health services; and

(c) Outline the provider appeals and individual complaint and appeals processes for rehabilitative mental health services delivered through the Division or its subcontractors.

(2) Scope. These rules:

(a) Cover those Medicaid-eligible individuals who receive rehabilitative mental health services reimbursed by the Division directly or through its contractors with Medicaid matched funds.

(b) Are applicable to rehabilitative mental health services provided by:

(A) Community Mental Health Programs (CMHPs);

(B) Extended Care Programs;

(C) Children, Adults, and Families (CAF) Division Residential Programs;

(D) Oregon Youth Authority (OYA) Contracted Residential Programs;

(E) Non-Contiguous Area Providers; and

(F) All other approved Medicaid Providers

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91;

MHD 4-1991, f. & cert. ef. 7-29-91; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f.

309-016-0005

Definitions

As used in these rules:

(1) “Action” means:

(a) The denial, limitation or restriction of a requested covered service including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service; or

(c) The failure to provide services in a timely manner, as defined by the Addictions and Mental Health Division of the Department of Human Services (DHS).

(2) “Americans with Disabilities Act” or “ADA” means the Federal law promoting the civil rights of persons with disabilities, including mental illness. The ADA requires that reasonable accommodations be made in employment, service delivery and accessibility of facilities and services.

(3) “Amount” means the number and frequency of treatment sessions provided.

(4) “Biennial Plan” means a document submitted to the Division by the Local Mental Health Authority (LMHA) in a format prescribed by the Division each biennium.

(5) “Child” or “Children” means a person under the age of 18. An Individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, will be considered a child until age 21 for purposes of these rules.

(6) “Children, Adults and Families (CAF) Division” means the Division responsible for administering self-sufficiency and child-protective programs under the Department of Human Services (DHS).

(7) “Client Process Monitoring System” or “CPMS” means the Division’s client information system for community-based services.

(8) “Clinical Supervision” means oversight by a qualified Clinical Supervisor of addiction and mental health services and supports provided according to this rule, including ongoing evaluation and improvement of the effectiveness of those services and supports.

(9) “Clinical Supervisor” means a person qualified to oversee and evaluate addiction, problem gambling or mental health services and supports.

(a) For supervisors in alcohol and other drug treatment programs, holding a certification or license in addiction counseling, qualifications for the certificate or license must have included at least:

(A) 4000 hours of supervised experience in substance use counseling;

(B) 300 contact hours of education and training in substance use related subjects; and

(C) Successful completion of a written objective examination or portfolio review by the certifying body.

(b) For supervisors, in alcohol and other drug treatment programs, holding a health or allied provider license, such license or registration must have been issued by one of the following state bodies and the supervisor must possess documentation of at least 120 contact hours of academic or continuing professional education in the treatment of alcohol and other drug-related disorders:

(A) The Board of Medical Examiners;

(B) The Board of Psychologist Examiners;

(C) The Board of Licensed Social Workers;

(D) The Board of Licensed Professional Counselors and Therapists;

or

(E) The Board of Nursing.

(10) “Community Mental Health Program (CMHP)” means an entity that is responsible for planning and delivery of services for persons with substance use disorders, mental health diagnosis, or developmental disabilities, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(11) “Complaint” means an oral or written expression by the individual or individual’s representative of dissatisfaction to a Provider or the Division.

(12) “Consent to Treatment” means a written agreement between the individual or the individual’s representative and the Provider for the individual to receive rehabilitative mental health services.

(13) “Corrective Action Plan” means a written document which specifies actions that a Provider will take to come into compliance with OAR 309-016-0000 through 309-016-0230.

(14) “Cultural Competence” means the process by which individuals and systems respond respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions,

ADMINISTRATIVE RULES

genders, sexual orientations and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families and communities and protects and preserves the dignity of each.

(15) "Date of Action" means the intended date on which an action of covered services becomes effective.

(16) "Declaration for Mental Health Treatment" means a written statement of an individual's preferences concerning his or her mental health treatment. The declaration is made when the individual is able to understand and legally make decisions related to such treatment. It is honored, as clinically appropriate, in the event the individual becomes unable to make such decisions.

(17) "Division Representative" means the person having the authority to represent the Division under the current Administrative Procedures Act. Responsibilities of the Division. Representative include, but are not limited to the following:

- (a) Collecting information from sources;
- (b) Documenting findings and conclusions;
- (c) Identifying, scheduling, interviewing and calling witnesses;
- (d) Testifying on behalf of Division; and
- (e) Cross-examining witnesses testifying during the hearing.

(18) "Direct Supervision" means the directing and coordinating by a QMHP of interventions performed by a QMHA. Direct supervision also means reviewing and evaluating the documentation of interventions by a QMHA. Direct supervision is performed on a regular, routine basis either individually or in a group setting.

(19) "Division" means the Addictions and Mental Health (AMH) Division of the Department of Human Services (DHS).

(20) "Division of Medical Assistance Programs (DMAP)" means the Division of the Department of Human Services responsible for coordinating the Medical Assistance Program within the State of Oregon.

(21) "DSM Diagnosis" means the determination of an individual's mental or emotional disorder as described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association. The principal Axis I diagnosis provides the clinical basis for treatment, is determined through the mental health assessment and any examinations, tests, procedures, or consultations suggested by the assessment and is entered on a written Individual Services and Supports Plan. Neither a DSM "V" code condition, substance use disorder or mental retardation may be considered the principal diagnosis, although these conditions or disorders may co-occur with the diagnosable mental disorder.

- (22) "Duration" means the length of time used to provide:
- (a) Specific treatment sessions; and
 - (b) An entire course of treatment.

(23) "Emergency" means the sudden onset of acute psychiatric symptoms requiring attention within 24 hours to prevent a serious deterioration in the individual's mental status.

(24) "Enhanced Care Services (ECS) and Enhanced Care Outreach Services (ECOS)" means mental health services and supports provided to individuals residing in licensed Seniors and People with Disabilities (SPD) facilities.

(25) "Enhanced Care Services Coordinator" means an employee of the Division responsible for managing utilization of the enhanced care services projects of the Extended Care Program. The Coordinator provides clinical assessment and placement of older adults and younger disabled adults with severe and persistent mental illness who require long-term structure, support, rehabilitation and supervision within the enhanced care services projects. The Coordinator also provides monitoring, oversight and technical assistance to the enhanced care programs.

(26) "Enrollment" means: The entry of a Medicaid-eligible individual into rehabilitative mental health services. This entry is documented by a completed CPMS enrollment form or, in case of a Medicaid-eligible child residing out-of-state, by the written authorization of the Division; or The approval of a Provider as a provider of rehabilitative mental health services under this rule. Approval is documented by the issuance of a Certificate of Approval and enrollment with the Division or enrollment in DMAP.

(27) "Extended Care Management Unit (ECMU)" means the unit within the Division responsible for managing non-forensic access to psychiatric Long Term Care services including Oregon State Hospital, Blue Mountain Recovery Center and the utilization of community based extended care projects. The unit provides the clinical assessment and placement of adults with severe and persistent mental illness who require long term structure, support, rehabilitation and supervision within designated projects of the Extended Care Program.

(28) "Extended Care Program" means a program designed to provide necessary services in a least restrictive environment, utilizing a range of

hospital, residential and community resources. These programs include secure residential facilities, residential psychiatric treatment for children and adolescents, Geropsychiatric Treatment Program at Oregon State Hospital, Senior and Disabled Services Division enhanced care and PAS-SAGES projects.

(29) "Fee-For-Service" or "FFS" means the payment made for each reimbursable service retrospectively based upon cost of providing the service.

(30) "Goal" means an expected result or condition to be achieved, which is specified in a statement of relatively broad scope, provides a guideline for the direction of care and is related to an identified clinical problem as stated on the Individual Services and Supports Plan.

(31) "Hearing" means:

(a) For individuals, an administrative hearing related to an action which is held when requested by an individual or individual representative. A hearing may also be held when requested by an individual or individual representative who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously; or

(b) For providers, an administrative hearing regarding appeal of:

(A) A denial of or limitation of payment allowed for services or items provided;

(B) Sanctions imposed, or intended to be imposed, by Division; or

(C) Overpayment determinations.

(32) "Individual" means any person being considered for or receiving services and supports regulated by these rules.

(33) "Individual Representative" means a person designated by an individual as permitted in ORS 430.210(3) to assert and exercise the individual's rights under ORS 430.210.

(34) "Individual Service Note" means the written record of services and supports provided, including documentation of progress toward specific objectives, consistent with the timelines stated in the ISSP.

(35) "Individual Service and Support Plan" (ISSP) means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the desired outcomes of service.

(36) "Individual Services Record" means the record required by the Medical Assistance Program Rules for DMAP OAR 410-120-1360. The record is a collection of all documentation regarding an individual's mental health treatment services. It is a legal document and provides the basis by which the provider manages service delivery and quality assurance. For the purpose of confidentiality, it is considered the medical record defined in ORS Chapter 179.

(37) "Integrated Services and Supports Rule (ISSR)" means the rules for providing services under OAR 309-032-1500 through OAR 309-032-1565

(38) "Level of Care" means the range of available services provided from the most integrated setting to the most restrictive and most intensive in an inpatient setting. As required in ORS 430.210(a), individuals are to be served in the most normative, least restrictive, least intrusive level of care appropriate to their needs, legal status, current symptoms and the extent of family or other supports.

(39) "Licensed Medical Practitioner" or "LMP" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licenses:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse Practitioner licensed to practice in the State of Oregon; or

(C) Physician's Assistant licensed to practice in the State of Oregon;

and

(b) Whose training, experience and competence demonstrates the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(40) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP; or, if the county declines to operate or contract for all or part of a CMHP, the board of directors of a public or private corporation which contracts with the Division to operate a CMHP for that county.

(41) "Medical Supervision" means an LMP's determination, at least annually and at intervals prescribed by the Division, of the medical appropriateness of rehabilitative mental health services for each individual in accordance with OAR 309-016-0075.

ADMINISTRATIVE RULES

(42) "Medically Appropriate" means services and medical supplies that are required for prevention, diagnosis or treatment of a physical or mental health condition, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an individual or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an individual.

(43) "Medication Service Record" means the documentation of written or verbal orders for medication, laboratory, and other medical procedures issued by an LMP employed by, or under contract with, the provider and acting within the scope of his or her license. The provision of medical services is documented in written individual service notes and placed in the clinical record.

(44) "Mental Health Assessment" means the process of obtaining all pertinent biopsychosocial information, as identified by the individual, family and collateral sources, for determining a diagnosis and to plan individualized services and supports, including a provisional assessment.

(45) "Non-Contiguous Area Provider" means a provider located more than 75 miles from Oregon and enrolled with the Division.

(46) "Notice of Action" means the notice given or sent to the individual upon denial, termination, suspension or reduction of services which explains the reason or reasons for the action, the individual's right to appeal such a decision and the process to appeal such a decision.

(47) "Objective" means the written statement of an expected result or condition that is related to the attainment of a goal. The objective is stated in measurable terms and has a specified time for accomplishment.

(48) "OMB Circular A-122" and "OMB Circular A-87" mean the Circulars established by the Federal Office of Management and Budget which sets forth the principles for determining costs of grants, contracts and other agreements.

(49) "Oregon Youth Authority (OYA)" means the Department created by the 1995 Legislative Assembly that has responsibility for care and housing of child and adolescent offenders adjudicated and sentenced by juvenile justice to the juvenile correction system.

(50) "OYA Contracted Residential Program" means an organization which has written approval from the Division to provide rehabilitative mental health treatment for children aged three through 20 licensed by, and contracted with, OYA to provide residential services to children in the custody of OYA.

(51) "PASSAGES Projects" means one type of extended care program which consists of community-based services for adults with severe and persistent mental illness who have been hospitalized for over six months in a state hospital or who have had difficulty maintaining stability in other structured community settings. Placements in these projects are approved by the Extended Care Management Unit of the Division.

(52) "Performing Provider" means a Non-Contiguous Area Provider, CMHP or public or private community agency or organization under contract with a CMHP that directly provides rehabilitative mental health services as described by OAR 309-016-0000 through 309-016-0230 (CAF and OYA Contracted Residential Programs are included in this definition).

(53) "Progress" means the movement toward the individual treatment goal or goals using measurement criteria in the individual Services and Supports Plan set by the provider and, if exercised under ORS 430.210(3), the individual, the individual's representative or any representative designated by the individual.

(54) "Provider" means a CMHP, Performing Provider, or Non-Contiguous Area Provider.

(55) "Provisional Assessment" means an initial assessment that identifies a presenting problem, provisional diagnosis and sufficient information to support the provisional diagnosis.

(56) "Qualified Mental Health Associate" or "QMHA" means a person delivering services under the direct supervision of a Qualified Mental Health Professional (QMHP) and meeting the following minimum qualifications as documented by the LMHA or designee:

(a) A bachelor's degree in a behavioral sciences field; or

(b) A combination of at least three year's relevant work, education, training or experience; and

(c) Has the competencies necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment and service terminology and to apply the concepts; and

(C) Provide psychosocial skills development and to implement interventions prescribed on a Treatment Plan within the scope of his or her practice.

(57) "Qualified Mental Health Professional" or "QMHP" means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

(a) Graduate degree in psychology;

(b) Bachelor's degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational, art, or music therapy; or

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and group therapy within the scope of his or her practice.

(58) "Quality Assurance (QA)" means the structured, internal monitoring, and evaluation process to:

(a) Identify aspects of quality care;

(b) Use indicators and clinical criteria to continually and systematically monitor these aspects of care;

(c) Establish markers which indicate problems or opportunities to improve care;

(d) Take action to correct problems and improve substandard care;

(e) Assess the effectiveness of the actions; and

(f) Document the improvements in care.

(59) "Quality Assurance Plan" or "Quality Improvement Plan" means a plan which describes the provider's Quality Assurance and Quality Improvement process.

(60) "Quality Improvement (QI)" means a management technique used to establish and revise as necessary services, standards and goals directed at improving the overall quality of the services.

(61) "Rehabilitative Mental Health Services" means those services listed in the Division Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule. CAF or OYA Contracted Residential Program services are also considered to be rehabilitative services under these rules.

(62) "Sanction" means an action against a provider taken by the Division in cases of non-compliance, fraud, misuse or abuse of Medicaid.

(63) "Scope" means the extent or range of the type of rehabilitative mental health services provided.

(64) "Service Conclusion Criteria" means the individualized standards to be met to complete service provision for each individual.

(65) "Service Conclusion Summary" means written documentation of the conclusion of services, or transfer of an individual from service, when:

(a) The individual moves;

(b) The individual dies;

(c) The individual requests termination of services;

(d) There is agreement between the individual, and guardian, if applicable, and the provider to conclude services;

(e) The individual is not expected to return to services;

(f) The individual transfers to another provider for the same services; or

(g) The individual has not accessed services for an extended period. Conclusion of an episode of care does not imply service conclusion when the provider has documented the reason that episodic service utilization is likely.

(66) "Setting" means the locations at which mental health treatment services are provided. Settings include such locations as mental health offices, an individual's home or school or other identified locations.

(67) "Therapeutic Group Home" means the planned treatment of a child using theoretically based individual and group skills development and medication management, individual therapy and consultation as needed to remediate significant impairments in the child's functioning that are the result of a principal mental or emotional disorder diagnosed on Axis I of a completed DSM 5-axes diagnosis.

(68) "Treatment" means the planned, medically appropriate, individualized program of medical, psychological, or rehabilitative procedures,

ADMINISTRATIVE RULES

experiences and activities designed to remediate symptoms of a DSM diagnosis, that are included in the ISSP.

(69) "Treatment Foster Care" means a program of rehabilitative mental health services prescribed in a child's ISSP provided in the child's foster home.

(70) "Urgent" means the onset of psychiatric symptoms requiring attention within 48 hours to prevent a serious deterioration in an individual's mental health condition.

(71) "Utilization Review" means a retrospective process through which a random sample of cases are reviewed at periodic intervals established by the provider, to safeguard against unnecessary or inappropriate use of rehabilitative mental health services.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 2-1993(Temp), f. 5-27-93, cert. ef. 6-1-93; MHD 4-1993, f. & cert. ef. 11-30-93; MHD 3-1994(Temp), f. & cert. ef. 4-15-94; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0010

Conditions of Provider Participation — General

All Providers participating in rehabilitative mental health services shall be contractually affiliated with the LMHA, the CMHP or, in the case of a Non-Contiguous Area Provider, directly with the Division or employed by the LMHA and enrolled as a Performing Provider.

(1) All providers shall abide by applicable portions of:

(a) These rules, OAR 309-016-0000 through 309-016-0230;

(b) All other Division rules; and

(c) The Medical Assistance Program Rules for DMAP, OAR 410-120-0000 through 410-120-1980.

(2) The Division will contract with CMHPs to provide rehabilitative mental health services to Medicaid-eligible individuals on a fee-for-service basis.

(3) The CMHP must:

(a) Have a signed written contract with the Division and a Certificate of Approval prior to delivering services; and

(b) Provide the treatment directly or through written subcontract.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 4-1993, f. & cert. ef. 11-30-93; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0015

Qualifications for Community Mental Health Programs (CMHPs)

(1) To qualify for approval and enrollment as a Provider of rehabilitative mental health services under this rule, a CMHP must provide directly, or through written subcontract, the following services as defined in applicable Division program rules and as governed by OAR 309-016-0000 through 309-016-0230 and the ISSR:

(a) Adult mental health services in accordance with the ISSR; and

(b) Children's mental health services in accordance with the ISSR;

(c) Adult Foster Home Services under OAR 309-040-0000 through 309-040-0100; or

(d) Residential Facility Services under OAR 309-035-0100 through 309-035-0190.

(2) The prospective CMHP must:

(a) Apply to the Division Medicaid Policy Unit for approval and enrollment as a Provider of rehabilitative mental health services in a format prescribed by the Division;

(b) Hold a valid Certificate of Approval granted by the Division for each type of service provided; and

(c) Enroll in DMAP based upon written application to the Division and determination by the Division, which substantiates compliance with the requirements of OAR 309-016-0010. Prospective CMHPs will be notified of their enrollment or denial of their application in writing.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1993, f. & cert. ef. 11-30-93; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10

309-016-0020

Administrative Requirements for Community Mental Health Programs (CMHPs)

CMHPs shall meet the following requirements:

(1) Have a full-time program director who demonstrates competence in leadership; program planning and budgeting, fiscal management, supervision of staff, personnel management, employee performance assessment, data collection, reporting, program evaluation, quality assurance, and developing and coordinating community resources.

(2) Have an advisory committee which shall:

(a) Meet at least quarterly;

(b) Have membership reflective of the geographic area, including appropriate cultural and ethnic representation as defined by the CMHP. This membership shall include:

(A) Consumers of mental health services and their families;

(B) Advocates for persons with mental or emotional disorders; and

(C) Persons with interest or experience in developing programs specific to mental health service needs.

(c) Advise and assist in the review, monitoring and evaluation of services and in the development and implementation of recommendations for the improvement of services.

(3) Have written contracts with all subcontractors specifying the authorities and responsibilities of each party and conforming to the requirements of all applicable Division rules and provisions of the agreement between the Division and the CMHP.

(4) Review and monitor services, including those provided by Performing Providers, to assure:

(a) Provision of services as specified in the contract with the Division;

(b) Consistency with the Division's administrative rules and other applicable Division administrative rules. The CMHP shall:

(A) Report to the Division any areas of substantial noncompliance;

(B) Provide the Division with a Corrective Action Plan for revision, at its discretion, and approval; and

(C) Provide on-going evaluation and training that supports continued affiliation with Performing Providers.

(c) Coordination of services delivered to each individual by more than one Performing Provider;

(d) Documentation of LMP, Clinical Supervisor, QMHP and QMHA qualifications; and

(e) Documentation of clinical supervision and direct supervision.

(5) Provide services in accordance with the Civil Rights Act of 1964, the Americans with Disabilities Act and any other state and federal laws and regulations listed in the contract with the Division.

(6) Coordinate service planning and implementation with any organization involved with an individual in any of the following treatment domains:

(a) Cognitive;

(b) Family;

(c) Substance abuse;

(d) Emotional;

(e) Behavioral;

(f) Developmental;

(g) Social;

(h) Physical health;

(i) Medical care;

(j) Nutritional;

(k) School or vocational;

(l) Cultural; and

(m) Legal.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0027

CMHP Medicaid Authorization Specialist Responsibilities for Medicaid-Eligible Children

Each CMHP shall provide the services of a Medicaid Authorization Specialist (MAS). The MAS will:

(1) Assure that referrals to SOSCF or OYA Contracted Residential Programs are made in accordance with OAR 309-016-0130.

(2) Perform administrative functions, in accordance with OAR 309-016-0000 through 309-016-0230, necessary to:

(a) Monitor service utilization patterns;

(b) Collect data and maintain required program records; and

(c) Authorize the amount, duration and scope of rehabilitative mental health services in SOSCF or OYA Contracted Residential Programs in accordance with OAR 309-016-0130.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

ADMINISTRATIVE RULES

Hist.: MHD 4-1991, f. & cert. ef. 7-29-91; MHD 2-1993(Temp), f. 5-27-93, cert. ef. 6-1-93; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 3-1994(Temp), f. & cert. ef. 4-15-94; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0030

Record Retention Requirements for Providers

All Providers shall retain complete and legible financial and clinical records in accordance with State Archivist rules OAR 166-005-0000 through OAR 166-040-1050. Financial records shall be retained for a minimum of three years and clinical records shall be retained for a minimum of seven years. If an audit, litigation, research and evaluation, or other action involving the financial or clinical record is started before the end of the established retention period, the financial or clinical record must be retained until all issues arising out of the action are resolved or until the end of the established retention period, whichever is later.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0035

Individual Rights

(1) In addition to all statutory and constitutional rights afforded to every person, every individual receiving services has the right to:

(a) Choose from available services and supports that are consistent with the ISSP and provided in the most integrated setting in the community and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for the greatest degree of independence.

(b) Be treated with dignity and respect.

(c) Participate in the development of a written Individual Service and Support Plan, services consistent with that plan and periodic review and reassessment of service and support needs, and to have a parent, guardian, advocate or representative assist in the development of the plan.

(d) To have all services explained, including expected outcomes and possible risks, and to receive a copy of the written ISSP.

(e) Confidentiality, and the right to consent to disclosure in accordance with ORS 179.505, 107.154 and 418.312.

(f) To give informed consent in writing prior to the start of services, except in a medical emergency or as otherwise permitted by law. Minor children can give informed consent in the following circumstances:

(A) Under age 18 and lawfully married.

(B) Age 16 or older and legally emancipated by the court.

(C) Age 14 or older for outpatient services only. For purposes of informed consent, outpatient service does not include service provided in residential programs or in day or partial hospitalization programs.

(g) Inspection of the Individual Service Record in accordance with ORS 179.505.

(h) Not participate in experimentation.

(i) Receive medication only for the individual's diagnosed clinical needs.

(j) Receive prior notice of service conclusion or transfer, unless the circumstances necessitating service conclusion or transfer pose a threat to health and safety.

(k) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation.

(l) Religious freedom.

(m) Be free from seclusion and restraint, except as regulated in OAR 309-035-0167 for adults and the ISSR for children.

(n) Be informed at the start of services, and periodically thereafter, of the rights guaranteed by this section.

(o) Be informed of the policies and procedures, service agreements and fees applicable to the services provided, and to have a custodial parent, guardian, or representative, assist with understanding any information presented.

(p) Family involvement in service planning and delivery.

(q) To make a declaration for mental health treatment, when legally an adult.

(r) File grievances, including appealing decisions resulting from the grievance.

(s) Exercise all rights set forth in ORS 109.610 through 109.697 if the individual is a child, as defined by these rules.

(t) Exercise all rights set forth in ORS 426.385 if the individual is committed to the Department; and

(u) Exercise all rights described in this section without any form of reprisal or punishment.

(2) In addition to the rights specified in section (1) of this rule, every individual receiving residential services has the right to:

(a) A safe, secure and sanitary living environment.

(b) A humane service environment that affords reasonable protection from harm, reasonable privacy and daily access to fresh air and the outdoors.

(c) Keep and use personal clothing and belongings, and to have an adequate amount of private, secure storage space, as defined in OAR 309-035-0125(4).

(A) Reasonable restriction of the time and place of use, of certain classes of property may be implemented if necessary to prevent the individual or others from harm, provided that notice of this restriction is given to individuals and their families, if applicable, upon entry to the program, documented, and reviewed periodically.

(d) Express sexual orientation, gender identity and gender presentation.

(e) Have access to and participate in social, religious and community activities.

(f) Private and uncensored communications by mail, telephone and visitation.

(A) This right may be restricted only if the provider documents in the individual's record that there is a court order to the contrary, or that in the absence of this restriction, significant physical or clinical harm will result to the individual or others. The nature of the harm will be specified in reasonable detail, and any restriction of the right to communicate will be no broader than necessary to prevent this harm.

(B) The individual and his or her guardian, if applicable, will be given specific written notice of each restriction of the individual's right to private and uncensored communication. The provider will ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible and allow for confidential communication, and that space is available for visits. Reasonable times for the use of telephones and visits may be established in writing by the provider.

(g) Communicate privately with public or private rights protection programs or rights advocates, clergy, and legal and medical professionals.

(h) Have access to and receive available educational services in the most integrated setting in the community.

(i) To participate regularly in indoor and outdoor recreation.

(j) Not be required to perform labor.

(k) Adequate food as defined in OARs 309-035-0170 and adequate shelter as defined in 309-0035-0125 through 309-035-0140.

(l) A reasonable accommodation if, due to a disability, the housing and services are not sufficiently accessible.

(3) Notification of Rights: The provider will give to the individual and, if appropriate, the guardian, a document that describes the applicable individual's rights as follows:

(a) Information given to the individual must be in written form or, upon request, in an alternative format or language appropriate to the individual's need.

(b) The rights, and how to exercise them, will be explained to the individual, and if appropriate, his or her guardian.

(c) Individual rights will be posted in writing in a common area.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0040

Provider Sanctions

Sanction for Non-Compliance with OAR 309-016-0000 through 309-016-0230:

(1) If a Provider does not maintain compliance with applicable requirements in 309-016-0000 through 309-016-0230, the CMHP shall notify the Division and submit a written Corrective Action Plan to the Division for approval within 10 days of its first knowledge of non-compliance. The Corrective Action Plan shall include:

(a) Identification of all areas of non-compliance;

(b) Description of specific activities to be undertaken to achieve compliance;

(c) A completion date for each activity and the date by which full compliance will be achieved;

(d) Identification of persons responsible for completing each activity; and

(e) In the case of Performing Provider non-compliance, a schedule for monitoring by the CMHP to assure on-going compliance. Performing

ADMINISTRATIVE RULES

Providers have responsibility to report non-compliance to their CMHP within 10 days of its first knowledge of non-compliance.

(2) The Division shall review and monitor Corrective Action Plans and approve, in writing, those plans which, in the opinion of the Division, have a probability of success. Prior to approval, the Division may choose to:

- (a) Revise or modify the Corrective Action Plan;
- (b) Require the Provider to obtain technical assistance or consultants;
- (c) Conduct an on-site review of the Provider; or
- (d) Perform a combination of these requirements.

(3) The Division shall deny approval, in writing, of those Corrective Action Plans that are, in the opinion of the Division, incomplete or do not have a probability of success.

(4) If a Corrective Action Plan is not approved by the Division, or, if the Provider is unable to meet the requirements of an approved Corrective Action Plan, the Division may terminate enrollment of the Provider in DMAP. The Division may impose further sanctions as allowed under Medical Assistance Program Rules for DMAP, OAR 410-120-0000 through 410-120-1980.

(5) If the CMHP does not inform the Division of non-compliance within the specified time period, the Division may terminate the enrollment of the Provider in DMAP retroactive to the date of non-compliance and may impose further sanctions as allowed under the Medical Assistance Program Rules for DMAP, OAR 410-120-0000 through 410-120-1980.

Stat. Auth.: ORS 409.010; 409.050 & 430.640
Stats. Implemented: ORS 414.065 & 430.640
Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0070

Performing Provider Requirements

(1) Performing Providers (except for Non-Contiguous Area Providers) shall be in receipt of or included in a Certificate of Approval granted under OAR 309-012-0130 through 309-012-0220 for the rehabilitative mental health services to be delivered.

(2) Performing Providers shall deliver all services under medical supervision in a manner which complies with OAR 309-016-0075, and clinical supervision in a manner which complies with OAR 309-016-0077 and applicable Division program rules.

(3) Agencies that seek to become Performing Providers shall apply to the Division Medicaid Policy Unit to be enrolled as a vendor in DMAP. Only services provided after the date the Performing Provider has been enrolled and issued a vendor number may be billed.

(4) Performing Providers may only provide services if they are operating under subcontract with a CMHP or enrolled with the Division, in the case of Non-Contiguous Area Providers. Performing Providers operating under subcontract shall request a Medicaid vendor number from the Division Medicaid Policy Unit through the CMHP. Only services provided after the date the Performing Provider has been issued a vendor number may be billed.

(5) Performing Providers shall determine if any enrolled individual is also receiving rehabilitative mental health services from any other Medicaid Provider of mental health services covered by these rules, and routinely report this information to the CMHP on a schedule determined by the CMHP.

Stat. Auth.: ORS 409.010; ORS 409.050 & ORS 430.640
Stats. Implemented: ORS 414.065 & ORS 430.640
Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 3-1994(Temp), f. & cert. ef. 4-15-94; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0072

Conditions of Non-Contiguous Area Provider Participation

All Non-Contiguous Area Providers participating in rehabilitative mental health services must be enrolled as Performing Providers and are subject to the applicable Provider standards stated in these rules.

(1) The Division will enroll Non-Contiguous Area Providers for the provision of prior-authorized rehabilitative mental health services to specific Oregon Medicaid-eligible individuals who:

- (a) Reside out-of-state in a subsidized adoption;
- (b) Reside out-of-state in a foster care placement; or
- (c) Reside in the State of Oregon but require specialized treatment, as defined by the Division, which is not available in the State of Oregon or provision of the treatment by a Non-Contiguous Area Provider is determined by the Division to be cost-effective.

(2) Non-Contiguous Area Providers must be enrolled with the Division prior to delivering services, unless the service is urgent or emergent or a delay could be expected to result in prolonged impairment or increase the risk that treatment will become more complex or hazardous. In such cases, the Non-Contiguous Area Provider must make every reasonable effort to contact the Division Medicaid Policy Unit within three working days and document such effort.

(3) Non-Contiguous Area Providers shall abide by relevant portions of these rules, applicable Division rules and the Medical Assistance Program Rules for DMAP OAR 410-120-0000 through 410-120-1980.

(4) All services must be provided directly by a Non-Contiguous Area Provider under:

- (a) Medical supervision in accordance with 309-016-0075 by an LMP operating within the scope of his or her license in the state of licensure; and
- (b) Clinical supervision in accordance with 309-016-0077 by a Clinical Supervisor operating within the scope of his or her practice.

Stat. Auth.: ORS 409.010; 409.050 & 430.640
Stats. Implemented: ORS 414.065 & 430.640
Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0075

Medical Supervision

Medical supervision will be secured through a current written agreement, job description, or similar type of binding arrangement between a Licensed Medical Practitioner (LMP) and the provider, which describes the LMP's responsibility in determining the medical appropriateness of services delivered.

Stat. Auth.: ORS 409.010; 409.050 & 430.640
Stats. Implemented: ORS 414.065 & 430.640
Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 3-1994(Temp), f. & cert. ef. 4-15-94; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0077

Clinical Supervision

Clinical Supervision will be specified through a current written agreement, job description, or similar type of binding arrangement between the Clinical Supervisor and the Provider which describes the Clinical Supervisor's oversight responsibility, including documentation of supervision no less than two hours per month, including one hour of face-to-face contact for each person supervised, or a proportional level of supervision for part-time staff.

Stat. Auth.: ORS 409.010; 409.050 & 430.640
Stats. Implemented: ORS 414.065 & 430.640
Hist.: MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0080

Individual Service Record Requirements

All Providers shall:

(1) Develop and maintain a legible Individual Service Record for each individual upon entry. The record will, at minimum, include:

(a) MHO, FCHP or other third party insurance enrollment information, including documentation of benefit, denial, or appeal, of a third party payer.

(b) Identifying information, or documentation of attempts to obtain the information, including:

(A) The individual's name, address, telephone number, date of birth, gender, marital status and military status;

(B) Name, address, and telephone number of parent or legal guardian, primary care giver, if applicable, next of kin or emergency contact;

(C) Name, address and telephone number of the individual's primary care physician;

(D) Emergency medical and dental resources;

(c) Informed Consent for Service, including medications, or documentation specifying why the provider could not obtain consent by the individual or guardian as applicable;

(d) Written refusal of any services and supports offered, including medications;

(e) Assessment or provisional assessment and updates to the assessment;

(f) An Individual Service and Support Plan or provisional ISSP, including any applicable behavior support or crisis intervention planning;

(g) Individual service notes;

(h) A Service Conclusion Summary, when required;

(i) Other plans as made available, such as, but not limited to, WRAP, recovery plans, wellness action plans, IEPs, and advance directives for physical and mental health care; and

ADMINISTRATIVE RULES

(j) Applicable signed consents for release of information.
(2) Medical Service Records: When medical services are provided, the following documents will be part of the Individual Service Record as applicable:

- (a) Medication Administration Records as per the ISSR.
- (b) Laboratory reports; and
- (c) LMP orders for medication, protocols or procedures.

(3) Individual Service and Support Plan (ISSP):

(a) The ISSP will document the specific services and supports to be provided, arranged or coordinated to assist the individual and his or her family, if applicable, to achieve desired outcomes.

(b) At minimum, each ISSP will include:

- (A) Measurable or observable rehabilitative and functional objectives;
- (B) Specific services and supports to be provided;

(C) Applicable service and support delivery details including frequency and duration of each service;

(D) Timelines for review of progress and ISSP updates, consistent with the level of care provided and the needs of the individual.

(c) For ICTS and ITS programs, the ISSP will include:

(A) Identification of strengths and needs;

(B) A summary of related planning across all relevant life domains by the participating team members;

(C) Proactive safety and crisis planning;

(D) Criteria for service conclusion; and

(E) A behavior support plan, consistent with the ISSR.

(d) A QMHP, who is also a licensed healthcare professional, will, within seven days of the date of the development of the ISSP, recommend the treatment by signing the ISSP for each individual receiving mental health services.

(4) Assessment:

(a) When an individual is admitted for services, an assessment will be completed prior to development of the ISSP.

(b) When an assessment is not completed at entry, a provisional assessment, as defined in these rules, will document the immediate medical appropriateness of services. If services are continued, an assessment will be completed within a timeframe that reflects the level and complexity of services and supports to be provided.

(c) The assessment will be completed by a QMHP in mental health programs. A QMHA can assist in the gathering and compiling of information to be included in the assessment.

(d) Each assessment will include sufficient biopsychosocial information and documentation to support the presence of a DSM diagnosis that is the medically appropriate reason for services.

(e) In addition to periodic assessment updates, any individual continuing to receive mental health services for one or more continuous years, will receive an annual assessment by a QMHP, that has documented approval by an LMP.

(5) Individual Service Notes:

(a) A written legible individual service note will be recorded each time a service is provided.

(b) Individual Service Notes will document:

- (A) The specific service provided;
- (B) Duration of the service provided;
- (C) The date on which the service was provided;
- (D) Location of service;

(E) The date of authentication and name, signature, and credentials, of the person who provided the service; and

(F) Periodic reviews of progress toward specific objectives, consistent with timelines documented in the ISSP. The timeline for periodic review of progress will be determined on an individual basis, and documented in the ISSP, reflective of the type and complexity of the services and supports provided and the needs of the individual.

(6) For services that are not specifically included in the individual's Treatment Plan, or exceed the scope of the plan, maintain an explanation of how the services being billed relate to the ISSP.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 6-1988, f. & cert. ef. 6-16-88; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 3-1994(Temp), f. & cert. ef. 4-15-94; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0085

Additional Provider Requirements

All Providers shall:

(1) Maintain fiscal records in accordance with accounting principles approved by the American Institute of Certified Public Accountants and other applicable accounting guidelines;

(2) Establish a schedule of fees for billable services based upon the reasonable and allowable costs of the services as determined by the Division in accordance with OMB Circular A-122 or other applicable state and federal laws, rules and regulations. Billings for Medicaid paid services shall in no case exceed the usual and customary charges to private individuals for any like item or service charged by the Provider;

(3) Accept payment from the Division as full and total reimbursement for services provided;

(4) Comply with these rules and the applicable Medical Assistance Program Rules for DMAP OAR 410-120-0000 through 410-120-1980 published by DMAP and all applicable Division rules. Sanctions may be imposed on a Provider for abuse or misutilization of Medicaid as described in OAR 410-120-0000 through 410-120-1980 of the Medical Assistance Program Rules for DMAP.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0088

Quality Assurance Requirements

(1) Quality Assessment and Performance Improvement Process: Providers will develop and implement a structured and ongoing process to assess, monitor, and improve the quality and effectiveness of services provided to individuals and their families to include participation in a Quality Improvement Committee.

(2) Quality Improvement Committee: The Quality Improvement Committee will oversee and advise the Quality Assessment and Performance Improvement process.

(a) The Quality Improvement Committee will include representatives of individuals served and their families.

(b) The Quality Improvement Committee will meet at least quarterly to:

(A) Identify indicators of quality including:

- (i) Access to services;
- (ii) Outcomes of services;
- (iii) Systems integration and coordination of services; and
- (iv) Utilization of services.

(B) review grievances and incident reports;

(C) Review incident reports, emergency safety intervention documentation, grievances and other documentation as applicable;

(D) Identify measurable and time-specific performance objectives and strategies to meet the objectives and measure progress;

(E) Recommend policy and operational changes necessary to achieve performance objectives; and

(F) Reassess and, if necessary, revise objectives and methods to measure performance on an ongoing basis to ensure sustainability of improvements.

(3) Performance Improvement Plan: The quality assessment and performance improvement process will be documented in a Performance Improvement Plan including:

(a) Performance objectives aimed at improving services; and

(b) Strategies designed to meet the performance objectives and measure progress.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0095

Scope of Medical Assistance Program Coverage — Fee-For-Service

(1) Payment for rehabilitative mental health services is available for services to Medicaid-eligible individuals within the limitations established by the Division through the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule or other approved schedules.

(2) The Division is not liable for Medicaid payment for treatment and treatment planning beyond limits stated in these rules or the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule or other approved schedules.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

ADMINISTRATIVE RULES

309-016-0100

Priorities for Services to Adults With Mental or Emotional Disorders

Within the limits of available funds, services to persons 21 years of age and older with mental or emotional disorders shall be provided in the following order of priority:

(1) Individuals who, in accordance with the assessment of professionals in the field of mental health, are at immediate risk of hospitalization for the treatment of mental health conditions or are in need of continuing services to avoid hospitalization or pose a hazard to the health and safety of themselves, including the potential for suicide;

(2) Individuals who, because of the nature of their diagnosis, their geographic location or their family income, are least capable of obtaining assistance from the private sector; and

(3) Individuals who, in accordance with the assessment of professionals in the field of mental health, are experiencing mental health conditions but will not require hospitalization in the foreseeable future.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0102

Priorities for Services to Children With Mental or Emotional Disorders

Mental health services to Medicaid-eligible children with mental or emotional disorders shall be provided in the following order of priority:

(1) Mental Health Crisis Services:

(a) Children whose level of functioning indicates an emergency psychiatric condition;

(b) Children whose level of functioning indicates an urgent psychiatric condition.

(2) Mental Health Treatment:

(a) Children, who, in accordance with the assessment of professionals in the mental health field:

(A) Are at immediate risk of psychiatric hospitalization or removal from the home due to a mental or emotional disorder;

(B) Exhibit behavior which indicates a high risk of developing disorders of a severe or persistent nature;

(C) Have a severe mental or emotional disorder.

(b) Any other Medicaid-eligible child who is experiencing mental or emotional disorders which significantly affect the child's ability to function in everyday life, but do not require hospitalization or removal from his or her home in the near future.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 4-1993, f. & cert. ef. 11-30-93; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0105

Billing Requirements

(1) All Providers:

(a) Shall not bill individuals for the cost of treatment; and

(b) Must pursue potential third-party payments from Medicare, health insurance, or other sources that may cover services rendered. Any such payments received must be indicated on billings to DMAP;

(c) Must bill the Division at a rate, based upon reasonable and allowable costs of services in accordance with OMB Circular A-122, OMB Circular A-87 or other applicable state and federal laws, rules and regulations, not in excess of the Provider's usual and customary charge to the general public. Rates charged are subject to review by the Division. Payment will not exceed rates established by the Division Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule or other applicable schedules;

(d) Submit all fee-for-service billings to the DMAP Medicaid Management Information System (MMIS) electronically or on forms designated by that office or through other systems as directed by the Division. Procedure codes listed in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule must accurately describe services rendered and must be used when billing.

(2) Fee-for-service claims must be filed within 12 months of the date of service to be eligible for payment.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 6-1988, f. & cert. ef. 6-16-88; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0110

Payment Limitations

(1) Payment will be made at each Provider's usual and customary charge or the Division's reimbursement rates, whichever is less, minus payments received or due from other payors. Payments to other specified Providers will be made according to other approved schedules:

(a) For Performing Providers:

(A) Limitations contained in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule, such as the maximum rate and the amount, duration, and scope of services provided, are subject to change at the discretion of the Division. Providers will be notified of such changes in writing; and

(B) Payment will be made for services listed in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule which are rendered to Medicaid-eligible individuals by qualified staff meeting the definition of OAR 309-016-0005(55) and 309-016-0005(56) during the period in which the Provider is enrolled in DMAP.

(2) When the Division determines an overpayment has been made to a Provider, the amount of overpayment is subject to recovery by the Division. The overpayment amount will be determined at the Division's discretion through direct examination of claims, through statistical sampling and extrapolation techniques or other means. Procedures for recovery of funds are as described in the DMAP Medical Assistance Program Rules OAR 410-120-1397 and 410-120-1505 or by applicable contract language.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0115

Variances

A variance from those portions of these rules that are not derived from federal regulations or the Medical Assistance Program Rules for DMAP, OAR 410-120-0000 through 410-120-1980 may be granted to a CMHP for a period of up to one year in the following manner:

(1) The Provider shall submit to the Division Medicaid Policy Unit a written request which includes:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(2) The Deputy Assistant Director shall approve or deny the request for variance in writing.

(3) The Division's Medicaid Policy Unit shall notify the Provider of the decision. The Division shall give notice in writing within 30 days of receipt of the request.

(4) Appeal of the denial of a variance request shall be to the Assistant Director of the Division, whose decision shall be final.

(5) All variances must be reapplied for annually.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1987, f. 6-29-87, ef. 7-1-87; MHD 1-1991(Temp), f. 1-30-91, cert. ef. 1-31-91; MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0120

Confidentiality of Records Requirements

(1) Providers shall keep all individual records confidential in accordance with 42 CFR, Part 431, Subpart F and 42 CFR Part 2, ORS 179.505 and other applicable state federal laws.

(2) Providers, upon request, shall make pertinent clinical and financial eligibility information concerning an individual available within ten days to other service Providers responsible for the individual's care, consistent with state statutes and federal laws and regulations concerning confidentiality.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 4-1991, f. & cert. ef. 7-29-91; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0130

Requirements for Rehabilitative Mental Health Services in SOSCF or OYA Contracted Residential Programs

(1) The MAS in the county in which the child resides will maintain a list, on file, of all authorized Service Authorization Forms by case name, Provider name, the amount, duration and scope of the services authorized, dates of the authorization and other data required.

ADMINISTRATIVE RULES

(2) Prior to admission or no later than 15 days after an emergency placement in an SOSCF or OYA Contracted Residential Program, the MAS in the county in which the child resides will determine the need for rehabilitative mental health services to be provided in an SOSCF or OYA Contracted Residential Program. No later than 15 working days after receiving an SOSCF or OYA Residential referral package the MAS will:

(a) Review the application;

(b) Assess the child's level of functioning and severity of problems based on information in the referral and/or face-to-face assessment;

(c) Determine the need for rehabilitative mental health treatment in a residential setting using a standardized measure provided by MHDDSD and the admission criteria listed in OAR 309-016-0130(3); and

(d) Complete the Service Authorization Form and return it to the SOSCF or OYA caseworker with the referral package. The referral package must be complete and current within the last 12 months.

(3) Children receiving rehabilitative mental health services in an SOSCF or OYA Contracted Residential Program must meet the following admission criteria:

(a) The child has a DSM diagnosis on Axis I of a completed five axes diagnosis; and

(b) The child's condition is not manageable in the child's current living situation; or

(c) The child cannot reside at home due to the family's level of functioning; and

(d) Less restrictive or intensive services are not adequate to meet the child's needs based on documented lack of response to prior treatment or clinical judgment of the MAS from the child's home county, the SOSCF or OYA caseworker, and the clinical staff of the residential program.

(4) Within 30 days of admission, the SOSCF or OYA caseworker and the SOSCF or OYA Contracted Residential Program shall develop the clinical criteria for discharge. The discharge criteria shall consist of measurable objectives and shall be placed in the clinical record.

(5) The MAS from the county in which the SOSCF or OYA Contracted Residential Program is located must authorize the amount, duration and scope of rehabilitative mental health services delivered in an SOSCF or OYA Contracted Residential Program in writing at least once every three months. This authorization must be included in the child's clinical record. Authorization for continuation of rehabilitative mental health services must meet at least one of the following criteria:

(a) Symptoms or behaviors persist at a level of severity documented upon admission and the projected time frame for attainment of treatment goals has not been reached as documented in the Treatment Plan;

(b) The child's and/or family's progress toward identified treatment goals for this level of care has been documented but not all treatment goals have been reached;

(c) No progress toward treatment goals has been documented and the Treatment Plan has been modified to introduce further evaluation in order to clarify the nature of the identified problems and/or new therapeutic interventions have been initiated; or

(d) New symptoms or maladaptive behaviors have appeared while the child is in the residential setting. Treatment of these symptoms and behaviors has been incorporated into a revised Treatment Plan. The new symptoms and/or maladaptive behaviors justify continuation of treatment and may be treated safely and effectively with this level of care.

(6) The MAS in the county in which the residential program is located shall identify or assist the SOSCF or OYA caseworker and the program to identify children appropriate for planned discharge in the next 30 days according to at least one of the following criteria:

(a) Targeted symptoms and/or maladaptive behaviors have abated to the child's baseline level, as documented by attainment of goals for this level of care in the Treatment Plan;

(b) The child exhibits new symptoms or maladaptive behavior which may not be treated safely or effectively at this level of residential care and the child meets admission criteria for a more intensive or restrictive level of care; or

(c) No progress toward treatment goals has been documented for a six-month period of time, and appropriate Treatment Plan review and revision has taken place.

(7) Planned discharges require a 30-day notification to the MAS in the county in which the program is located, the MAS in the county where the child lived at admission and the child's SOSCF or OYA caseworker.

(8) In the case of emergency admissions for acute psychiatric hospitalization, the SOSCF or OYA Contracted Residential Program will notify the MAS and the SOSCF or OYA caseworker in the county in which the program is located within one working day. Upon discharge from the hos-

pital the MAS will authorize the need for continued rehabilitative mental health services in the residential program.

(9) When a resident child has an unauthorized absence, the SOSCF or OYA Contracted Residential Program must give notification within one working day to the MAS in the county in which the program is located and to any person having custody of the child. The residential program, the MAS in the county in which the program is located and the SOSCF or OYA caseworker will jointly decide the appropriateness of returning the child to the program.

(10) A request for reconsideration of admission or discharge decisions made by the MAS must be submitted in writing to the local CMHP within three working days. The CMHP Director, in consultation with an independent psychiatrist, will review the record against the criteria in 309-016-0130 and issue a written decision to the treatment team and the Executive Director of the SOSCF or OYA Contracted Residential Program within seven working days of receipt of the appeal.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 2-1993(Temp), f. 5-27-93, cert. ef. 6-1-93; MHD 4-1993, f. & cert. ef. 11-30-93; MHD 3-1994(Temp), f. & cert. ef. 4-15-94; MHD 7-1994, f. & cert. ef. 10-12-94; MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0140

Individual Complaint Process

(1) Any individual receiving services or their representative, or guardian of the individual receiving services, may file a grievance with the provider, their managed care plan or the Division.

(2) For individuals whose services are funded by Medicaid, grievance and appeal procedures outlined in 410-141-0260 through 410-141-0266, will be followed.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0150

Expedited Client Complaint Process

(1) Upon receipt of an expedited complaint, the provider representative shall collect documents relevant to the expedited issue. The client or client representative may be asked to consent to a release of information to the provider to the extent necessary to resolve the complaint. Any delay in receipt of records shall extend the time period for making a decision about the need for an expedited complaint. The extension shall equal the delay in receiving records.

(2) The provider shall forward information collected to the clinical director, or designee(s) of the clinical director, as soon as available. This information shall include preauthorization documents; notification of denial; and clinical records supporting the denial and degree of urgency of the issue.

(3) The clinical directors or designees shall review documentation received to determine if the mental health condition at issue meets the definition of an emergency situation or urgent situation.

(4) The clinical directors or designees shall notify the designated staff member responsible for handling complaints of the decision in writing and the basis for that decision.

(5) The designated staff member shall notify the client in writing of the decision about the expedited request.

(6) If an expedited complaint has been granted, the provider shall convene a complaint review group to address the complaint within five working days.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0160

Provider Responsibilities in the Client Complaint Process

Providers shall have the following responsibilities in resolving disagreements with clients:

(1) Written procedures for accepting, documenting, processing, analyzing, resolving and responding to all complaints requested by clients;

(2) Designated staff members to resolve complaints received by clients. The designees shall be persons with the authority and expertise necessary to make final clinical or administrative decisions at the provider level;

(3) A method of informing clients about complaint procedures. Information provided to clients shall include:

(a) Written and posted material describing these processes;

ADMINISTRATIVE RULES

- (b) Assurance of confidentiality;
 - (c) Applicable complaint process forms; and
 - (d) Assurance that client rights to make a complaint are protected.
- (4) A procedure to notify the client when a denial of covered services occurs. The notification shall include:

(a) A statement of the intended action, the effective date of such action, and the date the written notice is mailed. The effective date of an intended action shall be set at least 10 calendar days after the date of notice unless one or more of the following conditions apply:

- (A) The provider has received confirmation of the death of a client;
- (B) The provider has received a written statement signed by a client or client representative that he or she no longer wishes treatment or gives information that requires a denial of services and indicates that he or she understands that this might be the result of supplying that information;
- (C) The client has been admitted to an institution;
- (D) The client's whereabouts are unknown and the post office returns mail directed to the client indicating no forwarding address; or
- (E) A change in the level of mental health services is prescribed by the client's LMP.

(b) The reason(s) for the intended action and the specific rules or regulations that support the action;

(c) An explanation of the client's right to file a complaint with the provider or to request an administrative hearing with MHDDSD, and the consequences of choices made. (The provider shall encourage the client or client representative to use the complaint procedure, but shall not discourage the client or client representative from requesting a hearing);

(d) A statement referring the client or client representative to an enclosed Notice of Complaint Process;

(e) A statement referring the client or client representative to an enclosed Notice of Hearing Rights; and

(f) The name and telephone number of the provider representative to contact for additional information.

(5) A procedure to forward to the Quality Assurance Committee of MHDDSD an analysis of complaints received;

(6) Provisions for reviewing the internal complaint processes;

(7) A procedure for retaining the following documents regarding complaints in a central location for a minimum of two calendar years from the date of the resolution:

- (a) Log of complaints received;
 - (b) File of written complaints received;
 - (c) Records of the review or investigation;
 - (d) Resolution of complaints received; and
 - (e) The name and title of the designated staff member making the resolutions, determinations or decisions.
- (8) Afford clients the full use of the complaint procedures;
- (9) Cooperate with MHDDSD and the client or client representative in seeking a remedy to the complaint issue and comply with and fully implement any decision. Providers shall:

(a) Not penalize the client or client representative for making a complaint or requesting a hearing;

(b) Render a decision about a complaint within 30 calendar days of receiving the complaint form;

(c) Cooperate in the hearing process and make available, as determined necessary by MHDDSD, all persons with relevant information and all pertinent files and clinical records;

(d) Not deny treatment until a decision is rendered after the hearing or complaint if a client or client representative requests a hearing or makes a complaint before the intended date of action.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0170

Client Hearing Process

(1) The Oregon Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act apply to client hearings process (OAR 137-003-0001 through 137-003-0092 and 137-004-0010). Clients may choose to request an administrative hearing to resolve a complaint with a provider in the following manner:

(a) Wait for a decision to be made on a complaint before requesting a hearing;

(b) Request a hearing prior to a decision being made related to a complaint (this choice will stop the complaint process regarding the issue(s) involved);

(c) Accept the decision made related to a complaint and not request a hearing; or

(d) Request an administrative hearing directly from the MHDDSD Title XIX Section.

(2) The time frame for requesting a hearing shall be within 45 calendar days after the date of:

(a) The decision related to the complaint;

(b) The initial notification of denial of covered services; or

(c) The date of initial dissatisfaction with the provider.

(3) If the client or client representative chooses to request a hearing, the client or client representative shall complete and sign an Administrative Hearing Request form (AFS 443) or other MHDDSD approved form and shall send it to the MHDDSD Title XIX Section.

(4) The client or client representative may request a postponement of a hearing or may withdraw a hearing request by making a written request to the MHDDSD Title XIX Section.

(5) The client or client representative shall cooperate with MHDDSD and the provider in gaining access to records related to the hearing issue by consenting to a release of information to MHDDSD and the provider to the extent necessary to resolve a hearing issue. Failure to consent may make it impossible to resolve the hearing issue. Untimely receipt of records shall serve as a valid reason for MHDDSD or the provider to request a postponement of the scheduled hearing.

(6) If the client believes that his or her health is at risk of deteriorating during the period of time required to resolve the hearing issue, then the client may request an expedited hearing. In addition to the information required by the Administrative Hearing Request form, the client or client representative shall do the following:

(a) Identify the issue as an expedited hearing request;

(b) Explain the urgency of resolving the issue; and

(c) Describe the negative consequences of following the regular hearing request process.

(7) A hearing officer, after weighing the evidence, will issue a proposed final order. MHDDSD may adopt or modify the order, or reject the order and prepare a new one.

[ED. NOTE: The forms referenced are available from the agency.]

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0180

Client Expedited Hearing Process

(1) Upon receipt of an expedited hearing request, the MHDDSD representative shall immediately notify the provider of the expedited hearing request and begin collecting documents relevant to the request. The client may be asked to consent to a release of information to MHDDSD and to the provider to the extent necessary to resolve the hearing issue. Any delay in receipt of records shall extend the time period for making a decision about the need for an expedited hearing.

(2) The MHDDSD representative shall forward information collected to the clinical directors or designees, as soon as available. These documents shall include:

(a) Preauthorization documents;

(b) Denial notifications; and

(c) Clinical records supporting the denial and the degree of urgency of the issue.

(3) The clinical directors or designees shall review documentation received to determine if the mental health condition at issue meets the definition of an emergency or urgent situation.

(4) The clinical directors or designees shall notify the MHDDSD representative responsible for handling hearings of the decision and the basis for that decision.

(5) The MHDDSD representative shall notify the client and the contracted Hearing Officer or Hearing Unit of the decision about the expedited request.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0190

Procedures for Client Hearings

(1) Upon receipt of the Administrative Hearings request, MHDDSD shall forward the request and any supporting documentation to a Hearings Officer or Hearing Unit under contract with MHDDSD.

ADMINISTRATIVE RULES

(2) MHDDSD shall forward a copy of the Administrative Hearing Request, supporting documentation, and the notice of hearing to the provider:

(a) If a client or client representative requests a hearing before the intended date of action described in the advance notice about the intent to deny treatment, the provider may not deny treatment until a decision is rendered after the hearing;

(b) The provider shall promptly notify the client in writing that:

(A) Services are to be continued until a hearing decision is rendered; and

(B) The cost of any services provided to the client based on the hearing issue will be recovered from the client if the Hearing Officer finds in favor of the provider and MHDDSD accepts the findings of the Hearing Officer.

(3) The provider shall collect documentation relevant to the case and have it reviewed by the clinical director or designee of the clinical director to determine if the case was handled correctly:

(a) If the clinical director or designee of the clinical director determines the case was handled incorrectly, he or she shall inform the client of how the issue will be addressed and shall determine whether or not the client is satisfied. The MHDDSD representative shall send a written notice to the Hearings Officer or Hearing Unit that the issue is settled if the client is satisfied;

(b) If the clinical director or designee of the clinical director determines the case was handled correctly and the original decision stands, then he or she shall identify witnesses to testify during the hearing, prepare a letter stating the position of the organization concerning the issue and forward copies of all evidence to the MHDDSD representative.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0200

Time Period Computation

The time period for filing a complaint or requesting a hearing shall be computed as follows:

(1) The day the complaint or hearing request is received by MHDDSD shall not be included;

(2) The last day of the time period shall be included unless it is a Saturday, Sunday or a legal holiday;

(3) If the last day is a Saturday, Sunday or a legal holiday, the time period shall include the next day which is not a Saturday, Sunday or a legal holiday.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0210

Confidentiality and Release of Information

(1) All information concerning a complaint made or a hearing requested shall be kept confidential by the parties. MHDDSD and the provider shall have a right to this information without a signed release from the client or client representative.

(2) The client or client representative may be asked to consent to the release of information to MHDDSD and the provider to the extent necessary to resolve the complaint or hearing request. Failure to consent may make it impossible to resolve the complaint or hearing request.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; MHD 7-1997, f. & cert. ef. 10-1-97; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0220

Provider Appeals Process

For individuals whose services are funded by Medicaid, provider appeal procedures outlined in 410-120-1560 through 410-120-1600, will be followed.

Stat. Auth.: ORS 409.010; 409.050 & 430.640

Stats. Implemented: ORS 414.065 & 430.640

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0230

Provider Appeals — Appeal of Payment/Sanction Decisions

A provider may appeal certain decisions affecting the provider made by MHDDSD by requesting an administrative review, or a contested case hearing. Providers may appeal:

(1) A denial of or limitation of payment allowed for services or items provided;

(2) Sanctions imposed, or intended to be imposed, by MHDDSD; or

(3) Overpayment determinations.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)

Stats. Implemented: ORS 430.021(2)

Hist.: MHD 5-1996, f. & cert. ef. 4-2-96; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0300

Purpose and Statutory Authority

(1) Purpose. These rules:

(a) Prescribe general standards for the provision of non-capitated outpatient mental health services under the Oregon Health Plan via a fee-for-service payment mechanism to clients eligible for payment under Title XIX (Medicaid) of the Social Security Act, Section 1905(a)(13) and Federal Regulations at **42 CFR 440.130(3)(d)**; and

(b) Define procedures for billing State of Oregon for non-capitated outpatient Medicaid reimbursable mental health services delivered to Medicaid eligible individuals who are not enrolled with MHOs. The rules do not apply to fee-for-service reimbursements made by an MHO to a sub-contractor for services which are capitated in the MHO agreement.

(2) Statutory Authority. These rules are authorized by ORS 414.640(2) and 430.041 and carry out the provisions of ORS 414.640(2) and 430.021(2).

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.740(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0310

Definitions

As used in these rules:

(1) "Action" means a denial of Medicaid-covered services;

(2) "Amount" means the number and frequency of treatment sessions provided;

(3) "Client" means a Medicaid-eligible individual with a mental or emotional disorder who requests or receives non-capitated outpatient mental health services;

(4) "Client Process Monitoring System" or "CPMS" means the MHDDSD's client information system for community-based services;

(5) "Client Representative" means a person designated by a client as permitted in ORS 430.210(3) to assert and exercise the client's rights under ORS 430.210;

(6) "Clinical Record" means the record required by OAR 309-014-0035, General Standards for Delivery of Community Mental Health Services. The record is a collection of all documentation regarding a client's mental health treatment services. It is a legal document and provides the basis by which the provider manages service delivery and quality assurance. For the purpose of confidentiality, it is considered the medical record defined in ORS Chapter 179;

(7) "Clinical Supervision" means the documented oversight by a Clinical Supervisor of outpatient mental health treatment services provided by Qualified Mental Health Professionals (QMHPs) or Qualified Mental Health Associates (QMHA);

(8) "Clinical Supervisor" means a designated QMHP with a Master's degree and at least two years post-graduate clinical experience in a mental health treatment setting. The Clinical Supervisor operates within the scope of his or her practice and demonstrates the competency to oversee and evaluate the outpatient mental health treatment services provided by a QMHP or QMHA;

(9) "Community Mental Health Program" or "CMHP" means the organization of all services under ORS 430.630 for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a Local Mental Health Authority, operated in a specific geographic area of the state under a contract or agreement with the MHDDSD;

(10) "Comprehensive Mental Health Assessment" means a mental status exam and an evaluation of a client's functioning in the treatment domains described in OAR 309-016-0390(3) completed by a QMHP;

(11) "Consent to Treatment" means a written agreement between the client or the client representative and the provider for the client to receive outpatient mental health services;

(12) "Corrective Action Plan" means a written document which specifies actions that a provider will take to come into compliance with OAR 309-016-0300 through 309-016-0550;

ADMINISTRATIVE RULES

(13) "Direct Supervision" means the directing and coordinating by a QMHP of interventions performed by a QMHA. Direct supervision also means reviewing and evaluating the documentation of interventions by a QMHA. Direct supervision is performed on a regular, routine basis either individually or in a group setting;

(14) "Discharge Criteria" means the individualized standards to be met to complete service provision for each client;

(15) "DSM Diagnosis" means the determination of a client's mental or emotional disorder as described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association. The principal Axis I diagnosis provides the clinical basis for treatment, is determined through the Mental Health Assessment and any examinations, tests, procedures, or consultations suggested by the assessment and is entered on a written individualized Treatment Plan. Neither a DSM "V" code condition, substance use disorder or mental retardation may be considered the principal diagnosis supporting eligibility for services under these rules, although these conditions or disorders may co-occur with the diagnosable mental disorder.

(16) "Duration" means the length of time used to provide:

- (a) Specific treatment sessions; and
- (b) An entire course of treatment.

(17) "Fee-For-Service" or "FFS" means the payment for each reimbursable service retrospectively based upon cost of providing the service, or the maximum rate approved by the MHDDSD for such service, whichever is less;

(18) "Fully Capitated Health Plans" or "FCHPs" means Prepaid Health Plans that contract with OMAP to provide physical health care services under the OHP Medicaid Demonstration Project. In order to provide services under these rules, an FCHP must also be a Mental Health Organization;

(19) "Goal" means an expected result or condition to be achieved, which is specified in a statement of relatively broad scope, provides a guideline for the direction of care and is related to an identified clinical problem as stated on the Treatment Plan;

(20) "Hearing" means:

(a) For clients, an administrative hearing related to a denial of benefits which is held when requested by a client or client representative. A hearing may also be held when requested by a client or client representative who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously; or

(b) For providers, an administrative hearing regarding appeal of:

(A) A denial of or limitation of payment allowed for services or items provided;

(B) Sanctions imposed, or intended to be imposed, by the MHDDSD;

or

(C) Overpayment determinations.

(21) "Licensed Medical Practitioner" or "LMP" means a person who meets the following minimum qualifications as documented by the provider:

(a) Holds at least one of the following educational degrees and valid licensures:

- (A) Physician licensed to practice in the State of Oregon;
- (B) Nurse Practitioner licensed to practice in the State of Oregon; or
- (C) Physician's Assistant licensed to practice in the State of Oregon;

and

(b) Whose training, experience and competence demonstrates the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(22) "Medical Supervision" means an LMP's determination at least annually and at intervals prescribed by the Office of Mental Health Services (OMHS), of the medical appropriateness of outpatient mental health services for each client;

(23) "Medically Appropriate" means the determination by an LMP, operating within the scope of his or her license, training and experience, that a service is required for prevention (including preventing a relapse), diagnosis or treatment of mental health conditions and is appropriate and consistent with the diagnosis; consistent with treating the symptoms of a mental illness or treatment of a mental condition; appropriate with regard to standards of good practice and generally recognized by the relevant scientific community as effective; not solely for the convenience of the client or provider of the service; and the most cost effective of the alternative levels of medically appropriate services which can be safely and effectively provided to the client;

(24) "Mental Health and Developmental Disability Services Division" or "MHDDSD" means the Department of Human Services

(DHS) Agency responsible for the administration of State mental health and developmental disability services to persons who qualify for certain programs under federal and state laws, rules and regulations;

(25) "Mental Health Assessment" means a determination by a QMHP during the enrollment process and periodically thereafter as medically appropriate of the client's need for outpatient mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status through interview(s), observation, testing, and review of previous treatment records. The activities conclude with:

(a) A determination of a DSM Axis I diagnosis, which provides the clinical basis for treatment, and is entered on a written Treatment Plan; or

(b) A written statement, supported by assessment and interview data, which indicates that the person is not in need of outpatient mental health services. Other disposition information such as to whom the person was referred and the date the Notice of Denial was given or sent shall be included in the statement.

(26) "Mental Health Organization" or "MHO" means a Prepaid Health Plan under an Intergovernmental Agreement or contract with the MHDDSD that provides outpatient mental health services under the Oregon Health Plan. MHOs can be FCHPs, CMHPs, county governments operating CMHPs, or private MHOs or combinations thereof;

(27) "MHO Agreement" means the written contract or Intergovernmental Agreement between the MHDDSD and an MHO as permitted in ORS 414.725 for provision of mental health services under the Oregon Health Plan;

(28) "Notice of Denial" means the notice given or sent to the client upon denial, termination, suspension or reduction of services which explains the client's right to appeal such a decision and the process to appeal such a decision;

(29) "Objective" means the written statement of an expected result or condition that is related to the attainment of a goal. The objective is stated in measurable terms and has a specified time for accomplishment;

(30) "Office of Medical Assistance Programs" or "OMAP" means the Office of the Oregon Department of Human Services responsible for coordinating the Medical Assistance Programs within the State of Oregon;

(31) "Office of Mental Health Services" or "OMHS" means the program office of the MHDDSD responsible for the administration of mental health services for the State of Oregon;

(32) "OMB Circular A-122" means the Circular established by the Federal Office of Management and Budget which sets forth the principles for determining costs of grants, contracts and other agreements;

(33) "Outpatient Mental Health Services" means those FFS services listed in the MHDDSD Medicaid Rehabilitative Services Procedures Codes and Reimbursement Rates Schedule. The QMHP or QMHA must provide these FFS services upon the recommendation or under the medical supervision of an LMP. The services must be provided either by a:

(a) Licensed Medical Practitioner (LMP);

(b) Qualified Mental Health Professional (QMHP) under clinical supervision of a Clinical Supervisor; or

(c) Qualified Mental Health Associate (QMHA) under the direct supervision of a QMHP and under clinical supervision of a Clinical Supervisor.

(34) "Progress" means the movement toward the individual treatment goal(s) using criteria in the client's treatment plan, set by the provider, and if exercised under ORS 430.210(3), the client, the client's guardian, and any representative designated by the client;

(35) "Progress Note" means the written documentation of the clinical course of treatment which becomes the basis for review and revision of the Treatment Plan and the clinical course of treatment;

(36) "Provider" means an MHO subcontractor providing outpatient mental health services under these rules;

(37) "Qualified Mental Health Associate" or "QMHA" means a person delivering services under the direct supervision of a Qualified Mental Health Professional (QMHP) and meeting the following minimum qualifications as documented by the provider:

(a) A bachelor's degree in a behavioral sciences field; or

(b) A combination of at least three year's relevant work, education, training or experience; and

(c) Has the competencies necessary to:

(A) Communicate effectively;

(B) Understand mental health assessment, treatment and service terminology and to apply the concepts; and

ADMINISTRATIVE RULES

(C) Provide psychosocial skills development and to implement interventions prescribed on a Treatment Plan within the scope of his or her practice.

(38) “Qualified Mental Health Professional” or “QMHP” means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the provider:

- (a) Graduate degree in psychology;
- (b) Bachelor’s degree in nursing and licensed by the State of Oregon;
- (c) Graduate degree in social work;
- (d) Graduate degree in a behavioral science field;
- (e) Graduate degree in recreational, art, or music therapy;
- (f) Bachelor’s degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and/or group therapy within the scope of his or her practice.

(39) “Quality Assurance” or “QA” means the structured, internal monitoring, and evaluation process to:

- (a) Identify aspects of quality care;
- (b) Use indicators and clinical criteria to continually and systematically monitor these aspects of care;
- (c) Establish markers which indicate problems or opportunities to improve care;
- (d) Take action to correct problems and improve standard care;
- (e) Assess the effectiveness of the actions; and
- (f) Document the improvements in care.

(40) “Sanction” means an action against a provider taken by MHDDSD in cases of non-compliance, fraud, misuse or abuse of Medicaid;

(41) “Scope” means the extent or range of the type of outpatient mental health services provided;

(42) “Setting” means the locations at which mental health treatment services are provided. Settings include such locations as mental health offices, an individual’s home or school or other identified locations;

(43) “Subcontractor” means an entity operating under a written contract with an MHO for the purpose of delivering mental health services in the Oregon Health Plan;

(44) “Treatment” means a planned, medically appropriate, individualized program of interactive medical, psychological or rehabilitative procedures, therapeutic interventions, experiences, and/or activities designed to rehabilitate, relieve or minimize mental or emotional disorders identified through a Mental Health Assessment and provided by a QMHP or QMHA within the scope of their provider certification;

(45) “Treatment Plan” means a written individualized program of treatment goals, measurable objectives and services to be provided. A QMHP and, if they elect to do so under ORS 430.210(3), the client, client guardian, and client representative, will develop the Treatment Plan which includes the amount, duration and scope of services. The Treatment Plan will be revised and the LMP will approve the plan at least annually.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0320

Conditions of Provider Participation — General

All Providers participating in non-capitated outpatient mental health services shall:

- (1) Be contractually affiliated with the MHDDSD or operate under a written subcontract with an MHO to provide OHP services;
- (2) Abide by applicable portions of:
 - (a) These rules;
 - (b) The Office of Mental Health Services (OMHS) rules;
 - (c) The General Rules for the Oregon Medical Assistance Program, OAR 410-120-0000 through 410-120-1980; and
 - (d) The Oregon Health Plan Administrative Rules of the Office of Medical Assistance Programs, OAR 410-141-0000 through 410-141-0860.
- (3) Hold a valid Certificate of Approval granted by MHDDSD for each type of service provided;
- (4) Be enrolled with OMAP based on written application;
- (5) Bill only those services provided after the date OMAP issues a vendor number.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0330

Record Retention Requirements

All providers shall retain complete and legible financial and clinical records in accordance with OAR 166-005-0000 through 166-040-1050 (State Archivist). Financial records shall be retained for a minimum of three years and clinical records shall be retained for a minimum of seven years. If an audit, litigation, research and evaluation, or other action involving the financial or clinical record is started before the end of the established retention period, the financial or clinical record must be retained until all issues arising out of the action are resolved or until the end of the established retention period, whichever is later.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0340

Client Rights

All providers must ensure provision of the client rights in ORS 430.210.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2), 430.021(2) & 430.210

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0350

Medical Supervision

All providers seeking reimbursement for services under these rules shall deliver such services under medical supervision in accordance with this rule and any applicable Office of Mental Health Services (OMHS) rules. Medical supervision shall be secured through a current written agreement, job description, or similar type of binding arrangement between a Licensed Medical Practitioner (LMP) and the provider which describes an LMP’s responsibility in determining the medical appropriateness of outpatient mental health services delivered under these rules. The LMP must perform medical supervision at least annually by reviewing the Comprehensive Mental Health Assessment and approving the revised Treatment Plan. Providers will utilize the LMP within the individual’s scope of practice. Psychiatrists will be involved when medically appropriate and each program shall assure access to psychiatric services.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0360

Clinical Supervision

All providers shall deliver medically appropriate services under clinical supervision in accordance with these rules and applicable Office of Mental Health Services rules. Clinical supervision includes evaluating the effectiveness of and continued need for mental health treatment services provided. Clinical Supervision shall be secured through a current written agreement, job description, or similar type of binding arrangement between the Clinical Supervisor and the provider which describes the Clinical Supervisor’s oversight responsibility for the supervision, monitoring, and training of QMHPs and QMHAs for the provision of outpatient mental health services. The Clinical Supervisor must provide and document clinical supervision of a QMHP or QMHA at least once every month.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0370

Clinical Record Requirements

All providers shall:

- (1) Develop and maintain an individual, legible record for each person served under these rules which is completed within medically appropriate timeframes. The clinical record must include:
 - (a) CPMS enrollment data;
 - (b) Identifying data including the client’s name, address, telephone number, date of birth, gender and marital status (if applicable);
 - (c) Name, address and telephone number of parent, legal guardian or next of kin;
 - (d) Name, address and telephone number of the client’s physician;
 - (e) Name and address of the client’s physical health plan;

ADMINISTRATIVE RULES

(f) Client Consent to Treatment (if the clinical record does not reflect a signed and dated consent of the client or client representative to the recommended services and Treatment Plan, the record shall document the reason such signature is missing);

- (g) A Mental Health Assessment and pertinent history;
- (h) Individualized Treatment Plan;
- (i) Documentation of client participation in treatment planning;
- (j) Medication services records (if applicable);
- (k) Progress notes sufficient to describe each service for which a billing is made; and

(l) Discharge criteria and summary.

(2) Provide services as specified in the client's Treatment Plan. The Treatment Plan shall specify:

(a) A DSM Axis I diagnosis that is the medically appropriate reason for service provision and the main focus of treatment;

(b) The individualized treatment goals and measurable objectives to be achieved;

(c) The regimen of outpatient mental health services described in MHDDSD's Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule, or other schedules approved by MHDDSD that will be used to meet the treatment goals and achieve the measurable objectives;

(d) The projected schedule for service delivery, describing the expected amount, duration and scope of each type of planned service;

(e) The printed name, signature and date of signature of the QMHP developing the Plan;

(f) The projected schedule for revising the Treatment Plan at least annually in conjunction with the annual Comprehensive Mental Health Assessment; and

(g) The criteria for discharge.

(3) Conduct a complete Comprehensive Mental Health Assessment for all clients receiving continual outpatient mental health services for more than one year from date of enrollment. The Comprehensive Mental Health Assessment shall be completed by a QMHP and reviewed and approved, in writing, at least annually by the LMP. The Comprehensive Mental Health Assessment will:

(a) Include the following treatment domains:

- (A) Cognitive;
- (B) Family;
- (C) Substance abuse;
- (D) Emotional;
- (E) Behavioral;
- (F) Developmental;
- (G) Social;
- (H) Physical health/medical care;
- (I) Nutritional;
- (J) School or vocational;
- (K) Cultural; and
- (L) Legal; and

(b) Conclude with a completed DSM five axes diagnosis followed by a revised Treatment Plan.

(4) Document delivery prescribed services through progress notes. This documentation, at a minimum, shall consist of material which includes the:

- (a) Specific Medicaid services rendered;
- (b) Date service was rendered;
- (c) Setting in which the service was rendered;
- (d) Amount of time it took to deliver the service;
- (e) Client's clinical response to the specific treatment;
- (f) Printed or stamped name of the QMHP or QMHA who rendered the service; and

(g) Signature, computerized signature or written initials and date of this authentication and educational credentials of the QMHP or QMHA providing the services. If written initials are utilized to authenticate a progress note, the provider must maintain a printed list of staff and with their corresponding initials. A stamped signature may be utilized if the QMHP or QMHA also authenticates this signature by initialing and dating the stamped signature.

(5) For services that are not specifically included in the client's Treatment Plan, or exceed the scope of the plan, a written explanation of how the services being billed relate to the Treatment Plan must be included and their provision specifically approved by the LMP who approved the mental health assessment and treatment plan.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0380

Additional Provider Requirements

All providers shall:

(1) Maintain fiscal records in accordance with accounting principles approved by the American Institute of Certified Public Accountants and/or other applicable accounting guidelines;

(2) Comply with these rules, the OHP Administrative Rules of the Office of Medical Assistance Programs, OAR 410-141-0000 through 410-141-0860, the applicable General Rules for Oregon Medical Assistance Programs, OAR 410-120-0000 through 410-120-1980 published by OMAP and all applicable MHDDSD Office of Mental Health Services (OMHS) rules. Sanctions may be imposed on a provider for abuse or misutilization of Medicaid as described in OAR 410-120-0000 through 410-120-1980 of the General Rules for Oregon Medical Assistance Programs;

(3) Accept payment from MHDDSD as full and total reimbursement for FFS services provided.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0390

Quality Assurance Requirements

All Providers will develop and implement a quality assurance program adequate to monitor, evaluate and improve the quality and appropriateness of services provided to clients under these rules, and to assure compliance with these and all other applicable Division Rules.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0400

Billing Requirements

All providers must:

(1) Bill MHDDSD at a rate, based upon reasonable and allowable costs of services in accordance with OMB Circular A-122 or other applicable federal laws, rules and regulations, or the provider's usual and customary charge to the general public, or rates established by MHDDSD Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule whichever is less;

(2) Submit all fee-for-service billings to the Office of Medical Assistance Programs Medicaid Management Information System (MMIS) electronically or on forms designated by that office or through other systems as directed by MHDDSD. Procedure codes listed in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule must accurately describe services rendered and must be used when billing;

(3) File claims within 12 months of the date of service to be eligible for payment.

Stat. Auth.: ORS 414.640(2) & 430.041

Stats. Implemented: ORS 414.640(2) & 430.021(2)

Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0410

Payment Limitations

Payment will be made according to:

(1) The limitations contained in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule, such as the maximum rate and the amount, duration, and scope of services provided, are subject to change at the discretion of MHDDSD. Providers will be notified of such changes in writing;

(2) Payment will be made only for services listed in the Medicaid Rehabilitative Services Procedure Codes and Reimbursement Rates Schedule under BA Codes 008 through 399, which are mental health services that are listed and funded under ORS 414.720 at the time of their provision, and which are rendered to Medicaid-eligible clients in full compliance with these rules. Such payments will only be made for services delivered during the period in which the provider is enrolled in the Oregon Medical Assistance Program;

(3) When MHDDSD determines an overpayment has been made to a provider, the amount of overpayment is subject to recovery by MHDDSD. The overpayment amount will be determined at MHDDSD's discretion through examination of all claims, through statistical sampling and extrapolation techniques or other means. Procedures for recovery of funds are as

ADMINISTRATIVE RULES

described in the Office of Medical Assistance Programs General Rules for Oregon Medical Assistance Programs or by applicable contract language.

Stat. Auth.: ORS 414.640(2) & 430.041
Stats. Implemented: ORS 414.640(2) & 430.021(2)
Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98;
Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0420

Variations

A variance from those portions of these rules that are not derived from federal regulations or the General Rules for Oregon Medical Assistance Programs may be granted to a CMHP for a period of up to one year in the following manner:

(1) The CMHP shall submit to the MHDDSD Title XIX Section a written request which includes:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice proposed; and
- (d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(2) The Assistant Administrator of the Office of Finance shall approve or deny the request for variance in writing.

(3) The MHDDSD Title XIX Section shall notify the Provider of the decision. MHDDSD shall give notice in writing within 30 days of receipt of the request.

(4) Appeal of the denial of a variance request shall be to the Administrator of MHDDSD, whose decision shall be final.

(5) All variances must be reapplied for annually.

Stat. Auth.: ORS 414.085, 430.041 & 430.640(1)(h)
Stats. Implemented: ORS 430.021(2)
Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98; MHD 11-2000, f. 8-30-00, cert. ef. 9-18-00; Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0430

Confidentiality of Records Requirements

(1) Providers shall keep all client records confidential in accordance with 42 CFR, Part 431, Subpart F and 42 CFR Part 2, ORS 179.505 and other applicable state or federal laws.

(2) Within 10 days of a request, providers shall make pertinent clinical and financial eligibility information concerning a client available to other service providers responsible for the client's care, consistent with ORS 179.505 and any other state statutes and federal laws and regulations concerning confidentiality.

Stat. Auth.: ORS 414.640(2) & 430.041
Stats. Implemented: ORS 414.640(2) & 430.021(2)
Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98;
Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0440

Provider Appeals Process

The Oregon Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act apply to provider appeals (OAR 137-003-0001 through 137-003-0092 and 137-004-0010).

Stat. Auth.: ORS 414.640(2) & 430.041
Stats. Implemented: ORS 414.640(2) & 430.021(2)
Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98;
Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-016-0450

Provider Appeals — Appeal of Payment/Sanction Decisions

A provider may appeal certain decisions affecting the provider made by MHDDSD by requesting an administrative review, or a contested case hearing. Providers may appeal:

(1) A denial of or limitation of payment allowed for services or items provided;

(2) Sanctions imposed, or intended to be imposed, by MHDDSD; or

(3) Overpayment determinations.
Stat. Auth.: ORS 414.640(2) & 430.041
Stats. Implemented: ORS 414.640(2) & 430.021(2)
Hist.: MHD 6-1997(Temp), f. & cert. ef. 10-1-97; MHD 2-1998, f. & cert. ef. 3-27-98;
Suspended by MHS 2-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

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Rule Caption: Update the "Other Contract Services" rules and CESIS rules in conjunction with ISSR".

Adm. Order No.: MHS 3-2010(Temp)

Filed with Sec. of State: 3-4-2010

Certified to be Effective: 3-4-10 thru 8-28-10

Notice Publication Date:

Rules Amended: 309-034-0150, 309-034-0160, 309-034-0170, 309-034-0180, 309-034-0190, 309-034-0205, 309-034-0210, 309-034-0240, 309-034-0250, 309-034-0260, 309-034-0270, 309-034-0290, 309-034-0310, 309-034-0320, 309-034-0400, 309-034-0410, 309-034-0420, 309-034-0430, 309-034-0440, 309-034-0450, 309-034-0460, 309-034-0470, 309-034-0480, 309-034-0490

Subject: The Addictions & Mental Health Division is proposing to update the "Other Contract Services" rules and the "Children's Emergency Safety Intervention Specialist" (CESIS) rules to reflect changes made to service delivery by the new "Integrated Services & Supports" Rule (ISSR), which is being developed in conjunction with these rule revisions.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-034-0150

Purpose

Purpose. These rules describe the methods and standards for payments for psychiatric residential treatment facilities for the provision of community psychiatric residential treatment services for children eligible for medical assistance under Medicaid, as defined in these rules. Psychiatric residential treatment services are provided within a comprehensive system of care and are provided to children whose treatment history, degree of impairment, current symptoms and degree of family and other supports require this level of care.

Stat. Auth.: ORS 409.050, 430.705 & 430.715
Stats. Implemented: ORS 414.025 & 414.065
Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0160

Definitions

(1) "Active Treatment" means of a professionally developed and supervised individual plan of care to improve a condition.

(2) "Allowable Cost" means the cost of psychiatric residential treatment services based on cost finding principles found in the appropriate OMB Circular such as "Cost Principles for Non-Profit Organization" (OMB Circular A-122) or "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87) and including costs incurred for interest on the acquisition of buildings and improvements thereon.

(3) "Certification of Need (CON)" means the procedures established by the Addictions and Mental Health (AMH) Division to certify in writing a child's need for psychiatric residential treatment services.

(4) "Child" or "Children" means a person or persons under the age of 18. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, will be considered a child until age 21 for purposes of these rules.

(5) "Children, Adults and Families Division (CAF)" means the Division responsible for administering self-sufficiency and child-protective programs under the Department of Human Services (DHS).

(6) "Commission on Accreditation of Rehabilitation (CARF)" means the organization that accredits behavioral health care and community providers based on the "CARF Behavioral Health" standards manual.

(7) "Council on Accreditation of Services for Families and Children Facilities (COA)" means an organization that accredits behavioral health care and social service programs based on the COA "Standards for Behavioral Health Care Services and Community Support and Education Services Manual."

(8) "Direction of the psychiatrist" means medical oversight of the clinical aspects of care required of accredited "inpatient under 21" providers by the Health Care Financing Administration (HCFA). Medical oversight includes participation on the interdisciplinary team, prescribing treatment on individual plans of care by signature, prescribing and monitoring or monitoring medications and reviewing special treatment procedures."

(9) "Division" mean the Addictions and Mental Health (AMH) Division of the Department of Human Services (DHS).

(10) "Division of Medical Assistance Programs (DMAP)" means the division within DHS that is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP - Title XXI), and several other programs.

(11) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders-IV-R," published by the American Psychiatric Association.

ADMINISTRATIVE RULES

(12) "Individual Plan of Care" or "Individual Service and Support Plan (ISSP)" means the written plan authored by a Qualified Mental Health Professional for active treatment for each child admitted for psychiatric residential treatment services. The individual plan of care specifies the DSM diagnosis, goals, measurable objectives, and specific treatment modalities and is based on a completed mental health assessment or comprehensive mental health assessment of the child's functioning and the acuity and severity of psychiatric symptoms.

(13) "Interdisciplinary Team" means a team of qualified treatment and education professionals including a child psychiatrist or Licensed Medical Practitioner and the child's parent or guardian responsible for assessment and evaluation, the development and oversight of individual plans of care, and the provision of treatment for children admitted to an intensive treatment services program.

(14) "JCAHO" means the Joint Commission on Accreditation of Healthcare Organizations. The Joint Commission accredits psychiatric residential treatment facilities according to its "Comprehensive Accreditation Manual for Behavioral Health Care."

(15) Licensed Medical practitioner (LMP) means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(16) "Maximum Per Diem Payment" means the established payment rate determined by the Division, based on a cost model for an economic and efficiently operated facility.

(17) "Medicaid" means the federal grant-in-aid program to state governments to provide medical assistance to poor and indigent persons under Title XIX of the Social Security Act.

(18) "Medicaid Patient Days" means the accumulated total number of days during which psychiatric residential treatment services were provided to Medicaid-eligible children during a contract period. The Division shall determine the total number of Medicaid patient days on the basis of dates of service per patient by provider and fiscal period.

(19) "Psychiatric Residential Treatment Facility" means a facility accredited by JCAHO; CARF; COA; or any other accrediting organization, with comparable standards, that is recognized by the State. The facility must also be licensed by CAF for treatment of children under age 21.

(20) "Psychiatric Residential Treatment Services" means the services provided by nationally accredited providers certified under these rules for children who require active psychiatric treatment for a diagnosed mental disorder in a 24-hour residential setting.

(21) "System of care" means the comprehensive array of mental health and other necessary services which are organized to meet the multiple and changing needs of children with severe emotional disorders and their families.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0170

Conditions of Service Provider Participation

A service provider must:

(1) Submit a completed application packet to the Division. No billing for Medicaid payment will be made until the service provider has received written approval from the Division.

(2) Provide psychiatric residential treatment services to children eligible for Medicaid benefits under the terms of a written agreement with the Division. The agreement must provide that the psychiatric residential treatment facility and the services provided comply with all applicable state and federal requirements.

(3) Be in compliance with the applicable State and Federal Civil Rights Laws.

(4) Support and protect the fundamental human, civil, constitutional, and statutory rights of each child.

(5) Be accredited as a psychiatric residential treatment facility for children under age 21 by JCAHO, CARF, COA, or any other accrediting organization with comparable standards, that is recognized by the State; be licensed by CAF; holds a Certificate of Approval per OAR 309-012-0130 through 309-012-0220 from the Division and be in compliance with the treatment services standards described in OAR 309-032-1100 through 309-032-1230.

(6) Provide a program consistent with standards set by JCAHO, CARF, COA, or any other accrediting organization, with comparable standards, that is recognized by the State.

(7) Keep fiscal records in accordance with generally accepted accounting principles.

(8) All providers shall develop and maintain:

(a) An individual Service Record for each individual upon entry. The record will, at minimum, include:

(A) MHO, FCHP or other third party insurance enrollment information, including documentation of benefit, denial, or appeal, of a third party payer.

(B) Identifying information, or documentation of attempts to obtain the information, including:

(C) The individual's name, address, telephone number, date of birth, gender, marital status and military status;

(D) Name, address, and telephone number of parent or legal guardian, primary care giver, if applicable, next of kin and emergency contact;

(E) Name, address and telephone number of the individual's primary care physician;

(F) Emergency medical and dental resources;

(G) Informed Consent for Service, including medications, or documentation specifying why the provider could not obtain consent by the individual or guardian as applicable;

(H) Written refusal of any services and supports offered, including medications;

(I) Assessment or provisional assessment and updates to the assessment;

(J) An Individual Plan of Care, including any applicable behavior support or crisis intervention planning;

(K) Individual service notes;

(L) A Service Conclusion Summary, when required;

(M) Other plans as made available, such as, but not limited to, WRAP, recovery plans, wellness action plans, IEPs, and advance directives for physical and mental health care; and

(N) Applicable signed consents for release of information.

(b) Medical Service Records: When medical services are provided, the following documents will be part of the Individual Service Record as applicable:

(A) Medication Administration Records as required under the Integrated Services and Supports Rule (ISSR) OAR 309-032-1500 through 309-032-1565.

(B) Laboratory reports; and

(C) LMP orders for medication, protocols or procedures.

(c) Individual Plan of Care: The Individual Plan of Care will document the specific services and supports to be provided, arranged or coordinated to assist the individual and his or her family, if applicable, to achieve desired outcomes. At minimum, each Individual Plan of Care will include:

(A) Measurable or observable rehabilitative and functional objectives;

(B) Specific services and supports to be provided;

(C) Applicable service and support delivery details including frequency and duration of each service; and

(D) Timelines for review of progress and Individual Plan of Care updates, consistent with the level of care provided and the needs of the individual. In ITS programs under the ISSR the timeline must not exceed 30 days.

(E) For Intensive Community-based Treatment and Support Services (ICTS) and Intensive Treatment Services (ITS) programs under the ISSR, the Individual Plan of Care will also include:

(i) Identification of strengths and needs;

(ii) A summary of related planning across all relevant life domains by the participating team members;

(iii) Proactive safety and crisis planning;

(iv) Criteria for service conclusion; and

(v) A behavior support plan, consistent with the ISSR.

(F) A QMHP, who is also a licensed healthcare professional, will, within seven days of the date of the development of the Individual Plan of Care, recommend the treatment by signing the Individual Plan of Care for each individual receiving mental health services.

(d) Assessment: When an individual is admitted for services, an assessment will be completed prior to development of the ISSP. When an assessment is not completed at entry, a provisional assessment, as defined in these rules, will document the immediate medical appropriateness of services. If services are continued, an assessment will be completed within a timeframe that reflects the level and complexity of services and supports to be provided.

(A) The assessment will be completed by qualified staff as follows:

(i) A QMHP in mental health programs. A QMHA can assist in the gathering and compiling of information to be included in the assessment.

ADMINISTRATIVE RULES

(ii) Supervisory or treatment staff in alcohol and other drug treatment programs, and

(iii) Supervisory or treatment staff in problem gambling treatment programs.

(B) Each assessment will include:

(i) Sufficient biopsychosocial information and documentation to support the presence of a DSM diagnosis that is the medically appropriate reason for services.

(ii) Screening for the presence of substance use, problem gambling, mental health conditions, and chronic medical conditions.

(iii) Screening for the presence of symptoms related to psychological and physical trauma.

(iv) In addition, for children age 0-5, diagnosis will be informed by treatment guidelines included in the Health Services Commission prioritized list of paired conditions and treatments, and will include:

(I) Direct observation of child, parent and family interaction, when applicable;

(II) Neurodevelopment considerations; and

(III) Parental and family biopsychosocial functioning within the context of the home, community and culture.

(C) When the assessment process determines the presence of co-occurring disorders, all providers will document referral for further assessment, planning and intervention from an appropriate professional, either with the same provider or with a collaborative community provider.

(D) Providers will document updates to the assessment consistent with the timelines specified in the ISSP, and when there are changes related to the biopsychosocial information in the assessment.

(e) Individual Service Notes:

(A) A written individual service note will be recorded each time a service is provided.

(B) Individual Service Notes will document:

(i) The specific service provided;

(ii) Duration of the service provided;

(iii) The date on which the service was provided;

(iv) Location of service; and

(v) The date of authentication and name, signature, and credentials, of the person who provided the service.

(vi) Individual service notes will also include:

(I) Periodic reviews of progress toward specific objectives, consistent with timelines documented in the ISSP;

(II) Any significant events or changes in the individual's life circumstances, including mental status, treatment response and recovery status; and

(III) Any decisions to conclude services or transfer an individual from service.

(IV) Timelines for periodic review of progress will be determined on an individual basis, and documented in the ISSP, reflective of the type and complexity of the services and supports provided and the needs of the individual.

(C) For services that are not specifically included in the ISSP, or exceed the scope of the plan, maintain an explanation of how the services being billed relate to the Individual Plan of Care.

(9) Make available to the Division or its authorized representatives, financial and treatment records including mental health, dental, dietetic, pastoral, pharmacy, emergency, and general medical services.

(10) Provide a physical facility suitable for treatment of children with attention to proper safety and sanitation, housekeeping, and general environment. Buildings shall comply with all applicable building, occupancy, electrical, plumbing, and zoning codes.

(11) Obtain certification for the admission of children to the psychiatric residential treatment facility following the Division's Certification of Need procedures.

(12) Accept payment from the Division as full and total payment for the Medicaid services provided.

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0180

Eligibility and Admission Policy

(1) In considering a child for admission for psychiatric residential treatment services, Certification of Need procedures will certify that:

(a) Other treatment resources available in the community do not meet the treatment needs of the child;

(b) Proper treatment of the child's psychiatric condition requires services on a psychiatric residential treatment basis under the direction of a psychiatrist;

(c) The services can reasonably be expected to improve the child's condition or prevent further regression so that psychiatric residential treatment services may no longer be needed; and

(d) The child has a principal diagnosis on Axis I of a completed 5-Axes DSM diagnosis that is not solely a result of mental retardation or other developmental disabilities, epilepsy, drug abuse, or alcoholism.

(2) The child must be eligible for medical assistance under Medicaid, according to procedures established by the Division, and meet the criteria for admission to psychiatric residential treatment services as defined by these rules.

(3) The Division shall authorize services based on the submitted Certification Of Need.

(4) The Division shall authorize payment for psychiatric residential treatment services for children upon the prior authorization issued by the Division.

(5) If a Medicaid applicant's or recipient's certification for psychiatric residential treatment services is denied or terminated, the applicant or recipient has the right to request a fair hearing in accordance with ORS chapter 183.

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0190

Admission Procedures Related to Payment

(1) Admission procedures for children eligible for Medicaid will be reviewed through an independent psychiatric review process established by the Division to certify the need for services.

(2) The referring source or the facility will make available for the Certification of Need (CON) process, the following information about the referred child:

(a) A letter of support for admission from the identified county of responsibility or qualified tribal representative;

(b) A Level of Need Determination screening outcome;

(c) A Child and Adolescent Service Intensity Instrument (CASII) or Early Childhood Service Intensity Instrument;

(d) An identified ICTS provider;

(e) An ICTS care coordinator;

(f) Child and family team members; and

(g) Copies of related available clinical documents such as updated mental health assessments, individual plan of care and service coordination plans.

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0205

Levels of Care Criteria

Children shall be served in the least restrictive, least intensive setting appropriate to their treatment history, degree of impairment, current symptoms and the extent of family and other supports, as applicable. The provider must recommend the appropriate level of care to the child and parent or guardian when a more restrictive or less restrictive level of care is determined to be medically necessary.

(1) The following criteria are used to determine the appropriateness of continued stay:

(a) The child is making observed progress toward identified treatment goals as documented in the Individual Plan of Care, but the measurable treatment objectives necessary to reach the goals have not been completed;

(b) The child made no documented progress toward treatment goals, but the Individual Plan of Care and measurable objectives necessary to reach the goals have been reviewed by the psychiatrist and modified in order to reevaluate the child's treatment needs, clarify the nature of the identified problems, and initiate new therapeutic interventions, as applicable; or

(c) The child exhibits new symptoms or maladaptive behaviors that justify continuation and can be safely and effectively treated at a community-based residential level of care. The Individual Plan of Care shall be revised accordingly.

ADMINISTRATIVE RULES

(2) A planned service termination will occur when the following criteria are met:

(a) The child's targeted symptoms and maladaptive behaviors have abated to an established baseline level as documented by the attainment of specific goals and measurable objectives in the Individual Plan of Care; or

(b) The child exhibits new symptoms and maladaptive behaviors which may not be safely or effectively treated at this level of care; or

(c) The child is not benefiting from treatment and made no progress toward specific treatment goals or measurable objectives in the last 90 days even though appropriate Individual Plan of Care reviews and revisions were conducted.

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0210

Rate Setting

In order to establish the maximum allowable payment amount, the Division will use a per diem payment rate based on a cost model determined by the State of Oregon to represent 100% of the reasonable costs of an economically and efficiently operated facility.

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0240

Billing Requirements

(1) Bills shall be submitted on a monthly basis to the Division, through DMAP, on forms designated by the Division. Payment shall not be made for services which were provided more than 12 months prior to presentation of the claim unless the facility shows that the delay was caused by factors outside its control.

(2) Billings must be based upon the reasonable and allowable costs of services in accordance with OMB Circulars A-122 and A-87 or other applicable state and federal.

(3) Billing to the Division shall in no case exceed the customary charges to privately funded children for any like item or service charged by the facility.

(4) A provider must pursue third-party payments from Social Security, health insurance or other sources that may cover services provided to enrolled children. Any such payments received must be indicated on billings to DMAP and used to offset the cost of providing psychiatric residential treatment services.

(5) Any payment received by the facility prior to the submission of the invoice to the Division shall be indicated as a credit on the invoice.

(6) Any payments to the provider for services provided to an eligible patient from any source subsequent to payment by the Division shall be reported on an adjustment request form, giving full details. Failure to report such payments will be considered concealment of material facts and is grounds for recovery and sanction.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0250

Payments

(1) Payments will be made for the provision of active psychiatric residential treatment services on a filled-bed basis, including approved leave for children eligible for such services under Medicaid. If active treatment is not documented during any period in which Division payments are made on behalf of a child, the Division may recoup such payments.

(2) The Division will pay for the day of admission but not for the day of discharge.

(3) Medicaid eligible children receiving psychiatric residential treatment services will be subject to periodic review by a professional review organization to determine medical appropriateness and quality of services. If a review reveals that a child received an inappropriate level of care, such as less than active treatment, payment will not be allowed under these rules.

(4) Payment by the Division constitutes payment in full for psychiatric residential treatment services. The rate established for a facility includes payment for all services, supplies, and facility equipment required for care, by State and Federal standards except for medical care or services

by outside providers paid separately through other Title XIX Medical Assistance funds, Title XVI, Veterans Administration, etc.

(5) Payment for planned absences from the program such as home care visits, and transitions shall be allowed if the absences are:

(a) Based on the individual clinical needs of the child; and

(b) Specified in the child's Individual Plan of Care's measurable objectives or Service Conclusion Summary; and

(c) Documented in Individual Service Notes; and

(d) The duration of any single planned absence is no more than seven consecutive days, unless a longer duration is authorized in writing by the Division.

(6) Payment for unplanned absences from the program such as run-away, hospitalization, and detention shall be allowed if;

(a) The provider clearly documents in the child's clinical record regular and ongoing case coordination efforts undertaken by the program during the unplanned absence; and

(b) The provider clearly documents in the child's clinical record that the child will be returned to the program when the unplanned absence is resolved; and

(c) The duration of any single unplanned absence is no more than seven consecutive days, unless longer duration is authorized in writing by the Division.

(7) Payment for unplanned absences from the program shall be disallowed if the child is not returned to the program, unless the interdisciplinary team, in consultation with the child's parent or guardian or provider of the next level of care determines that the child requires a more or less restrictive level of care.

(8) Planned absences from the program which are not indicated in the child's Individual Plan of Care or Service Conclusion Summary shall be considered unplanned absences and payment will be disallowed.

(9) An additional five day per contracted bed per year may be used an unfilled vacant bed days. The use of these vacancy days will be determined by the psychiatric residential treatment facility. The Division will track utilization through the computerized billing system and make annual contract settlements accordingly.

Stat. Auth.: ORS 409.050, 430.705 & 430.715

Stats. Implemented: ORS 414.025 & 414.065

Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0260

Allowable and Non-Allowable Costs

(1) Costs of a Psychiatric Residential Treatment Facility will be subject, but not limited to the allowable and non-allowable costs as determined by cost finding principles found in "Cost Principles for a Non-Profit Organization" (OMB Circular A-122) or "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87) with the exception of interest: Mortgage interest on the acquisition of buildings and improvements, which is necessary and proper, will be classified as an allowable cost for a non-profit psychiatric residential treatment facility:

(a) "Necessary" requires that the interest be incurred on a loan made for a purpose reasonably related to patient care.

(b) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made.

(2) In accord with the Deficit Reduction Act of 1984, as outlined in the Social Security Act, Section 1851(V)(I)(O), for determining the allowance for depreciation and interest on capital indebtedness with respect to a non-profit psychiatric residential treatment facility which has undergone a change of ownership, this rule provides that the valuation of the asset after such a change of ownership has occurred shall be the lesser of the allowable acquisition cost of such an asset to the owner of record as of July 18, 1984, or the acquisition cost of such an asset to the new owner. In the case where the asset was in existence prior to July 18, 1984, the value of the asset will be based on the allowable acquisition cost to the first owner of record after July 18, 1984, thereby eliminating upward revaluation of an asset. The recapture of depreciation only up to the full value of the initial asset is allowed.

(3) Non-allowable costs include but are not limited to:

(a) Educational program services as defined by the Department of Education.

(b) Costs of services otherwise reimbursed through DMAP medical programs.

(c) Costs, including legal fees, accounting and administrative costs, travel costs, and costs of feasibility studies attributable to the negotiation or

ADMINISTRATIVE RULES

settlement of the sale or purchase of any capital asset by acquisition or merger for which any payment has previously been made.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 430.705 & 430.715
Stats. Implemented: ORS 414.025 & 414.065
Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 4-2001, f. 7-3-01, cert. ef. 7-5-01; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0270

Accounting and Record Keeping

(1) The provider shall maintain, for a period of not less than three years following the date of submission of billings to DMAP, the financial and statistical records which are accurate and in sufficient detail to substantiate the billings. If there are audit issues, the records must be maintained for three years after the audit settlement. The records shall be maintained in a condition that can be audited for compliance with generally accepted accounting principles and the provisions of these rules.

(2) Expenses reported as allowable costs must be adequately documented in the financial records of the provider, or they shall be disallowed in an audit.

(3) Each provider is required to notify the Division in writing within 30 days of the effective date of a change in ownership.

Stat. Auth.: ORS 409.050, 430.705 & 430.715
Stats. Implemented: ORS 414.025 & 414.065
Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0290

Auditing

(1) Provider billings are subject to review by the Division.

(2) The scope of the review will verify, to the extent possible, that the provider has properly billed only its allowable costs on the basis of generally accepted accounting principles, that the provider has properly applied the cost finding methods specified by the Division to its allowable costs, and whether the analysis indicates that further auditing of the provider's financial and statistical records is needed.

(3) If the Division determines an overpayment has been made to a provider, the amount of overpayment is subject to recovery by the Division in accordance with applicable state and federal laws, rules and regulations.

Stat. Auth.: ORS 409.050, 430.705 & 430.715
Stats. Implemented: ORS 414.025 & 414.065
Hist.: MHD 7-1991(Temp), f. 8-30-91, cert. ef. 9-1-91; MHD 3-1992, f. 1-10-92, cert. ef. 1-13-92 (and corrected 1-31-92); MHD 4-1996, f. & cert. ef. 3-22-96; MHD 7-1996(Temp), f. & cert. ef. 10-1-96; MHD 4-1997, f. & cert. ef. 3-20-97; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0310

Provider Appeals

(1) A provider who receives any of the following decisions may appeal to the Division:

(a) A denial or limitation of payment allowed for services or items provided;

(b) Overpayment determinations; or

(c) Sanctions imposed or intended to be imposed by the Division.

(2) Appeals must be in writing and postmarked no later than thirty days after receipt of the Division's notification.

(3) The provider may request an administrative review or a contested case hearing as set forth in the DMAP Medical Assistance Programs Rules under OAR 410-120-1560 through 410-120-1600.

Stat. Auth.: ORS 409.050, 430.705 & 430.715
Stats. Implemented: ORS 414.025 & 414.065
Hist.: MHD 4-1997, f. & cert. ef. 3-20-97; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0320

Variance

A variance from those portions of these rules that are not derived from federal regulations or the DMAP Rules may be granted for a period of up to one year in the following manner:

(1) The provider shall submit to the Deputy Assistant Director of the Division a written request which includes:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(2) The Division shall approve or deny the request for variance in writing.

(3) The Division shall notify the provider of the decision in writing within 30 days of the receipt of the request.

(4) Appeal of the denial of a variance request shall be to the Assistant Director of the Division whose decision shall be final.

(5) All variances must be reapplied for annually.

Stat. Auth.: ORS 409.050, 430.705 & 430.715
Stats. Implemented: ORS 414.025 & 414.065
Hist.: MHD 4-1997, f. & cert. ef. 3-20-97; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0400

Purpose

Purpose. These rules prescribe procedures relating to licensing Children's Emergency Safety Intervention Specialist (CESIS). A licensed CESIS is authorized to order, monitor, and evaluate the use of personal restraint and seclusion in certified facilities providing intensive mental health treatment services to individuals under 21 years of age. The CESIS license is for the purpose of licensing Qualified Mental Health Professionals (QMHPs) who are not licensed by any other healthcare licensing board. It is not to be issued as an additional credential to currently licensed practitioners such as licensed clinical social workers, licensed registered nurses, licensed psychologists, licensed professional counselors, licensed marriage and family therapist, or licensed physicians.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0410

Definitions

As used in these rules:

(1) "Chemical Restraint" means the administration of medication for the acute management of potentially harmful behavior. Chemical restraint is prohibited in the services regulated by these rules.

(2) "Children's Emergency Safety Intervention Specialist (CESIS)" means a Qualified Mental Health Professional (QMHP) who is licensed to order, monitor, and evaluate the use of seclusion or personal restraint in certified facilities providing intensive mental health treatment services to individuals under 21 years of age.

(3) "Division" means the Addictions and Mental Health (AMH) Division of the Department of Human Services (DHS).

(4) "Emergency safety intervention" means the use of seclusion or personal restraint under OAR 309-032-1540(9) as an immediate response to an unanticipated threat of violence or injury to an individual, or others.

(5) "Emergency Safety Intervention Training" means a Division approved course that teaches students to safely manage emergency safety situations and methods for reducing the need for emergency safety interventions. The minimum requirements for a Division approved course is one that has an established curriculum, includes an identified instructor, requires an identified number of face to face instruction hours, teaches students how to safely manage emergency safety situations, includes methods to de-escalate volatile clients, and has an evaluation component to assess the student's competency of the course materials.

(6) "Emergency safety situation" means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.

(7) "Intensive Mental Health Treatment Services" (ITS) means the range of services in the system of care comprised of psychiatric residential treatment facilities (PRTF) and psychiatric day treatment services (PDTS), or other services as determined by the Division, that provide active psychiatric treatment for children with severe emotional disorders and their families.

(8) "Mechanical restraint" means any device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

(9) "Personal Restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a resident's body to protect the individual, or others, from immediate harm. Personal restraint does not include briefly holding without undue force an individual to calm or comfort him or her, or holding an individual's hand to safely escort him or her from one area to another. Personal restraint can be used only in approved ITS programs as an emergency safety intervention under OAR 309-032-1540(9).

ADMINISTRATIVE RULES

(10) "Qualified Mental Health Professional (QMHP)" means a Licensed Medical Practitioner (LMP) or any other person meeting one or more of the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

- (a) Holds any of the following educational degrees:
 - (a) Graduate degree in psychology;
 - (b) Bachelor's degree in nursing and licensed by the State of Oregon;
 - (c) Graduate degree in social work;
 - (d) Graduate degree in a behavioral science field;
 - (e) Graduate degree in recreational, music, or art therapy;
 - (f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(b) Whose education and experience demonstrate the ability to conduct an assessment, including identifying precipitating events, gathering histories of mental and physical health, alcohol and other drug use, past mental health services and criminal justice contacts, assessing family, cultural, social and work relationships, and conducting a mental status examination, complete a five-axis DSM diagnosis, write and supervise the implementation of a ISSP and provide individual, family or group therapy within the scope of their training.

(11) "Seclusion" means the involuntary confinement of a individual to a room or an area from which the individual is physically prevented from leaving. Seclusion can be used only in approved ITS programs as an emergency safety intervention specified in OAR 309-032-1540(9).

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0420

Application for Licensure as a Children's Emergency Safety Intervention Specialist

In order to obtain a license as a CESIS, an agency that is certified by the Division to provide intensive mental health treatment services for individuals under 21 years shall make application on behalf of the licensure applicant. The Division shall issue a license as a CESIS to each applicant who furnishes satisfactory evidence to the Division that the applicant meets the following qualifications:

- (1) Is employed by or providing services under contract with a provider that is certified by the Division to provide intensive mental health treatment services for individuals under 21 years of age;
- (2) Meets qualifications established by the Division by rule for qualified mental health professionals;
- (3) Has successfully completed an emergency safety intervention training program approved by the Division within the past 12 months;
- (4) Demonstrates the ability to assess the psychological and physical well-being of individuals under 21 years of age;
- (5) Demonstrates knowledge of federal and state rules governing the use of restraint and seclusion in intensive mental health treatment programs for individuals under 21 years of age.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0430

Scope of Licensure

- (1) A licensed CESIS is authorized to:
 - (a) Order the least restrictive intervention, including personal restraint or seclusion that is most likely to be effective in resolving an emergency safety situation if the treatment team physician is not available.
 - (b) Provide the federally mandated face-to-face assessment of a child's well-being within one hour of the initiation of the emergency safety intervention; and
 - (c) Accept verbal orders for personal restraint or seclusion from a physician or licensed practitioner who is authorized to order personal restraint and seclusion.

(2) Exclusions to Licensure:

(a) A licensed Children's Emergency Intervention Specialist is not authorized to order or receive orders for the use of mechanical or chemical restraint.

(b) A CESIS license is only valid while the licensee is employed or contracting to provide services with the intensive mental health treatment services program that submitted the application on behalf of the licensee.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0440

Application Process

(1) Application for licensure as a CESIS shall be made to the Division and be on forms provided by the Division.

(2) Application for licensure shall be accompanied by a formal written request from a provider that is certified by the Division to provide intensive mental health treatment services for individuals under 21 years of age with which the applicant is employed or contracted. The request must include:

(a) Official transcript and supporting documentation as necessary showing the applicant meets qualifications established by rule for a QMHP;

(b) Verification that an emergency safety intervention course approved by the Division has been successfully completed within the past 12 months;

(c) Verification of certification in CPR and First Aid by a recognized training agency;

(d) A signed Criminal Record Clearance Check form as described in OAR Chapter 407 Division 007. The Criminal Record Check form will request information regarding criminal history and other information;

(e) Verification of employment or contracted services with a provider that is certified by the Division to provide intensive mental health treatment services for individuals under 21 years of age;

(f) A copy of the completed examination or evaluation the provider used to determine the applicant's competence to assess the psychological and physical well being of individuals under 21 years of age; and

(g) A copy of the completed examination or evaluation the provider used to determine the applicants knowledge of the federal and state rules governing the use of seclusion and restraint in intensive mental health treatment programs for individuals under 21 years of age.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0450

Issuance of a License

(1) The Division shall issue a license within 30 days of the submission of a completed application. The license shall state the name of the licensee, the provider, and expiration date.

(2) The license shall be placed in the licensee's personnel file and be easily visible.

(3) An initial license is valid from the time of issuance until the expiration date, which will be September 30th of the following calendar year.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0460

Renewal and Expiration of License

(1) A license issued under these rules is subject to renewal every 2 years.

(a) All licenses will expire on September 30th. The issuance date of the licensee's first license will determine if the license expires on an odd or even year.

(b) At least 30 days prior to the expiration of a license, a reminder notice will be sent by the Division to the licensee and the provider.

(c) A licensee seeking renewal of a license shall have a provider with whom they are employed or contracted submit on their behalf:

(A) Proof of fulfillment of the following requirements;

(i) Verification of current certification in CPR and First aid by a recognized training agency;

(ii) A copy of the evaluation completed within the last year of the applicants competence to assess the psychological and physical well-being of individuals under 21 years of age.

(iii) A copy of the evaluation completed within the last year demonstrating the applicant's knowledge of federal and state rules governing the use of seclusion and restraint in intensive mental health treatment services programs for individuals under 21 years of age.

(B) Proof of continued employment or contract with a facility certified by the Division to provide intensive mental health treatment services for individuals under 21.

(2) A licensee may not continue to practice as a licensed CESIS after expiration of the license.

(3) A licensee may not continue to practice as a licensed CESIS upon discontinuation of employment or contract with the provider of intensive mental health treatment services specified on the license.

ADMINISTRATIVE RULES

(4) If the person's previous license has expired, the person must apply and qualify for a new license in the same manner as a person who has never been licensed.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0470

Complaint

(1) Any person who believes these rules have been violated may file a complaint with the Division.

(2) The Division shall establish a protocol for investigation of complaints and make that information available to anyone who files a complaint or has a complaint filed against them. Following the Divisions investigation of a complaint, the Division may take action to:

- (a) Dismiss the complaint;
- (b) Issue a letter of reprimand;
- (c) Direct the Provider to draft a plan of correction with the licensee;

or

(d) Institute disciplinary action.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0480

Denial, Suspension, Revocation or Non-renewal of License

(1) The Division may deny, suspend, revoke or refuse to issue or to renew any license issued under these rules upon proof that the applicant for licensure or the licensee:

- (a) Has been convicted of one or more crimes described in the Criminal Records Check under OAR 407-007-0200 through 407-007-0380;
- (b) Is unable to perform the duties of a CESIS by reason of mental illness, physical illness, drug addiction or alcohol abuse;
- (c) Has been grossly negligent in the duties of a CESIS;
- (d) Has violated one or more of the rules of the Division pertaining to the licensure of a CESIS;

(e) Has practiced outside the scope of activities for which the licensee has individual training and qualification; or

(f) Has been disciplined by a state licensing board or program in this or any other state for violation of competency or conduct standards.

(2)(a) The Division may reprimand or impose probation on a licensee upon proof of any of the grounds for discipline provided in subsection (1) of this Section.

(b) If the Division elects to place a licensee on probation, the Division may impose:

- (A) Restrictions on the scope of practice of the licensee;
- (B) Requirements for specific training;
- (C) Supervision of the practice of the licensee; or
- (D) Other conditions the Division finds necessary for the protection

of the public.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

309-034-0490

Appeal Process

(1) An appeal of a denial, suspension, probation, or revocation of a license may be requested in writing to the Division from a provider of intensive mental health treatment services for children under 21 years of age on behalf of their employee or contractor.

(2) Within 10 days of the receipt of the appeal, the Division Assistant Director or designee shall review all material relating to the denial, suspension, revocation or non-renewal, including any written documentation submitted by the licensee and provider within that time frame. The Division shall determine, based on review of the material, whether to sustain the decision. If the Division does not sustain the decision, the denial, suspension, revocation or non-renewal shall be rescinded immediately. The decision of the Division is subject to a contested case hearing under ORS Chapter 183, if requested within 90 days.

Stat. Auth.: ORS 409.050 & 426.415
Stats. Implemented: ORS 426.415
Hist.: MHD 5-2001(Temp), f. & cert. ef. 7-20-01 thru 1-15-02; MHD 1-2002, f. 1-14-02 cert. ef. 1-15-02; MHD 3-2010(Temp), f. & cert. ef. 3-4-10 thru 8-28-10

Rule Caption: Revise and Integrate Regulations for the Provision of Addictions and Mental Health Services and Supports.

Adm. Order No.: MHS 4-2010

Filed with Sec. of State: 3-4-2010

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Rules Adopted: 309-032-1500, 309-032-1505, 309-032-1510, 309-032-1515, 309-032-1520, 309-032-1525, 309-032-1530, 309-032-1535, 309-032-1540, 309-032-1545, 309-032-1550, 309-032-1555, 309-032-1560, 309-032-1565

Rules Repealed: 309-032-0001, 309-032-0070, 309-032-0075, 309-032-0080, 309-032-0085, 309-032-0090, 309-032-0095, 309-032-0100, 309-032-0105, 309-032-0110, 309-032-0115, 309-032-0220, 309-032-0225, 309-032-0230, 309-032-0235, 309-032-0240, 309-032-0245, 309-032-0250, 309-032-0455, 309-032-0460, 309-032-0465, 309-032-0470, 309-032-0475, 309-032-0480, 309-032-0485, 309-032-0490, 309-032-0495, 309-032-0500, 309-032-0505, 309-032-0510, 309-032-0515, 309-032-0525, 309-032-0535, 309-032-0545, 309-032-0555, 309-032-0565, 309-032-0575, 309-032-0585, 309-032-0595, 309-032-0605, 309-032-0720, 309-032-0730, 309-032-0740, 309-032-0750, 309-032-0760, 309-032-0770, 309-032-0780, 309-032-0790, 309-032-0800, 309-032-0810, 309-032-0820, 309-032-0820, 309-032-0950, 309-032-0960, 309-032-0970, 309-032-0980, 309-032-0990, 309-032-1000, 309-032-1010, 309-032-1020, 309-032-1030, 309-032-1040, 309-032-1050, 309-032-1060, 309-032-1070, 309-032-1080, 309-032-1095, 309-032-1100, 309-032-1110, 309-032-1120, 309-032-1130, 309-032-1140, 309-032-1150, 309-032-1160, 309-032-1170, 309-032-1180, 309-032-1190, 309-032-1200, 309-032-1210, 309-032-1220, 309-032-1230, 309-032-1240, 309-032-1245, 309-032-1250, 309-032-1255, 309-032-1260, 309-032-1265, 309-032-1270, 309-032-1275, 309-032-1280, 309-032-1285, 309-032-1290, 309-032-1295, 309-032-1300, 309-032-1305

Subject: These rules prescribe minimum standards for the services and supports provided by addictions and mental health providers approved by the Department of Human Services, Addictions and Mental Health (AMH) Division. These rules:

(1) Promote recovery, resiliency, wellness, independence and safety for individuals receiving addictions and mental health services and supports;

(2) Specify standards for services and supports that are person-directed, youth guided, family-driven, culturally competent, trauma-informed and wellness-informed; and

(3) Promote functional and rehabilitative outcomes for individuals throughout a continuum of care that is developmentally appropriate.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-032-1500

Purpose and Scope

(1) Purpose: These rules prescribe minimum standards for the services and supports provided by addictions and mental health providers approved by the Department of Human Services (DHS), Addictions and Mental Health Division (AMH). These rules:

(a) Promote recovery, resiliency, wellness, independence and safety for individuals receiving addictions and mental health services and supports;

(b) Specify standards for services and supports that are person-directed, youth guided, family-driven, culturally competent, trauma-informed and wellness-informed; and

(c) Promote functional and rehabilitative outcomes for individuals throughout a continuum of care that is developmentally appropriate.

(2) Scope: In addition to applicable requirements in OAR 410-120-0000 through 410-120-1980 and 407-120-0000 through 407-120-0400, these rules specify standards for addictions and mental health services and supports provided in:

(a) Outpatient Community Mental Health Services and Supports for Children and Adults;

(b) Intensive Community-based Treatment and Support Services (ICTS) for Children;

(c) Intensive Treatment Services (ITS) for Children;

(d) Outpatient and Residential Alcohol and Other Drug Treatment Services; and

ADMINISTRATIVE RULES

(e) Outpatient and Residential Problem Gambling Treatment Services.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1505

Definitions

(1) "Abuse of an adult" means the circumstances defined in OAR 407-045-0260 for abuse of an adult with mental illness.

(2) "Abuse of a child" means the circumstances defined in ORS 419B.005.

(3) "Addictions and Mental Health Services and Supports" means all services and supports that are regulated by this rule, including, but not limited to, Outpatient Community Mental Health Services and Supports for Children and Adults, ICTS for Children, ITS for Children, Outpatient and Residential Alcohol and Other Drug Treatment Services and Outpatient and Residential Problem Gambling Treatment Services.

(4) "Adolescent" means an individual from 12 through 17 years of age, or those individuals who are determined to be developmentally appropriate for youth services.

(5) "Adult" means a person 18 years of age or older, or an emancipated minor. An Individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, must be considered a child until age 21 for the purposes of these rules. Adults who are between the ages of 18 and 21, who are considered children for purposes of these rules, must have all rights afforded to adults as specified in these rules.

(6) "Alcohol and Other Drug Treatment and Recovery Services" means outpatient, intensive outpatient, and residential services and supports for individuals with substance use disorders.

(7) "Alcohol and Other Drug Treatment Staff" means a person certified or licensed by a health or allied provider agency to provide alcohol and other drug treatment services that include assessment, development of an Individual Service and Support Plan (ISSP), and individual, group and family counseling.

(a) For treatment staff holding certification in addiction counseling, qualifications for the certificate must have included at least:

(A) 750 hours of supervised experience in substance use counseling;

(B) 150 contact hours of education and training in substance use related subjects; and

(C) Successful completion of a written objective examination and portfolio review by the certifying body.

(b) For treatment staff holding a health or allied provider license, the license or registration must have been issued by one of the following state bodies and the person must possess documentation of at least 60 contact hours of academic or continuing professional education in alcohol and other drug treatment:

(A) Board of Medical Examiners;

(B) Board of Psychologist Examiners;

(C) Board of Licensed Social Workers;

(D) Board of Licensed Professional Counselors and Therapists; or

(E) Board of Nursing.

(8) "Assessment" means the process of obtaining all pertinent biopsychosocial information, as identified by the individual, family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

(9) "ASAM PPC-2R" means the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-related Disorders, Second Edition Revised, April 2001, which is a clinical guide used in matching individuals to appropriate levels of care, and incorporated by reference in these rules.

(10) "Assistant Director" means the Assistant Director of the Addictions and Mental Health Division of DHS, or that person's designee.

(11) "Behavior Support Plan" means the individualized proactive support strategies, consistent with OAR 309-032-1540(8), documented in the ISSP that are used by the provider and family when applicable, to support positive behavior.

(12) "Behavior Support Strategies" means proactive supports designed to replace challenging behavior with functional, positive behavior. The strategies address environmental, social, neurodevelopmental and physical factors that affect behavior.

(13) "Biopsychosocial Information" means the combination of physical, psychological, social, environmental and cultural factors that influence the individual's development and functioning.

(14) "Care Coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies; organizing, facilitating and participating in team meetings; and providing for continuity of care by creating linkages to and managing transitions between levels of care and transitions for transition-age young adults to adult services.

(15) "Case Management" means the services provided to assist individuals, who reside in a community setting, or are transitioning to a community setting, in gaining access to needed medical, social, educational, entitlement and other applicable services.

(16) "Chemical Restraint" means the administration of medication for the acute management of potentially harmful behavior. Chemical restraint is prohibited in the services regulated by these rules.

(17) "Child" means a person under the age of 18. An individual with Medicaid eligibility, who is in need of services specific to children, adolescents, or young adults in transition, must be considered a child until age 21 for purposes of these rules.

(18) "Child and Family Team" means those persons who are responsible for creating, implementing, reviewing, and revising the service coordination section of the ISSP in ICTS programs. At a minimum, the team must be comprised of the family, care coordinator, and child when appropriate. The team should also include any involved child-serving providers and agencies and any other natural, formal, and informal supports as identified by the family.

(19) "Children's Emergency Safety Intervention Specialist (CESIS)" means a Qualified Mental Health Professional (QMHP) who is licensed to order, monitor, and evaluate the use of seclusion and restraint in accredited and certified facilities providing intensive mental health treatment services to individuals under 21 years of age.

(20) "Clinical Supervision" means oversight by a qualified Clinical Supervisor of addictions and mental health services and supports provided according to this rule, including ongoing evaluation and improvement of the effectiveness of those services and supports.

(21) "Clinical Supervisor" means a person qualified to oversee and evaluate addictions or mental health services and supports.

(a) For supervisors in alcohol and other drug treatment programs, holding a certification or license in addiction counseling, qualifications for the certificate or license must have included at least:

(A) 4000 hours of supervised experience in substance use counseling;

(B) 300 contact hours of education and training in substance use related subjects; and

(C) Successful completion of a written objective examination and portfolio review by the certifying body.

(b) For supervisors, in alcohol and other drug treatment programs, holding a health or allied provider license, such license or registration must have been issued by one of the following state bodies and the supervisor must possess documentation of at least 120 contact hours of academic or continuing professional education in the treatment of alcohol and other drug-related disorders:

(A) Board of Medical Examiners;

(B) Board of Psychologist Examiners;

(C) Board of Licensed Social Workers;

(D) Board of Licensed Professional Counselors and Therapists; or

(E) Board of Nursing.

(22) "Co-occurring substance use and mental health disorders (COD)" means the existence of a diagnosis of both a substance use disorder and a mental health disorder.

(23) "Community Mental Health Program (CMHP)" means an entity that is responsible for planning and delivery of services for persons with substance use disorders or a mental health diagnosis, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with AMH.

(24) "Conditional Release" means placement by a court or the Psychiatric Security Review Board (PSRB), of a person who has been found eligible under ORS 161.327(2)(b) or 161.336, for supervision and treatment in a community setting.

(25) "Court" means the last convicting or ruling court unless specifically noted.

ADMINISTRATIVE RULES

(26) "Criminal Records Check" means the Oregon Criminal Records Check and the processes and procedures required by OAR 407-007-0000 through 407-007-0370.

(27) "Crisis" means either an actual or perceived urgent or emergency situation that occurs when an individual's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health or to prevent referral to a significantly higher level of care.

(28) "Cultural Competence" means the process by which individuals and systems respond respectfully and effectively to people of all cultures, languages, classes, races, ethnic backgrounds, disabilities, religions, genders, sexual orientations and other diversity factors in a manner that recognizes, affirms, and values the worth of individuals, families and communities and protects and preserves the dignity of each.

(29) "Culturally Specific Program" means a program that is designed to meet the unique service needs of a specific culture and that provides services to a majority of individuals representing that culture.

(30) "Declaration for Mental Health Treatment" means a written statement of an individual's preferences concerning his or her mental health treatment. The declaration is made when the individual is able to understand and legally make decisions related to such treatment. It is honored, as clinically appropriate, in the event the individual becomes unable to make such decisions.

(31) "Department of Human Services (DHS)" or "Department" means the Department of Human Services of the State of Oregon.

(32) "Deputy Assistant Director" means the Deputy Assistant Director of the Addictions and Mental Health (AMH) Division of the Department of Human Services (DHS), or that person's designee.

(33) "Developmentally Appropriate" means services and supports that match emotional, social and cognitive development rather than chronological age.

(34) "Diagnosis" means the principal mental health, substance use or problem gambling diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM). The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment, and is the medically appropriate reason for services.

(35) "Director" means the Director of DHS or that person's designee.

(36) "Division" means the Addictions and Mental Health Division of DHS.

(37) "DSM" means the Diagnostic and Statistical Manual of Mental Disorders-IV-R, published by the American Psychiatric Association.

(38) "DSM Five-axis Diagnosis" means the multi-axial diagnosis, consistent with the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-R), resulting from the assessment.

(39) "Driving Under the Influence of Intoxicants (DUI) Alcohol and Other Drug Rehabilitation Program" means a program of treatment and therapeutically oriented education services for an individual who is either:

(a) A violator of ORS 813.010 Driving Under the Influence of Intoxicants; or

(b) A defendant who is participating in a diversion agreement under ORS 813.200.

(40) "Emergency" means the onset of symptoms requiring attention within 24 hours to prevent serious deterioration in mental or physical health or threat to safety.

(41) "Emergency Safety Intervention" means the use of seclusion or personal restraint under OAR 309-032-1540(9) of these rules, as an immediate response to an unanticipated threat of violence or injury to an individual, or others.

(42) "Employee" means a person who provides a program service or who takes part in a program service and who receives wages, a salary, or is otherwise paid by the program for providing the service.

(43) "Enhanced Care Services (ECS)" and "Enhanced Care Outreach Services (ECOS)" means mental health services and supports provided to individuals residing in licensed Seniors and People with Disabilities (SPD) facilities.

(44) "Entry" means the act or process of acceptance and enrollment into services regulated by this rule.

(45) "Evaluation Specialist" means a person who possesses valid certification issued by the Division to conduct DUI evaluations.

(46) "Family" means the biological or legal parents, siblings, other relatives, foster parents, legal guardians, spouse, domestic partner, caregivers and other primary relations to the individual whether by blood, adoption, legal or social relationships. Family also means any natural, formal or informal support persons identified as important by the individual.

(47) "Family Support" means the provision of supportive services to persons defined as family to the individual. It includes support to caregivers at community meetings, assistance to families in system navigation and managing multiple appointments, supportive home visits, peer support, parent mentoring and coaching, advocacy, and furthering efforts to develop natural and informal community supports.

(48) "Fully Capitated Health Plan (FCHP)" means a prepaid health plan under contract with the Division of Medical Assistance Programs to provide capitated physical or behavioral health services.

(49) "Gender Identity" means a person's self-identification of gender, without regard to legal or biological identification, including, but not limited to persons identifying themselves as male, female, transgender and transsexual.

(50) "Gender Presentation" means the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

(51) "Gender-specific Services" means those services that comprehensively address the needs of a gender group and foster positive gender identity development, intentionally allowing gender to affect and guide the services that are responsive to the unique developmental issues and needs of the individuals receiving them.

(52) "Grievance" means a formal complaint submitted to a provider verbally, or in writing, by an individual, or the individual's chosen representative, pertaining to the denial or delivery of services and supports.

(53) "Guardian" means a person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(54) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1996 and the regulations published in Title 45, parts 160 and 164, of the Code of Federal Regulations (CFR).

(55) "Incident Report" means a written description of any incident involving an individual, occurring on the premises of a program, or involving program staff or an ISSP activity, including, but not limited to, injury, major illness, accident, act of physical aggression, medication error, suspected abuse or neglect, or any other unusual incident that presents a risk to health and safety.

(56) "Individual" means any person being considered for or receiving services and supports regulated by these rules.

(57) "Individual Service and Support Plan" (ISSP) means a comprehensive plan for services and supports provided to or coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the intended outcomes of service.

(58) "Individual Service Note" means the written record of services and supports provided, including documentation of progress toward intended outcomes, consistent with the timelines stated in the ISSP.

(59) "Individual Service Record" means the documentation, written or electronic, regarding an individual and resulting from entry, assessment, orientation, service and support planning, services and supports provided, and service conclusion.

(60) "Informed Consent for Services" means that the service options, risks and benefits have been explained to the individual and guardian, if applicable, in a manner that they comprehend, and the individual and guardian, if applicable, have consented to the services on, or prior to, the first date of service.

(61) "Intensive Outpatient Alcohol and Other Drug Treatment Services" means structured nonresidential evaluation, treatment, and continued care services for individuals with substance use disorders who need a greater number of therapeutic contacts per week than are provided by traditional outpatient services. Intensive outpatient services may include, but are not limited to, day treatment, correctional day treatment, evening treatment, and partial hospitalization.

(62) "Intensive Community-based Treatment and Support Services (ICTS)" means a specialized set of comprehensive in-home and community-based supports and mental health treatment services, including care coordination as defined in these rules, for children that are developed by the child and family team and delivered in the most integrated setting in the community.

(63) "Intensive Treatment Services (ITS)" means the range of services in the system of care comprised of Psychiatric Residential Treatment Facilities (PRTF) and Psychiatric Day Treatment Services (PDTs), or other services as determined by the Division, that provide active psychiatric treatment for children with severe emotional disorders and their families.

(64) "Interim Referral and Information Services" means services provided by an alcohol and other drug treatment provider to individuals on a waiting list, and whose services are funded by the Substance Abuse Prevention and Treatment (SAPT) Block Grant, to reduce the adverse

ADMINISTRATIVE RULES

health effects of alcohol and other drug use, promote the health of the individual and reduce the risk of disease transmission.

(65) "Interdisciplinary Team" means the group of people designated to advise in the planning and provision of services and supports to individuals receiving ITS services or ECS services and may include multiple disciplines or agencies. For Psychiatric Residential Treatment Facilities (PRTF), the composition of the interdisciplinary team must be consistent with the requirements of 42 CFR Part 441.156.

(66) "Intern" or "Student" means a person who provides a paid or unpaid program service to complete a credentialed or accredited educational program recognized by the state of Oregon.

(67) "Juvenile Psychiatric Security Review Board (JPSRB)" means the entity described in ORS 161.385.

(68) "Level of Care" means the range of available services provided from the most integrated setting to the most restrictive and most intensive in an inpatient setting.

(69) "Level of Service Intensity Determination" means the Division approved process by which children and young adults in transition are assessed for ITS and ICTS services.

(70) "Licensed Health Care Professional" means a practitioner of the healing arts, acting within the scope of his or her practice under State law, who is licensed by a recognized governing board in Oregon.

(71) "Licensed Medical Practitioner (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

- (a) Physician licensed to practice in the State of Oregon; or
- (b) Nurse practitioner licensed to practice in the State of Oregon; or
- (c) Physician's Assistant licensed to practice in the State of Oregon;

and

(d) Whose training, experience and competence demonstrate the ability to conduct a mental health assessment and provide medication management.

(e) For ICTS and ITS providers, LMP means a board-certified or board-eligible child and adolescent psychiatrist licensed to practice in the State of Oregon.

(72) "Local Mental Health Authority (LMHA)" means one of the following entities:

(a) The board of county commissioners of one or more counties that establishes or operates a CMHP;

(b) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(c) A regional local mental health authority comprised of two or more boards of county commissioners.

(73) "Mandatory Reporter" means any public or private official, as defined in ORS 419B.005(3), who comes in contact with or has reasonable cause to believe that an individual has suffered abuse, or that any person with whom the official comes in contact with, has abused the individual. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to ORS 40.295.

(74) "Mechanical Restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of an individual's body as a means of controlling his or her physical activities in order to protect the individual or other persons from injury. Mechanical restraint is prohibited in the services regulated by these rules.

(75) "Medicaid" means the federal grant-in-aid program to state governments to provide medical assistance to eligible persons, under Title XIX of the Social Security Act.

(76) "Medical Director" means a physician licensed to practice medicine in the State of Oregon and who is designated by an alcohol and other drug treatment program to be responsible for the program's medical services, either as an employee or through a contract.

(77) "Medical Supervision" means an LMP's review and approval, at least annually, of the assessment and the medical appropriateness of services and supports identified in the ISSP for each individual receiving mental health services for one or more continuous years.

(78) "Medically Appropriate" means services and medical supplies required for prevention, diagnosis or treatment of a physical or mental health condition, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an individual or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an individual.

(79) "Medication Administration Record" means the documentation of the administration of written or verbal orders for medication, laboratory and other medical procedures issued by a LMP employed by, or under contract with, the provider and acting within the scope of his or her license.

(80) "Mental Health Organization (MHO)" means an approved organization that manages most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs can be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(81) "Older Adult" means an individual who is 60 years of age or older.

(82) "Older Adult Services" means age-appropriate services designed for older adults and provided by professionals trained in geriatrics. The services are preventative and include primary prevention efforts including suicide prevention, early identification services, early intervention services and comprehensive local planning for older adult mental health services.

(83) "Outpatient Alcohol and Other Drug Treatment Program" means a publicly or privately operated program that provides assessment, treatment, and rehabilitation on a regularly scheduled basis or in response to crisis for individuals with alcohol or other drug use disorders and their family members, or significant others, consistent with Level I or Level II of the ASAM PPC-2R.

(84) "Outpatient Community Mental Health Services and Supports" means all outpatient mental health services and supports provided to children, youth and adults.

(85) "Outpatient Problem Gambling Treatment Services" means all outpatient treatment services and supports provided to individuals with gambling related problems and their families.

(86) "Outreach" means the delivery of addictions, problem gambling or mental health services, referral services and case management services in non-traditional settings, such as, but not limited to, the individual's residence, shelters, streets, jails, transitional housing sites, drop-in centers, single room occupancy hotels, child welfare settings, educational settings or medical settings. It also refers to attempts made to engage or re-engage an individual in services by such means as letters or telephone calls.

(87) "Peer" means any person supporting an individual, or a family member of an individual, who has similar life experience, either as a current or former recipient of addictions or mental health services, or as a family member of an individual who is a current or former recipient of addictions or mental health services.

(88) "Peer Delivered Services" means an array of agency or community-based services and supports provided by peers, and peer support specialists, to individuals or family members with similar lived experience, that are designed to support the needs of individuals and families as applicable.

(89) "Peer Support Specialist" means a person providing peer delivered services to an individual or family member with similar life experience, under the supervision of a qualified Clinical Supervisor. A Peer Support Specialist must complete an AMH approved training program and be:

(a) A self-identified person currently or formerly receiving mental health services; or

(b) A self-identified person in recovery from a substance use disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs; or

(c) A family member of an individual who is a current or former recipient of addictions or mental health services.

(90) "Performance Improvement Plan" means a plan that describes the provider's quality assessment and performance improvement strategies and measurements.

(91) "Person-directed" means the individual, and others involved in supporting the treatment and recovery of the individual, are actively involved in assessment, planning and revising services and supports and intended outcomes. Individuals are empowered through this process to regain their health, safety and independence to the greatest extent possible and in a manner that is holistic and specific to the individual, including culturally, developmentally, age and gender appropriate.

ADMINISTRATIVE RULES

(92) "Personal Restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of an individual's body to protect the individual, or others, from immediate harm. Personal restraint does not include briefly holding without undue force an individual to calm or comfort him or her, or holding an individual's hand to safely escort him or her from one area to another. Personal restraint can be used only in approved ITS programs as an emergency safety intervention under OAR 309-032-1540(9).

(93) "Problem Gambling Treatment Staff" means persons providing problem gambling treatment services on a quarter-time or greater basis who hold a certification in a mental health or addictions discipline and have completed, within the past two years, at least 30 hours of problem gambling specific education. Problem Gambling Treatment Staff providing services on a half time or greater basis must hold advanced certification in addictions or be a QMHP and be able to document a minimum of 1000 hours of problem gambling treatment experience and have completed 60 hours of problem gambling specific education.

(94) "Program" means a particular type or level of service that is organizationally distinct.

(95) "Program Administrator" or "Program Director" means a person with appropriate professional qualifications and experience, who is designated to manage the operation of a program.

(96) "Program Staff" means an employee or person who, by contract with the program, provides a service and who has the applicable competencies, qualifications or certification, required in this rule to provide the service.

(97) "Provider" means an organizational entity, or qualified person, that is operated by or contractually affiliated with, a community mental health program, or contracted directly with the Division, for the direct delivery of addictions, problem gambling or mental health services and supports.

(98) "Provisional Assessment" means an initial assessment that identifies a presenting problem, provisional diagnosis and sufficient information to support the provisional diagnosis.

(99) "Provisional ISSP" means an initial ISSP that includes short term objectives and medically appropriate services sufficient to address presenting issues as they relate to a provisional diagnosis, including any engagement strategies, crisis services and activities necessary to complete the assessment and the ISSP.

(100) "Psychiatric Day Treatment Services (PDTs)" means the comprehensive, interdisciplinary, non-residential, community-based program certified under this rule consisting of psychiatric treatment, family treatment and therapeutic activities integrated with an accredited education program.

(101) "Psychiatric Residential Treatment Facility (PRTF)" means facilities that are structured residential treatment environments with daily 24-hour supervision and active psychiatric treatment including Psychiatric Residential Treatment Services (PRTS), Secure Children's Inpatient Treatment Programs (SCIP), Secure Adolescent Inpatient Treatment Programs (SAIP), and Sub-acute psychiatric treatment for children who require active treatment for a diagnosed mental health condition in a 24-hour residential setting.

(102) "Psychiatric Residential Treatment Services (PRTS)" means services delivered in a PRTF that include 24-hour supervision for children who have serious psychiatric, emotional or acute mental health conditions that require intensive therapeutic counseling and activity and intensive staff supervision, support and assistance.

(103) "Psychiatric Security Review Board (PSRB)" means the entity described in ORS 161.295 through 161.400.

(104) "Psychiatrist" means a physician licensed pursuant to ORS 677.010 to 677.228 and 677.410 to 677.450 by the Board of Medical Examiners for the State of Oregon and who has completed an approved residency training program in psychiatry.

(105) "Psychologist" means a psychologist licensed by the Oregon Board of Psychologist Examiners.

(106) "Qualified Mental Health Associate (QMHA)" means a person delivering services under the direct supervision of a QMHP and meeting the following minimum qualifications as authorized by the LMHA or designee:

- (a) Bachelor's degree in a behavioral sciences field; or
- (b) A combination of at least three years relevant work, education, training or experience.

(107) "Qualified Mental Health Professional (QMHP)" means a LMP or any other person meeting one or more of the following minimum qualifications as authorized by the LMHA or designee:

- (a) Bachelor's degree in nursing and licensed by the State of Oregon;

(b) Bachelor's degree in occupational therapy and licensed by the State of Oregon;

(c) Graduate degree in psychology;

(d) Graduate degree in social work;

(e) Graduate degree in recreational, art, or music therapy; or

(f) Graduate degree in a behavioral science field.

(108) "Qualified Person" means a person who is a QMHP, or a QMHA, and is identified by the PSRB in its Conditional Release Order. This person is designated by the provider to deliver or arrange and monitor the provision of the reports and services required by the Conditional Release Order.

(109) "Quality Assessment and Performance Improvement" means the structured, internal monitoring and evaluation of services to improve processes, service delivery and service outcomes.

(110) "Recovery" means a process of healing and transformation for a person to achieve full human potential and personhood in leading a meaningful life in communities of his or her choice.

(111) "Representative" means a person who acts on behalf of an individual, at the individual's request, with respect to a grievance, including, but not limited to a relative, friend, employee of the Division, attorney or legal guardian.

(112) "Reportable Incident" means a serious incident involving an individual in an ITS program that must be reported in writing to the Division within 24 hours of the incident, including, but not limited to, serious injury or illness, act of physical aggression that results in injury, suspected abuse or neglect, involvement of law enforcement or emergency services, or any other serious incident that presents a risk to health and safety.

(113) "Residential Alcohol and Other Drug Treatment Program" means a publicly or privately operated program as defined in ORS 430.010 that provides assessment, treatment, rehabilitation, and twenty-four hour observation and monitoring for individuals with alcohol and other drug dependence, consistent with Level III of ASAM PCC-2R.

(114) "Residential Problem Gambling Treatment Program" means a publicly or privately operated program that is licensed in accordance with OAR 309-032-1540(11), that provides assessment, treatment, rehabilitation, and twenty-four hour observation and monitoring for individuals with gambling related problems.

(115) "Residential Transition Program" means an Alcohol and Other Drug residential program that provides a drug-free supportive living environment and provides clinical services consistent with Level III of the ASAM PPC-2R.

(116) "Resilience" means the universal capacity that a person uses to prevent, minimize, or overcome the effects of adversity. Resilience reflects a person's strengths as protective factors and assets for positive development.

(117) "Respite care" means planned and emergency supports designed to provide temporary relief from care giving to maintain a stable and safe living environment. Respite care can be provided in or out of the home. Respite care includes supervision and behavior support consistent with the strategies specified in the ISSP.

(118) "Screening" means the process to determine whether the individual needs further assessment to identify circumstances requiring referrals or additional services and supports.

(119) "Seclusion" means the involuntary confinement of an individual to an area or room from which the individual is physically prevented from leaving. Seclusion can be used only in approved ITS programs as an emergency safety intervention specified in OAR 309-032-1540(9).

(120) "Secure Children's Inpatient Programs (SCIP) and Secure Adolescent Inpatient Programs (SAIP)" means ITS programs that are designed to provide inpatient psychiatric stabilization and treatment services to children up to age 14 for SCIP services and individuals under the age of 21 for SAIP services, who require a secure intensive treatment setting.

(121) "Service Conclusion" means the conclusion of services when:

- (a) The individual moves out of the service area;
- (b) The individual dies;
- (c) The individual requests termination of services;
- (d) There is agreement between the individual, and guardian, if applicable, and the provider to conclude services;
- (e) The individual is not expected to return to services;
- (f) The individual transfers to another provider;
- (g) The individual has not accessed services for an extended period;

or

(h) The individual requires a level of care not available through the current provider.

ADMINISTRATIVE RULES

(122) "Service Conclusion Summary" means written documentation of the conclusion of services, or transfer of an individual from service, under the circumstances described in OAR 309-032-1505(121).

(123) "Services" means those activities and treatments described in the ISSP that are intended to assist the individual's transition to recovery from a substance use disorder, problem gambling disorder or mental health condition, and to promote resiliency, and rehabilitative and functional individual and family outcomes.

(124) "Signature" means any written or electronic means of entering the name, date of authentication and credentials of the person providing a specific service or the person authorizing services and supports. Signature also means any written or electronic means of entering the name and date of authentication of the individual receiving services, the guardian of the individual receiving services, or any authorized representative of the individual receiving services.

(125) "Skills Training" means providing information and training to individuals and families designed to assist with the development of skills in areas including, but not limited to, anger management, stress reduction, conflict resolution, self-esteem, parent-child interactions, peer relations, drug and alcohol awareness, behavior support, symptom management, accessing community services and daily living.

(126) "Sub-Acute Psychiatric Care" means services that are provided by nationally accredited providers to children who need 24-hour intensive mental health services and supports, provided in a secure setting to assess, evaluate, stabilize or resolve the symptoms of an acute episode that occurred as the result of a diagnosed mental health condition.

(127) "Substance Abuse Prevention and Treatment Block Grant" or "SAPT Block Grant" means the federal block grants for prevention and treatment of substance abuse under Public Law 102-321 (31 U.S.C. 7301-7305) and the regulations published in Title 45 Part 96 of the Code of Federal Regulations.

(128) "Substance Use Disorders" means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc. as defined in DSM criteria.

(129) "Successful DUII Completion" means that the DUII program has documented in its records that for the period of service deemed necessary by the program, the individual has:

- (a) Met the service conclusion criteria approved by the Division; and
- (b) Met the terms of the fee agreement between the provider and the individual.

(130) "Supports" means activities, referrals and supportive relationships designed to enhance the services delivered to individuals and families for the purpose of facilitating progress toward intended outcomes.

(131) "Systems Integration" means the efforts by providers to work collaboratively with other service systems including, but not limited to, schools, corrections, child welfare and physical health providers, in order to coordinate and enhance services and supports and reduce barriers to service delivery.

(132) "Time out" means the restriction of a child for a period of time to a designated area from which he or she is not physically prevented from leaving, for the purpose of providing him or her an opportunity to regain self-control. When time out is documented as a behavior support strategy in the ISSP, it must be tracked for effectiveness in increasing positive behavior.

(133) "Transfer" means the process of transferring an individual to the same level of care with a different provider.

(134) "Trauma Informed Services" means services that are reflective of the consideration and evaluation of the role that trauma plays in the lives of people seeking mental health and addictions services, including recognition of the traumatic effect of misdiagnosis and coercive treatment. Services are responsive to the vulnerabilities of trauma survivors and are delivered in a way that avoids inadvertent re-traumatization and facilitates individual direction of services.

(135) "Treatment" means the planned, medically appropriate, individualized program of medical, psychological, and rehabilitative procedures, experiences and activities designed to remediate symptoms of a DSM diagnosis, that are included in the ISSP.

(136) "Urinalysis Test" means an initial test and, if positive, a confirmatory test:

(a) An initial test must include, at a minimum, a sensitive, rapid, and inexpensive immunoassay screen to eliminate "true negative" specimens from further consideration.

(b) A confirmatory test is a second analytical procedure used to identify the presence of a specific drug or metabolite in a urine specimen. The confirmatory test must be by a different analytical method from that of the initial test to ensure reliability and accuracy.

(c) All urinalysis tests must be performed by laboratories meeting the requirements of OAR 333-024-0305 to 333-024-0365.

(137) "Urgent" means the onset of symptoms requiring attention within 48 hours to prevent a serious deterioration in an individual's mental or physical health or threat to safety.

(138) "Variance" means an exception from a provision of these rules, granted in writing by the Division, upon written application from the provider. Duration of a variance is determined on a case-by-case basis.

(139) "Volunteer" means an individual who provides a program service or who takes part in a program service and who is not an employee of the program and is not paid for services. The services must be non-clinical unless the individual has the required credentials to provide a clinical service.

(140) "Wellness" means an approach to healthcare that emphasizes good physical and mental health, preventing illness, and prolonging life.

(141) "Wellness-informed Services" means services that place a priority on taking active measures to reverse the trends of significant health issues among individuals with serious mental health conditions, substance use disorders and co-occurring disorders.

(142) "Young Adult in Transition" means an individual who is developmentally transitioning into independence, sometime between the ages of 14 and 25.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1510

Provider Policies

(1) Personnel Policies: All providers must develop and implement written personnel policies and procedures, compliant with these rules, including:

- (a) Hiring, Promotion, Disciplinary Procedures and Dismissal, including the use of interns or students;
- (b) Personnel Qualifications and Credentialing, including policies to establish standards for the ethical conduct of all staff;
- (c) Training;
- (d) Supervision;
- (e) Mandatory abuse reporting, compliant with ORS 430.735-430.768 and 407-045-0250 through 407-045-0360;
- (f) Harassment;
- (g) Non-discrimination;
- (h) Criminal Records Checks, compliant with ORS 181.533 through 181.575 and 407-007-0000 through 407-007-0370;
- (i) Fraud, waste and abuse in Federal Medicaid and Medicare programs compliant with OAR 410-120-1380 and 410-120-1510;
- (j) Use of Volunteers; and
- (k) Managing incidents of alcohol and drug use by program staff that, at a minimum, comply with Drug Free Workplace Standards.

(2) Service Delivery Policies: All providers must develop and implement written policies and procedures, consistent with these rules, describing the provider's approach to services and supports and the procedures for the delivery of services and supports.

(a) A summary of the policies must be available to individuals and family members upon request; and

(b) Service delivery policies and procedures must include, at a minimum:

- (A) Entry and orientation;
- (B) Fee agreements;
- (C) Assessment, service planning, coordination and documentation;
- (D) Person-directed services, including:
 - (i) Cultural competency;
 - (ii) Developmentally appropriate and age-appropriate service planning and delivery; and
 - (iii) Family involvement.
- (E) Service conclusion, Transfer and Continuity of Care;
- (F) Trauma-informed Services, as defined in these rules;

ADMINISTRATIVE RULES

(G) Confidentiality and compliance with HIPAA, Federal Confidentiality Regulations (42 CFR, Part 2), and State confidentiality regulations as specified in ORS 179.505 and 192.518 through 192.530;

(H) Compliance with Title 2 of the Americans with Disabilities Act of 1990 (ADA);

(I) Grievances and Appeals;

(J) Individual Rights;

(K) Quality Assessment and Performance Improvement;

(L) Crisis Prevention and Response, and Incident Reporting;

(M) Services to Young Adults in Transition, when applicable; and

(N) Urinalysis testing to ensure validity of urine specimens collected by staff authorized to collect urine samples, when applicable.

(3) Residential Program Policies: In addition to the personnel and service delivery policies required of all providers, residential program providers must develop and implement written policies and procedures for the following:

(a) Medical services including protocols and medication administration, storage and disposal;

(b) Facility standards for Alcohol and Other Drug Residential Treatment Programs, including the standards under these rules;

(c) Safety and Emergency Procedures; and

(d) Emergency Safety Interventions in ITS Programs.

(4) Behavior Support Policies: Applicable providers, as specified below, must develop behavior support policies including:

(a) ITS and ICTS Services: policies consistent with 309-032-1540 (8) of these rules.

(b) ECS Services: policies consistent with 309-032-1540 (8) of these rules.

(c) Alcohol and Other Drug Residential Treatment Services: policies that prohibit:

(A) Physical or other forms of aversive action to discipline an individual;

(B) Seclusion, personal restraint, mechanical restraint and chemical restraint;

(C) Withholding shelter, regular meals, clothing, or aids to physical functioning; and

(D) Discipline of one individual by another.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

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309-032-1515

Individual Rights

(1) In addition to all applicable statutory and constitutional rights, every individual receiving services has the right to:

(a) Choose from available services and supports, those that are consistent with the ISSP and provided in the most integrated setting in the community and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for the greatest degree of independence;

(b) Be treated with dignity and respect;

(c) Participate in the development of a written ISSP, receive services consistent with that plan and participate in periodic review and reassessment of service and support needs, assist in the development of the plan, and to receive a copy of the written ISSP;

(d) Have all services explained, including expected outcomes and possible risks;

(e) Confidentiality, and the right to consent to disclosure in accordance with ORS 107.154, 179.505, 179.507, 192.515, 192.507, 42 CFR Part 2 and 45 CFR Part 205.50.

(f) Give informed consent in writing prior to the start of services, except in a medical emergency or as otherwise permitted by law. Minor children may give informed consent to services in the following circumstances:

(A) Under age 18 and lawfully married;

(B) Age 16 or older and legally emancipated by the court; or

(C) Age 14 or older for outpatient services only. For purposes of informed consent, outpatient service does not include service provided in residential programs or in day or partial hospitalization programs;

(g) Inspect their Individual Service Record in accordance with ORS 179.505;

(h) Not participate in experimentation;

(i) Receive medication specific to the individual's diagnosed clinical needs;

(j) Receive prior notice of service conclusion or transfer, unless the circumstances necessitating service conclusion or transfer pose a threat to health and safety;

(k) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(l) Have religious freedom;

(m) Be free from seclusion and restraint, except as regulated in OAR 309-032-1540(9).

(n) Be informed at the start of services, and periodically thereafter, of the rights guaranteed by this rule;

(o) Be informed of the policies and procedures, service agreements and fees applicable to the services provided, and to have a custodial parent, guardian, or representative, assist with understanding any information presented;

(p) Have family involvement in service planning and delivery;

(q) Make a declaration for mental health treatment, when legally an adult;

(r) File grievances, including appealing decisions resulting from the grievance;

(s) Exercise all rights set forth in ORS 109.610 through 109.697 if the individual is a child, as defined by these rules;

(t) Exercise all rights set forth in ORS 426.385 if the individual is committed to DHS; and

(u) Exercise all rights described in this rule without any form of reprisal or punishment.

(2) In addition to the rights specified in (1) of this rule, every individual receiving residential services has the right to:

(a) A safe, secure and sanitary living environment;

(b) A humane service environment that affords reasonable protection from harm, reasonable privacy and daily access to fresh air and the outdoors;

(c) Keep and use personal clothing and belongings, and to have an adequate amount of private, secure storage space. Reasonable restriction of the time and place of use, of certain classes of property may be implemented if necessary to prevent the individual or others from harm, provided that notice of this restriction is given to individuals and their families, if applicable, upon entry to the program, documented, and reviewed periodically;

(d) Express sexual orientation, gender identity and gender presentation;

(e) Have access to and participate in social, religious and community activities;

(f) Private and uncensored communications by mail, telephone and visitation, subject to the following restrictions:

(A) This right may be restricted only if the provider documents in the individual's record that there is a court order to the contrary, or that in the absence of this restriction, significant physical or clinical harm will result to the individual or others. The nature of the harm must be specified in reasonable detail, and any restriction of the right to communicate must be no broader than necessary to prevent this harm; and

(B) The individual and his or her guardian, if applicable, must be given specific written notice of each restriction of the individual's right to private and uncensored communication. The provider must ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible and allow for confidential communication, and that space is available for visits. Reasonable times for the use of telephones and visits may be established in writing by the provider;

(g) Communicate privately with public or private rights protection programs or rights advocates, clergy, and legal or medical professionals;

(h) Have access to and receive available and applicable educational services in the most integrated setting in the community;

(i) Participate regularly in indoor and outdoor recreation;

(j) Not be required to perform labor;

(k) Have access to adequate food and shelter; and

(l) A reasonable accommodation if, due to a disability, the housing and services are not sufficiently accessible.

(3) Notification of Rights: The provider must give to the individual and, if appropriate, the guardian, a document that describes the applicable individual's rights as follows:

(a) Information given to the individual must be in written form or, upon request, in an alternative format or language appropriate to the individual's need;

ADMINISTRATIVE RULES

(b) The rights, and how to exercise them, must be explained to the individual, and if appropriate, to her or his guardian; and

(c) Individual rights must be posted in writing in a common area.
Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
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309-032-1520

Personnel

(1) Licensing and Credentialing: All program staff must meet applicable credentialing or licensing standards, including those outlined in these rules, for the following:

- (a) Alcohol and Other Drug Treatment Staff;
- (b) CESIS;
- (c) Clinical Supervisor;
- (d) LMP;
- (e) Medical Director;
- (f) Peer Support Specialist;
- (g) Problem Gambling Treatment Staff;
- (h) QMHA; and
- (i) QMHP.

(2) General Program Staff Competencies and Qualifications:

(a) Providers must document that all program staff have demonstrated the ability to perform essential job duties as specified in the applicable job description; and

(b) Job descriptions must include competencies that are applicable to the type of service to be provided and to the specific population for whom services will be delivered.

(3) Specific Program Staff Competencies: At minimum, competencies for the following specified program staff must include:

(a) Program Administrators or Program Directors must demonstrate competence in leadership, program planning and budgeting, fiscal management, supervision of program staff, personnel management, employee performance assessment, data collection, reporting, program evaluation, quality assurance, and developing and coordinating community resources;

(b) Clinical Supervisors in addictions and mental health programs must demonstrate competence in leadership, wellness, oversight and evaluation of services, staff development, individual service and support planning, case management and coordination, utilization of community resources, group, family and individual therapy or counseling, documentation and rationale for services to promote intended outcomes and implementation of all provider policies. In addition:

(A) Clinical Supervisors in alcohol and other drug treatment programs must be certified or licensed by a health or allied provider agency, as defined in these rules, to provide addiction treatment, and have one of the following qualifications:

(i) Five years of paid full-time experience in the field of alcohol and other drug counseling; or

(ii) A Bachelor's degree and four years of paid full-time experience in the social services field, with a minimum of two years of direct alcohol and other drug counseling experience; or

(iii) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience;

(B) Clinical Supervisors in mental health programs must meet QMHP requirements and have completed two years of post-graduate clinical experience in a mental health treatment setting; and

(C) Clinical Supervisors in problem gambling treatment programs must meet the requirements for clinical supervisors in either mental health or alcohol and other drug treatment programs, and have completed 10 hours of gambling specific training within two years of designation as a problem gambling services supervisor.

(c) Alcohol and other drug treatment staff must:

(A) Be certified or licensed by a health or allied provider agency, as defined in these rules, to provide addiction treatment within two years of the first hire date and must make application for certification no later than six months following that date. The two years is not renewable if the person ends employment with a provider and becomes re-employed with another provider.

(B) Demonstrate competence in treatment of substance-use disorders including individual assessment and individual, group, family and other counseling techniques, program policies and procedures for service deliv-

ery and documentation, and identification, implementation and coordination of services identified to facilitate intended outcomes.

(d) Problem gambling treatment staff must demonstrate competence in treatment of problem gambling including individual assessment and individual, group, family and other counseling techniques, program policies and procedures for service delivery and documentation, and identification, implementation and coordination of services identified to facilitate intended outcomes.

(e) QMHAs must demonstrate the ability to communicate effectively, understand mental health assessment, treatment and service terminology and apply each of these concepts, implement skills development strategies, and identify, implement and coordinate the services and supports identified in an ISSP.

(f) QMHPs must demonstrate the ability to conduct an assessment, including identifying precipitating events, gathering histories of mental and physical health, alcohol and other drug use, past mental health services and criminal justice contacts, assessing family, cultural, social and work relationships, and conducting a mental status examination, complete a five-axis DSM diagnosis, write and supervise the implementation of a ISSP and provide individual, family or group therapy within the scope of their training.

(g) Peer support specialists must demonstrate knowledge of approaches to support others in recovery and resiliency, and demonstrate efforts at self-directed recovery.

(4) Recovering Staff: Program staff, contractors, volunteers and interns recovering from a substance-use disorder, providing treatment services or peer support services in alcohol and other drug treatment programs, must be able to document continuous abstinence under independent living conditions or recovery housing for the immediate past two years.

(5) Personnel Documentation: Providers must maintain personnel records for each employee that contains all of the following documentation:

(a) An employment application;

(b) For subject individuals, verification of a criminal records check consistent with OAR 407-007-0200 through 407-007-0370;

(c) A current job description;

(d) Copies of relevant licensure or certification, diploma, or certified transcripts from an accredited college, indicating that the employee meets applicable qualifications;

(e) Periodic performance appraisals;

(f) Staff orientation and development activities;

(g) Employee incident reports;

(h) Disciplinary documentation;

(i) Reference checks;

(j) Emergency contact information; and

(k) Information from subsection (6) of this rule, if applicable.

(6) Non-employee Documentation: For providers utilizing contractors, interns or volunteers, providers must maintain the following documentation, as applicable:

(a) A contract, or written agreement, if applicable;

(b) A signed confidentiality agreement;

(c) Service-specific orientation documentation; and

(d) For subject individuals, verification of a criminal records check consistent with OAR 407-007-0200 through 407-007-0370.

(7) Program Specific Employee Documentation: In addition to general employee documentation requirements, providers must maintain additional documentation as applicable.

(a) For all employees and volunteers providing residential services to children or adults:

(A) Results of a Hepatitis B screening as per OAR 333-071-0057; and

(B) Results of a Tuberculosis screening as per OAR 333-071-0057.

(8) Training: Providers must ensure that program staff receives training applicable to the specific population for whom services are planned, delivered, or supervised as follows:

(a) Pre-service training: The program must document appropriate orientation training for each employee, or person providing services, within 30 days of the hire date. At minimum, pre-service training for all program staff must include, but not be limited to,

(A) A review of individual crisis response procedures;

(B) A review of emergency procedures;

(C) A review of program policies and procedures;

(D) A review of rights for individuals receiving services and supports;

(E) Mandatory abuse reporting procedures;

(F) Population-specific information; and

(G) An overview of applicable community resources.

(9) Supervision: Persons providing services to individuals in accordance with this rule must receive supervision by a qualified Clinical

ADMINISTRATIVE RULES

Supervisor, as defined in these rules, related to the development, implementation and outcome of services.

(a) Clinical supervision must be provided to assist program staff and volunteers to increase their skills, improve quality of services to individuals, and supervise program staff and volunteers' compliance with program policies and procedures.

(b) Clinical Supervision must be specified through a current written agreement, job description, or similar type of binding arrangement between the Clinical Supervisor and the Provider which describes the Clinical Supervisor's oversight responsibility, including:

(A) Documentation of supervision for each person supervised, of no less than two hours per month. The two hours must include one hour of face-to-face contact for each person supervised, or a proportional level of supervision for part-time program staff.

(c) Medical supervision must be secured, when required, through a current written agreement, job description, or similar type of binding arrangement between a LMP and the provider, which describes the LMP's responsibility in reviewing and approving the assessment and services and supports identified in the ISSP for each individual receiving mental health services for one or more continuous years.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

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309-032-1525

Entry and Assessment

(1) Entry Process: The program must utilize a written entry procedure to ensure the following:

(a) Individuals must be considered for entry without regard to race, ethnicity, gender, gender identity, gender presentation, sexual orientation, religion, creed, national origin, age, except when program eligibility is restricted to children, adults or older adults, familial status, marital status, source of income, and disability.

(b) Individuals must receive services in the most timely manner feasible consistent with the presenting circumstances.

(c) For individuals receiving services funded by the SAPT Block Grant, entry of pregnant women to services must occur no later than 48 hours from the date of first contact, and no less than 14 days after the date of first contact for individuals using substances intravenously. If services are not available within the required timeframe, the provider must document the reason and provide interim referral and informational services as defined in these rules, within 48 hours.

(d) Written informed consent for services must be obtained from the individual or guardian, if applicable, prior to the start of services. If such consent is not obtained, the reason must be documented and further attempts to obtain informed consent must be made as appropriate.

(e) The provider must establish an Individual Service Record for each individual on the date of entry.

(f) The provider must report the entry of all individual on the mandated state data system.

(g) In accordance with ORS 179.505 and HIPAA, an authorization for the release of information must be obtained for any confidential information concerning the individual being considered for, or receiving, services.

(h) Orientation: At the time of entry, the program must give to the individual and guardian if applicable, written program orientation information. The written information must be in the individual's primary language and must include:

(A) The program's philosophical approach to providing services and supports;

(B) A description of individual rights consistent with these rules;

(C) An overview of services available including any related fees when applicable; and

(D) Policies concerning grievances and confidentiality.

(2) Entry Priority:

(a) Entry of adults and older adults, in community-based mental health programs, whose services are not funded by Medicaid, must be prioritized in the following order:

(A) Individuals who, in accordance with the assessment of professionals in the field of mental health, are at immediate risk of hospitalization for the treatment of mental health conditions or are in need of continuing services to avoid hospitalization or pose a hazard to the health and safety of themselves, including the potential for suicide;

(B) Individuals who, because of the nature of their diagnosis, their geographic location or their family income, are least capable of obtaining assistance from the private sector; and

(C) Individuals who, in accordance with the assessment of professionals in the field of mental health, are experiencing mental health conditions but will not require hospitalization in the foreseeable future.

(b) Entry of children in community-based mental health services, whose services are not funded by Medicaid, must be prioritized in the following order:

(A) Children who are at immediate risk of psychiatric hospitalization or removal from home due to emotional and mental health conditions;

(B) Children who have severe mental health conditions;

(C) Children who exhibit behavior which indicates high risk of developing conditions of a severe or persistent nature; and

(D) Any other child who is experiencing mental health conditions which significantly affect the child's ability to function in everyday life but not requiring hospitalization or removal from home in the near future.

(c) Entry of individuals whose services are funded by the SAPT Block Grant, must be prioritized in the following order:

(A) Women who are pregnant and using substances intravenously;

(B) Women who are pregnant;

(C) Individuals who are using substances intravenously; and

(D) Women with dependent children.

(3) Assessment:

(a) When an individual is admitted for services, an assessment must be completed prior to development of the ISSP, or provisional ISSP, if applicable.

(b) When an assessment cannot be completed at entry, a provisional assessment, as defined in these rules, must document the immediate medical appropriateness of services. If services are continued, an assessment must be completed within a timeframe that reflects the level and complexity of services and supports to be provided.

(c) The assessment must be completed by qualified program staff as follows:

(A) A QMHP in mental health programs. A QMHA may assist in the gathering and compiling of information to be included in the assessment.

(B) Supervisory or treatment staff in alcohol and other drug treatment programs, and

(C) Supervisory or treatment staff in problem gambling treatment programs.

(d) Each assessment must include:

(A) Sufficient biopsychosocial information and documentation to support the presence of a DSM diagnosis that is the medically appropriate reason for services.

(B) Screening for the presence of substance use, problem gambling, mental health conditions, and chronic medical conditions.

(C) Screening for the presence of symptoms related to psychological and physical trauma.

(D) Suicide potential must be assessed and individual service records must contain follow-up actions and referrals when an individual reports symptoms indicating risk of suicide.

(E) In addition, for children age zero to five, diagnosis must be informed by treatment guidelines included in the Health Services Commission prioritized list of paired conditions and treatments, and must include:

(i) Direct observation of child, parent, family and interaction;

(ii) Neurodevelopment considerations; and

(iii) Parental and family biopsychosocial functioning within the context of the home, community and culture.

(F) Subsections (3)(d)(A), (3)(d)(B), (3)(d)(C) and (3)(d)(D) of this rule, apply to alcohol and other drug assessments, which must be consistent with the dimensions described in the ASAM PPC-2R, and must document a diagnosis and level of care determination consistent with the DSM and ASAM PPC-2R.

(e) When the assessment process determines the presence of co-occurring substance use and mental health disorders, all providers must document referral for further assessment, planning and intervention from an appropriate professional, either with the same provider or with a collaborative community provider.

(f) Providers must document updates to the assessment consistent with the timelines specified in the ISSP, and when there are changes related to the biopsychosocial information in the assessment.

(g) In addition to periodic assessment updates, any individual continuing to receive mental health services for one or more continuous years,

ADMINISTRATIVE RULES

must receive an annual assessment by a QMHP, that has documented approval by an LMP.

(h) The requirements in OAR 309-032-1525(3)(d)(A) and 309-032-1525(3)(g) are minimum requirements to meet Medicaid auditing standards and may result in financial findings when not met. The requirements in OAR 309-032-1525(3)(d)(B) through 309-032-1525(3)(f) are quality standards and may result in limitations, or revocation of, certification when not met. Failure to maintain certification may result in exclusion or limited participation in the Medicaid program.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

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309-032-1530

Individual Service and Support Planning and Coordination

(1) Individual Services and Supports: The provider must deliver or coordinate, for each individual, appropriate services and supports to collaboratively facilitate intended service outcomes as identified by the individual, and family, when applicable.

(a) Qualified program staff must facilitate a planning process, resulting in an ISSP that reflects the assessment and the level of care to be provided.

(b) A provisional ISSP, including applicable crisis services, must be completed prior to the start of services. For mental health services, a QMHP, who is also a licensed health care professional, must recommend the services and supports by signing the provisional ISSP.

(c) If services are continued, an ISSP must be completed within a timeframe that reflects:

(A) The type and level of services and supports to be provided;

(B) A complete assessment; and

(C) Engagement and agreement of the individual, and family if applicable, in the development of the ISSP.

(d) Individuals, and family members, as applicable, must collaboratively participate in the development of the ISSP.

(e) Providers must fully inform the individual and guardian when applicable, of the proposed services and supports, in developmentally and culturally appropriate language, and give the individual and guardian when applicable, a written copy of the ISSP.

(f) Providers must obtain informed consent from the individual and guardian when applicable, for the proposed services and supports, including any medications, behavior support strategies and emergency safety interventions.

(g) Providers must collaborate with community partners to coordinate or deliver services and supports identified in the ISSP.

(h) Providers must request authorization to exchange information with any applicable physical health care providers or Fully Capitated Health Plans, for the individual, to collaborate in promoting regular and adequate health care.

(i) When there are barriers to services due to culture, gender, language, illiteracy, or disability, the provider must take measures to address or overcome those barriers including:

(A) Making reasonable modifications in policies, practices, and procedures to avoid discrimination (unless the provider can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity);

(B) Providing supports including, but not limited to, the provision of interpreters to provide translation services, at no additional cost to the individual; and

(C) Referring an individual to another provider if that individual requires services outside of the referring provider's area of specialization.

(2) Individual Service and Support Plan (ISSP):

(a) The ISSP must document the specific services and supports to be provided, arranged or coordinated to assist the individual and his or her family, if applicable, to achieve intended outcomes.

(b) At minimum, each ISSP must include:

(A) Measurable or observable intended outcomes;

(B) Specific services and supports to be provided;

(C) Applicable service and support delivery details including frequency and duration of each service;

(D) Criteria for service conclusion; and

(E) Timelines for review of progress and ISSP updates, must be consistent with the level of care provided and the needs of the individual. For ITS programs, the interdisciplinary team must conduct a review of progress

and service conclusion criteria at least every 30 days from the date of entry and must document members present, progress and changes made. For Psychiatric Day Treatment Services, the review must be conducted every 30 days and the LMP must participate in the review at least every 90 days.

(c) For ICTS programs, the ISSP must include:

(A) Identification of strengths and needs;

(B) A service coordination section that summarizes service planning in all relevant life domains by the participating team members; and

(d) For ICTS and ITS programs, the ISSP must include:

(A) Proactive safety and crisis planning; and

(B) A behavior support plan, consistent with OAR 309-032-1540(8) of these rules.

(e) A QMHP, who is also a licensed health care professional, must recommend the services and supports by signing the ISSP for each individual receiving mental health services within five days of the development of the ISSP;

(f) A LMP must approve updates to the ISSP at least annually for each individual receiving mental health services for one or more continuous years.

(g) The requirements in OAR 309-032-1530(2)(a) through 309-032-1530(2)(e) are minimum requirements to meet both Medicaid auditing and quality standards and may result in financial findings or limitations or both, or revocation of certification when not met. Failure to maintain certification may result in exclusion or limited participation in the Medicaid program.

(3) Individual Service Notes:

(a) A written individual service note must be recorded each time a service is provided.

(b) Individual Service Notes must document the:

(A) Specific service provided;

(B) Duration of the service provided;

(C) Date on which the service was provided;

(D) Location of service; and

(E) Date of authentication and name, signature, and credentials, of the person who provided the service.

(c) Individual service notes must also include:

(A) Periodic reviews of progress toward intended outcomes, consistent with timelines documented in the ISSP;

(B) Any significant events or changes in the individual's life circumstances, including mental status, treatment response and recovery status; and

(C) Any decisions to conclude services or transfer an individual from service.

(d) Timelines for periodic review of progress must be determined on an individual basis, and documented in the ISSP, reflective of the type and complexity of the services and supports provided and the needs of the individual.

(e) The requirements in OAR 309-032-1530(3)(a) and 309-032-1530(3)(b)(A) through 309-032-1530(3)(b)(E) are minimum requirements to meet Medicaid auditing standards and may result in financial findings when not met. The requirements in 309-032-1530(3)(c)(A) through 309-032-1530(3)(c)(C) are quality standards and may result in limitations, or revocation of, certification when not met. Failure to maintain certification may result in exclusion or limited participation in the Medicaid program.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1535

Individual Service Record

(1) Documentation Standards: Documentation must be appropriate in quality and quantity to meet professional standards applicable to the provider and any additional standards for documentation in the provider's policies and any pertinent contracts.

(2) General Requirements for Individual Service Record: All providers must develop and maintain an Individual Service Record for each individual upon entry. The record must, at a minimum, include:

(a) MHO, FCHP or other third party insurance enrollment information, including documentation of benefit, denial, or appeal, of a third party payer.

(b) Identifying information, or documentation of attempts to obtain the information, including:

(A) The individual's name, address, telephone number, date of birth, gender, marital status and military status;

ADMINISTRATIVE RULES

(B) Name, address, and telephone number of the parent or legal guardian, primary care giver, if applicable, and next of kin or emergency contact;

(C) Name, address and telephone number of the individual's primary care physician; and

(D) Emergency medical and dental resources.

(c) Informed Consent for Service, including medications, or documentation specifying why the provider could not obtain consent by the individual or guardian as applicable;

(d) Written refusal of any services and supports offered, including medications;

(e) A signed fee agreement, when applicable;

(f) Assessment or provisional assessment and updates to the assessment;

(g) An ISSP or provisional ISSP, including any applicable behavior support or crisis intervention planning;

(h) Individual service notes;

(i) A Service Conclusion Summary, when required;

(j) Other plans as made available, such as, but not limited to recovery plans, wellness action plans, education plans, and advance directives for physical and mental health care; and

(k) Applicable signed consents for release of information.

(3) Medical Service Records: When medical services are provided, the following documents must be part of the Individual Service Record as applicable:

(a) Medication Administration Records as per these rules;

(b) Laboratory reports; and

(c) LMP orders for medication, protocols or procedures.

(4) Documentation in Residential Programs: In addition to the requirements for Individual Service Records in subsection 309-032-1535(2), residential providers must include the following documentation in the Individual Service Record:

(a) A personal belongings inventory created upon entry and updated whenever an item of significant value is added or removed, or on the date of service conclusion;

(b) Documentation indicating that the individual and guardian, as applicable, were provided with the required orientation information upon entry;

(c) Background information including strengths and interests, all available previous mental health or substance use assessments, previous living arrangements, service history, behavior support considerations, education service plans if applicable, and family and other support resources;

(d) Medical information including a brief history of any health conditions, documentation from a LMP or other qualified health care professional of the individual's current physical health, and a written record of any prescribed or recommended medications, services, dietary specifications, and aids to physical functioning;

(e) Copies of documents relating to guardianship or any other legal considerations, as applicable;

(f) A copy of the individual's most recent ISSP, if applicable, or in the case of an emergency or crisis-respite entry, a summary of current addictions or mental health services and any applicable behavior support plans;

(g) Documentation of the individual's ability to evacuate the home consistent with the program's evacuation plan developed in accordance with the Oregon Structural Specialty Code and Oregon Fire Code;

(h) Documentation of any safety risks; and

(i) Incident reports, when required, including:

(A) The date of the incident, the persons involved, the details of the incident, and the quality and performance actions taken to initiate investigation of the incident and correct any identified deficiencies; and

(B) Any child abuse reports made by the provider to law enforcement or to the DHS Children, Adults and Families Division, documenting the date of the incident, the persons involved and, if known, the outcome of the reports.

(5) Additional documentation in ITS Programs: In addition to OAR 309-032-1535(2), 309-032-1535(3) and 309-032-1535(4), ITS providers must include the following documentation in the Individual Service Record:

(a) Level of Service Intensity Determination;

(b) Names and contact information of the members of the interdisciplinary team;

(c) Documentation by the interdisciplinary team that the child's ISSP has been reviewed, the services provided are medically appropriate for the specific level of care, and changes in the plan recommended by the inter-

disciplinary team, as indicated by the child's service and support needs, have been implemented;

(d) Emergency safety intervention records, in a separate section or in a separate format, documenting each incident of personal restraint or seclusion, signed and dated by the qualified program staff directing the intervention and, if required, by the psychiatrist or clinical supervisor authorizing the intervention; and

(e) A copy of the written transition instructions provided to the child and family on the date of service conclusion.

(6) Additional documentation in ICTS Programs: In addition to OAR 309-032-1535(2), ICTS providers must include the following documentation in the Individual Service Record:

(a) Level of Service Intensity Determination; and

(b) Names and contact information of the members of the child and family team.

(7) PSRB and JPSRB Documentation: When the individual is under the jurisdiction of the PSRB or JPSRB, providers must include the following additional documentation in the Individual Service Record:

(a) Monthly reports to the PSRB or JPSRB;

(b) Interim reports, as applicable;

(c) The PSRB Initial Evaluation; and

(d) For PSRB and JPSRB services, a copy of the Conditional Order of Release.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

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309-032-1540

Program Specific Service Standards

In addition to individualized service and support planning and coordination, providers of each of the following program-specific service areas must ensure the following requirements listed for that service are met.

(1) Co-Occurring Mental Health and Substance Use Disorders (COD):

(a) Providers approved and designated to provide services and supports for individuals diagnosed with COD must:

(A) Establish program content consisting of an array of treatment options, including:

(i) Individual medication evaluation, referral and treatment;

(ii) Motivational strategies;

(iii) Symptom management;

(iv) Case management;

(v) Wellness; and

(vi) Relapse prevention.

(B) Ensure ongoing intermittent contact with the individual by program staff including, but not limited to, telephone outreach and home visits.

(C) Provide concurrent service and support planning and delivery for substance use and mental health diagnosis, including integrated assessment, ISSP and individual service record; and

(D) Provide case management services with a primary contact for multiple health and social service systems to:

(i) Assist the individual to transition through the continuum of care; and

(ii) Assist the individual to access necessary services and recovery supports for both substance use and mental health diagnosis, including dual-diagnosis recovery self-help groups and programs, and peer delivered supports.

(2) Outpatient Mental Health Services to Children, Adults and Older Adults:

(a) Crisis services must be provided directly or through linkage to a local crisis services provider and must include the following:

(A) 24 hours, seven days per week telephone or face-to-face screening to determine an individual's need for immediate community mental health services; and

(B) 24 hour, seven days per week capability to conduct, by or under the supervision of a QMHP, a provisional assessment resulting in a provisional ISSP that includes the crisis services necessary to assist the individual and family to stabilize and transition to the appropriate level of care.

(b) Individual, family and group therapy provided by a QMHP;

(c) Psychiatric services including medication management as applicable, provided by a LMP who is either an employee of the provider or is a contracted provider; and

ADMINISTRATIVE RULES

(d) Available case management services including the following:

(A) Assistance in applying for benefits to which the individual may be entitled. Program staff must assist individuals in gaining access to, and maintaining, resources such as Social Security benefits, general assistance, food stamps, vocational rehabilitation, and housing. When needed, program staff must arrange transportation or accompany individuals to help them apply for benefits;

(B) Assistance with completion of a declaration for mental health treatment with the individual's participation and informed consent;

(C) Referral and coordination to help individuals gain access to services and supports identified in the ISSP;

(D) When an individual receives residential services, program staff must collaborate with the residential program and family to coordinate services;

(E) When an individual resides in an Adult Foster Home, program staff must assist in the development of a Personal Care Plan. Program staff must also evaluate the appropriateness of services in relation to the individual's assessed need and review the Personal Care Plan every 180 days;

(F) When an individual is admitted to a hospital or non-hospital facility, program staff must make contact in person or by telephone with the individual within one working day of entry and P must be actively involved with transition planning from the hospital or non-hospital facility;

(G) If an individual is receiving treatment in a state funded long-term care psychiatric facility, program staff must, from the point of entry, be actively involved with transitioning the individual from long term care;

(H) When significant health and safety concerns are identified, program staff must assure that necessary services or actions occur to address the identified health and safety needs for the individual; and

(I) For children and youth, program staff must create linkages to and ongoing communication with other involved child-serving providers and agencies such as child welfare, education, primary care and juvenile justice, and make referrals for additional services and supports as indicated.

(e) Skills training as indicated;

(f) Peer delivered supports, as indicated; and

(g) Older adult services, including preventative mental health services, when applicable.

(3) Enhanced Care Services:

(a) Enhanced care services must be provided in DHS, SPD licensed facilities that have a multipurpose room, an area providing an environment with low stimulation, an accessible outdoor space with a covered area, a refrigerator, a microwave conveniently located for program activities, space for interdisciplinary meetings, space for mental health treatment and space for storage of records. A minimum of one private room is required in facilities opened after January 1, 1994.

(b) Services must include:

(A) 12 hours per week of mental health services available during evening and weekend shifts provided or arranged for by the contracted mental health provider;

(B) Weekly interdisciplinary team meetings to develop the ISSP, review the behavior support plan and to coordinate care planning with the SPD licensed provider staff and related professionals, including a QMHP, prescriber, SPD direct care staff, SPD case manager, SPD facility RN and SPD facility administrator; and

(C) A crisis service staffed by a QMHP or the local CMHP available to the provider and facility direct care staff 24-hours per day.

(c) ECOS services must be delivered according to the individual's needs and do not require the services listed under OAR 309-032-1540(3)(b)(A) and 309-032-1540(3)(b)(B) of this rule.

(d) Behavior support services must be consistent with OAR 309-032-1540(8) of these rules.

(4) Psychiatric Security Review Board and Juvenile Psychiatric Security Review Board: Services and supports must include all appropriate services determined necessary to assist the individual in maintaining community placement and which are consistent with Conditional Release Orders and the Agreement to Conditional Release.

(a) Providers of PSRB and JPSRB services acting through the designated Qualified Person, must submit reports to the PSRB or JPSRB as follows:

(A) Orders for Evaluation: For individuals under the jurisdiction of the PSRB or the JPSRB, providers must take the following action upon receipt of an Order for Evaluation:

(i) Within 15 days of receipt of the Order, schedule an interview with the individual for the purpose of initiating or conducting the evaluation;

(ii) Appoint a QMHP to conduct the evaluation and to provide an evaluation report to the PSRB or JPSRB;

(iii) Within 30 days of the evaluation interview, submit the evaluation report to the PSRB or JPSRB responding to the questions asked in the Order for Evaluation; and

(iv) If supervision by the provider is recommended, notify the PSRB or JPSRB of the name of the person designated to serve as the individual's Qualified Person, who must be primarily responsible for delivering or arranging for the delivery of services and the submission of reports under these rules.

(B) Monthly reports consistent with PSRB or JPSRB reporting requirements as specified in the Conditional Release Order that summarize the individual's adherence to Conditional Release requirements and general progress; and

(C) Interim reports, including immediate reports by phone, if necessary, to ensure the public or individual's safety including:

(i) At the time of any significant change in the individual's health, legal, employment or other status which may affect compliance with Conditional Release orders;

(ii) Upon noting major symptoms requiring psychiatric stabilization or hospitalization;

(iii) Upon noting any other major change in the individual's ISSP;

(iv) Upon learning of any violations of the Conditional Release Order; and

(v) At any other time when, in the opinion of the Qualified Person, such an interim report is needed to assist the individual.

(b) JPSRB providers must submit copies of all monthly reports and interim reports to both the JPSRB and the Division.

(5) Intensive Community-Based Treatment and Support Services (ICTS) for Children: ICTS services may be delivered at a clinic, facility, home, school, other provider or allied agency location or other setting as identified by the child and family team. In addition to services specified by the ISSP and the standards for outpatient mental health services, ICTS services must include:

(a) Care coordination provided by a QMHP or a QMHA supervised by a QMHP;

(b) A child and family team, as defined in these rules;

(c) Service coordination as specified in the ISSP, to be developed by the child and family team;

(d) Review of progress at child and family team meetings to occur at a frequency documented in the ISSP;

(e) Family support and respite care, as indicated;

(f) Proactive safety and crisis planning that utilizes professional and natural supports to provide 24 hours, seven days per week flexible response and is reflective of strategies to avert potential crisis without placement disruptions; and

(g) Behavior support planning, consistent with OAR 309-032-1540(8) of these rules.

(6) Intensive Treatment Services (ITS) for Children:

(a) ITS Providers must meet the following general requirements:

(A) Maintain the organizational capacity and interdisciplinary treatment capability to deliver clinically and developmentally appropriate services in the medically appropriate amount, intensity and duration for each child specific to the child's diagnosis, level of functioning and the acuity and severity of the child's psychiatric symptoms;

(B) Maintain 24 hour, seven days per week treatment responsibility for children in the program;

(C) Non-residential programs must maintain on-call capability at all times to respond directly or by referral to the treatment needs of children, including crises, 24 hours per day and seven days per week;

(D) Inform the Division and the legal guardian within twenty-four hours of reportable incidents;

(E) Maintain linkages with primary care physicians, CMHPs and MHOs and the child's parent or guardian to coordinate necessary continuing care resources for the child; and

(F) Maintain linkages with the applicable education service district or school district to coordinate and provide the necessary educational services for the children and integrate education services in all phases of assessment, service and support planning, active treatment and transition planning.

(b) General staffing requirements: ITS providers must have the clinical leadership and sufficient QMHP, QMHA and other program staff to meet the 24-hour, seven days per week treatment needs of children and must establish policies, procedures and contracts to assure:

(A) Availability of psychiatric services to meet the following requirements;

ADMINISTRATIVE RULES

(i) Provide medical oversight of the clinical aspects of care in nationally accredited sub-acute and psychiatric residential treatment facilities and provide 24-hour, seven days per week psychiatric on-call coverage; or consult on clinical care and treatment in psychiatric day treatment; and

(ii) Assess each child's medication and treatment needs, prescribe medicine or otherwise assure that case management and consultation services are provided to obtain prescriptions, and prescribe therapeutic modalities to achieve the child's individual service and support plan goals.

(B) There must be a clinical supervisory ratio of at least one QMHP clinical supervisor for every nine program staff; and

(C) There must be at least one program staff who has completed First Aid and CPR training on duty at all times.

(c) ITS providers must ensure that the following services and supports are available and accessible through direct service, contract or by referral:

(A) Active psychiatric treatment and education services must be functionally integrated in a therapeutic environment designed to reflect and promote achievement of the intended outcomes of each child's ISSP;

(B) When treatment services interrupt the child's day to day educational environment, the program must provide or make arrangements for the continuity of the child's education;

(C) Family therapy must be provided by a QMHP. The family therapist to child ratio must be at least one family therapist for each 12 children;

(D) Psychiatric services;

(E) Individual, group and family therapies provided by a QMHP. There must be no less than one family therapist available for each 12 children;

(F) Medication evaluation, management and monitoring;

(G) Pre-vocational or vocational rehabilitation;

(H) Therapies supporting speech, language and hearing rehabilitation;

(I) Individual and group psychosocial skills development;

(J) Activity and recreational therapies;

(K) Nutrition;

(L) Physical health care services or coordination;

(M) Recreational and social activities consistent with individual strengths and interests;

(N) Educational services coordination and advocacy; and

(O) Behavior support services, consistent with OAR 309-032-1540(8) of these rules.

(7) Program Specific Requirements for ITS Providers: In addition to the general requirements for all ITS providers listed in OAR 309-032-1540(6), the following program-specific requirements must be met:

(a) Psychiatric Residential Treatment Facilities (PRTF):

(A) Children must either have or be screened for an Individual Education Plan, Personal Education Plan, or an Individual Family Service Plan;

(B) Psychiatric Residential Treatment Facilities must maintain one or more linkages with acute care hospitals or MHOs to coordinate necessary inpatient care;

(C) Psychiatric residential clinical care and treatment must be under the direction of a psychiatrist and delivered by an interdisciplinary team of board-certified or board-eligible child and adolescent psychiatrists, registered nurses, psychologists, other qualified mental health professionals, and other relevant program staff. A psychiatrist must be available to the unit 24-hours per day, seven days per week; and

(D) Psychiatric Residential Treatment Facilities must be staffed at a clinical staffing ratio of not less than one program staff for three children during the day and evening shifts. At least one program staff for every three program staff members during the day and evening shifts must be a QMHP or QMHA. For overnight program staff there must be a staffing ratio of at least one program staff for six children; at least one of the overnight program staff must be a QMHA. For units that by this ratio have only one overnight program staff, there must be additional program staff immediately available within the facility or on the premises. At least one QMHP must be on site or on call at all times. At least one program staff with designated clinical leadership responsibilities must be on site at all times.

(b) SCIP and SAIP: Programs providing SCIP and SAIP Services must meet the requirements for PRTFs listed in 7(a) of this subsection. They must also establish policies and practices to meet the following:

(A) The staffing model must allow for the child's frequent contact with the child psychiatrist a minimum of one hour per week;

(B) Psychiatric nursing staff must be provided in the program 24 hours per day;

(C) A psychologist, psychiatric social worker, rehabilitation therapist and psychologist with documented training in forensic evaluations must be available 24 hours per day as appropriate; and

(D) Program staff with specialized training in SCIP or SAIP must be available 24 hours per day;

(E) The program must provide all medically appropriate psychiatric services necessary to meet the child's psychiatric care needs;

(F) The program must provide secure psychiatric treatment services in a manner that ensures public safety to youth who are under the care and custody of the Oregon Youth Authority, court ordered for the purpose of psychiatric evaluation, or admitted by the authority of the JPSRB; and

(G) The program must not rely on external entities such as law enforcement or acute hospital care to assist in the management of the SCIP or SAIP setting.

(c) Sub-Acute Psychiatric Care: In addition to the services provided as indicated by the assessment and specified in the ISSP, Sub-Acute Psychiatric Care providers must:

(A) Provide psychiatric nursing staffing at least 16 hours per day;

(B) Provide nursing supervision and monitoring and psychiatric supervision at least one to three times per week; and

(C) Work actively with the child and family team and multi-disciplinary community partners, to plan for the long-term emotional, behavioral, physical and social needs of the child to be met in the most integrated setting in the community.

(d) Psychiatric Day Treatment Services (PDTs):

(A) PDTs must be provided to children who remain at home with a parent, guardian or foster parent by qualified mental health professionals and qualified mental health associates in consultation with a psychiatrist;

(B) An education program must be provided and children must either have or be screened for an Individual Education Plan, Personal Education Plan or Individual Family Service Plan; and

(C) Psychiatric Day Treatment programs must be staffed at a clinical staffing ratio of at least one QMHP or QMHA for three children.

(8) Behavior Support Services: Behavior support services must be proactive, recovery-oriented, individualized, and designed to facilitate positive alternatives to challenging behavior, as well as to assist the individual in developing adaptive and functional living skills. Behavior support services are required in ITS, ICTS and ECS Services. Providers of these services must:

(a) Take into consideration the neurodevelopmental and environmental factors related to behavior;

(b) Develop and implement individual behavior support strategies, based on a functional or other clinically appropriate assessment of challenging behavior;

(c) Document the behavior support strategies and measures for tracking progress as a behavior support plan in the ISSP;

(d) Establish a framework which assures individualized positive behavior support practices throughout the program and articulates a rationale consistent with the philosophies supported by the Division, including the Division's Trauma-informed Services Policy;

(e) Obtain informed consent from the parent or guardian, when applicable, in the use of behavior support strategies and communicate both verbally and in writing the information to the individual and guardian in the individual's primary language and in a developmentally appropriate manner;

(f) Establish outcome-based tracking methods to measure the effectiveness of behavior support strategies in:

(A) Reducing or eliminating the use of emergency safety interventions; and

(B) Increasing positive behavior.

(g) Require all program staff to receive annual training in Collaborative Problem Solving, Positive Behavior Support or other Evidence-based Practice to promote positive behavior support;

(h) Require program staff to receive training specific to the individual support strategies to be implemented; and

(i) Review and update behavior support policies, procedures, and practices annually.

(9) Emergency Safety Interventions in ITS Programs: Providers of ITS services must:

(a) Adopt policies and procedures for Emergency safety interventions as part of a Crisis Prevention and Intervention Policy. The policy must be consistent with the provider's trauma-informed services policies and procedures.

(b) Inform the individual and his or her parent or guardian of the provider's policy regarding the use of personal restraint and seclusion during an emergency safety situation by both furnishing a written copy of the policy and providing an explanation in the individual's primary language that is developmentally appropriate.

ADMINISTRATIVE RULES

(c) Obtain a written acknowledgment from the parent or guardian that he or she has been informed of the provider's policies and procedures regarding the use of personal restraint and seclusion.

(d) Prohibit the use of mechanical restraint and chemical restraint as defined in these rules.

(e) Establish an Emergency Safety Interventions Committee or designate this function to an already established Quality Assessment and Performance Improvement Committee. Committee membership must minimally include a program staff with designated clinical leadership responsibilities, the person responsible for staff training in crisis intervention procedures and other clinical personnel not directly responsible for authorizing the use of emergency safety interventions. The committee must:

(A) Monitor the use of emergency safety interventions to assure that individuals are safeguarded and their rights are always protected;

(B) Meet at least monthly and must report in writing to the provider's Quality Assessment and Performance Improvement Committee at least quarterly regarding the committee's activities, findings and recommendations;

(C) Analyze emergency safety interventions to determine opportunities to prevent their use, increase the use of alternatives, improve the quality of care and safety of individuals receiving services and recommend whether follow up action is needed;

(D) Review and update emergency safety interventions policies and procedures annually;

(E) Conduct individual and aggregate review of all incidents of personal restraint and seclusion; and

(F) Report the aggregate number of personal restraints and incidents of seclusion to the Division within 30 days of the end of each calendar quarter.

(f) Providers must meet the following general conditions of personal restraint and seclusion:

(A) Personal restraint and seclusion must only be used in an emergency safety situation to prevent immediate injury to an individual who is in danger of physically harming him or herself or others in situations such as the occurrence of, or serious threat of violence, personal injury or attempted suicide;

(B) Any use of personal restraint or seclusion must respect the dignity and civil rights of the individual;

(C) The use of personal restraint or seclusion must be directly related to the immediate risk related to the behavior of the individual and must not be used as punishment, discipline, or for the convenience of staff;

(D) Personal restraint or seclusion must only be used for the length of time necessary for the individual to resume self-control and prevent harm to the individual or others, even if the order for seclusion or personal restraint has not expired, and must under no circumstances, exceed 4 hours for individuals ages 18 to 21, 2 hours for individuals ages 9 to 17, or 1 hour for individuals under age 9;

(E) An order for personal restraint or seclusion must not be written as a standing order or on an as needed basis;

(F) Personal restraint and seclusion must not be used simultaneously;

(G) Providers must notify the individual's parent or guardian of any incident of seclusion or personal restraint as soon as possible;

(H) If incidents of personal restraint or seclusion used with an individual cumulatively exceed five interventions over a period of five days, or a single episode of one hour within 24 hours, the psychiatrist, or designee, must convene, by phone or in person, program staff with designated clinical leadership responsibilities to:

(i) Discuss the emergency safety situation that required the intervention, including the precipitating factors that led up to the intervention and any alternative strategies that might have prevented the use of the personal restraint or seclusion;

(ii) Discuss the procedures, if any, to be implemented to prevent any recurrence of the use of personal restraint or seclusion;

(iii) Discuss the outcome of the intervention including any injuries that may have resulted; and

(iv) Review the individual's ISSP, making the necessary revisions, and document the discussion and any resulting changes to the individual's ISSP in the Individual Service Record.

(g) Personal Restraint:

(A) Each personal restraint must require an immediate documented order by a physician, licensed practitioner, or, in accordance with OAR 309-034-0400 through 309-034-0490, a licensed CESIS;

(B) The order must include:

(i) Name of the person authorized to order the personal restraint;

(ii) Date and time the order was obtained; and

(iii) Length of time for which the intervention was authorized.

(C) Each personal restraint must be conducted by program staff that have completed and use a Division-approved crisis intervention training. If in the event of an emergency a non Division-approved crisis intervention technique is used, the provider's on-call administrator must immediately review the intervention and document the review in an incident report to be provided to the Division within 24 hours;

(D) At least one program staff trained in the use of emergency safety interventions must be physically present, continually assessing and monitoring the physical and psychological well-being of the individual and the safe use of the personal restraint throughout the duration of the personal restraint;

(E) Within one hour of the initiation of a personal restraint, a psychiatrist, licensed practitioner, or CESIS must conduct a face-to-face assessment of the physical and psychological well being of the individual;

(F) A designated program staff with clinical leadership responsibilities must review all personal restraint documentation prior to the end of the shift in which the intervention occurred; and

(G) Each incident of personal restraint must be documented in the individual service record. The documentation must specify:

(i) Behavior support strategies and less restrictive interventions attempted prior to the personal restraint;

(ii) Required authorization;

(iii) Events precipitating the personal restraint;

(iv) Length of time the personal restraint was used;

(v) Assessment of appropriateness of the personal restraint based on threat of harm to self or others;

(vi) Assessment of physical injury; and

(vii) Individuals response to the emergency safety intervention.

(h) Seclusion: Providers must be approved by the Division for the use of seclusion.

(A) Authorization for seclusion must be obtained by a psychiatrist, licensed practitioner or CESIS prior to, or immediately after the initiation of seclusion. Written orders for seclusion must be completed for each instance of seclusion and must include:

(i) Name of the person authorized to order seclusion;

(ii) Date and time the order was obtained; and

(iii) Length of time for which the intervention was authorized.

(B) Program staff trained in the use of emergency safety interventions must be physically present continually assessing and monitoring the physical and psychological well-being of the individual throughout the duration of the seclusion;

(C) Visual monitoring of the individual in seclusion must occur continuously and be documented at least every fifteen minutes or more often as clinically indicated;

(D) Within one hour of the initiation of seclusion a psychiatrist or CESIS must conduct a face-to-face assessment of the physical and psychological well being of the individual;

(E) The individual must have regular meals, bathing, and use of the bathroom during seclusion and the provision of these must be documented in the individual service record; and

(F) Each incident of seclusion must be documented in the individual service record. The documentation must specify:

(i) The behavior support strategies and less restrictive interventions attempted prior to the use of seclusion;

(ii) The required authorization for the use of seclusion;

(iii) The events precipitating the use of seclusion;

(iv) The length of time seclusion was used;

(v) An assessment of the appropriateness of seclusion based on threat of harm to self or others;

(vi) An assessment of physical injury to the individual, if any; and

(vii) The individual's response to the emergency safety intervention.

(i) Any room specifically designated for the use of seclusion or time out must be approved by the Division.

(j) If the use of seclusion occurs in a room with a locking door, the program must be authorized by the Division for this purpose and must meet the following requirements:

(A) A facility or program seeking authorization for the use of seclusion must submit a written application to the Division;

(B) Application must include a comprehensive plan for the need for and use of seclusion of children in the program and copies of the facility's policies and procedures for the utilization and monitoring of seclusion including a statistical analysis of the facility's actual use of seclusion, physical space, staff training, staff authorization, record keeping and quality assessment practices;

ADMINISTRATIVE RULES

(C) The Division must review the application and, after a determination that the written application is complete and satisfies all applicable requirements, must provide for a review of the facility by authorized Division staff;

(D) The Division must have access to all records including individual service records, the physical plant of the facility, the employees of the facility, the professional credentials and training records for employees, and must have the opportunity to fully observe the treatment and seclusion practices employed by the facility;

(E) After the review, the Deputy Assistant Director or their designee must approve or disapprove the facility's application and upon approval must certify the facility based on the determination of the facility's compliance with all applicable requirements for the seclusion of children;

(F) If disapproved, the facility must be provided with specific recommendations and have the right of appeal to the Division; and

(G) Certification of a facility must be effective for a maximum of three years and may be renewed thereafter upon approval of a renewal application.

(k) Structural and physical requirements for seclusion: An ITS provider seeking this certification under these rules must have available at least one room that meets the following specifications and requirements:

(A) The room must be of adequate size to permit three adults to move freely and allows for one adult to lie down. Any newly constructed room must be no less than 64 square feet;

(B) The room must not be isolated from regular program staff of the facility, and must be equipped with adequate locking devices on all doors and windows;

(C) The door must open outward and contain a port of shatterproof glass or plastic through which the entire room may be viewed from outside;

(D) The room must contain no protruding, exposed, or sharp objects;

(E) The room must contain no furniture. A fireproof mattress or mat must be available for comfort;

(F) Any windows must be made of unbreakable or shatterproof glass or plastic. Non-shatterproof glass must be protected by adequate climb-proof screening;

(G) There must be no exposed pipes or electrical wiring in the room. Electrical outlets must be permanently capped or covered with a metal shield secured by tamper-proof screws. Ceiling and wall lights must be recessed and covered with safety glass or unbreakable plastic. Any cover, cap or shield must be secured by tamper-proof screws;

(H) The room must meet State Fire Marshal fire, safety, and health standards. If sprinklers are installed, they must be recessed and covered with fine mesh screening. If pop-down type, sprinklers must have break-away strength of under 80 pounds. In lieu of sprinklers, combined smoke and heat detector must be used with similar protective design or installation;

(I) The room must be ventilated, kept at a temperature no less than 64°F and no more than 85°F. Heating and cooling vents must be secure and out of reach;

(J) The room must be designed and equipped in a manner that would not allow a child to climb off the ground;

(K) Walls, floor and ceiling must be solidly and smoothly constructed, to be cleaned easily, and have no rough or jagged portions; and

(L) Adequate and safe bathrooms must be available.

(10) Outpatient Problem Gambling Treatment Services: These services include group, individual and family treatment consistent with the following requirements:

(a) The first offered service appointment must be five business days or less from the date of request for services;

(b) Service sessions must address the challenges of the individual as they relate, directly or indirectly, to the problem gambling behavior;

(c) Telephone counseling: Providers may provide telephone counseling when person-to-person contact would involve an unwise delay, as follows:

(A) Individual must be currently enrolled in the problem gambling treatment program;

(B) Phone counseling must be provided by a qualified provider within their scope of practice;

(C) Individual service notes must follow the same criteria as face-to-face counseling and identify the session was conducted by phone and the clinical rationale for the phone session;

(D) Telephone counseling must meet HIPAA and 42 CFR standards for privacy; and

(E) There must be an agreement of informed consent for phone counseling that is discussed with the individual and documented in the individual's service record.

(d) Family Counseling: Family counseling includes face-to-face or non face-to-face service sessions between a program staff member delivering the service and a family member whose life has been negatively impacted by gambling.

(A) Service sessions must address the problems of the family member as they relate directly or indirectly to the problem gambling behavior; and

(B) Services to the family must be offered even if the individual identified as a problem gambler is unwilling, or unavailable to accept services.

(e) 24-hour crisis response accomplished through agreement with other crisis services, on-call program staff or other arrangement acceptable to the Division.

(11) Residential Problem Gambling Treatment Services: Providers of this service must comply with OAR 309-032-1545 of these rules.

(a) When problem gambling treatment services are provided in a psychiatric health facility, providers must have Division approved written policies and procedures for operating this service, and must be licensed in accordance with OAR 309-035-0100 through OAR 309-035-0460.

(b) When problem gambling treatment services are provided in an alcohol and other drug residential treatment facility providers of this service must have Division approved written policies and procedures for operating this service and have a current license issued by the Division in accordance with OAR 415-012-0000 through 415-012-0090.

(c) Providers must coordinate services and make appropriate referrals to other formal and informal service systems to insure continuity of care, including, but not limited to, mental health, self-help support groups, financial consultants, legal advice, medical, crisis management, cultural issues, housing and vocational. All referral and follow-up actions must be documented in the individual service record.

(12) Alcohol and Other Drug Treatment and Recovery Services:

(a) Interim Referral and Information Services: Pregnant women or other individuals using substances intravenously, whose services are funded by the SAPT Block Grant, must receive interim referrals and information prior to entry, to reduce the adverse health effects of alcohol and other drug use, promote the health of the individual, and reduce the risk of transmission of disease. At a minimum, interim referral and informational services must include:

(A) Counseling and education about blood borne pathogens including Hepatitis, HIV, STDs and Tuberculosis (TB); the risks of needle and paraphernalia sharing and the likelihood of transmission to sexual partners and infants;

(B) Counseling and education about steps that can decrease the likelihood of Hepatitis, HIV, STD, and TB transmission;

(C) Referral for Hepatitis, HIV, STD and TB testing, vaccine or care services if necessary; and

(D) For pregnant women, counseling on the likelihood of blood borne pathogen transmission as well as the effects of alcohol, tobacco and other drug use on the fetus and referral for prenatal care.

(b) Culturally Specific Services: Programs approved and designated as culturally specific programs must meet the following criteria:

(A) Serve a majority of individuals representing the culturally specific population; and

(B) Governing Board: Develop and maintain a governing or advisory board that must:

(i) Have a majority representation of the culturally specific group being served;

(ii) Receive training concerning the significance of culturally relevant services and supports;

(iii) Include at least 20% representation of individuals, as defined in these rules, or family members of individuals; and

(iv) Meet at least quarterly.

(C) Maintain accessibility to culturally specific populations including:

(i) The physical location of the program must be within close proximity to the culturally specific populations;

(ii) Where available, public transportation must be within close proximity to the program; and

(iii) Hours of service, telephone contact, and other accessibility issues must be appropriate for the population; and

(D) The physical facility within which the culturally specific services are delivered must be psychologically comfortable for the group including:

(i) Materials displayed must be culturally relevant;

ADMINISTRATIVE RULES

(ii) Mass media programming (radio, television, etc.) must be sensitive to cultural background; and

(iii) Other cultural differences must be considered and accommodated when possible, such as the need or desire to bring family members to the facility, play areas for small children and related accommodations.

(c) Adolescent Treatment Services: Programs approved to provide adolescent alcohol and other drug treatment services or those with adolescent-designated service funding must meet the following standards:

(A) Residential programs providing services to individuals defined as children for purposes of this rule must, in addition to the applicable requirements of this rule, be licensed by DHS, Children, Adults and Families Division in cooperation with the AMH.

(B) Development of ISSPs and case management services must include participation of parents, other family members, schools, children's services agencies, and juvenile corrections, as appropriate;

(C) Services, or appropriate referrals, must include:

(i) Family service;

(ii) Recreation and leisure time consistent with the individual's interests;

(iii) Community and social skills training;

(iv) Academic education services or referral;

(v) Smoking cessation service; and

(vi) Gender-specific service.

(D) Continuing care services must be of appropriate duration, consistent with ASAM PPC-2R criteria, and designed to maximize recovery opportunities. The services must include:

(i) Reintegration services and coordination with family and schools;

(ii) Support groups and other peer support groups provided at school sites if available, and individual peer delivered supports;

(iii) Youth dominated self-help groups where available;

(iv) Linkage to emancipation services when appropriate; and

(v) Linkage to physical or sexual abuse counseling and support services when appropriate; and

(E) There must be a sufficient number of qualified program staff to ensure a ratio of at least one treatment staff per eight adolescents at all times.

(F) Program staff coverage must be provided 24 hours per day, seven days per week.

(d) Women's Treatment Services: Programs approved and designated to provide alcohol and other drug treatment services primarily to women must meet the following standards:

(A) The Assessment must contain an evaluation that identifies and assesses needs specific to women's issues in service such as social isolation, self-reliance, parenting issues, domestic violence, women's physical health, housing and financial considerations;

(B) The Individual Service and Support Plan must address all areas identified in (12)(d)(A) of this subsection as well as alcohol and other drug use and any other applicable service coordination details;

(C) The program must provide or coordinate services and supports that meet the special access needs of women such as childcare, mental health services, and transportation, as indicated;

(D) The program must provide, or coordinate, the following services and supports unless clinically contraindicated:

(i) Gender-specific services and supports;

(ii) Family services, including therapeutic services for children in the custody of women in treatment;

(iii) Reintegration with family;

(iv) Peer delivered supports;

(v) Smoking cessation;

(vi) Housing; and

(vii) Transportation.

(E) Individual Service and Support Planning and treatment must include the participation of family and other agencies as appropriate, such as social service, child welfare, or corrections agencies;

(F) Referral Services: The program must coordinate services with the following, if indicated:

(i) Agencies providing services to women who have experienced physical abuse, sexual abuse or other types of domestic violence; and

(ii) Parenting training; and

(G) Continuing care treatment services must be consistent with the ASAM PPC-2R and must include referrals to female dominated support groups where available; and

(H) Programs that receive SAPT Block Grant funding must provide or coordinate the following services for pregnant women and women with

dependent children, including women who are attempting to regain custody of their children:

(i) Primary medical care for women, including referral for prenatal care and, while the women are receiving such services, child care;

(ii) Primary pediatric care, including immunizations for their children;

(iii) Gender specific substance abuse treatment and other therapeutic interventions for women which may include, but are not limited to:

(I) Relationship issues;

(II) Sexual and physical abuse;

(III) Parenting; and

(IV) Access to child care while the women are receiving these services; and

(iv) Therapeutic interventions for children in the custody of women in treatment which may include, but are not limited to:

(I) Their developmental needs; and

(II) Any issues concerning sexual and physical abuse, and neglect; and

(III) Sufficient case management and transportation to ensure that women and their children have access to services.

(e) Specialized Alcohol and Other Drug Community-based Programs for Individuals in the Criminal Justice System: These services and supports are for individuals who are under the supervision of a probation officer or on parole or post-prison supervision or participating in a drug treatment court program or otherwise under the direct supervision of the court.

(A) Services and supports must incorporate interventions and strategies that target criminogenic risk factors and include:

(i) Cognitive behavioral interventions;

(ii) Motivational interventions;

(iii) Relapse prevention; and

(iv) Healthy relationships education;

(B) Providers must demonstrate coordination of services with criminal justice partners through written protocols, program staff activities, and individual record documentation;

(C) Program Directors or clinical supervisors must have experience in community-based offender treatment programs and have specific training and experience applying effective, evidence-based clinical strategies and services for individuals receiving community-based alcohol and other drug treatment services to individuals in the criminal justice system;

(D) Within the first six months of hire, program staff must receive training on effective principles of evidenced-based practices for individuals with criminogenic risk factors; and

(E) Within six months of hire, program staff must have documented knowledge, skills, and abilities demonstrating treatment strategies for individuals with criminogenic risk factors.

(f) DUII Alcohol and Other Drug Rehabilitation Programs: In addition to the general standards for alcohol and other drug treatment programs, those programs approved to provide DUII rehabilitation services must meet the following standards:

(A) DUII rehabilitation programs must assess individuals referred for treatment by the evaluation specialist. Placement, continued stay and service conclusion of individuals must be based on the criteria described in the ASAM PPC-2R, subject to the following additional terms and conditions:

(i) Abstinence: Individuals must demonstrate continuous abstinence for a minimum of 90 days prior to service conclusion as documented by urinalysis tests and other evidence;

(ii) Treatment Completion: Only DUII rehabilitation programs may certify treatment completion;

(iii) Residential Treatment: Using the ASAM PPC-2R, the DUII program's assessment may indicate that the individual requires treatment in a residential program. It is the responsibility of the DUII program to:

(I) Monitor the case carefully while the individual is in residential treatment by confirming that the individual entered the program and that the individual completed the program;

(II) Provide or monitor outpatient and follow-up services when the individual is transferred from the residential program; and

(III) Verify completion of residential treatment and follow-up outpatient treatment.

(iv) Urinalysis Testing: A minimum of one urinalysis sample per month must be collected during the period of service deemed necessary by an individual's DUII rehabilitation program:

(I) Using the process defined in these rules, the samples must be tested for at least five controlled drugs;

ADMINISTRATIVE RULES

(II) At least one of the samples is to be collected and tested in the first two weeks of the program and at least one is to be collected and tested in the last two weeks of the program;

(III) If the first sample is positive, two or more samples must be collected and tested, including one sample within the last two weeks before service conclusion; and

(IV) Programs may use methods of testing for the presence of alcohol and other drugs in the individual's body other than urinalysis tests if they have obtained the prior review and approval of such methods by the Division.

(v) Reporting: The program must report:

(I) To the Division on forms prescribed by the Division;

(II) To the evaluation specialist within 30 days from the date of the referral by the specialist. Subsequent reports must be provided within 30 days of service conclusion or within 10 days of the time that the individual enters noncompliant status; and

(III) To the appropriate evaluation specialist, case manager, court, or other agency as required when requested concerning individual cooperation, attendance, treatment progress, utilized modalities, and fee payment.

(vi) Certifying Completion: The program must send a numbered Certificate of Completion to the Department of Motor Vehicles to verify the completion of convicted individuals. Payment for treatment may be considered in determining completion. A certificate of completion must not be issued until the individual has satisfied the abstinence requirements of 309-032-1540(f)(A)(i).

(vii) Records: The DUII rehabilitation program must maintain in the permanent Individual Service Record, urinalysis results and all information necessary to determine whether the program is being, or has been, successfully completed.

(viii) Separation of Evaluation and Rehabilitation Functions: Without the approval of the Assistant Director no agency or person may provide DUII rehabilitation to an individual who has also been referred by a Judge to the same agency or person for a DUII evaluation. Failure to comply with this rule will be considered a violation of ORS chapter 813. If the Assistant Director finds such a violation the Assistant Director may deny, suspend, revoke, or refuse to renew a letter of approval.

(13) Medical Protocols in Alcohol and Other Drug Treatment Programs: Medical protocols must be approved by a medical director under contract with a program or written reciprocal agreement with a medical practitioner under managed care. The protocols must:

(a) Require, but not be limited to the collection of medical histories as described in the Assessment;

(b) Designate those medical symptoms that, when found, require further investigation, physical examinations, service, or laboratory testing;

(c) Describe procedures for medical emergencies;

(d) Require that individuals admitted to the program who are currently injecting or intravenously using a drug, or have injected or intravenously used a drug within the past 30 days, or who are at risk of withdrawal from a drug, or who may be pregnant, must be referred for a physical examination and appropriate lab testing within 30 days of entry to the program. This requirement may be waived by the medical director if these services have been received within the past 90 days and documentation is provided;

(e) Require pregnant women be referred for prenatal care within two weeks of entry to the program;

(f) Require that the program provide HIV and AIDS, TB, sexually transmitted disease, Hepatitis and other infectious disease information and risk assessment, including any needed referral, within 30 days of entry; and

(g) Specify the steps for follow up and coordination with physical health care providers in the event the individual is found to have an infectious disease or other major medical problem.

(14) Administration of Medications: The following guidelines must be followed in policies on administration of medications in all programs:

(a) Medications prescribed for one individual must not be administered to or self-administered by another individual or employee;

(b) When an individual self-administers medication, self-administration must be approved in writing by a physician and closely monitored by the residential program staff;

(c) No unused, outdated, or recalled drugs must be kept in a residential program. On a monthly basis any unused, outdated, or recalled drugs must be disposed of in a manner that assures they cannot be retrieved;

(d) A written record of all disposals of drugs must be maintained in the program and must include:

(A) A description of the drug, including the amount;

(B) The individual for whom the medication was prescribed;

(C) The reason for disposal; and

(D) The method of disposal.

(e) Storage of Prescription Drugs: All prescription drugs stored in the residential program must be kept in a locked stationary container. Medications requiring refrigeration must be stored in a refrigerator using a locked container; and

(f) Written documentation of medications prescribed for the individual by a LMP must be maintained in the Individual Service Record. Documentation for each medication prescribed must include the following:

(A) A copy or detailed written description of the signed prescription order;

(B) The name of the medication prescribed;

(C) The prescribed dosage and method of administration;

(D) The date medications were prescribed, reviewed, or renewed;

(E) The date, the signature and credentials of program staff administering or prescribing medications; and

(F) Medication records which contain:

(i) Observed side effects including laboratory findings; and

(ii) Medication allergies and adverse reaction.

(15) Building Requirements for Alcohol and Other Drug Programs: Each alcohol and other drug treatment program must provide facilities that:

(a) Comply with all applicable state and local building, electrical, plumbing, fire, safety, and zoning codes;

(b) Maintain up-to-date documentation verifying that they meet applicable local business license, zoning and building codes and federal, state and local fire and safety regulations. It is the responsibility of the program to check with local government to make sure all applicable local codes have been met;

(c) Provide space for services including but not limited to intake, assessment, counseling and telephone conversations that assures the privacy and confidentiality of individuals and is furnished in an adequate and comfortable fashion including plumbing, sanitation, heating, and cooling;

(d) Provide rest rooms for individuals, visitors, and staff that are accessible to persons with disabilities pursuant to Title II of the Americans with Disabilities Act if the program receives any public funds or Title III of the Act if no public funds are received;

(e) Adopt and implement emergency policies and procedures, including an evacuation plan and emergency plan in case of fire, explosion, accident, death or other emergency. The policies and procedures and emergency plans must be current and posted in a conspicuous area; and

(f) Tobacco Use: Outpatient programs must not allow tobacco use in program facilities and on program grounds. Residential programs must not allow tobacco use in program facilities.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1545

Facility Standards for Alcohol and Other Drug Residential Treatment Programs

(1) Building Requirements: In addition to the building requirements for outpatient Alcohol and Other Drug treatment programs, residential programs must meet the following standards:

(a) Prior to construction of a new building or major alteration of or addition to an existing building:

(A) One set of plans and specifications must be submitted to the State Fire Marshal for approval;

(B) Plans must be in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations;

(C) Plans for construction containing 4,000 square feet or more must be prepared and bear the stamp of an Oregon licensed architect or engineer; and

(D) The water supply, sewage, and garbage disposal system must be approved by the agency having jurisdiction.

(2) Interiors: All rooms used by individuals must have floors, walls, and ceilings that meet the interior finish requirements of the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations:

(a) A separate dining room or area must be provided for exclusive use of individuals, employees, and invited guests, and must:

(A) Seat at least one-half of the individuals at a time with a minimum of 15 square feet per occupant; and

(B) Be provided with adequate ventilation.

(b) A separate living room or lounge area must be provided for the exclusive use of individuals, employees, and invited guests and must:

ADMINISTRATIVE RULES

- (A) Provide a minimum of 15 square feet per occupant; and
- (B) Be provided with adequate ventilation.
- (c) Bedrooms must be provided for all individuals and must:
 - (A) Be separate from the dining, living, multi-purpose, laundry, kitchen, and storage areas;
 - (B) Be an outside room with a window that can be opened, and is at least the minimum required by the State Fire Marshal;
 - (C) Have a ceiling height of at least seven feet, six inches;
 - (D) Provide a minimum of 60 square feet per individual, with at least three feet between beds;
 - (E) Provide permanently wired light fixtures located and maintained to give light to all parts of the room; and
 - (F) Provide a curtain or window shade at each window to assure privacy.
- (d) Bathrooms must be provided and conveniently located in each building containing a bedroom and must:
 - (A) Provide a minimum of one toilet and one hand-washing sink for each eight individuals, and one bathtub or shower for each ten individuals;
 - (B) Provide one hand-washing sink convenient to every room containing a toilet;
 - (C) Provide permanently wired light fixtures located and maintained to give adequate light to all parts of the room;
 - (D) Provide arrangements for personal privacy for individuals;
 - (E) Provide a privacy screen at each window;
 - (F) Provide a mirror; and
 - (G) Be provided with adequate ventilation.
- (e) A supply of hot and cold water installed and maintained in compliance with rules of DHS, Health Services, Office of Public Health Systems, must be distributed to taps conveniently located throughout the residential program;
 - (f) All plumbing must comply with applicable codes;
 - (g) Laundry facilities, when provided, must be separate from:
 - (A) Resident living areas, including bedrooms;
 - (B) Kitchen and dining areas; and
 - (C) Areas used for the storage of unrefrigerated perishable foods.
 - (h) Storage areas must be provided appropriate to the size of the residential program. Separate storage areas must be provided for:
 - (A) Food, kitchen supplies, and utensils;
 - (B) Clean linens;
 - (C) Soiled linens and clothing;
 - (D) Cleaning compounds and equipment; and
 - (E) Poisons, chemicals, insecticides, and other toxic materials, which must be properly labeled, stored in the original container, and kept in a locked storage area.
 - (i) Furniture must be provided for each individual and must include:
 - (A) A bed with a frame and a clean mattress and pillow;
 - (B) A private dresser or similar storage area for personal belongings which is readily accessible to the individual; and
 - (C) Access to a closet or similar storage area for clothing and
 - (j) Linens must be provided for each individual and must include:
 - (A) Sheets and pillowcases;
 - (B) Blankets, appropriate in number and type for the season and the individual's comfort; and
 - (C) Towel and washcloth.
 - (3) Food Service and Storage: The residential program must meet the requirements of the State of Oregon Sanitary Code for Eating and Drinking Establishments relating to the preparation, storage, and serving of food. At minimum:
 - (a) Menus must be prepared in advance to provide a sufficient variety of foods served in adequate amounts for each resident at each meal and must be adjusted for seasonal changes;
 - (b) Records of menus as served must be filed and maintained in the residential program records for at least 30 days;
 - (c) All modified or special diets must be ordered by a physician;
 - (d) At least three meals must be provided daily;
 - (e) Supplies of staple foods for a minimum of one week and of perishable foods for a minimum of a two-day period must be maintained on the premises;
 - (f) Food must be stored and served at proper temperature;
 - (g) All utensils, including dishes, glassware, and silverware used in the serving or preparation of drink or food for individuals must be effectively washed, rinsed, sanitized, and stored after each individual use to prevent contamination in accordance with Health Division standards; and
 - (h) Raw milk and home-canned vegetables, meats, and fish must not be served or stored in a residential program.

- (4) Safety: The residential program must meet the following safety requirements:
 - (a) At no time must the number of individuals served exceed the approved capacity;
 - (b) A written emergency plan must be developed and posted next to the telephone used by employees and must include:
 - (A) Instructions for the employee or designated resident in the event of fire, explosion, accident, death, or other emergency and the telephone numbers of the local fire department, law enforcement agencies, hospital emergency rooms, and the residential program's designated physician and on-call back-up program staff;
 - (B) The telephone number of the administrator or clinical supervisor and other persons to be contacted in case of emergency; and
 - (C) Instructions for the evacuation of individuals and employees in the event of fire, explosion, or other emergency.
 - (c) The residential program must provide fire safety equipment appropriate to the number of individuals served, and meeting the requirements of the State of Oregon Structural Specialty Code and Fire and Life Safety Regulations:
 - (A) Fire detection and protection equipment must be inspected as required by the State Fire Marshal;
 - (B) All flammable and combustible materials must be properly labeled and stored in the original container in accordance with the rules of the State Fire Marshal; and
 - (C) The residential program must conduct unannounced fire evacuation drills at least monthly. At least once every three months the monthly drill must occur between 10 p.m. and 6 a.m. Written documentation of the dates and times of the drills, time elapsed to evacuate, and program staff conducting the drills must be maintained.
 - (d) At least one program staff who is trained in First Aid and CPR must be onsite at all times; and
 - (e) In Residential Transition programs, at least one individual, designated by the administrator as being capable of managing emergencies and other situations that require immediate attention, must be onsite at all times when there is no onsite program staff coverage.
- (5) Sanitation: The residential program must meet the following sanitation requirements:
 - (a) All floors, walls, ceilings, window, furniture, and equipment must be kept in good repair, clean, neat, orderly, and free from odors;
 - (b) Each bathtub, shower, hand-washing sink, and toilet must be kept clean and free from odors;
 - (c) The water supply in the residential program must meet the requirements of the rules of the Health Division governing domestic water supplies;
 - (d) Soiled linens and clothing must be stored in an area separate from kitchens, dining areas, clean linens and clothing and unrefrigerated food;
 - (e) All measures necessary to prevent the entry into the program of mosquitoes and other insects must be taken;
 - (f) All measures necessary to control rodents must be taken;
 - (g) The grounds of the program must be kept orderly and free of litter, unused articles, and refuse;
 - (h) Garbage and refuse receptacles must be clean, durable, water-tight, insect- and rodent proof and kept covered with a tight-fitting lid;
 - (i) All garbage solid waste must be disposed of at least weekly and in compliance with the rules of the Department of Environmental Quality; and
 - (j) Sewage and liquid waste must be collected, treated and disposed of in compliance with the rules of the Department of Environmental Quality.
Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270
Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1550

Service Conclusion, Transfer, and Continuity of Care

- (1) Planned Service Conclusion: Providers must meet the following requirements for planned service conclusion:
 - (a) Decisions to conclude services or transfer individuals must be documented in a service conclusion summary. The documentation must include the reason for service conclusion consistent with the service conclusion criteria documented in the ISSP, or the reason for transfer;
 - (b) For alcohol and other drug treatment services, planned service conclusion must be consistent with the ASAM service conclusion criteria established in the assessment and indicated in the ISSP;

ADMINISTRATIVE RULES

(c) For ITS programs, planned service conclusion must be consistent with the service conclusion criteria established by the interdisciplinary team and documented in the ISSP. In addition:

(A) Providers must not conclude services unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care; and

(B) If the determination is made to admit the child to acute care, the provider must not conclude services during the acute care stay unless the interdisciplinary team, in consultation with the child's parent or guardian and the next provider, agree that the child requires a more or less restrictive level of care following the acute care stay; and

(d) The balance, if any, of fees charged not paid by the individual.

(2) Service Conclusion Process and Continuity of Care: Prior to service conclusion, providers must:

(a) When applicable, coordinate and provide appropriate referrals for medical care and medication management. The concluding provider must assist the individual to identify the medical provider who will provide continuing care and to arrange an initial appointment with that provider;

(b) Coordinate recovery and ongoing support services for individuals and their families including identifying resources and facilitating linkage to other service systems necessary to sustain recovery, including peer delivered services.;

(c) Complete a Service Conclusion Summary within 30 calendar days following a planned service conclusion and within 45 calendar days following the date of the determination documenting that the individual is not likely to return in the event of unplanned service conclusion;

(d) When services are concluded due to the absence of the individual, the provider must document outreach efforts made to re-engage the individual, or document the reason why such efforts were not made;

(e) If the individual is under the jurisdiction of the PSRB or JPSRB, the provider must notify the PSRB or JPSRB immediately and provide a copy of the Service Conclusion Summary within 30 days;

(f) The provider must report all instances of service conclusion on the mandated state data system; and

(g) Service Conclusion in ITS programs: At a minimum, the provider's interdisciplinary team must:

(A) Integrate service conclusion planning into ongoing treatment planning and documentation from the time of entry, and specify the service conclusion criteria that must indicate resolution of the symptoms and behaviors that justified the entry;

(B) Review and, if needed, modify the service conclusion criteria in the ISSP every 30 days;

(C) Notify the child's parent or guardian, and the provider to which the child must be transitioned of the anticipated service conclusion dates at the time of entry and when the service conclusion plan is changed;

(D) Include the parent, guardian and provider to which the child must be transitioned in service conclusion planning and reflect their needs and desires to the extent clinically indicated;

(E) Finalize the service conclusion plan prior to service conclusion and identify in the plan the continuum of services and the type and frequency of follow-up contacts recommended by the provider to assist in the child's successful transition to the next appropriate level of care;

(F) Assure that appropriate medical care and medication management must be provided to individuals who leave through a planned service conclusion. The last service provider's interdisciplinary team must identify the medical personnel who will provide continuing care and must arrange an initial appointment with that provider;

(G) Coordinate appropriate education services with applicable school district personnel; and

(H) Give written transition instructions to the child's parent or guardian and the next provider if applicable, on the date of service conclusion.

(3) Service Conclusion Summary: The Service Conclusion Summary must contain information sufficient to promote continuity of care including:

(a) The date and reason for the conclusion of services or transfer;

(b) A summary statement that describes the effectiveness of services in assisting the individual and his or her family to achieve intended outcomes identified in the ISSP;

(c) Where appropriate, a plan for personal wellness and resilience, including relapse prevention; and

(d) Identification of resources to assist the individual and family, if applicable, in accessing recovery and resiliency services and supports.

(4) Transfer Process: Providers must coordinate transfers as follows:

(a) All documentation contained in the Individual Service Record that is requested by the receiving provider must be furnished, compliant with the provider's confidentiality policies and procedures within 14 days of receipt of a written request for the documentation; and

(b) A complete service conclusion summary must be sent to the receiving provider within 30 days of the transfer.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1555

Quality Assessment and Performance Improvement

(1) Quality Assessment and Performance Improvement Process: Providers must develop and implement a structured and ongoing process to assess, monitor, and improve the quality and effectiveness of services provided to individuals and their families.

(2) Quality Improvement Committee: The Quality Improvement Committee must oversee and advise the Quality Assessment and Performance Improvement process:

(a) The Quality Improvement Committee must include representatives of individuals served and their families; and

(b) The Quality Improvement Committee must meet at least quarterly to:

(A) Identify indicators of quality including:

(i) Access to services;

(ii) Outcomes of services;

(iii) Systems integration and coordination of services; and

(iv) Utilization of services.

(B) Review incident reports, emergency safety intervention documentation, grievances and other documentation as applicable;

(C) Identify measurable and time-specific performance objectives and strategies to meet the objectives and measure progress;

(D) Recommend policy and operational changes necessary to achieve performance objectives; and

(E) Reassess and, if necessary, revise objectives and methods to measure performance on an ongoing basis to ensure sustainability of improvements.

(3) Performance Improvement Plan: The quality assessment and performance improvement process must be documented in a Performance Improvement Plan including:

(a) Performance objectives aimed at improving services; and

(b) Strategies designed to meet the performance objectives and measure progress.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1560

Grievances and Appeals

(1) Any individual receiving services, or the parent or guardian of the individual receiving services, may file a grievance with the provider, the individual's managed care plan or the Division.

(2) For individuals whose services are funded by Medicaid, grievance and appeal procedures outlined in OAR 410-141-0260 through OAR 410-141-0266, must be followed.

(3) For individuals whose services are not funded by Medicaid, providers must:

(a) Notify each individual, or guardian, of the grievance procedures by reviewing a written copy of the policy upon entry;

(b) Assist individuals and parents or guardians, as applicable, to understand and complete the grievance process; and notify them of the results and basis for the decision;

(c) Encourage and facilitate resolution of the grievance at the lowest possible level;

(d) Complete an investigation of any grievance within 30 calendar days;

(e) Implement a procedure for accepting, processing and responding to grievances including specific timelines for each;

(f) Designate a program staff person to receive and process the grievance;

ADMINISTRATIVE RULES

(g) Document any action taken on a substantiated grievance within a timely manner; and

(h) Document receipt, investigation and action taken in response to the grievance.

(4) Grievance Process Notice. The provider must have a Grievance Process Notice, which must be posted in a conspicuous place stating the telephone number of:

- (a) The Division;
- (b) The CMHP;
- (c) Disability Rights Oregon; and
- (d) The applicable managed care organization.

(5) Expedited Grievances: In circumstances where the matter of the grievance is likely to cause harm to the individual before the grievance procedures outlined in these rules are completed, the individual, or guardian of the individual, may request an expedited review. The program administrator must review and respond in writing to the grievance within 48 hours of receipt of the grievance. The written response must include information about the appeal process.

(6) Retaliation: A grievant, witness or staff member of a provider must not be subject to retaliation by a provider for making a report or being interviewed about a grievance or being a witness. Retaliation may include, but is not limited to, dismissal or harassment, reduction in services, wages or benefits, or basing service or a performance review on the action.

(7) Immunity: The grievant is immune from any civil or criminal liability with respect to the making or content of a grievance made in good faith.

(8) Appeals: Individuals and their legal guardians, as applicable, must have the right to appeal entry, service conclusion and grievance decisions as follows:

(a) If the individual or guardian, if applicable, is not satisfied with the decision, the individual or guardian may file an appeal in writing within ten working days of the date of the program administrator's response to the grievance or notification of denial for services as applicable. The appeal must be submitted to the CMHP Director in the county where the provider is located or to the Division as applicable;

(b) If requested, program staff must be available to assist the individual;

(c) The CMHP Director or Division, must provide a written response within ten working days of the receipt of the appeal; and

(d) If the individual or guardian, if applicable, is not satisfied with the appeal decision, he or she may file a second appeal in writing within ten working days of the date of the written response to the AMH Assistant Director.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

309-032-1565

Variances

(1) Criteria for a Variance: Variances may be granted to a LMHA, CMHP or provider holding a certificate directly with the Division, by the Division:

(a) If there is a lack of resources to implement the standards required in these rules; or

(b) If implementation of the proposed alternative services, methods, concepts or procedures would result in improved outcomes for the individual.

(2) Application for a Variance:

(a) CMHPs and other providers may submit their variance request directly to the Division;

(b) Providers who hold Certificates of Approval jointly with CMHP's and the Division must submit their variance requests to the CMHP. The CMHP must then submit the variance request, along with the CMHP's written recommendation;

(c) The LMHA, CMHP or provider requesting a variance must submit a written application to the Deputy Assistant Director of the Division; and

(d) Variance requests must contain the following:

(A) The section of the rule from which the variance is sought;

(B) The reason for the proposed variance;

(C) The alternative practice, service, method, concept or procedure proposed;

(D) A description of the individual's opinion and participation in requesting the variance, if applicable;

(E) A proposal for the duration of the variance; and

(F) A plan and timetable for compliance with the section of the rule for which the variance applies.

(3) Division Review and Notification: The Deputy Assistant Director of the Division must approve or deny the request for a variance and must notify the LMHA, CMHP or provider in writing of the decision to approve or deny the requested variance, within 30 days of receipt of the variance. The written notification must include the specific alternative practice, service, method, concept or procedure that is approved and the duration of the approval.

(4) Appeal Application: Appeal of the denial of a variance request must be made in writing to the Assistant Director of the Division, whose decision will be final and must be provided in writing within 30 days of receipt of the appeal.

(5) Written Approval: The LMHA, CMHP or provider may implement a variance only after written approval from the Division.

(6) Duration of Variance: It is the responsibility of the LMHA, CMHP or the provider to submit a request to extend a variance in writing prior to a variance expiring. Extension must be approved in writing by the Division.

(7) Granting a variance for one request does not set a precedent that must be followed by the Division when evaluating subsequent requests for variance.

Stat. Auth.: ORS 161.390, 409.050, 409.410, 409.420, 426.490 - 426.500, 428.205 - 428.270, 430.640 & 443.450

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 179.505, 409.010, 409.430 - 409.435, 426.380 - 426.395, 426.490 - 426.500, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 443.400 - 443.460, 443.991, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 4-2010, f. & cert. ef. 3-4-10

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Rule Caption: Update the definition of "Significant Procedures of a Similar Class" to list specific classes of medications.

Adm. Order No.: MHS 5-2010(Temp)

Filed with Sec. of State: 3-12-2010

Certified to be Effective: 3-12-10 thru 9-8-10

Notice Publication Date:

Rules Amended: 309-114-0005

Subject: Oregon State Hospital has requested that the Addictions & Mental Health Division amend this rule in order to update the definition of "Significant Procedures of a Similar Class" in order to list specific classes of medications to be considered as "Significant Procedures of a Similar Class."

Rules Coordinator: Richard Luthe—(503) 947-1186

309-114-0005

Definitions

As used in these rules:

(1) "Authorized Representative" or "representative" means an individual who is an employee of the system described in ORS 192.517(1) and who may represent a party in a contested case hearing; the representative must be supervised by an attorney that is licensed by the Oregon State Bar and employed by the same system described in ORS 192.517(1).

(2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(3) "Division" means these Divisions of the Department of Human Services:

(a) Addictions and Mental Health Division (AMH) when referring to "patients;" and

(b) The Seniors and People with Disabilities Division (SPD) when referring to "residents;"

(4) "Guardian" means a legal guardian who is an individual appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(5) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.

(6) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's or resident's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes, and metabolic changes.

(7) "Medication Educator" means a Qualified Mental Health Professional (QMHP) or Qualified Mental Retardation Professional who

ADMINISTRATIVE RULES

provides information about the proposed significant procedures to patients and residents.

(8) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(9) "Person Committed to the Division" or "Person" means a patient or resident committed under ORS 161.327, 161.370, 179.478, 426.130, or 427.215, or certified by the State Training Center Review Board under 427.020.

(10) "Psychiatric Nurse Practitioner," means a registered nurse with prescription authority who independently provides health care to clients with mental and emotional needs or disorders.

(11) "Qualified Mental Health Professional" (QMHP) means any individual meeting the following minimum qualifications as documented by the state institution:

- (a) Graduate degree in psychology;
- (b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;
- (c) Graduate degree in social work or counseling;
- (d) Graduate degree in a behavioral science field;
- (e) Graduate degree in recreational art, or music therapy;
- (f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or
- (g) Bachelor's or graduate degree in a relevant area.

(12) "Qualified Mental Retardation Professional" means an individual who meets the professional requirements under 42 CFR 483.430.

(13) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(14) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient or resident, including, but not limited to, physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing, and hygiene.

(15) "Significant Procedure" means a diagnostic or treatment modality, and all significant procedures of a similar class that pose a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures. For purposes of these rules, "Human immunodeficiency virus" (HIV) testing shall be considered a "Significant Procedure."

(16) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's or psychiatric nurse practitioner's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure.

(a) For purposes of these rules, medications listed in subsections (17)(a)(A)-(F) will be considered the same or similar class of medication as other medications in the same subsection:

(A) All medications used under current clinical practice as antipsychotic medications, including typical and atypical antipsychotic medications;

(B) All medications used under current clinical practice as mood stabilizing medications;

(C) All medications used under current clinical practice as antidepressants;

(D) All medications used under current clinical practice as anxiolytics;

(E) All medications used under current clinical practice as psychostimulants; and

(F) All medications used under current clinical practice as dementia cognitive enhancers.

(b) Significant procedures of the same or similar class do not need to be specifically listed on the treating physician's or psychiatric nurse practitioner's form.

(17) "State Institution" or "Institution" means all Oregon State Hospital campuses and the Blue Mountain Recovery Center.

(18) "Superintendent" means the executive head of the state institution listed in section (17) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 183.458; 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 2-2009(Temp), f. & cert. ef. 4-2-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09; MHS 6-2009, f. & cert. ef. 12-28-09; MHS 5-2010(Temp), f. & cert. ef. 3-12-10 thru 9-8-10

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 3-2010(Temp)

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-15-10 thru 9-10-10

Notice Publication Date:

Rules Amended: 413-040-0240

Subject: OAR 413-040-0240 about which state is responsible for providing the financial support and medical coverage for a child when that child has been placed in another state under the Interstate Compact on the Placement of Children (ICPC) is being amended to state how the Department determines the amount of the foster care payment, if any, the child is to receive.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-040-0240

Financial and Medical Responsibility of Sending Agency

(1) The sending agency is responsible for the support and maintenance of the child during the period of the placement.

(2) The sending agency is responsible for arranging for medical coverage for the child before the child is placed with an ICPC approved family.

(3) When, subsequent to ICPC approval, the Department places a child out of state with a foster parent or relative caregiver, foster care payment is determined in accordance with Child Welfare Policy I-E.5.1, "Payment for Family Foster Care, Base Rate, Shelter Care, Enhanced Shelter Care, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050.

Stat. Auth.: ORS 417.200 - 417.260, 418.005 & 418.647

Stats. Implemented: ORS 417.200 - 417.260, 418.005 & 418.647

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 3-2010(Temp), f. & cert. ef. 3-15-10 thru 9-10-10

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

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

Adm. Order No.: SSP 3-2010(Temp)

Filed with Sec. of State: 2-23-2010

Certified to be Effective: 2-23-10 thru 8-22-10

Notice Publication Date:

Rules Amended: 461-175-0200

Subject: 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 state under what circumstances the Department need not

ADMINISTRATIVE RULES

send a decision notice to an HKC program client. A decision notice is a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-175-0200

Notice Situations; General Information

(1) In the EA program, a *basic decision notice* (see OAR 461-001-0000) is sent for all situations.

(2) In the SNAP program:

(a) A *continuing benefit decision notice* (see OAR 461-001-0000) is sent to cases that are recertified early to align the SNAP certification end date with the end date of TANF or medical benefits.

(b) A *basic decision notice* is sent for all other actions on applications for assistance.

(3) In the JOBS program:

(a) A *basic decision notice* is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the TANF program, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a *basic decision notice* is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In the TA-DVS program, a *basic decision notice* (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.

(7) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A *basic decision notice* is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A *timely continuing benefit decision notice* (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(8) In all programs:

(a) Notwithstanding any rule in chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a *decision notice* with another *decision notice* or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a *decision notice* or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the *financial group* (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No *decision notice* is required in each of the following situations:

(A) Benefits are ended because there is no living person in the *benefit group* (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) When the Department sent a combination eligibility approval and reduction *decision notice* to a woman in the prenatal expansion program described in OAR 410-120-0030 at the time her program benefits were approved, the woman's pregnancy has since ended, and the woman remains eligible for CAWEM benefits.

(E) A *decision notice* that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.

(F) When the Department sent a combination approval for referral to the Office of Private Health Partnerships (OPHP) and reduction *decision notice* to a child found eligible for an HKC program subsidy or employer sponsored insurance reimbursement described in OAR 461-135-1101 at the time the Department referred the child to OPHP and the child has since enrolled in an HKC program.

(d) When the Department amends a *decision notice* with another *decision notice* under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049 & 414.826

Stats. Implemented: ORS 183.417, 411.060, 411.117, 411.404, 411.816, 412.014, 412.049 & 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; 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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 3-2010(Temp), f. & cert. ef. 2-23-10 thru 8-22-10

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

Rule Caption: October 09 Technical changes to the January 1, 2009 through December 31, 2010 Health Services Commission's Prioritized List of Health Services.

Adm. Order No.: DMAP 3-2010

Filed with Sec. of State: 3-5-2010

Certified to be Effective: 3-17-10

Notice Publication Date: 2-1-2010

Rules Amended: 410-141-0520

Rules Repealed: 410-141-0520(T)

Subject: The Oregon Health Plan Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended 410-141-0520, referencing the January 1, 2010–December 31, 2010 Oregon Health Services Commission's Prioritized List of health Services that reflects interim modifications and technical changes made, subject to Centers for Medicare and Medicaid Services (CMS) approval effective January 1, 2010–11 Prioritized List includes 678 lines (down from 680), with a funding line that covers all services appearing on lines 1–502. The change in the funding line number from 503 to 502 does not result in a reduction in services in covered services.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520

Prioritized List of Health Services

(1) The Oregon Health Services Commission's (HSC) Prioritized List of Health Services (Prioritized List) is the 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 retroactively to January 1, 2010, this rule incorporates by reference the CMS approved biennial January 1, 2010–December 31, 2011 Oregon Health Services Commission's Prioritized List of Health Services, including technical revisions and interim modifications effective April 1, 2009, October 1, 2009 and January 1, 2010 which

ADMINISTRATIVE RULES

includes expanded definitions, practice guidelines and condition treatment pairs funded through line 502. 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 Division and approval to bill Medicaid for CD services.

Stat. Auth.: 2007 OL Ch. 798 (SB 163), ORS 409.050 & 414.065
Stats. Implemented: ORS 192.527, 192.528, 414.065, 414.727 & 414.010
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. & cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. & cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. & cert. ef. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. & cert. ef. 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. & cert. ef. 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 3-15-03; OMAP 88-2002, f. & cert. ef. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. & cert. ef. 3-1-03; OMAP 30-2003, f. & cert. ef. 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. & cert. ef. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. & cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. & cert. ef. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. & cert. ef. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. & cert. ef. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. & cert. ef. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. & cert. ef. 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. & cert. ef. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. & cert. ef. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. & cert. ef. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. & cert. ef. 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. & cert. ef. 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. & cert. ef. 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. & 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. & cert. ef. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. & cert. ef. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. & cert. ef. 12-10-09, cert. 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. & cert. ef. 3-5-10, cert. ef. 3-17-10

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

Rule Caption: Edits, amendments, and adoption of rules related to Radiation Protection Services.

Adm. Order No.: PH 4-2010

Filed with Sec. of State: 2-16-2010

Certified to be Effective: 2-16-10

Notice Publication Date: 1-1-2010

Rules Adopted: 333-116-0485, 333-118-0051, 333-118-0052, 333-118-0053, 333-118-0125, 333-118-0162, 333-124-0001, 333-124-0010

Rules Amended: 333-100-0020, 333-100-0065, 333-102-0010, 333-102-0015, 333-102-0035, 333-102-0105, 333-102-0110, 333-102-0115, 333-102-0190, 333-102-0245, 333-102-0285, 333-102-0290, 333-102-0305, 333-102-0325, 333-102-0340, 333-103-0001, 333-103-0010, 333-106-0005, 333-106-0215, 333-106-0320, 333-116-0020, 333-116-0035, 333-116-0140, 333-116-0170, 333-116-0190, 333-116-0300, 333-116-0360, 333-116-0660, 333-116-0670, 333-116-0683, 333-116-0687, 333-116-0690, 333-116-0700, 333-116-0810, 333-116-0905, 333-118-0020, 333-118-0050, 333-118-0070, 333-118-0110, 333-118-0120, 333-118-0140, 333-118-0150, 333-118-0160, 333-118-0190, 333-118-0200, 333-119-0010, 333-119-0020, 333-119-0080, 333-119-0090, 333-119-0100, 333-120-0015, 333-120-0800

Rules Repealed: 333-102-0020

Subject: The Department of Human Services, Public Health Division is permanently adopting, amending and repealing administrative rules in chapter 333, divisions 100, 102, 103, 106, 116, 118, 119, 120 and 124 related to radiation protection. Changes to the OARs are necessary to comply with the Nuclear Regulatory Commission's (NRC) Code of Federal Regulations (CFR); Adopt, revise and repeal rules to comply with implemented CFRs for compatibility with NRC regulations per state agreement; Make administrative amendments

to change "agency" to "department"; Amend rule text in division 100 to direct X-ray registrants to not operate X-ray systems with a fixed nominal kVp of less than 55; Amend divisions 102, 116, 118, and 120 to reflect changes for compatibility with Nuclear Regulatory Commission (NRC), 10 CFR; Amend division 119 to discontinue the use of tanning beds manufactured prior to September 8, 1986 and revise definitions for operator and customer. Division 124 is being adopted to provide a civil penalty schedule for RPS programs.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-100-0020

Prohibited Uses

(1) Hand-held fluoroscopic screens shall not be used unless they have been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) Shoe-fitting fluoroscopic devices shall not be used.

(3) Sources of radiation shall not be used to expose any individual solely for training or demonstration purposes.

(4) Sources of radiation shall not be used for the purpose of screening or inspecting individuals for concealed weapons, hazardous materials, stolen property, illegal goods or contraband.

(5) No person shall intentionally apply or allow to be applied, either directly or indirectly, ionizing radiation to human beings except by, or under the supervision of, persons licensed by the State of Oregon to practice the healing arts and who are authorized to use radiation on humans. Notwithstanding this restriction, the Department recognizes practitioners of the healing arts to be as outlined in ORS 676.110, that is:

(a) Podiatrists, Chiropractors, Dentists, Naturopath, Osteopaths, Medical Doctors, and Veterinarians;

(b) Nurse Practitioners and Physician Assistants may prescribe X-ray when doing so within the bounds of their independent rules;

(c) No person will be allowed to use X-ray producing equipment without first meeting the requirements of OAR 333-106-0045(15) or 333-106-0055.

(6) No person shall intentionally or unintentionally expose another individual to radiation other than ionizing radiation in such a way as to adversely affect the health or safety of that individual. Notwithstanding this restriction, the use of radiation other than ionizing radiation by persons licensed by the State of Oregon to practice the healing arts and who are authorized to use radiation will be allowed.

(7) Dental units which are 50 kVp and below are prohibited from being sold, leased, transferred or lent.

(a) Existing diagnostic dental X-ray systems less than 55 kVp shall not be used on minors.

(b) After October 1, 2011, registrants may not use diagnostic dental X-ray systems with a fixed, nominal kVp of less than 55.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-100-0065

Tests

Each licensee and registrant must perform, or permit the Department to perform, such tests as the Department deems appropriate or necessary for the administration of the rules in this division and divisions 101, 105, 106, 108, 109, 112, 113, 115, 116, 117, 119, 121, 122, and 123 of this chapter including, but not limited to, tests of:

(1) Sources of radiation and radioactive material;

(2) Facilities wherein sources of radiation and radioactive material are used or stored;

(3) Radiation detection and monitoring instruments; and

(4) Other equipment and devices used in connection with the utilization or storage of licensed or registered sources of radiation and radioactive material.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-81-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

ADMINISTRATIVE RULES

333-102-0010

Exempt Concentrations

(1) Except as provided in sections (3) or (4) of this rule, any person is exempt from this division to the extent that such person receives, possesses, uses, transfers, owns or acquires products containing radioactive material introduced in concentrations not in excess of those listed in 10 CFR Part 30.70.

(2) This section shall not be deemed to authorize the import of byproduct material or products containing byproduct material.

(3) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license outlined in OAR 333-102-0005 to the extent that transfers of radioactive material contained in a product or material in concentrations not in excess of those specified in 10 CFR Part 30.70 and introduced into the product or material by a licensee holding a specific license issued by an Agreement State, or the Nuclear Regulatory Commission, expressly authorizing such introduction. This exemption does not apply to the transfer of byproduct material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(4) No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under section (1) of this rule or equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State, or Licensing State except in accordance with a specific license issued pursuant to OAR 333-102-0245 or the general license granted by OAR 333-102-0340.

NOTE: 10 CFR Part 30.70 Schedule A is available from the Agency, Health Services, Radiation Protection Services.
Stat. Auth.: ORS 453.635, 453.665
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0015

Certain Items Containing Radioactive Material

(1) Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, any person is exempt from these rules to the extent that he or she receives, possesses, uses, transfers, owns or acquires the following products:

NOTE: Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(A) 25 millicuries (925 MBq) of tritium per timepiece;

(B) Five millicuries (185 MBq) of tritium per hand;

(C) 15 millicuries (555 MBq) of tritium per dial (when used, bezels must be considered as part of the dial);

(D) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(E) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(F) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial (when used, bezels must be considered as part of the dial);

(G) 0.15 microcurie (5.55 kBq) of radium per timepiece;

(H) 0.03 microcurie (1.11 kBq) of radium per hand;

(I) 0.09 microcurie (3.33 kBq) of radium per dial (when used, bezels must be considered as part of the dial);

(J) The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(i) For wrist watches, 0.1 millirad (one Gy) per hour at 10 centimeters from any surface;

(ii) For pocket watches, 0.1 millirad (one Gy) per hour at one centimeter from any surface; and

(iii) For any other timepiece, 0.2 millirad (two Gy) per hour at 10 centimeters from any surface.

(K) One microcurie (37 kBq) of radium-226 per timepiece in timepieces acquired prior to June 1, 1977.

(b) Precision balances containing not more than one millicurie (37 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before December 17, 2007;

(c) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before December 17, 2007;

(d) Electron tubes: Provided, that each tube does not contain more than one of the following specified quantities of radioactive material:

(A) 150 millicuries (5.55 GBq) of tritium per microwave receiver projector tube or 10 millicuries (370 MBq) of tritium per any other electron tube;

(B) One microcurie (37 kBq) of cobalt-60;

(C) Five microcuries (185 kBq) of nickel-63;

(D) 30 microcuries (1.11 MBq) of krypton-85;

(E) Five microcuries (185 kBq) of cesium-137; or

(F) 30 microcuries (1.11 MBq) of promethium-147.

(G) And provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10 Gy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

NOTE: For purposes of, subsection (1)(d) of this rule "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes and any other completely sealed tube that is designed to conduct or control electrical currents.

(e) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(A) Each source contains no more than one exempt quantity set forth in 10 CFR Part 30.71 Schedule B; and

(B) Each instrument contains no more than 10 exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in 10 CFR Part 30.71 Schedule B provided that the sum of such fractions must not exceed unity.

(C) For americium-241, 0.05 microcuries (1.85 kBq) is considered an exempt quantity under section (8) of this rule.

(i) Ionization chamber smoke detectors containing not more than one microcurie (uCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(2) The exemptions contained in this rule must not authorize any of the following:

(a) The manufacture of any product listed;

(b) The application or removal of radioactive luminous material to or from meters and timepieces or hands and dials therefore;

(c) The installation into automobile locks of illuminators containing tritium or promethium-147 or the application of tritium to balances of precision or parts thereof;

(d) Human use, or the use in any device or article, except timepieces, which is intended to be placed on or in the human body;

(e) As applied to radioactive material exempted under section (1) of this rule, the production, packaging, repackaging or transfer of radioactive material for purposes of commercial distribution or the incorporation of radioactive material into products intended for commercial distribution.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0035

Exempt Quantities

(1) Except as provided in sections (2), (3) and (5) of this rule, any person is exempt from these rules to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in individual quantities, each of which does not exceed the applicable quantity set forth in 10 CFR Part 30.71 Schedule B.

(2) This rule does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution or the incorporation of radioactive material into products intended for commercial distribution.

(3) Any person who possesses radioactive material received or acquired under the general license formerly provided in OAR 333-102-0105(2) is exempt from the requirements for a license set forth in this rule to the extent that such person possesses, uses, transfers or owns such radioactive material. Such exemption does not apply for radium-226.

(4) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in 10 CFR Part

ADMINISTRATIVE RULES

30.71 Schedule B, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this rule or equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to section 32.18 of 10 CFR Part 32 or by the Department pursuant to OAR 333-102-0255, which license states that the radioactive material may be transferred by the licensee to persons exempt under this rule or the equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State.

(5) No person may, for purposes of producing an increased radiation level, combine quantities of byproduct material covered by this exemption so that the aggregate quantity exceeds the limits set forth in 10 CFR Part 30.71, Schedule B, except for byproduct material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the regulations in this rule.

NOTE: Authority to transfer possession or control by the manufacturer, processor or producer or any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-2985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0105

Certain Devices and Equipment

A general license is hereby granted to transfer, receive, acquire, own, possess and use radioactive material incorporated in the following devices or equipment that have been manufactured, tested and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission for use pursuant to section 31.3 of 10 CFR Part 31. This general license is subject to the provisions of OAR 333-100-0005 (Definitions), 333-100-0025 (Exemptions), 333-100-0030 (Additional Requirements), 333-100-0055 (Records), 333-100-0060(1) and 333-100-0060(2) (Inspections), and 333-100-0065 (Tests), 333-102-0010(2) (Exempt Concentrations), 333-102-0305(1) through 333-102-0305(7) (Terms and Conditions of Licenses), 333-102-0330 (Transfer of Material), 333-102-0335 (Modification, Revocation, and Termination of Licenses), and divisions 111, 118, and 120 of this chapter.

NOTE: Attention is directed particularly to the provisions of division 120 of this chapter that relate to the labeling of containers (OAR 333-120-0430 and 333-120-0440).

(1) Static Elimination Devices. Devices designed for use as static eliminators that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 microcuries) of polonium-210 per device;

(2) Ion Generating Tubes. Devices designed for ionization of air that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 microcuries) of polonium-210 per device or a total of not more than 1.85 GBq (50 millicuries) of hydrogen-3 (tritium) per device.

NOTE: Different general licenses are issued in this division, each of which has its own specific conditions and requirements.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0110

Luminous Safety Devices for Aircraft

(1) A general license is hereby granted to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(a) Each device contains not more than 370 GBq (10 curies) of tritium or 11.1 GBq (300 millicuries) of promethium-147; and

(b) Each device has been manufactured, assembled or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Department or any Agreement State to the manufacturer or assembler of such device pursuant to licensing requirements equivalent to those in 10 CFR Part 32.53.

(2) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in section (1) of this rule are exempt from the requirements of divisions 111 and 120 of this chapter except that they must comply with the provisions of 333-120-0700 and 333-120-0710.

(3) This general license does not authorize the manufacture, assembly or repair of luminous safety devices containing tritium or promethium-147.

(4) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(5) This general license is subject to the provisions of OAR 333-100-0005 (Definitions), 333-100-0025 (Exemptions), 333-100-0030 (Additional Requirements), 333-100-0055 (Records), 333-100-0060(1) and 333-100-0060(2) (Inspections), 333-100-0065 (Tests), 333-102-0305(1) through 333-102-0305(7) (Terms and Conditions of Licenses), 333-102-0330 (Transfer of Material), 333-102-0335 (Modification, Revocation, and Termination of Licenses), and division 118 of this chapter.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0115

Certain Measuring, Gauging and Controlling Devices

(1) A general license is hereby issued to commercial and industrial firms and to research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, receive, acquire, possess, use or transfer in accordance with the provisions of OAR 333-103-0015 and sections (2), (3) and (4) of this rule, radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(2) The general license in section (1) of this rule applies only to radioactive material contained in devices that have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued by the Department pursuant to OAR 333-102-0200 or in accordance with the specifications contained in a specific license issued by the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State, that authorizes distribution of devices to persons generally licensed by the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State.

(3) The devices must have been received from one of the specific licensees described in section (2) of this rule or through a transfer made in accordance with subsection (4)(i) of this rule.

NOTE: Regulations under the Federal Food, Drug and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(4) Any person who owns, receives, acquires, possesses, uses or transfers radioactive material in a device pursuant to the general license in section (1) of this rule:

(a) Must assure that all labels affixed to the device at the time of receipt, and bearing a statement that removal of the label is prohibited, are maintained thereon and must comply with all instructions and precautions provided by such labels;

(b) Must assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at such other intervals as are specified in the label; however:

(A) Devices containing only krypton need not be tested for leakage of radioactive material; and

(B) Devices containing only tritium or not more than 100 microcuries (3.7 MBq) of other beta and/or gamma emitting material or 10 microcuries (0.37 MBq) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose.

(c) Must assure that tests required in subsection (4)(b) of this rule and other testing, installation servicing and removing from installation involving the radioactive materials, its shielding or containment, are performed:

(A) In accordance with the instructions provided by the labels; or

(B) By a person holding an applicable specific license from the Department, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to perform such activities.

ADMINISTRATIVE RULES

(d) Must maintain records showing compliance with the requirements of subsections (4)(b) and (4)(c) of this rule. The records must show the results of tests. The records also must show the dates of performance of, and the names of persons performing, testing, installation servicing and removal from installation concerning the radioactive material, its shielding or containment. The licensee must retain these records as follows:

(A) Records of tests for leakage of radioactive material required by subsection (4)(b) of this rule must be maintained as required in OAR 333-100-0057.

(B) Records of tests of the on-off mechanism and indicator required by subsection (4)(b) of this rule must be maintained as required in OAR 333-100-0057.

(C) Records which are required by subsection (4)(c) of this rule must be maintained as required in OAR 333-100-0057.

(e) Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie (185 Bq) or more of removable radioactive material, the licensee must immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding an applicable specific license from the Department, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to repair such devices. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device or as otherwise approved by the Department. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 0.005 microcurie or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be submitted to the Department within 30 days. Under these circumstances, the criteria set out in OAR 333-120-0190, as determined by the Department, on a case-by-case basis;

(f) Must not abandon the device containing radioactive material;

(g) Except as provided in subsection (4)(i) of this rule, must transfer or dispose of the device containing radioactive material only by export as provided by subsection (4)(l) of this rule, by transfer to another general licensee as authorized in subsection (4)(i) of this rule, or by transfer to a specific licensee of the Department, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State whose specific license authorizes the individual to receive the device; and

(A) Must furnish to the Department, within 30 days after transfer of a device to a specific licensee or export, a report containing identification of the device by manufacturer's name, model number, serial number, the date of transfer, and the name, address and license number of the person receiving the device;

(B) The general licensee must obtain written Department approval before transferring the device to any other specific licensee not specifically identified in subsection (4)(g) of this rule.

(h) A holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if the holder:

(A) Verifies that the specific license authorized the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(B) Removes, alters, covers, or clearly and unambiguously augments the existing label so that the device is labeled in compliance with OAR 333-120-0430, however the manufacturer model and serial numbers must be retained;

(C) Obtains manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(D) Reports the transfer under OAR 333-102-0115(4)(g)(A).

(i) Must transfer the device to another general licensee only:

(A) Where the device remains in use at a particular location. In such case the transferor must give the transferee a copy of this rule and any safety documents identified in the label on the device and within 30 days of the transfer, report to the Department the manufacturer's (or initial transferor's) name, model number, serial number of the device transferred, the date of transfer, the name and address of the transferee and the location of use, and the name, title and phone number of the individual who is a point of contact between the Department and the transferee. This individual must have the knowledge and authority to take actions to ensure compliance with the appropriate rules and requirements concerning the possession and use of these devices; or

(B) Where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee.

(j) Must comply with the provisions of OAR 333-120-0700 and 333-120-0710 for reporting radiation incidents, theft or loss of licensed material but shall be exempt from the other requirements of divisions 111 and 120 of this chapter;

(k) Must submit the required Department form and receive from the Department a validated registration certificate acknowledging the general license and verifying that all provisions of these rules have been met. The form must be submitted within 30 days after the first receipt or acquisition of such device. The general licensee must develop and maintain procedures designed to establish physical control over the device as described in this rule and designed to prevent transfer of such devices in any form, including metal scrap, to persons not authorized to receive the devices.

(l) Shall not export a device containing radioactive material except in accordance with 10 CFR Part 110.

(5) The general license in section (1) of this rule does not authorize the manufacture of devices containing radioactive material.

(6) The general license provided in section (1) of this rule is subject to the provisions of OAR 333-100-0040 through 333-100-0055, 333-102-0335, 333-103-0015 and 333-118-0050.

(7) The general licensee possessing or using devices licensed under the general license established by section (1) of this rule must report in writing to the Department any changes in information furnished by the licensee on the required Department form. The report must be submitted within 30 days after the effective date of such change.

(8) The licensee must appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, must ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

(9)(a) A device distributed or otherwise received as a generally licensed device must be registered with the Department. Devices containing more than 37 MBq (1 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, any quantity of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), are required to have a specific license. Each address for a location of use, as described under subsection (9)(b) of this rule, represents a separate general licensee and requires a separate registration and fee.

(b) In registering devices, the general licensee must furnish the following information and any other information specifically requested by the Department:

(A) Name and mailing address of the general licensee;

(B) Information about each device. The manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label);

(C) Name, title, and telephone number of the responsible person designated as a representative of the general licensee under section (8) of this rule.

(D) Address or location at which the device(s) are used and/or stored. For portable devices, the address of the primary place of storage.

(E) Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information.

(F) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

(10) General licensees must report changes to their mailing address or the location of use (including a change in name of general licensee) to the Department within 30 days of the effective date of the change.

(11) Generally licensed devices that are not in use for longer than two years must be transferred to an authorized recipient or disposed of as radioactive waste. Shutters must be locked in the closed position on devices that are not being used or are in storage. The testing required by subsection (4)(b) of this rule need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before use or transfer and the shutter tested before use.

(12) Persons generally licensed by an Agreement State with respect to devices meeting the criteria in subsection (9)(a) of this rule are not subject to registration requirements if the devices are used in areas subject to NRC jurisdiction for a period less than 180 days in any calendar year. The

ADMINISTRATIVE RULES

Nuclear Regulatory Commission does not require registration information from such licensees.

(13) The general license in section (1) of this rule does not authorize the manufacture or import of devices containing radioactive material.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0190

Application for Specific Licenses.

(1) Applications for specific licenses must be filed on a form prescribed by the Department. Information contained in previous applications, statements or reports filed with the Department, the US Nuclear Regulatory Commission, or an Agreement State or a Licensing State or the Atomic Energy Commission may be incorporated by reference, provided that the reference is clear and specific.

(2) The Department may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Department to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Each application must be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's or licensee's behalf.

(4) Each applicant for a specific license is required to have a permanent in-state office with a copy of all required records available for inspection by the Department.

(5) An application for a license filed pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter will be considered also as an application for licenses authorizing other activities for which licenses are required by the Act, provided that the application specifies the additional activities for which licenses are requested and complies with rules of the Department and the US Nuclear Regulatory Commission as to applications for such licenses.

(6) Each new application for a radioactive material license must be accompanied by the fee prescribed by OAR 333-103-0010. No fee will be required to accompany an application for renewal or amendment of a license, except as provided in OAR 333-103-0010.

(7) An application for a license to receive and possess radioactive material for the conduct of any activity that the Department has determined, pursuant to Subpart A of Part 51 of 10 CFR (Environmental Protection Regulations applicable to materials licensing), will significantly affect the quality of the environment, must be filed at least nine months prior to commencement of construction of the plant or facility in which the activity will be conducted and must be accompanied by any Environmental Report required pursuant to Subpart A of 10 CFR Part 51.

(8) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must either:

(a) Identify the source or device by manufacturer and model number as registered with the US Nuclear Regulatory Commission under 10 CFR Part 32.210 or with an Agreement State; or

(b) Contain the information identified in 10 CFR Part 32.210(c).

(9) As provided by OAR 333-102-0200, certain applications for specific licenses filed under this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning as follows:

NOTE: If a renewal application was submitted on or before July 27, 1990, the decommissioning information may follow the renewal application but must be submitted prior to the license being issued.

(10)(a) Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in 10 CFR 30.72, "Schedule C — Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release," must contain either:

(A) An evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(B) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under paragraph (10)(a)(A) of this rule:

(A) The radioactive material is physically separated so that only a portion could be involved in an accident;

(B) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(C) The release fraction in the respirable size range would be lower than the release fraction shown in 10 CFR Part 30.72 (Schedule C — Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release) due to the chemical or physical form of the material;

(D) The solubility of the radioactive material would reduce the dose received;

(E) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in 10 CFR Part 30.72;

(F) Operating restrictions or procedures would prevent a release fraction as large as that shown in 10 CFR Part 30.72; or

(G) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under paragraph (10)(a)(B) of this rule must include the following information:

(A) Facility description. A brief description of the licensee's facility and area near the site.

(B) Types of accidents. An identification of each type of radio-active materials accident for which protective actions may be needed.

(C) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(D) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(E) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(F) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(G) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the Department; also responsibilities for developing, maintaining, and updating the plan.

(H) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee also must commit to notify the Department immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supercede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

(I) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the Department.

(J) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training must familiarize personnel with site-specific emergency procedures. Also, the training must thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(K) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(L) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee must invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises although recommended is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios must not be known to most exercise participants. The licensee must critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of

ADMINISTRATIVE RULES

exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(M) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, title III, Pub. L. 99-499, if applicable to the applicant's activities at the proposed place of use of the byproduct material.

(d) The licensee must allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Department. The licensee must provide any comments received within the 60 days to the Department with the emergency plan.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0245

Introduction of Radioactive Material in Exempt Concentrations into Products or Materials, and Transfer of Ownership or Possession: Requirements for License

An application for a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product or material containing the radioactive material: will be approved if the applicant:

(1) Satisfies the general requirements specified in OAR 333-102-0200, provided however, that the requirements of OAR 333-102-0200(2) and (3) do not apply to an application for a license to introduce byproduct material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product.

(2) Provides a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material, and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioisotopes in the product or material at the time of transfer.

(3) Provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in 10 CFR Part 30.70 Schedule A, that reconcentrating of the radioactive material in concentrations exceeding those in 10 CFR Part 30.70 Schedule A is not likely, that use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(4) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under 10 CFR Part 30.14 or equivalent regulations of an Agreement State, except in accordance with a license issued pursuant to 10 CFR Part 32.11, or the general license provided in 10 CFR Part 150.20 (reciprocity).

(5) Each person licensed under this rule must maintain records of transfer of material and file reports with the Department as required in OAR 333-102-0247.

(6) Each licensee who manufactures a nationally tracked source shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0285

Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs Containing Radioactive Material for Medical Use Under Division 116

(1) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing radioactive material for use by persons authorized pursuant to division 116 of this chapter will be approved if:

(a) The applicant satisfies the general requirements specified in OAR 333-102-0200;

(b) The applicant submits evidence that the applicant is at least one of the following:

(A) Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

(B) Registered or licensed with a state agency as a drug manufacturer;

(C) Licensed as a pharmacy by a state Board of Pharmacy; or

(D) Operating as a nuclear pharmacy within a federal medical institution.

(c) The applicant submits information on the radionuclide, chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(d) The applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words CAUTION, RADIOACTIVE MATERIAL or DANGER, RADIOACTIVE MATERIAL; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words CAUTION, RADIOACTIVE MATERIAL or DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) A licensee described by paragraphs (1)(b)(C) or (D) of this rule:

(a) May prepare radioactive drugs for medical use, as defined in OAR 333-116-0020, provided that the radioactive drug is prepared either by an authorized nuclear pharmacist, as specified in subsections (2)(b) and (2)(c) of this rule, or an individual under the supervision of an authorized nuclear pharmacist as specified in OAR 333-116-0100.

(b) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) This individual qualifies as an authorized nuclear pharmacist as defined in OAR 333-116-0020;

(B) This individual meets the requirements specified in OAR 333-116-0910, 333-116-0760, 333-116-0915 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) This individual is designated as an authorized nuclear pharmacist in accordance with subsection (2)(c) of this rule.

(c) The actions authorized in subsections (2)(a) and (2)(b) of this rule are permitted in spite of more restrictive language in license conditions.

(d) May designate a pharmacist (as defined in OAR 333-116-0020 as an authorized nuclear pharmacist if the individual is identified as of December 2, 1994, as an authorized user on a nuclear pharmacy license issued by the Department pursuant to this division.

(e) Must provide to the Department a copy of each individual's certification by the Board of Pharmaceutical Specialties, the Commission or Agreement State license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to paragraphs (2)(b)(A) and (C) of this rule, the individual to work as an authorized nuclear pharmacist.

(3) A licensee must possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee must have procedures for use of the instrumentation. The licensee must measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee must:

(a) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument and make adjustments when necessary; and

(b) Check each instrument for constancy and proper operation at the beginning of each day of use.

ADMINISTRATIVE RULES

(4) Nothing in this rule relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

NOTE: Although the Agency does not regulate the manufacture and distribution of reagent kits that do not contain radioactive material, it does regulate the use of such reagent kits for the preparation of radio pharmaceuticals containing radioactive material as a part of its licensing and regulation of the users of radioactive material. Any manufacturer of reagent kits that do not contain radioactive material, who desires to have the reagent kits approved by the Agency for use by persons licensed for medical use pursuant to OAR 333-116 or by persons authorized under a group license, or equivalent, by the U.S. Nuclear Regulatory Commission or any other Agreement State, may submit the pertinent information specified in this rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0290

Manufacture and Distribution of Sources or Devices Containing Radioactive Material for Medical Use

(1) An application for a specific license to manufacture and distribute sources and devices containing byproduct material to persons licensed pursuant to division 116 of this chapter for use as a calibration transmission or reference source or for the uses listed in OAR 333-116-0400, 333-116-0420 and 333-116-0480 will be approved if:

(a) The applicant satisfies the general requirements in OAR 333-102-0200.

(b) The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(A) The radioactive material contained, its chemical and physical form and amount;

(B) Details of design and construction of the source or device;

(C) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) For devices containing radioactive material, the radiation profile of a prototype device;

(E) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(F) Procedures and standards for calibrating sources and devices;

(G) Legend and methods for labeling sources and devices as to their radioactive content; and

(H) Instructions for handling and storing the source or device from the radiation safety standpoint; these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device. Provided, that instructions that are too lengthy for such a label may be summarized on the label and printed in detail on a brochure that is referenced on the label.

(c) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, date of assay and a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the (name of source or device) to persons licensed to use radioactive material identified in OAR 333-116-0190, 333-116-0400, or 333-116-0420, as appropriate, and to persons who hold an equivalent license issued by an Agreement State or the US Nuclear Regulatory Commission. However, labels worded in accordance with requirements that were in place on March 30, 1987 may be used until March 30, 1989.

(2) In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months:

(a) The applicant must include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(b) In determining the acceptable interval for test of leakage of radioactive material, the Department will consider information that includes, but is not limited to:

(A) Primary containment or source capsule;

(B) Protection of primary containment;

(C) Method of sealing containment;

(D) Containment construction materials;

(E) Form of contained radioactive material;

(F) Maximum temperature withstood during prototype tests;

(G) Maximum pressure withstood during prototype tests;

(H) Maximum quantity of contained radioactive material;

(I) Radiotoxicity of contained radioactive material; and

(J) Operating experience with identical sources or devices similarly designed and constructed sources or devices.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0305

Specific Terms and Conditions of Licenses

(1) Each license issued pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120 and 121 of this chapter are subject to all the provisions of the Act, now or hereafter in effect, and to all rules, regulations and orders of the Department.

(2) No license issued or granted pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120 and 121 of this chapter nor any right may be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Department, after securing full information, shall find that the transfer is in accordance with the provisions of the Act, and shall give its consent in writing.

(3) Each person licensed by the Department pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120 and 121 of this chapter must confine the use and possession of the radioactive material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall carry with it the right to receive, acquire, own, and possess radioactive material. Preparation for shipment and transport of radioactive material must be in accordance with the provisions of division 118 of this chapter.

(4) Each license issued pursuant to the rules in this division and divisions 105, 113, 115, 116, 117, and 121 of this chapter shall be deemed to contain the provisions set forth in section 183b.-d., inclusive, of the Atomic Energy Act of 1954, as amended, whether or not these provisions are expressly set forth in the license.

(5) The Department may incorporate, in any license issued pursuant to the rules in this division and divisions 103, 105, 113, 115, 116, 117, 120 and 121 of this chapter, at the time of issuance, or thereafter by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material as it deems appropriate or necessary in order to:

(a) Promote the common defense and security;

(b) Protect health or to minimize danger to life or property;

(c) Protect restricted data; and

(d) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and regulations thereunder.

(6) Licensees required to submit emergency plans by OAR 333-102-0190(9) must follow the emergency plan approved by the Department. The licensee may change the approved plan without Department approval only if the changes do not decrease the effectiveness of the plan. The licensee must furnish the change to the Department and to affected offsite response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Department.

(7) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators must test the generator eluates for molybdenum-99 breakthrough in accordance with OAR 333-116-0330. The licensee must record the results of each test and retain each record for three years after the record is made.

(8)(a) Each general licensee subject to the registration requirement in OAR 333-101-0007 and each specific licensee must notify the Department in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(A) The licensee;

(B) An entity (as that term is defined in 11 U.S.C. 101 (14)) controlling the licensee or listing the license or licensee as property of the estate; or

ADMINISTRATIVE RULES

(C) An affiliate (as that term is defined in 11 U.S.C. 101 (2)) of the licensee.

(b) This notification must indicate:

(A) The bankruptcy court in which the petition for bankruptcy was filed; and

(B) The date of the filing of the petition.

(9) Sealed sources or detector cells containing licensed material must not be opened or sources removed from source holders or detector cells by the licensee.

(10) No licensee may acquire licensed radioactive material in a sealed source or in a device that contains a sealed source unless the source or device has been registered with the U.S. Nuclear Regulatory Commission under 10 CFR 32.210 or with an Agreement State.

(11) Any sealed source fabricated by a licensee must be registered, inspected, and tested for construction defects, leakage, and contamination prior to any use or transfer as a sealed source in accordance with requirements in 10 CFR 32.210.

(12) Each licensee must conduct a physical inventory at intervals not to exceed six months to account for all radioactive material received and possessed by licensee. Inventories must include the types and quantities of radioactive material, location of materials, date of receipt, and the date of the inventory; and for sealed sources, the inventory must include the types and quantities of sealed sources, sealed source manufacturer, model number, serial number, date of receipt, condition of sealed sources, and the date of the inventory. Records of the inventories required by section (12) of this rule must be kept until inspection by the Department.

(13) Each licensee must transport radioactive material or deliver radioactive material to a carrier for transport in accordance with the provisions of Parts 170 through 189 of Title 49, Code of Federal Regulations and in accordance with division 118 of this chapter, "Transportation of Radioactive Material."

(14) Each licensee possessing a device licensed pursuant to OAR 333-103-0010(2)(h) must perform an inspection of all devices at intervals not to exceed six months. Inspections must include condition of labeling and posting of each radiation device, and corrective actions taken if any; condition of shutter operation, if applicable, of each device, and corrective actions taken if any; and location of each device. Records of the inspections required by section (14) of this rule must be kept until inspection by the Department.

(15) No licensee may open or remove radioactive material from sealed sources or detector cells containing licensed radiation sources.

(16) No person may repair, modify, dismantle, or effect any change in licensed devices or radiation sources, nor modify nor alter labels affixed to licensed devices by the manufacturer

(17) Installation, initial radiation survey, relocation, removal from service, maintenance, and repair of fixed gauging devices containing radioactive sealed sources, and installation, replacement, and disposal of sealed sources must be performed only by persons specifically authorized by the Department, the U.S. Nuclear Regulatory Commission, or another Agreement state to perform such services. Records of all surveys must be maintained for inspection by the Radiation Protection Services section.

(18) If the licensee has previously determined that monitoring for internal exposure pursuant to OAR 333-120-0130, 333-120-0210, or 333-120-0320 is required, the data and results of this evaluation must be placed in the worker's exposure records and included the worker's Oregon Form Z report.

(19) Testing for leakage or contamination of sealed sources must be in accordance with requirements in OAR 333-120-0460. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, a sealed source or detector cell received from another person must not be put into use until tested.

(20) Detector cells must be used only in conjunction with a properly operating temperature control mechanism that prevents foil temperatures from exceeding manufacturer's specifications. Exhaust from detector cells must be vented to keep exposures to personnel and the public as low as reasonably achievable pursuant to OAR 333-120-0180.

(21) Licensees who possess sealed sources used for testing at field sites must possess at such locations transport documents, a current copy of the specific radioactive materials license, specific license validation certificates, the current leak test certificate, and the licensee's operating and emergency procedures. Licensed materials stored in an unrestricted area must be secured from unauthorized removal from the place of storage in accordance with provisions of OAR 333-120-0250 and 333-120-0260.

(22) Any specific licensee is authorized to receive, possess, use, transfer, and import up to 999 kilograms of uranium contained as shielding for specific licensed radioactive material authorized by license.

(23) A licensee may store, pursuant to OAR 333-120-0500, radioactive waste with a physical half-life of less than 65 days, for decay-in-storage, before disposal in ordinary trash, provided that:

(a) Waste to be disposed of by storage-for-decay must be held for decay a minimum of 10 half-lives;

(b) Prior to disposal in ordinary trash, decayed waste must be surveyed with an instrument that will properly record background radiation dose, to confirm that the radioactivity cannot be distinguished from background. All radiation labels must be removed or obliterated; and

(c) Notwithstanding OAR 333-102-0305(23)(a) iodine-125 waste in microcurie amounts may be held for a minimum of five half-lives. Such waste must be surveyed with an appropriate instrument prior to disposal to confirm that waste is indistinguishable from background.

(24) Licensed materials in an unrestricted area and not in storage must be tended under the constant surveillance and immediate control of the licensee.

(25) Except as otherwise specified in a radioactive materials license, the licensee must have available and follow the instructions contained in the manufacturer's instruction manual for the chromatography device.

(26) In lieu of using the conventional radiation caution colors (magenta or purple on yellow background) as provided in OAR 333-120-0400(2), the licensee is hereby authorized to label detector cells and cell baths, containing licensed radioactive material and used in gas chromatography devices, with conspicuously etched or stamped radiation caution symbols without a color requirement.

(27) If a radiography licensee plans to use, during normal industrial radiographic operations subject to division 105 of this chapter, two or more exposure devices at one jobsite, the licensee must require at least one Radiographer or Radiographer Instructor authorized user for each exposure device, and the total number of authorized personnel (radiographers and assistant radiographers) at the temporary jobsite must not be less than n+1 where n=the number of cameras.

(28) Security requirements for portable devices containing licensed radioactive materials. Each portable device containing licensed radioactive materials must be secured using a minimum of three independent physical controls that form tangible barriers to prevent unauthorized removal or use, whenever the portable device is not under the direct control and constant surveillance of the licensee.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0325

Agency Action on Applications to Renew and Amend

In considering an application by a licensee to renew or amend the license, the Department will apply the criteria set forth in OAR 333-102-0200 through 0290, as applicable.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-102-0340

Reciprocal Recognition of Licenses

(1) Subject to these rules, any person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or a licensing state, and issued by the Department having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within this state for a period not in excess of 180 days in any calendar year, provided that:

(a) The licensing document does not limit the activity authorized by such document to specified installations or locations;

(b) The out-of-state licensee has notified the Department using the Notification of Entry to Perform Activities Under Oregon Reciprocity Application form at least three days prior to engaging in such activity and has paid the applicable registration fee pursuant to OAR 333-103-0030. Such notification shall indicate the location, period and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licens-

ADMINISTRATIVE RULES

ee may, upon application to the Department, obtain permission to proceed sooner. The Department may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license granted by subsection (1)(a) of this rule;

(c) The out-of-state licensee complies with all applicable rules of the Department and with all the terms and conditions of the licensing document, except any such terms and conditions that may be inconsistent with applicable rules of the Department or laws of the State of Oregon;

(d) The out-of-state licensee supplies such other information as the Department may request; and

(e) The out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in subsection (1)(a) of this rule except by transfer to a person:

(A) Specifically licensed by the Department or by the U.S. Nuclear Regulatory Commission to receive such material; or

(B) Exempt from the requirements for a license for such material under OAR 333-102-0010(2).

(2) Notwithstanding the provisions of section (1) of this rule, any person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR 31.6 or equivalent regulations of an Agreement State, authorizing the holder of the license to manufacture, transfer, install or service a device described in OAR 333-102-0115(1) within the State of Oregon is hereby granted a general license to install, transfer, demonstrate or service such a device in this state provided that:

(a) Such person shall register the general license pursuant to OAR 333-101-0007;

(b) File a report with the Department within 30 days after the end of each calendar quarter in which any device is transferred to or installed in this state. Each such report shall identify each general licensee to whom such device is transferred by name and address, the type of device transferred and the quantity and type of radioactive material contained in the device;

(c) Ensure that the device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specific license issued to such person by the U.S. Nuclear Regulatory Commission or an Agreement State;

(d) Ensure that any labels required to be affixed to the device under rules of the licensing authority also include the statement "Removal of this label is prohibited"; and

(e) The holder of the specific license shall furnish to each general licensee to whom such device is transferred, or on whose premises such a device is installed, a copy of the general license contained in OAR 333-102-0115 or in equivalent rules of the Department having jurisdiction over the manufacture and distribution of the device.

(3) The Department may withdraw, limit or qualify its acceptance of any specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission or an Agreement State, or any product distributed pursuant to such licensing document, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or property.

(4) The out-of-state licensee shall at all times during work at any work location within the state have available the pertinent licensing document, the applicable sections of the State of Oregon radiation regulations, a complete source inventory, pertinent U.S. Department of Transportation documentation, leak test records, instrument calibration records, personnel training records, and necessary documentation required by applicable special requirements of these regulations.

(5) While working in Oregon, the out-of-state licensee shall notify the Department (in writing, indicating date and court) immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title II (bankruptcy) of the United States code by or against:

(a) The licensee;

(b) An entity (as that term is defined in II U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) An affiliate (as that term is defined in II U.S.C. 101(2)) of the licensee.

(6) The out-of-state licensee shall notify the Department within one hour after arrival at the actual work location within the state and notification within one hour after any change of work location within the state.

(7) If multiple work crews or persons work concurrently at more than one work location under a general license granted pursuant to this rule, each day worked at each location shall count toward the limit of 180 days in a calendar year.

(8) The Department may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by the U. S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or any product distributed pursuant to such licensing document, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or property.

(9) Each general licensee granted authorization to conduct activities within the State of Oregon pursuant to this rule, based upon an acceptable licensing document, will receive acknowledgment from the Department. This acknowledgment shall be kept at the site of use.

(10) Each general licensee granted authorization to conduct activities within the State of Oregon pursuant to this rule based upon an acceptable licensing document is subject to the reciprocity fee and may be inspected by the Department. The fee for the general license granting reciprocity shall:

(a) Be charged as provided by division 103 of this chapter; and

(b) Shall not be charged more often than once during each calendar year.

(11) Each general licensee operating within the state under reciprocity in areas of exclusive federal jurisdiction shall comply with the applicable provisions of 10 CFR 150.20.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-103-0001

Purpose and Scope

(1) The rules in this division establish fees for sources of radiation and provide for their payment. Sources of radiation, as defined in OAR 333-100-0005, include, but are not limited to, radiation facilities, radiation producing machines, radiation producing devices, radioactive material in sealed and unsealed form (normal form and special form), and radioactive material uses.

(2) Except as otherwise specifically provided, the rules in this division apply as follows:

(a) Radiation producing machines, radiation facility registration, radiation machine vendors and/or services, accredited hospital radiology inspectors, and non-ionizing sources of radiation are subject to OAR chapter 333, divisions 101, 105, 106, 108, 109, 111, 112, 115, 119, 122 or 123;

(b) Radioactive materials pursuant to OAR chapter 333 divisions 102, 105, 110, 113, 115, 116, 117, or 121;

(c) General licenses and registrations pursuant to divisions 101 and 102 of this chapter;

(d) Microwave Oven Service Licensees;

(e) Radiological Analyses; and

(f) Tanning Device Registrations.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 2-1995(Temp), f. & cert. ef. 7-11-95; HD 4-1995, f. & cert. ef. 9-8-95; HD 3-1996, f. & cert. ef. 8-9-96; DOA 13-2006, f. & cert. ef. 6-21-06; PH 11-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-103-0010

Annual Fee for Specific Licenses

(1)(a) Each specific license listed in section (2) of this rule, as defined in OAR 333-102-0203, shall be licensed pursuant to sections (2), (3), (4), (5), and (6) of this rule by a specific license fee.

(b) Upon written request and approval by the Department, fees for new licenses or additional sources may be prorated on a quarterly basis for the current fiscal year.

(2) Each specific license type appearing in the following fee schedule shall be licensed separately with a specific license fee as indicated:

(a) Analytical/Leak Test/Fixed X-ray Fluorescence, \$458(F);

(b) Basic License, \$812(F);

(c) Brachytherapy, \$1,836(F);

(d) Broad Scope A, \$3,000(F);

(e) Broad Scope B, \$1,836(F);

(f) Broad Scope C, \$916(F);

(g) Distribution, \$916 (F);

(h) Fixed Gauge, \$228(S);

(i) High, medium and low dose rate brachytherapy, \$2,296(S);

(j) Imaging and Localization, \$916(F);

(k) In Vitro Laboratory, \$304(F);

(l) Industrial Radiography;

ADMINISTRATIVE RULES

- (A) Fixed Facility, \$3,000(F);
- (B) Field Use, \$3,000(F);
- (m) Instrument Calibration, \$688(S);
- (n) Investigational New Drug, \$1,376(F);
- (o) Irradiator Self-Shielded, \$916 (S);
- (p) Manufacturing/Compounding, \$2,448(F);
- (q) Mobile Nuclear Medicine, \$2,448(F);
- (r) NORM (no processing), \$612(F);
- (s) Nuclear Pharmacy, \$3,000(F);
- (t) Other Measuring Device, \$132(S);
- (u) Portable Gauge:
 - (A) X-ray Fluorescence, \$458(S);
 - (B) All other portable gauges, \$612(S);
 - (v) Radiopharmaceutical Therapy, \$1,376(F);
 - (w) RAM/NOS Facility, \$3,000(F);
 - (x) Research & Development, \$1,376(F);
 - (y) Sealed Sources for Diagnosis, \$458(S);
 - (z) Source Material, \$3,000(F);
 - (aa) Special Nuclear Material (sealed), \$916(S);
 - (bb) Special Nuclear Material (unsealed), \$2,296(F);
 - (cc) Teletherapy (external beam), \$3,000(S);
 - (dd) Unique, \$No Fee;
 - (ee) Uptake and Dilution, \$612(F);
 - (ff) Use of Xenon Gas, \$612(F);
 - (gg) Waste Packaging, \$3,000(F);
 - (hh) Well Logging, \$1,376(S). (NOTE: (F) means facility; (S) means

source.)

(3) Each specific license validation fee shall be due and payable:

(a) On or before October 1 of each year;

(b) For each specific license source of radiation listed in section (2) of this rule for which application pursuant to OAR 333-102-0190 for an Oregon Radioactive Materials License has been made;

(c) For each additional specific license source of radiation in an amendment to an existing Oregon Radioactive Materials License pursuant to OAR 333-102-0320.

(4) A license for each specific license issued pursuant to section (3) of this rule for the then or current fiscal year shall be provided by the Department. The certificate of validation for the then or current fiscal year shall be retained by the licensee and attached to the license pursuant to requirements in OAR 333-111-0005.

(5) The specific license fee that validates specific sealed sources also validates possession of one additional sealed source during source exchange (one new source and one spent source) for a period not to exceed 30 calendar days.

(6) Sealed sources manufactured and distributed as reference sources that do not exceed 100 times the quantity in 30.71 Schedule B of 10 CFR Part 30 are exempt from specific license fees and validation if used pursuant to a specific license listed in section (2) of this rule. The license validation fee for reference sources that exceed 100 times the quantity in 30.71 Schedule B of 10 CFR Part 30 or reference sources authorized alone without additional licensed radioactive material shall be \$916, pursuant to subsection (2)(b) of this rule.

Stat. Auth.: ORS 453.757

Stats. Implemented: ORS 453.757

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 13-1988, f. 6-7-88, cert. ef. 7-1-88; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 2-1995(Temp), f. & cert. ef. 7-11-95; HD 4-1995, f. & cert. ef. 9-8-95; HD 3-1996, f. & cert. ef. 8-9-96; PH 11-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-106-0005

Definitions

As used in this division, the following definitions apply:

(1) "Accessible Surface" means the external surface of the enclosure or housing provided by the manufacturer.

(2) "Added Filtration" means any filtration that is in addition to the inherent filtration.

(3) "Aluminum Equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

NOTE: The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

(4) "Applications Training" means a vendor specific training program approved by the Department.

(5) "A.R.R.T." means the American Registry of Radiologic Technologists.

(6) "Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an X-ray sys-

tem or subsystem. The term includes the owner of an X-ray system or his or her employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

(7) "Attenuation Block" means a block or stack, having dimensions 20 centimeters (cm) by 20 cm by 3.8 cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(8) "Automatic Exposure Control (AEC)" means a device that automatically controls one or more technique factors in order to obtain at a pre-selected location(s) a required quantity of radiation. (See also "Photo timer".)

(9) "Barrier" (see "Protective Barrier").

(10) "Beam Axis" means a line from the source through the centers of the X-ray fields.

(11) "Beam-Limiting Device" means a device that provides a means to restrict the dimensions of the X-ray field.

(12) "Beam Monitoring System" means a system designed to detect and measure the radiation present in the useful beam.

(13) "C-arm X-ray system" means an X-ray system in which the image receptor and X-ray tube housing are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

(14) "Cephalometric Device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(15) "Certified Components" means components of X-ray systems that are subject to the X-ray Equipment Performance Standards promulgated under Public Law 90-602, the Radiation Control Agency for Health and Safety Act of 1968.

(16) "Certified System" means any X-ray system that has one or more certified component(s).

(17) "Changeable Filters" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through any electronic, mechanical or physical process.

(18) "Coefficient of Variation (C)" means the ratio of the standard deviation to the mean value of a set of observations.

(19) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

(20) "Contact Therapy System" means an X-ray system used for therapy with the tube port placed in contact with or within five centimeters of the surface being treated.

(21) "Control Panel" means that part of the X-ray control upon which are mounted the switches, knobs, pushbuttons and other hardware necessary for manually setting the technique factors.

(22) "Cooling Curve" means the graphical relationship between heat units stored and cooling time.

(23) "Dead-Man Switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(24) "Department approved instructor," means an individual who has been evaluated and approved by the Department to teach Radiation Safety.

(25) "Department approved training course" means a course of training that has been evaluated and approved by the Department.

(26) "Detector" (see "Radiation detector").

(27) "Diagnostic X-ray imaging system" means an assemblage of components for the generation, emission, and reception of X-rays and the transformation, storage, and visual display of the resultant X-ray image.

(28) "Diagnostic Source Assembly" means the tube housing assembly with a beam-limiting device attached.

(29) "Diagnostic-Type Protective Tube Housing" means a tube housing so constructed that the leakage radiation measured at a distance of one meter from the source does not exceed 100 milliroentgens (mR) in one hour when the tube is operated at its leakage technique factors.

(30) "Diagnostic X-ray System" means an X-ray system designed for irradiation of any part of the human body or animal body for the purpose of diagnosis or visualization.

(31) "Direct Scattered Radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

(32) "Direct supervision" means that the person who directs the X-ray or fluoroscopic equipment operator(s) shall be present in the room while the individual operates the equipment.

(33) "Entrance Exposure Rate" means the exposure free in air per unit of time.

ADMINISTRATIVE RULES

(34) "Field Emission Equipment" means equipment which uses a tube in which electron emission from the cathode is due solely to the action of an electric field.

(35) "Filter" means material placed in the useful beam to absorb preferentially selected radiations.

(36) "Fluoroscopic Benchmark" means a standard based upon the average cumulative fluoroscopic on-time normally found to be used for a specific fluoroscopic procedure at the site.

(37) "Fluoroscopic Imaging Assembly" means a subsystem in which X-ray photons produce a visible image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(38) "Fluoroscopic X-ray equipment operator" means any individual who, adjusts technique factors, activates the exposure switch or button of a fluoroscopic X-ray machine or physically positions patients or animals. Human holders, used solely for immobilization purposes (i.e. veterinarian human holders) are excluded from this rule.

(39) "Focal Spot" means the area projected on the anode of the tube by the electrons accelerated from the cathode and from which the useful beam originates.

(40) "General Purpose Radiographic X-ray System" means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(41) "General supervision" means that the person who directs the X-ray or fluoroscopic equipment operator(s), must be immediately available by telephone, pager, or other mode of communication, to provide direction if needed or requested.

(42) "Gonad Shield" means a protective barrier for the testes or ovaries.

(43) "Half-Value Layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(44) "Healing arts screening" means the testing of human beings using X-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by an Oregon licensed practitioner of the healing arts legally authorized to prescribe such X-ray tests for the purpose of diagnosis or treatment.

(45) "Heat Unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes and seconds, i.e., $kVp \times mA \times second$.

(46) "HVL" (see "Half-value layer").

(47) "Image Intensifier" means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy density.

(48) "Image Receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident photons either into a visible image or into another form which can be made into a visible image by further transformations.

(49) "Indirect supervision" means that the person who directs the X-ray or fluoroscopic equipment operator(s) be readily available on facility premises when the X-ray or fluoroscopic equipment is operated.

(50) "Inherent Filtration" means the filtration of the useful beam provided by the permanently installed components of the tube housing assembly.

(51) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(52) "Irradiation" means the exposure of matter to ionizing radiation.

(53) "Kilovolt-Peak" (see "Peak tube potential").

(54) "kV" means kilovolts.

(55) "kVp" (see "Peak tube potential").

(56) "kWs" means kilowatt second.

(57) "Lead Equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(58) "Leakage Radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

(a) The useful beam; and

(b) Radiation produced when the exposure switch or timer is not activated.

(59) "Leakage Technique Factors" means the technique factors associated with the diagnostic or therapeutic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, i.e., 10 milliamperere seconds (mAs), or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of X-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For all other diagnostic or therapeutic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

(60) "Light Field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

(61) "Line-Voltage Regulation" means the difference between the no-load and the load line potentials expressed as a percent of the load line potential.

(62) "mA" means milliamperere.

(63) "mAs" means milliamperere second.

(64) "Maximum Line Current" means the root-mean-square current in the supply line of an X-ray machine operating at its maximum rating.

(65) "Mobile Equipment" (see "X-ray Equipment").

(66) "Non-radiologist practitioner" means an individual who practices medicine as a medical doctor (M.D.), doctor of osteopathic medicine (D.O.), doctor of chiropractic medicine (D.C.), doctor of podiatric medicine (D.P.M.) or doctor of veterinary medicine (D.V.M.); and

(a) Are not specifically certified in diagnostic and/or therapeutic use of X-rays; and

(b) Are currently licensed by their respective Oregon licensing board.

(67) "Operator" means an individual who, under the supervision of a practitioner of the healing arts, handles ionizing radiation equipment, physically positions patients or animals, determines exposure parameters or applies the radiation for the diagnostic or therapeutic purposes intended.

(68) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(69) "Peak Tube Potential" means the maximum value of the potential difference across the X-ray tube during an exposure.

(70) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation. This requires that both the atomic number (Z) and the density of the material be similar to that of tissue.

(71) "Photo timer" means a method for controlling radiation exposures to image receptors by measuring the amount of radiation which reaches a radiation monitoring device(s). The radiation monitoring device(s) is a part of an electronic circuit which controls the duration of time the tube is activated (see also "Automatic exposure control").

(72) "PID" (see "Position indicating device").

(73) "Portable Equipment" (see "X-ray Equipment").

(74) "Position Indicating Device" means a device on dental X-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(75) "Primary Dose Monitoring System" means a system which will monitor useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been acquired.

(76) "Primary Protective Barrier" (see "Protective barrier").

(77) "Protective Apron" means an apron made of radiation absorbing materials used to reduce radiation exposure.

(78) "Protected Area" means an area shielded with primary or secondary protective barriers or an area removed from the radiation source such that the exposure rate within the area due to normal operating procedures and workload does not exceed any of the following limits:

(a) 2 milliroentgens (mR) in any one hour; or

(b) 100 mR in any one year.

(c) See OAR 333-120-0180 for additional information.

(79) "Protective Barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure;

ADMINISTRATIVE RULES

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(80) "Protective Glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

(81) "Qualified Expert" means an individual, approved by the Department, who has demonstrated, pursuant to these rules, that he/she possesses the knowledge, skills, and training to measure ionizing radiation, to evaluate radiation parameters, to evaluate safety techniques, and to advise regarding radiation protection needs. The individual shall:

(a) Be certified in the appropriate field by the American Board of Radiology, the American Board of Health Physics, the American Board of Medical Physics or the American Board of Nuclear Medicine Science; or

(b) Hold a master's or doctor's degree in physics, biophysics, radiological physics, health physics, or medical physics and have completed one year of documented, full time training in the appropriate field and also one year of documented, full time work experience under the supervision of a qualified expert in the appropriate field. To meet this requirement, the individual shall have performed the tasks required of a qualified expert during the year of work experience; or

(c) Receive approval from the Department for specific activities.

(82) "Quality Control Program" means a program directed at film processing and radiographic image quality whereby periodic monitoring of film processing is performed. Test films are compared against control film, either visually or by use of a densitometer, to determine if density or contrast have changed. Steps can then be taken to investigate such change and correct the problem. The X-ray machine itself can also be involved in the quality control program, as can other components of the imaging chain.

(83) "Radiation Detector" means a device which in the presence of radiation provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(84) "Radiation Therapy Simulation System" means a radiographic or fluoroscopic system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(85) "Radiograph" means an image receptor on which the image is created directly or indirectly by a pattern and results in a permanent record.

(86) "Radiographic Imaging System" means any system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(87) "Radiological Physicist" means an individual who:

(a) Is certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, or x- and gamma-ray physics; or

(b) Has a bachelor's degree in one of the physical sciences or engineering and three years full-time experience working in therapeutic radiological physics under the direction of a physicist certified by the American Board of Radiology. The work duties must include duties involving the calibration and spot checks of a medical accelerator or a sealed source teletherapy unit; or

(c) Has a master's or a doctor's degree in physics, biophysics, radiological physics, health physics, or engineering; has had one year's full-time training in therapeutic radiological physics; and has had one year's full-time work experience in a radiotherapy facility where the individual's duties involve calibration and spot checks of a medical accelerator or a sealed source teletherapy unit.

(88) "Radiologist" or "Oral Radiologist" means a physician or dentist trained in the diagnostic and/or therapeutic use of X-rays and who is:

(a) Currently licensed by their respective Oregon licensing board; and

(b) Board certified by the American Board of Radiology (ABR) or American Osteopathic Board of Radiology (AOBR) or American Chiropractic Board of Radiology (DACBR) or Royal College of Physicians and Surgeons of Canada (RCPSC) or the American Board of Oral and Maxillo-Facial Radiology (ABOMFR) and currently licensed to practice medicine or dentistry in Oregon.

(89) "Radiology Physician's Assistant" (R.P.A.)/ "Registered Radiology Assistant" (R.R.A.).

(a) An R.P.A. means an American Registry of Radiologic Technologists (A.R.R.T.) technologist who has successfully completed an advanced training program and is certified by the Certification Board for Radiology Practitioner Assistants (CBRPA).

(b) An R.R.A. means an A.R.R.T. technologist who has successfully completed an advanced training program and is certified by A.R.R.T.

(90) "R.T." means a radiologic technologist certified in radiography and currently licensed by the Oregon Board of Radiologic Technology (OBRT).

(91) "Rating" means the operating limits as specified by the component manufacturer.

(92) "Recording" means producing a permanent form of an image resulting from X-ray photons.

(93) "Registrant," as used in this division, means any person who owns or possesses and administratively controls an X-ray system which is used to deliberately expose humans, animals or materials to the useful beam of the system and is required by the provisions contained in divisions 100 and 101 of this chapter to register with the Department.

(94) "Response Time" means the time required for an instrument system to reach 90 percent of its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero, sufficient to provide a steady state midscale reading.

(95) "Scattered Radiation" means radiation that, during passage through matter, has been deviated in direction (see "Direct Scattered Radiation").

(96) "Screening" means the use of a systematic approach to obtain cursory examinations of a person or group of persons without regard to specific clinical indications.

(97) "Secondary Dose Monitoring System" means a system which will terminate irradiation in the event of failure of the primary system.

(98) "Secondary Protective Barrier" (see "Protective barrier").

(99) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(100) "SID" (see "Source-image receptor distance").

(101) "Source" means the focal spot of the X-ray tube.

(102) "Source-Image Receptor Distance" means the distance from the source to the center of the input surface of the image receptor.

(103) "Spot Check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(104) "Spot Film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(105) "Spot-Film Device" means a device intended to transport and/or position a radiographic image receptor between the X-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(106) "SSD" means the distance between the source and the skin of the patient.

(107) "Stationary Equipment" (see "X-ray Equipment").

(108) "Stray Radiation" means the sum of leakage and scattered radiation.

(109) "Technique Factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses;

(c) For all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(110) "Termination of Irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(111) "Traceable to a National Standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(112) "Tube" means an X-ray tube, unless otherwise specified.

(113) "Tube Housing Assembly" means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(114) "Tube Rating Chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(115) "Unprotected Area" means any area in which the exposure rate, due to the use of the radiation machine under normal operating procedures and workload, exceeds any of the following limits:

(a) Two mR in any one hour;

(b) 100 mR in any seven consecutive days; or

(c) 500 mR in any one year.

(116) "Useful Beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the

ADMINISTRATIVE RULES

beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

(117) "Variable-Aperture Beam-Limiting Device" means a beam-limiting device which has capacity for stepless adjustment of the X-ray field size at a given SID.

(118) "Visible Area" means that portion of the input surface of the image receptor over which the incident X-ray photons are producing a visible image.

(119) "Wedge Filter" means an added filter effecting continuous progressive attenuation on all or part of the useful beam.

(120) "X-ray Control" means a device which controls input power to the X-ray high-voltage generator and/or the X-ray tube. It includes equipment such as exposure switches (control), timers, photo timers, automatic brightness stabilizers and similar devices, which control the technique factors of an X-ray exposure.

(121) "X-ray Equipment" means an X-ray system, subsystem, or component thereof. Types of equipment are as follows:

(a) "Mobile equipment" means X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled;

(b) "Portable equipment" means X-ray equipment designed to be hand-carried;

(c) "Stationary equipment" means X-ray equipment which is installed in a fixed location; and

(d) "Transportable" means X-ray equipment installed in a vehicle or trailer.

(122) "X-ray equipment operator" means any individual who handles, adjusts technique factors, activates the exposure switch/ or button of an X-ray machine, or physically positions patients or animals for a radiograph (see "Operator").

(123) "X-ray Field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(124) "X-ray High-Voltage Generator" means a device which transforms electrical energy from the potential supplied by the X-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the X-ray tube(s), high-voltage switches, electrical protective devices and other appropriate elements.

(125) "X-ray System" means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(126) "X-ray Subsystem" means any combination of two or more components of an X-ray system for which there are requirements specified in this division.

(127) "X-ray Tube" means any electron tube which is designed to be used primarily for the production of X-rays.

[ED. NOTE: Equations referenced are available from the agency.]

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-106-0215

Barrier Transmitted Radiation Rate Limits

(1) The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed two mR (0.516 uC/kg) per hour at 10 cm from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate.

(2) Measuring Compliance of Barrier Transmission:

(a) The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square cm with no linear dimension greater than 20 cm;

(b) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 cm above the tabletop;

(c) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or

spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 cm;

(d) Movable grids and compression devices shall be removed from the useful beam during the measurement;

(e) The attenuation block shall be positioned in the useful beam 10 centimeters from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-106-0320

Radiation from Capacitor Energy Storage Equipment in Standby Status

Radiation emitted from the X-ray tube when the exposure switch or timer is not activated shall not exceed a rate of two milliroentgens (0.516 uC/kg) per hour at five centimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

Stat. Auth.: ORS 453.605 - 453.755

Stats. Implemented: ORS 453.605 - 453.755

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0020

Definitions

As used in this division, the following definitions apply:

(1) "Address of use" means the building or buildings identified on the license as the location(s) where radioactive material may be received, used, or stored.

(2) "Area of use" means location(s) at the address of use set aside for the purpose of receiving, using or storing radioactive material.

(3) "Attestation" means required training, experience and appropriate board certification is validated using the Nuclear Regulatory Commission's form 313A.

(4) "Authorized Medical Physicist" means an individual who:

(a) Meets the requirements in OAR 333-116-0730, or 333-116-0905 and 333-116-0760; or

(b) Is identified as an authorized medical physicist or teletherapy physicist on:

(A) A specific medical use license issued by the Department or an Agreement State or the US Nuclear Regulatory Commission;

(B) A medical use permit issued by a Commission master material licensee;

(C) A permit issued by a Commission or Agreement State broad scope medical use licensee; or

(D) A permit issued by a Commission master material license broad scope medical use permittee.

(5) "Authorized nuclear pharmacist" means a pharmacist who:

(a) Meets the requirements in OAR 333-116-0910 and 333-116-0915;

(b) Is identified as an authorized nuclear pharmacist on a Department, Agreement State, or U.S. Nuclear Regulatory Commission license that authorizes the use of radioactive material in the practice of nuclear pharmacy;

(c) Is identified as an authorized nuclear pharmacist on a license issued by a Department, Agreement State, or U.S. Nuclear Regulatory Commission specific licensee of broad scope that is authorized to permit the use of radioactive material in the practice of nuclear pharmacy; or

(d) Is approved as an authorized nuclear pharmacist by a nuclear pharmacy licensed (authorized) by the Department, the U.S. Nuclear Regulatory Commission, or an Agreement State to approve authorized nuclear pharmacists.

(6) "Authorized user" means a physician, dentist or podiatrist who:

(a) Meets the requirements listed in OAR 333-116-0660, 333-116-0670, 333-116-0680, 333-116-0683, 333-116-0687, 333-116-0690, 333-116-0700, 333-116-0710, 333-116-0720, and 333-116-0740;

(b) Is identified as an authorized user on a Department, Agreement State, Licensing State or U.S. Nuclear Regulatory Commission license that authorizes the medical use of radioactive material; or

(c) Is identified as an authorized user on a permit issued by a Department, Agreement State, or U.S. Nuclear Regulatory Commission licensee of broad scope that is authorized to permit the medical use of radioactive material.

(7) "Black Box" means the radiopharmaceutical production purification system used in a PET facility.

ADMINISTRATIVE RULES

(8) "Brachytherapy" means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal, or interstitial application.

(9) "Brachytherapy source" means an individual sealed source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose of radiation within a few centimeters, by surface, intracavitary, or interstitial application that is not designed to be disassembled by the user.

(10) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. This source may also be used for other purposes.

(11) "Dental use" means the intentional external administration of the radiation from radioactive material to human beings in the practice of dentistry in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(12) "Dentist" means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

(13) "Diagnostic clinical procedures manual" means a collection of written procedures that describes each method (and other instructions and precautions) by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

(14) "High dose-rate remote afterloader" means a device that remotely delivers a brachytherapy source, with a dose rate in excess of two gray (200 rad) per hour, to the point or surface where the dose is prescribed.

(15) "Human Research Subject" means a living person that an authorized user, conducting research, obtains data resulting from the intentional internal or external administration of radioactive material, or the radiation from radioactive material, to the individual. For the purpose of these rules, unless otherwise noted, the term patient applies to a human research subject.

(16) "Low dose-rate remote afterloader" means a device that remotely delivers a brachytherapy source, with a dose rate of less than two gray (200 rad) per hour, to the point or surface where the dose is prescribed.

(17) "Management" means the chief executive officer or that individual's designee.

(18) "Manual Brachytherapy", as used in this part, means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed on, or in close proximity, to the treatment site or inserted directly into the tissue volume.

(19) "Medical Event or Medical Error" means an event where a patient or human research subject:

(a) Receives a dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin;

(b) Receives a dose to the skin or an organ or tissue other than the treatment site that exceeds by 0.5 Sv (50 rem) to an organ or tissue and 50 percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site); or

(c) An event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(20) "Medical institution" means an organization in which more than one medical discipline is practiced.

(21) "Medical use" means the intentional internal or external administration of radioactive material, or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

(22) "Ministerial change" means a change that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgment about whether those requirements should apply in the case at hand.

(23) "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than 1.11 megabecquerels (30 uCi) of either sodium iodide I-125 or I-131:

(A) Involving the wrong individual or wrong radiopharmaceutical; or

(B) When both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administered dosage and prescribed dosage exceed 1.11 megabecquerels (30 uCi).

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

(A) Involving the wrong individual, wrong radiopharmaceutical, or wrong route of administration; or

(B) When the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

(A) Involving the wrong individual or wrong treatment site; or

(B) When the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose.

(d) A teletherapy radiation dose:

(A) Involving the wrong individual, wrong mode of treatment, or wrong treatment site;

(B) When the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

(C) When the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

(D) When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

(A) Involving the wrong individual, wrong radioisotope, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

(B) Involving a sealed source that is leaking;

(C) When, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(D) When the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than 1.11 megabecquerels (30 uCi) of either sodium iodide I-125 or I-131:

(A) Involving the wrong individual, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; or

(B) When the dose to the individual exceeds 50 millisieverts (5 rem) effective dose equivalent or 500 millisieverts (50 rem) dose equivalent to any individual organ.

(24) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(25) "Nuclear Pharmacist" means an authorized nuclear pharmacist, as defined in OAR 333-116-0020, who has received additional training, pursuant to OAR 333-116-0910 and 333-116-0915 in the management and handling of radioactive drugs and is authorized by license to receive, use, transfer, and dispose of such radioactive drugs.

(26) "Output" means the exposure rate, dose rate or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(27) "Patient Intervention" means actions taken by a patient or human research subject, whether intentional or unintentional, interrupt or terminate the administration of radioactive materials or radiation.

(28) "PET" means Positron Emission Tomography.

(29) "PET Isotope Nuclear Pharmacy" means a licensed facility that compounds radiopharmaceuticals using positron emitting isotopes for use at licensed medical facilities.

(30) "PET cyclotron facility" means a facility that manufactures short-lived radioisotopes for use in compounding radiopharmaceuticals at a PET Isotope Nuclear Pharmacy.

(31) "PET Medical Facility" means a clinical nuclear medicine facility that utilizes positron-emitting isotopes for diagnostic imaging.

(32) "Pharmacist" means an individual licensed by a state or territory of the United States, The District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

(33) "Physician" means a medical doctor or doctor of osteopathy licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

(34) "Podiatric use" means the intentional external administration of the radiation from byproduct material to human beings in the practice of podiatry in accordance with a license issued by a state or territory of the

ADMINISTRATIVE RULES

United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(35) "Podiatrist" means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

(36) "Positron Emission Tomography (PET) facility" means a facility comprised of an accelerator that produces positron-emitting isotopes, a radiopharmacy that specializes in preparation of PET radiopharmaceuticals, and/or a clinic that uses PET isotopes for medical diagnostic purposes.

(37) "Preceptor" means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer. The preceptor must have previously met all of the applicable requirements and be so named on a radioactive materials license issued by the Department, the Nuclear Regulatory Commission, an Agreement State or licensing state.

(38) "Prescribed dosage" means the specified activity or range of activity of a radiopharmaceutical or radioisotope as documented:

(a) In a written directive; or

(b) Either in the diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(39) "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive;

(c) For manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

(d) For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

(40) "Pulsed dose-rate remote afterloader" means a special type of remote afterloading device that uses a single source capable of delivering dose rates in the "high dose rate" range, but is used to simulate the radiobiology of a low dose rate treatment by inserting the source for a given fraction of each hour.

(41) "Radiation Safety Officer" means an individual who:

(a) Meets the requirements in OAR 333-116-0640, 333-116-0650, 333-116-0740 and 333-116-0760; or

(b) Is identified as a Radiation Safety Officer on:

(A) A specific medical use license issued by the Nuclear Regulatory Commission or Agreement State; or

(B) A medical use permit issued by a Nuclear Regulatory Commission master material licensee.

(42) "Recordable Event" (See Medical Event and Misadministration).

(43) "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

(44) "Stereotactic Radiosurgery" means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a dose to a tissue volume.

(45) "Structured educational program" means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

(46) "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(47) "Teletherapy physicist" means the individual identified as the qualified teletherapy physicist on a Department license.

(48) "Therapeutic Dosage" means a dosage of unsealed byproduct material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

(49) "Therapeutic Dose" means a radiation dose delivered from a source containing byproduct material to a patient or human research subject for palliative or curative treatment.

(50) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

(51) "Unit dosage" means a dosage intended for medical use in a single patient or human research subject that has been obtained from a manufacturer or preparer licensed by the Department as a nuclear pharmacy.

(52) "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(53) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration

of a radiopharmaceutical or radiation, except as specified in OAR 333-116-0125(1)(e), containing the following information:

(a) For any administration of quantities greater than 1.11 megabecquerels (30 uCi) of either sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

(A) Prior to implantation: the radioisotope, number of sources, and source strengths; and

(B) After implantation but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0035

Application for License, Amendment, or Renewal

(1) An application must be signed by the management of the facility.

(2) An application for a license for medical use of radioactive material as described in OAR 333-116-0300, 333-116-0320, 333-116-0360, 333-116-0400, 333-116-0420 and 333-116-0480 and medical use of byproduct material as described in OAR 333-116-0485 must be made by filing a "Radioactive Materials License Application: Medical." A request for a license amendment or renewal may be submitted in letter format.

(3) Except for medical use of remote afterloaders, a separate license application must be filed for each medical use of radioactive material as described in OAR 333-116-0480 by filing a "Radioactive Materials License Application: Medical." A request for a license amendment or renewal may be submitted in letter format.

(4) An application for a license for medical use of radioactive material as described in OAR 333-116-0800, Licensing and Registration of Positron Emission Tomography (PET) Facilities, must be made by filing a "Radioactive Materials License Application: Medical."

(a) In addition to the information required in the "Radioactive Materials License Application: Medical," the application must also include information regarding any radiation safety aspects of the medical use of the radioactive material that is not addressed in this division, as well as any specific information necessary for:

(A) Radiation safety precautions and instructions;

(B) Training and experience of proposed users;

(C) Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

(D) Calibration, maintenance, and repair of equipment necessary for radiation safety.

(b) The applicant of licensee must also provide any other information requested by the Department in its review of the application.

NOTE: An applicant that satisfies the requirements specified in OAR 333-102-0900 may apply for a Broad Scope A specific license.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0140

Suppliers

A licensee may use for medical use only:

(1) Radioactive material manufactured, produced, labeled, prepared, compounded, packaged and distributed in accordance with a license issued pursuant to these rules or the equivalent rules of another Agreement State, a Licensing State or the U.S. Nuclear Regulatory Commission.

(2) Reagent kits, radiopharmaceuticals, and/or radiobiologics that have been manufactured, labeled, packaged and distributed in accordance with an approval issued by the U.S. Department of Health and Human Services, Food and Drug Administration.

(3) Radiopharmaceuticals compounded from a prescription in accordance with the regulations of the state Board of Pharmacy.

ADMINISTRATIVE RULES

(4) Teletherapy and brachytherapy sources manufactured and distributed in accordance with a license issued pursuant to these regulations, or the equivalent regulations of another Agreement State, a Licensing State, or the Nuclear Regulatory Commission.

(5) Sealed sources or devices non-commercially transferred from a 10 CFR, Part 35 licensee or Agreement State medical licensee.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0170

Calibration and Check of Survey Instrument

(1) A licensee must ensure that the survey instruments used to show compliance with OAR chapter 333, divisions 116 and 120 have been calibrated before first use, annually and following repair.

(2) To satisfy the requirements of section (1) of this rule the licensee must:

(a) Calibrate all required scale readings up to 10 millisieverts (1000 mrem) per hour with a radiation source;

(b) For each scale that must be calibrated, calibrate two readings separated by at least 50 percent of scale reading; and

(c) Conspicuously note on the instrument the date of calibration.

(3) To satisfy the requirements of section (2) of this rule, the licensee must:

(a) Consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 10 percent; and

(b) Consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent if a correction chart or graph is conspicuously attached to the instrument.

(4) A licensee must check each survey instrument for proper operation with the dedicated check source before each use. (5) The licensee must retain a record of each calibration required in section (1) of this rule in accordance with OAR 333-100-0057. The record must include:

(a) A description of the calibration procedure; and

(b) A description of the source used and the certified exposure rates from the source and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration and the date of calibration.

(6) To meet the requirements of sections (1), (2) and (3) of this rule, the licensee may obtain the services of individuals licensed by the Department, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State to perform calibrations of survey instruments. Records of calibrations which contain information required by section (5) of this rule must be maintained by the licensee calibration in accordance with OAR 333-100-0057.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0190

Authorization for Calibration and Reference Source

Any person authorized by OAR 333-116-0030 for medical use of radioactive material may receive, possess and use the following radioactive material for check, calibration and reference use:

(1) Sealed sources manufactured and distributed by persons specifically licensed pursuant to OAR 333-102-0290 or equivalent provisions of the U.S. Nuclear Regulatory Commission, Agreement State or Licensing State and that do not exceed 1.11GBq (30 mCi) each;

(2) Any radioactive material listed in OAR 333-116-0300, 333-116-0320 or 333-116-0360 with a half-life of 100 days or less in individual amounts not to exceed 1.11GBq (30 mCi), except Y-90 sources not to exceed 2.8 GBq (75 mCi);

(3) Any radioactive material listed in OAR 333-116-0300, 333-116-0320 or 333-116-0360 with a half life greater than 100 days in individual amounts not to exceed 7.4 MBq (200 mCi) each; and

(4) Technetium-99m in individual amounts to exceed 1.85 GBq (50 mCi).

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0300

Use of Unsealed Radioactive Material for Uptake, Dilution or Excretion Studies for Which a Written Directive Is Not Required

(1) A licensee may use any unsealed radioactive material for a diagnostic use involving measurements of uptake, dilution or excretion that:

(a) The Food and Drug Administration (FDA) has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA); and

(b) Is obtained from a manufacturer or preparer licensed under OAR 333-102-0285 or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

(c) Is prepared and compounded by an authorized nuclear pharmacist, a physician who is an authorized user, or an individual under the supervision of either as specified in OAR 333-116-0100, 333-116-0670 and 333-116-0670(3)(B); or

(d) Is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

(2) A licensee using a radiopharmaceutical specified in section (1) of this rule for a clinical procedure other than one specified in the product label or package insert instructions for use must comply with the product label or package insert instructions regarding physical form, route of administration and dosage range.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0360

Use of Unsealed Radioactive Materials or Radiopharmaceuticals for Which a Written Directive is Required

A licensee may use for therapeutic administration any unsealed radioactive material or radiopharmaceutical prepared for medical use that:

(1) Has been granted acceptance or approval by the Food and Drug Administration; and

(2) Has been prepared by an authorized nuclear pharmacist, a physician who is an authorized user on a license from the Department, other Agreement State, or the U.S. Nuclear Regulatory Commission and meets the specified requirements in OAR 333-116-0670; or

(3) Has been manufactured and distributed under a license from the Department, other Agreement State, or the U.S. Nuclear Regulatory Commission; or

(4) Obtained from and prepared by the Department or Nuclear Regulatory Commission or Agreement State licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA; or

(5) Prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0485

Other Medical Uses of Byproduct Material or Radiation from Byproduct Material

A licensee shall use byproduct or a radiation source not specifically addressed in OAR 333-116-0300 through 333-116-0480 in accordance with the manufacturer's radiation safety and operating instructions.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 4-2010, f. & cert. ef. 2-16-10

333-116-0660

Training for Uptake, Dilution or Excretion Studies

Except as provided in OAR 333-116-0740 and 333-116-0750, the licensee must require the authorized user of a radiopharmaceutical listed in OAR 333-116-0300 to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in section (3) of this rule and whose certification has been recognized by the Commission or an Agreement State; or

(2) Is an authorized user under OAR 333-116-0670 and 333-116-0680 or equivalent Nuclear Regulator Commission or Agreement State requirements; or

ADMINISTRATIVE RULES

(3) Has completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed byproduct material for uptake, dilution, and excretion studies. The training and experience must include:

(a) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(b) Work experience, under the supervision of an authorized user who meets the requirements in this rule, OAR 333-116-0670 and 333-116-0680 or Nuclear Regulatory Commission or equivalent Agreement State requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Calibrating instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(E) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(4) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this rule, OAR 333-116-0670 and 333-116-0680 or Nuclear Regulatory Commission or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in section (3) of this rule and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under OAR 333-116-0300.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0670

Training for Imaging and Localization Studies

Except as provided in OAR 333-116-0740 or 333-116-0750, the licensee shall require an authorized user of unsealed byproduct material for the uses authorized under OAR 333-116-0320 to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in section (3) of this rule and whose certification has been recognized by the Nuclear Regulatory Commission or an Agreement State; or

(2) Is an authorized user under OAR 333-116-0680 or equivalent Agreement State requirements; or

(3)(a) Has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed byproduct material for imaging and localization studies. The training and experience must include: (A) Classroom and laboratory training in the following areas:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of byproduct material for medical use; and

(v) Radiation biology; and

(B) Work experience, under the supervision of an authorized user, who meets the requirements in this rule or OAR 333-116-0680 or equivalent Nuclear Regulatory Commission or Agreement State requirements, involving:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Calibrating instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of unsealed byproduct material;

(v) Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

(vi) Administering dosages of radioactive drugs to patients or human research subjects; and

(vii) Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this rule or OAR 333-116-0680 or equivalent Nuclear Regulatory Commission or Agreement State requirements, that the individual has satisfactorily completed the requirements in subsection (3)(a) of this rule and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under this rule or OAR 333-116-0680.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0683

Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 millicuries)

Except as provided in OAR 333-116-0740, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive and the total treatment quantity is less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in section (3) of this rule and whose certification has been recognized by the Nuclear Regulatory Commission or an Agreement State; or

(2) Is an authorized user under OAR 333-116-0680 section (1) or (2) for uses listed in 333-116-0680(2)(a)(B)(vii)(I) or (II), 333-116-0687, or equivalent Agreement State requirements; or

(3)(a) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in OAR 333-116-0680 section (1) or (2), OAR 333-116-0687 or Nuclear Regulatory Commission or equivalent Agreement State requirements. A supervising authorized user who meets the requirements in OAR 333-116-0680(2) must have experience in administering dosages as specified in OAR 333-116-0680(2)(a)(B)(vii)(I) or (II). The work experience must involve:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Calibrating instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of byproduct material;

(E) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(F) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsections (3)(a) and (3)(b) of this rule and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under OAR 333-116-0360. The written attestation must be signed by a preceptor authorized user who meets the requirements in OAR 333-116-0680(1) and (2), this rule, OAR 333-116-0687, or equivalent Nuclear Regulatory Commission or Agreement State requirements. A preceptor authorized user, who meets the requirement in OAR 333-116-0680(2), must have experience in administering dosages as specified in OAR 333-116-0680(2)(a)(B)(vii)(I) or (II).

Stat. Auth.: ORS 453.635

ADMINISTRATIVE RULES

Stats. Implemented: ORS 453.605 - 453.807
Hist.: PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0687

Qualifications for Authorized User for Oral Administration When a Written Directive is Required

Except as provided in OAR 333-116-0740, the licensee must require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3)(c) of this rule and whose certification has been recognized by the Commission or an Agreement State; or

(2) Is an authorized user under OAR 333-116-0680 section (1) or (2) for uses listed in OAR 333-116-0680(2)(a)(B)(vii)(II), or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

(3)(a) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

- (A) Radiation physics and instrumentation;
- (B) Radiation protection;
- (C) Mathematics pertaining to the use and measurement of radioactivity;

- (D) Chemistry of byproduct material for medical use; and
- (E) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in OAR 333-116-0680 section (1) or (2), or equivalent Nuclear Regulatory Commission or Agreement State requirements. A supervising authorized user, who meets the requirements in OAR 333-116-0680(2), must have experience in administering dosages as specified in OAR 333-116-0680(2)(a)(B)(vii)(II). The work experience must involve:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Calibrating instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of byproduct material;

(E) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(F) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsections (3)(a) and (3)(b) of this rule, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under OAR 333-116-0360. The written attestation must be signed by a preceptor authorized user who meets the requirements in OAR 333-116-0680 section (1) or (2), or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in OAR 333-116-0680(2), must have experience in administering dosages as specified in OAR 333-116-0680(2)(a)(B)(vii)(II).

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0690

Training for Therapeutic Use of Brachytherapy Source

Except as provided in OAR 333-116-0740, the licensee must require the authorized user using manual brachytherapy sources specified in OAR 333-116-0420 for therapy to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in section (2) of this rule and whose certification has been recognized by the Nuclear Regulatory Commission or an Agreement State; or

(2)(a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

(A) 200 hours of classroom and laboratory training in the following areas:

- (i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity; and

(iv) Radiation biology; and

(B) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this rule or equivalent Nuclear Regulatory Commission or Agreement State requirements at a medical institution, involving:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Checking survey meters for proper operation;

(iii) Preparing, implanting, and removing brachytherapy sources;

(iv) Maintaining running inventories of material on hand;

(v) Using administrative controls to prevent a medical event involving the use of byproduct material; and

(vi) Using emergency procedures to control byproduct material; and

(b) Has obtained three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this rule or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (2)(a)(B) of this rule; and

(c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this rule or equivalent Nuclear Regulatory Commission or Agreement State requirements, that the individual has satisfactorily completed the requirements in subsections (2)(a) and (2)(b) of this rule and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under OAR 333-116-0420.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0700

Training for Ophthalmic Use of Strontium-90

Except as provided in OAR 333-116-0740, the licensee must require the authorized user using only strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user under OAR 333-116-0690 or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

(2)(a) Has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training must include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve:

(A) Examination of each individual to be treated;

(B) Calculation of the dose to be administered;

(C) Administration of the dose;

(D) Follow up and review of each individual's case history; and

(E) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in OAR 333-116-0690, this rule, or equivalent Nuclear Regulatory Commission or Agreement State requirements, that the individual has satisfactorily completed the requirements in sections (1) and (2) of this rule and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

ADMINISTRATIVE RULES

333-116-0810

Supervision of PET Facilities

(1) Management must ensure that there is a qualified Radiation Safety Officer (RSO) who must oversee the radiation safety aspects of the PET facility and be responsible for radiation safety of the accelerator facility, pharmacy, and PET clinic.

(a) In the case of separate licenses for different components in a PET facility, there must be a cooperative consortium of management and radiation safety personnel that acts as directors for the facility.

(b) Management, whether singular or in consortium, must write a statement of authority and responsibility for all staff handling or controlling the production and use of PET isotopes.

(2) The RSO must be assisted by personnel specifically trained and designated for the area of concern, whether accelerator operation, pharmaceutical production, or PET clinic.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-116-0905

Training for Authorized Medical Physicist

Except as provided in OAR 333-116-0740, the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State and who meets the requirements in subsection (2)(b) and section (3) of this rule. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have two years of full-time practical training and/or supervised experience in medical physics:

(A) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Commission or an Agreement State; or

(B) In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to one million electron volts) and brachytherapy services under the direction of physicists who meet the requirements for authorized users in OAR 333-116-0720, 333-116-0690, 333-116-0720 or 333-116-0740; and

(c) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2)(a) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to one million electron volts) and brachytherapy services and must include:

(A) Performing sealed source leak tests and inventories;

(B) Performing decay corrections;

(C) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(D) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in subsections (1)(a) and (1)(b) and section (3) of this rule, or subsection (2)(a) and section (3) of this rule, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in this rule, 10 CFR part 35 or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(3) Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0020

Definitions

As used in this division, the following definitions apply:

(1) "A1" means the maximum activity of special form radioactive material permitted in a Type A package. This value is either listed in Appendix A to 10 CFR Part 71, Table A-1, or may be derived in accordance with the procedures prescribed in Appendix A to 10 CFR Part 71.

(2) "A2" means the maximum activity of radioactive material, other than special form material, LSA, and SCO material, permitted in a Type A package. This value is either listed in Appendix A to 10 CFR Part 71, Table A-1, or may be derived in accordance with the procedures prescribed in Appendix A to 10 CFR Part 71.

(3) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(4) "Closed transport vehicle" means a transport vehicle equipped with a securely attached exterior enclosure that during normal transportation restricts the access of unauthorized persons to the cargo space containing the radioactive material. The enclosure may be either temporary or permanent but shall limit access from top, sides, and ends. In the case of packaged materials, it may be of the "see-through" type.

(5) "Consignment" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

(6) "Conveyance" means for transport by public highway or rail any transport vehicle or large freight container; or for transport by water any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; or for transport by aircraft.

(7) "Criticality Safety Index (CSI)" means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of criticality safety index is described in 10 CFR 71.22, 71.23, and 71.59.

(8) "Deuterium" means for the purposes of 10 CFR Parts 71.15 and 71.22, deuterium and any deuterium compounds, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

(9) "Exclusive use" means the sole use of a conveyance by a single consignor and for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

NOTE: The term "exclusive use" is used interchangeably with the terms "sole use" or "full load" in other regulations, such as Title 49 of the Code of Federal Regulations.

(10) "Fissile material" means the radionuclides plutonium-239, plutonium-241, uranium-233, and uranium-235, or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only, are not included in this definition. Certain exclusions from fissile material controls are provided in 10 CFR 71.15. NOTE: Department jurisdiction is limited to special nuclear material in quantities not sufficient to form a critical mass as defined in division 100 of this chapter.

(11) "Fissile material package" means a fissile material packaging together with its fissile material contents.

(12) "Graphite" means for the purposes of 10 CFR 71.15 and 71.22 and graphite with a boron equivalent content less than five parts per million and density greater than 1.5 grams per cubic centimeter.

ADMINISTRATIVE RULES

(13) "Licensed material" means radioactive or special nuclear material received, possessed, used, or transferred under a general or specific license issued by the Department.

NOTE: The definition of licensed material in this division is used in the same way as in 49 CFR 173.403.

(14) "Low specific activity (LSA) material" means radioactive material with limited specific activity that is nonfissile or is excepted under 10 CFR 71.15, and that satisfies the descriptions and limits set forth below. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(a) LSA-I:

(A) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) that are not intended to be processed for the use of these radionuclides;

(B) Solid unirradiated natural uranium, depleted uranium, natural thorium, or their solid or liquid compounds or mixtures;

(C) Radioactive material, other than fissile material, for which the A2 value is unlimited; or

(D) Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with 10 CFR 71, Appendix A.

(b) LSA-II:

(A) Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

(B) Material in which the radioactive material is distributed throughout, and the average specific activity does not exceed 10-4 A2/g for solids and gases, and 10-5 A2/g for liquids.

(c) LSA-III. Solids (e.g., consolidated wastes, activated materials) in which:

(A) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(B) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed 1E-1 A2; and

(C) The estimated average specific activity of the solid does not exceed 2E-3 A2 per gram.

(15) "Low toxicity alpha emitters" means natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

(16) "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(17) "Normal form radioactive material" means radioactive material that has not been demonstrated to qualify as "special form radioactive material".

(18) "Package" means the packaging together with its radioactive contents as presented for transport.

(a) Fissile material package or Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package means a fissile material packaging together with its fissile material contents.

(b) Type A package means a Type A packaging together with its radioactive contents. A Type A package is defined and must comply with the DOT regulations in 49 CFR part 173.

(c) Type B package means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lbs/in²) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in 10 CFR 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in 10 CFR 71.19.

(19) "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 10 CFR Part 71.4. It may consist of one or more receptacles, absorbent materials, spacing

structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(20) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189 and Parts 390-397.

(21) "Regulations of the U.S. Nuclear Regulatory Commission" means the regulations in 10 CFR 71.

(22) "Special form radioactive material" means radioactive material that satisfies the following conditions:

(a) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one dimension not less than five millimeters (0.2 inch.); and

(c) It satisfies the requirements of 10 CFR Part 71.75. A special form encapsulation designed in accordance with the requirements of 10 CFR Part 71.4 in effect on June 30, 1983 (see 10 CFR Part 71, revised as of January 1, 1983), and constructed before July 1, 1985 and a special form encapsulation designed in accordance with the requirements of 10 CFR Part 71.4 in effect on March 31, 1996 (see 10 CFR Part 71, revised as of January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

(23) "Specific activity" of a radionuclide means the radioactivity of a radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(24) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(25) "Surface contaminated object" (SCO) means a solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. SCO must be in one of two groups with surface activity not exceeding the following limits:

(a) SCO-I: a solid object on which:

(A) The non-fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4 Bq/cm² (10⁻⁴ microcurie/cm²) for beta, gamma and low toxicity alpha emitters, or 0.4 Bq/cm² (10⁻⁵ microcurie/cm²) for all other alpha emitters;

(B) The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4x10⁴ Bq/cm² (1.0 microcurie/cm²) for beta, gamma and low toxicity alpha emitters, or 4x10³ Bq/cm² (0.1 microcurie/cm²) for all other alpha emitters; and

(C) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 4x10⁴ Bq/cm² (1 microcurie/cm²) for beta, gamma and low toxicity alpha emitters, or 4x10³ Bq/cm² (0.1 microcurie/cm²) for all other alpha emitters.

(b) SCO-II: a solid object on which the limits for SCO-I are exceeded and on which:

(A) The nonfixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 400 Bq/cm² (10⁻² microcurie/cm²) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm² (10⁻³ microcurie/cm²) for all other alpha emitters;

(B) The fixed contamination on the accessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8 x 10⁵ Bq/cm² (20 microcuries/cm²) for beta and gamma and low toxicity alpha emitters, or 8 x 10⁴ Bq/cm² (2 microcuries/cm²) for all other alpha emitters; and

(C) The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm² (or the area of the surface if less than 300 cm²) does not exceed 8 x 10⁵ Bq/cm² (20 microcuries/cm²) for beta and gamma and low toxicity alpha emitters, or 8 x 10⁴ Bq/cm² (2 microcuries/cm²) for all other alpha emitters.

(26) "Transport index (TI)" means the dimensionless number, rounded up to the next tenth) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one meter (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at one meter (3.3 ft)).

(27) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A1 for special form

ADMINISTRATIVE RULES

radioactive material or A2 for normal form radioactive material, where A1 and A2 are given in 10 CFR Part 71 Appendix A or may be determined by procedures described in 10 CFR Part 71 Appendix A.

(28) "Type A package" means a packaging that, together with its radioactive contents limited to A1 or A2 as appropriate, meets the requirements of 49 CFR 173.410 and 173.412 and is designed to retain the integrity of containment and shielding under normal conditions of transport as demonstrated by the tests set forth in 173.465 or 173.466, as appropriate.

(29) "Type B package" means a Type B packaging together with its radioactive contents.

NOTE: A type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to 49 CFR Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in OAR 333-118-0035.

(30) "Type B packaging" means a packaging designed to retain the integrity of containment and shielding when subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(31) "Type B quantity" means a quantity of radioactive material greater than Type A quantity.

NOTE: 10 CFR Part 71 Appendix A referred to or incorporated by reference in this rule is attached to this division or available from the Department.

(32) "Unirradiated uranium" means uranium containing not more than 2E+3 Bq of plutonium per gram of uranium-235, not more than 9E+6 Bq of fission products per gram of uranium-235, and not more than 5E-3 g of uranium-236 per gram of uranium-235.

(33) "Uranium — natural, depleted, enriched":

(a) "Natural uranium" means uranium isotopes with the naturally occurring distribution of uranium, isotopes (which is approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(b) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(c) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0050

Transportation of Licensed Material

(1) Each licensee who transports licensed material outside the site of usage, as specified in the Department license, or where transport is on public highways, or who delivers licensed material to a carrier for transport shall:

(a) Comply with the applicable requirements, appropriate to the mode of transport, of the regulations of the U.S. Department of Transportation in 49 CFR Parts 107, 171-180, and 390-397, appropriate to the mode of transportation. The licensee shall particularly note the regulations of U.S. Department of Transportation in the following areas:

(A) Packaging — 49 CFR Part 173: Subparts A, B and I.

(B) Marking and labeling — 49 CFR Part 172: Subpart D, 172.400 through 172.407, and 172.436 through 172.441 of Subpart E.

(C) Placarding — 49 CFR Part 172: Subpart F, especially 172.500 through 172.519, and 172.556, and Appendices B and C.

(D) Accident reporting — 49 CFR Part 171: 171.15 and 171.16.

(E) Shipping papers and emergency information — 49 CFR Part 172: Subparts C and G.

(F) Hazardous material employee training — 49 CFR Part 172: Subpart H.

(G) Security plans — 49 CFR Part 172: Subpart I

(H) Hazardous material shipper/carrier registration — 49 CFR Part 107: Subpart G.

(b) The licensee also shall comply with applicable U.S. Department of Transportation regulations pertaining to the following modes of transportation:

(A) Rail — 49 CFR Part 174: Subparts A through D and K.

(B) Air — 49 CFR Part 175.

(C) Vessel — 49 CFR Part 176: Subparts A through F and M.

(D) Public highway — 49 CFR Part 177 and Parts 390 through 397.

(c) Assure that any special instructions needed to safely open the package are sent to or have been made available to the consignee.

(2) If, for any reason, the regulations of the U.S. Department of Transportation are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of 49 CFR Parts 170 through 189 appropriate to the mode of transport and to the same extent as if the shipment were subject to the regulations.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0051

Deliberate Misconduct

(1) This rule applies to any:

(a) Licensee;

(b) Certificate holder;

(c) Quality assurance program approval holder;

(d) Applicant for a license, certificate, or quality assurance program approval;

(e) Contractor (including a supplier or consultant) or subcontractor, to any person identified in subsection (1)(d) of this section; or

(f) Employees of any person identified in subsections (1)(a) through (e) of this rule.

(2) A person identified in subsections (1)(a) through (f) of this rule who knowingly provides to an entity any components, materials, or other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's, or applicant's activities subject to this rule may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate holder, quality assurance program approval holder, or any applicant to be in violation of any rule, regulation, or order; or any term, condition or limitation of any license, certificate, or approval issued by the Department; or

(b) Submit to the Department, a licensee, a certificate holder, quality assurance program approval holder, an applicant for a license, certificate or quality assurance program approval, or a licensee's, applicant's, certificate holder's, or quality assurance program approval holder's contractor or subcontractor, information that the person knows to be incomplete or inaccurate.

(3) A person who violates section (2) of this rule may be subject to enforcement action by the Department.

(4) For the purposes of section (2) of this rule, deliberate misconduct means an intentional act or omission that the person knows:

(a) Would cause a licensee, certificate holder, quality assurance program approval holder, or applicant for a license, certificate, or quality assurance program approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or certificate issued by the Department; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, quality assurance program approval holder, applicant, or the contractor or subcontractor of any of them.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 4-2010, f. & cert. ef. 2-16-10

333-118-0052

Exemption for Low Level Materials

A licensee is exempt from all the requirements of division 118 with respect to shipment or carriage of the following low-level materials:

(1) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in 10 CFR Parts 71, Appendix A, Table A-2.

(2) Materials for which the activity concentration is not greater than the activity concentration values specified in 10 CFR Parts 71, Appendix A, Table A-2, or for which the consignment activity is not greater than the limit for an exempt consignment found in 10 CFR Parts 71, Appendix A, Table A-2.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 4-2010, f. & cert. ef. 2-16-10

333-118-0053

Exemption from Classification as Fissile Material

Fissile material meeting the requirements of at least one section of this rule are exempt from classification as fissile material and from the

ADMINISTRATIVE RULES

fissile material package standards of 10 CFR Parts 71.55 and 71.59, but are subject to all other requirements of this rule, except as noted.

(1) Individual package containing two grams or less fissile material.

(2) Individual or bulk packaging containing 15 grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but must not be included in determining the required mass for solid nonfissile material.

(3) Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:

(a) There is at least 2000 grams of solid nonfissile material for every gram of fissile material; and

(b) There is no more than 180 grams of fissile material distributed within 360 kg of contiguous nonfissile material.

(4) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but must not be included in determining the required mass of solid nonfissile material.

(5) Uranium enriched in uranium-235 to a maximum of one percent by weight, and with total plutonium and uranium-233 content of up to one percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than five percent of the uranium mass.

(6) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of two percent by mass, with a total plutonium and uranium-233 content not exceeding 0.002 percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of two. The material must be contained in at least a DOT Type A package.

(7) Packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: PH 4-2010, f. & cert. ef. 2-16-10

333-118-0070

General License: Nuclear Regulatory Commission-Approved Packages

(1) A general license is hereby issued to any licensee of the Department to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, Certificate of Compliance (CoC), or other approval has been issued by the U.S. Nuclear Regulatory Commission.

(2) This general license applies only to a licensee who:

(a) Has a quality assurance program approved by the Nuclear Regulatory Commission as satisfying the provisions of 10 CFR Part 71, Subpart H and applicable requirements in OAR 333-118-0200;

(b) Has a copy of the specific license, certificate of compliance, or other approval by the Nuclear Regulatory Commission of the package and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment;

(c) Complies with the terms and conditions of the license, certificate, or other approval by the Nuclear Regulatory Commission, as applicable, and the applicable requirements of division 118; and

(d) Prior to the licensee's first use of the package, has registered with the U.S. Nuclear Regulatory Commission outlined in 10 CFR Part 71.17.

(3) The general license in section (1) of this rule applies only when the package approval authorizes use of the package under this general license.

(4) For previously approved Type B packages which are not designated as either B(U) or B(M) in the Certificate of Compliance, this general license is subject to additional restrictions in OAR 333-118-0080. For a Type B or fissile material package, the design of which was approved by Nuclear Regulatory Commission before April 1, 1996, the general license is subject to additional restrictions of OAR 333-118-0080.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0110

General License: Fissile Material

A general license is issued to any licensee of the Department to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with 10 CFR Part 71.22.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0120

General License: Plutonium Beryllium Special Form Material

A general license is issued to any licensee of the Department to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with 10 CFR Part 71.23.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0125

External Radiation Standards for All Packages

Each package of radioactive materials offered for transportation must be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 2 mSv/h (200 mrem/h) at any point on the external surface of the package, and the transport index does not exceed 10. A package that exceeds the radiation level must be transported by exclusive use shipment only, and the radiation levels for such shipment must be in accordance with 10 CFR Part 71.47.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: PH 4-2010, f. & cert. ef. 2-16-10

333-118-0140

Preliminary Determinations

Prior to the first use of any packaging for the shipment of radioactive material:

(1) The licensee shall show that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

(2) Where the maximum normal operating pressure will exceed 35 kilopascals (five pounds per square inch (psi)) gauge, the licensee shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure to show that the system will maintain its structural integrity at that pressure;

(3) The licensee shall determine that the packaging meets 10 CFR Part 71.85(b); and

(4) The licensee shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number as assigned by the U.S. Nuclear Regulatory Commission.

Stat. Auth.: ORS 453.635
Stats. Implemented: ORS 453.605 - 453.807
Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0150

Routine Determinations

Prior to each shipment of licensed material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this division and of the license. The licensee shall determine that:

(1) The package is proper for the contents to be shipped.

(2) The package is in unimpaired physical condition except superficial defects such as marks or dents.

(3) Each closure device of the packaging, including any required gasket, is properly installed and secured and free of defects.

(4) Any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid.

(5) Any pressure relief device is operable and set in accordance with written procedures.

(6) The package has been loaded and closed in accordance with written procedures.

(7) Any structural part of the package which could be used to lift or tie down the package during transport is rendered inoperable for that purpose unless it satisfies design requirements specified in 10 CFR 71.45.

(8) For fissile material, any moderator or neutron absorber, if required, is present and in proper condition.

ADMINISTRATIVE RULES

(9) The level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable and within the limits specified in Department of Transportation regulations outlined in 49 CFR Part 173.443.

(a) External radiation levels around the package and around the vehicle, if applicable, will not exceed the limits specified in 10 CFR Part 71.47 at anytime during transportation; and

(b) Accessible package surface temperatures will not exceed the limits specified in 10 CFR Part 71.43(g) at any time during transportation.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0160

Air Transport of Plutonium

(1) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this division or included indirectly by citation of the U.S. Department of Transportation regulations 49 CFR Chapter I, as may be applicable, the licensee shall assure that plutonium in any form is not transported by air, or delivered to a carrier for air transport, unless:

(a) The plutonium is contained in a medical device designed for individual human application;

(b) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in 10 CFR Part 71, Appendix A, Table A-2 and in which the radioactivity is essentially uniformly distributed;

(c) The plutonium is shipped in a single package containing no more than an A2 quantity of plutonium in any isotope or form and is shipped in accordance with OAR 333-118-0050 and 10 CFR Part 71.5; or

(d) The plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the Nuclear Regulatory Commission Part.

(2) Nothing in OAR 333-118-0160(1)(a) is to be interpreted as removing or diminishing the requirements in 10 CFR Part 73.24.

(3) For a shipment of plutonium by air, which is subject to OAR 333-118-0160(1)(d), the licensee shall, through special arrangement with the carrier, require compliance with 49 CFR 175.704, U.S. Department of Transportation regulations applicable to the air transport of plutonium.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0162

Opening Instructions

Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with 10 CFR 20.1906(e).

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 4-2010, f. & cert. ef. 2-16-10

333-118-0190

Advance Notification of Transport of Nuclear Waste

(1) Each licensee shall provide advance notification to the Governor of the State of Oregon or designee of the shipment of licensed material through or across the boundary of the state before the transport or delivery to a carrier for transport of licensed material outside the confines of the licensee's plant or other place of storage.

NOTE: A list of the mailing addresses of the governors and governors' designees is available upon request from the Director, Office of State, Local, and Indian Tribe Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Nuclear waste transports shall be transported as specified in 10 CFR Part 71.97.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-118-0200

Quality Assurance Requirements

(1) Each licensee shall establish and maintain a Quality Assurance program specified by the Nuclear Regulatory Commission, 10 CFR, Subpart H, Parts 71.101 through 71.137.

(2) Licensees shall provide the Department their Quality Assurance program or plans for review and approval by the Department.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10

333-119-0010

Definitions

(1) "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a condition or benefit of membership or access.

(2) "Department" means the Department of Human Services of the State of Oregon.

(3) "Employee" means any individual, including a minor whether lawfully or unlawfully employed, who engages to furnish services for remuneration, financial or otherwise, subject to the direction and control of an employer and includes any individual who is required to have workers' compensation coverage.

(4) "EPA" means the U.S. Environmental Protection Agency.

(5) "FDA" means the U.S. Food and Drug Administration.

(6) "Formal Training" means a course of instruction reviewed and approved by the Department and which is conducted or presented under formal classroom conditions by a qualified expert possessing adequate knowledge and experience to offer a curriculum, associated training, and certification testing pertaining to and associated with the correct use of tanning equipment. Operator training shall cover ultraviolet radiation and effects on the skin, photosensitivity, FDA and State of Oregon regulations, eye protection, and equipment maintenance.

(7) "Handrails" means a suitable physical aid that will help to maintain proper exposure distance.

(8) "Individual" means any human being.

(9) "Minor" means any individual under the age of 18.

(10) "Operator" means the person who is an employee (defined by the Oregon Occupational Safety and Health Division, Oregon Administrative Rule 437-003-0011(2)) or contractor of the tanning facility that is responsible for:

(a) Determining customer's skin type;

(b) Determining the suitability for use of a tanning device;

(c) Providing information regarding the dangers of ultraviolet radiation exposure including photoallergic reactions and photosensitizing agents;

(d) Assuring that all required forms are understood and properly signed by the customer;

(e) Maintaining required exposure records;

(f) Recognizing and reporting injuries or alleged injuries to the registrant;

(g) Determining the customers' exposure schedule;

(h) Setting timers which control the duration of exposure; and

(i) Instructing the customer in the proper use of protective eyewear.

(11) "Other Compensation" means the payment or exchange of goods, services or anything of value for use of the tanning device or devices.

(12) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of these entities.

(13) "Phototherapy Device" means equipment that emits Ultraviolet radiation used by a health care professional in the treatment of disease or illness.

(14) "Program" means the Radiation Protection Services section of the Public Health Division.

(15) "Protective Eyewear" means suitable eyewear that protects the eye from Ultraviolet radiation and allows adequate vision.

(16) "Registrant" means a tanning facility registered with the Department as required by provisions of this division.

(17) "Registration" means registration with the Department in accordance with provisions of this division.

(18) "Safe Level" means not more than 50 colonies of microorganisms per four square inches of equipment surface.

(19) "Sanitize" means the effective bactericidal treatment of surfaces of equipment and devices by an EPA or FDA registered product that provides a sufficient concentration of chemicals, and enough time to reduce the

ADMINISTRATIVE RULES

bacterial count, including pathogens, to a safe level. Chemical germicides that are registered with EPA as hospital disinfectants when used at recommended dilutions and directions may be approved for sanitizing of tanning devices.

(20) "Tanning Device" means any equipment used for tanning of the skin, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers including, but not limited to, a sunlamp, Ultraviolet Lamp, tanning booth, facial unit, UVA wand, or tanning bed. "Tanning device" also means any accompanying equipment, including, but not limited to, protective eyewear, timers, ballasts, starters, lamps, reflectors, cooling fans, acrylics, comfort pillows and handrails.

(21) "Tanning Facility" means any location, place, area, structure, or business that provides persons access to any tanning device.

(22) "Timers" means a device provided to terminate the exposure at a preset time interval.

(23) "Ultraviolet Radiation" means radiation that has a wavelength between two hundred nanometers and four hundred nanometers.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.925 - 431.955

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-119-0020

Registration

(1) Prior to the operation of any tanning device used by the public for a fee or other compensation, the owner or operator shall file an application with the Department and pay applicable fee(s) in the amount and in the manner specified in OAR 333-103-0025 to register each tanning device.

(2) If the owner or operator owns or operates more than one such tanning facility, the owner or operator shall file a separate application for each such facility owned or operated.

(3) Registration application shall be made on forms furnished by the Department.

(4) A validation certificate or acknowledgement of validation will be issued by the Department.

(5) The certificate issued by the Department shall be effective for one year beginning January 1 through December 31.

(6) The certificate shall be displayed in a conspicuous place on the premises of the tanning facility.

(7) The Department will provide an identification number that will be affixed by a Department inspector to each tanning device during the initial or follow-up facility inspection:

(a) Identification numbers shall not be removed without written permission of the Department; and

(b) Identification numbers shall not be defaced.

(8) The registrant shall notify the Department in writing before making any change that would render the information contained in the application for registration or the validation of registration no longer accurate.

(9) No registration may be transferred from one person to another person, from one tanning facility to another tanning facility, or from one tanning device to another tanning device.

(10) In the event of a change in ownership, the new owner will be required to apply for a registration of the tanning device within 30 days after taking possession of the property.

(11) Tanning facilities already in existence at the time of the effective date of this rule may continue to operate. Such facility shall be given priority in the inspection process by the Department. However, should those tanning facilities fail to meet the standards, they may be prohibited from continuing to operate until such time as they have met those standards through evaluation by the Department's inspectors or through a hearing held by the Department.

(12) Failure to properly register a tanning device is subject to the imposition of a civil penalty per ORS 431.950 and ORS 431.262..

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.925 - 431.955

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-119-0080

Training of Personnel

(1) The registrant shall maintain documentation to verify that all tanning device operators are adequately trained in the following:

(a) The rules of this division;

(b) Procedures for correct operation of the tanning facility and tanning devices;

(c) Recognition of injury or overexposure to Ultraviolet radiation;

(d) The tanning device manufacturer's procedures for operation and maintenance of the tanning devices;

(e) The determination of skin type of customers and appropriate determination of duration of exposure to registered tanning devices;

(f) Emergency procedures to be followed in case of injury; and

(g) Potential photosensitizing foods, cosmetics, and medications.

(2) The registrant shall ensure that tanning devices are operated only while an adequately trained operator is present at the tanning facility.

(3) All currently registered tanning facilities in the State of Oregon must have completed the following staff training requirements within one year of registering with the Department:

(a) At least one owner, manager, or operator from each tanning facility with four or less tanning devices, shall successfully complete one of the vendor-provided formal training courses authorized by the Department.

(b) At least two operators from each tanning facility with five or more tanning devices shall successfully complete one of the vendor provided formal training courses authorized by the Department.

(c) Training of other full or part-time operators shall be by means of a Department-authorized and vendor-provided training course, or by materials received by an owner or primary operator from a Department-authorized and vendor-provided training course, or by a Department-authorized correspondence course.

(4) Staff training shall be documented by the facility owner or operator and include date and time with subjects covered in the training session for all operators.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.930

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-119-0090

Protection of Consumers

The registrant shall establish and use a procedure manual that will aid in the protection of the customer to excessive or unnecessary exposure to Ultraviolet Light. This manual shall include, but not be limited to, the following instructions:

(1) Only one customer may occupy the tanning room.

(a) In the case of a customer using a tanning device who may need the aid or assistance from another person, that individual must also be provided with and wear protective eyewear.

(2) No customer under the age of 18, without written parental consent, shall be allowed to use a tanning device. Written consent must be provided on the premises in the presence of an owner/operator, with the parent's understanding of the potential risks involved in overexposure.

(3) A sign shall be posted in conspicuous view at or near the reception area with the following text:

"PERSONS UNDER AGE 18 ARE REQUIRED TO HAVE PARENT OR LEGAL GUARDIAN SIGN AUTHORIZATION TO TAN, IN THE PRESENCE OF A TANNING FACILITY OPERATOR. OAR 333-119-0090(2)."

(4) Each person using a tanning device shall be instructed by the operator on the maximum exposure time and proper exposure distance, as recommended by the manufacturer of the device. The operator shall also instruct the customer as to the location and proper operation of the tanning device's emergency shut off switch.

(5) Infants and minors are not permitted to be in the tanning device room during exposure by parents or guardians.

(6) Tanning operators shall limit exposure time to the exposure time recommendation provided by the device manufacturer on the tanning device or in the device operating manual. The maximum exposure time recommended by the manufacturer of the device shall not be exceeded in any 24-hour period.

(7) Tanning facilities shall post the following signs visible to the customer:

(a) "In Case Of An Emergency, Dial 911";

(b) "Oregon Radiation Protection Services at (971) 673-0490".

(8) Tanning operators shall maintain a list of the common photosensitizing agents as provided by the Public Health Division, FDA, or other appropriate authorities, available for review by customers.

(9) Tanning facilities are prohibited from controlling the use of tanning devices solely with token timer systems.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.930

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

ADMINISTRATIVE RULES

333-119-0100

Equipment

(1) The registrant shall use only tanning devices manufactured in accordance with the specifications set forth in 21 CFR Part 1040, Section 1040.20, "Sunlamp Products and Ultraviolet Lamps Intended for Use in Sunlamp Products."

(2) Each sunlamp product or Ultraviolet Lamp used in these facilities shall not emit measurable Ultraviolet C radiation.

(3) Each Ultraviolet Lamp contained within the sunlamp product shall be shielded so as to not come into contact with the customer. A transparent acrylic cover shall be used for this purpose.

(4) Tanning booths in which the customer is in a standing position shall be provided with a handrail for the customer to hold onto during operation of the booth.

(a) The construction of the booth shall be such that it will have the strength to withstand the stress of use and the impact of a falling person.

(b) Entry to stand-up booths shall be of rigid construction with doors which are non-latching and open outwardly.

(5) Each tanning device shall have, clearly marked, the appropriate position the customer is to assume prior to operation.

(6) Each tanning device shall prominently display the following label or equivalent warning/information label:

DANGER — ULTRAVIOLET RADIATION.
FOLLOW INSTRUCTIONS CAREFULLY
DO NOT ENTER WITHOUT PROTECTIVE EYEWEAR

(7) Adequate means shall be provided to enable a customer to summon assistance from the exposure position.

(8) All persons hired for servicing and repair of tanning devices shall be a Department licensed service technician or State of Oregon licensed electrician.

(9) Original Equipment Manufacturer (OEM) replacement parts (or equivalent) shall be used, if available, to prevent UL/ETL delisting of tanning devices. All local, State of Oregon, and National Electrical Codes must be observed during service and repair actions.

(10) Defective or burned out tanning lamps or bulbs shall be replaced with a type intended for use in the device and shall be of the same Ultraviolet range (A or B) as the manufacturer specifies, and shall be the original lamp type as specified by the manufacturer, or certified as an equivalent lamp per 21 CFR 1040.20.

(11) If equivalent lamps are used instead of the Original Equipment Manufacturer (OEM) required lamps, a copy of the equivalency certification, provided by the lamp supplier, shall be maintained on file for review by Department inspectors.

(12) Defective or burned out tanning lamps and tanning lamps which have been operated in a tanning device for the manufacturer's maximum rated lamp hour life, shall be disposed of in a safe and proper manner to prevent unauthorized and unsafe use as lighting devices. Used tanning lamps are prohibited from being resold for any purpose.

(13) If the Ultraviolet tanning device is not in an individual cubicle, then a suitable screen, curtain, or other shield shall be provided, maintained, and used to prevent unnecessary exposure to Ultraviolet radiation of persons not using the device.

(14) The facility operator shall ensure that customers do not exceed the exposure time indicated by the manufacturer.

(15) Each tanning device shall have a timer that complies with the requirements of 21 CFR Part 1040, Section 1040.20 (c)(2).

(a) The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.

(b) Tanning device timers shall be controlled by a properly trained operator. A remote timer control system shall be used for this purpose.

(c) Each tanning device shall be equipped with an emergency shut-off mechanism to allow manual termination of the UV exposure by the customer, as required by 21 CFR 1040.20(c)(3).

(16) Each timer must be functional and accurate to within ± 10 percent.

(17) The registrant shall ensure that the timer is checked annually for accuracy.

(18) All tanning devices shall be maintained to the minimum requirements of the manufacturer.

(19) Each tanning device shall be equipped with an hour meter to accurately determine lamp hour use and recording of maintenance service on each device.

(20) Commencing January 1, 2011, tanning devices intended for commercial use that were manufactured prior to September 8, 1986 shall be prohibited from being operated, sold, leased, transferred and lent within the State of Oregon.

Stat. Auth.: ORS 431.925 - 431.955

Stats. Implemented: ORS 431.655, 431.930 & 431.945

Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-120-0015

Definitions

(1) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) "Activity" is the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the becquerel (Bq) and the Curie (Ci). The becquerel is equal to one disintegration per second (dps) and the Curie is equal to 3.7×10^{10} dps.

(3) "Adult" means an individual 18 or more years of age.

(4) "Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(5) "Airborne radioactivity area" means a room, enclosure, or area in which the airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(a) In excess of the derived air concentrations (DACs) specified in 10 CFR 20 Appendix B; or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours present in a week, and intake of 0.6 percent of the annual limit of intake (ALI) or 12 DAC hours.

(6) "Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element. (7) "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this division as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the use of licensed materials in the public interest.

(8) "Annual limit on intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B.

(9) "Assigned protection factor (APF)" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(10) "Atmosphere supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(11) "Background radiation" means radiation from cosmic sources; naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive or special nuclear materials regulated by the Department.

(12) "Bioassay" (radiobioassay) means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(13) "Class" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than 10 days; for Class W, Weeks, from 10 to 100 days; and for Class Y, Years, of greater than 100 days. For purposes of these regulations, "lung class" and "inhalation class" are equivalent terms.

ADMINISTRATIVE RULES

(14) "Collective dose" is the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(15) "Committed dose equivalent" (HT,50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(16) "Committed effective dose equivalent" (HE,50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues (HE,50) = The Sum of WTHT,50.

(17) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason.

(18) Constraint (dose constraint) means a value above which specified licensee actions are required.

(19) "Critical Group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(20) "Declared pregnant woman" means a woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(21) "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) Release of the property for unrestricted use and termination of the license; or

(b) Release of the property under restricted conditions and termination of the license.

(22) "Deep-dose equivalent" (Hd), which applies to external whole-body exposure, is the dose equivalent at a tissue depth of one cm (1000 mg/cm²).

(23) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(24) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of 10 CFR 20 Appendix B.

(25) "Derived air concentration-hour" (DAC-hour) means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(26) "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(27) "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(28) "Dose or radiation dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent, as defined in this rule.

(29) "Dose equivalent" (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(30) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(31) "Effective Dose Equivalent" (HE) is the sum of the products of the dose equivalent to the organ or tissue (HT) and the weighting factor (WT) applicable to each of the body organs or tissues that are irradiated (HE = The Sum of WTHT).

(32) "Embryo/fetus" means the developing human organism from conception until the time of birth.

(33) "Entrance or access point" means any location through which an individual could gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(34) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(35) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(36) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(37) "Eye dose equivalent" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²). (See "lens dose equivalent").

(38) "Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(39) "Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(40) "Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(41) "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(42) "Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(43) "High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(44) "Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(45) "Individual" means any human being.

(46) "Individual monitoring" means:

(a) The assessment of dose equivalent by the use of devices designed to be worn by an individual;

(b) The assessment of committed effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e. DAC-hours; or

(c) The assessment of dose equivalent by the use of survey data.

(47) "Individual monitoring devices" (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(48) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(49) "Lens dose equivalent (LDE)" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).

(50) "Loose fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

(51) "Member of the public" means any individual except when that individual is receiving an occupational dose.

(52) "Minor" means an individual less than 18 years of age.

(53) "Monitoring (radiation monitoring, radiation protection monitoring)" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(54) "Nationally Tracked Source" means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of radioactive material listed in 10 CFR Part 20, Appendix E. . In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded in a solid form and that is not exempt from regulatory control. It

ADMINISTRATIVE RULES

does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel rod, or fuel pellet.

(a) Category 1 nationally traced sources are those containing radioactive material at a quantity equal to or greater than Category 1 threshold.

(b) Category 2 nationally traced sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

(55) "Negative pressure respirator (tight fitting)" means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(56) "Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these regulations, "deterministic effect" is an equivalent term.

(57) "Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material for medical purposes and released under OAR 333-116-0260, from voluntary participation in medical research programs, or as a member of the public.

(58) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(59) "Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(60) "Powered air purifying respirator" (PAPR) means an air purifying respirator that uses a blower to force the ambient air through air purifying elements to the inlet covering.

(61) "Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(62) "Public dose" means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee, or to any other source of radiation under the control of a licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material for medical purposes and released under OAR 333-116-0260, or from voluntary participation in medical research programs.

(63) "Qualitative fit test (QLFT)" means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(64) "Quantitative fit test (QNFT)" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(65) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(66) "Radiation" (ionizing radiation) means alpha particles, beta particles, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. Radiation, as used in this part, does not include non-ionizing radiation, such as radio- or microwaves, or visible, infrared, or ultraviolet light.

(67) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(68) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of the reference man is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(69) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed

and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site.

(70) "Restricted area" means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(71) "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(72) "Sanitary sewerage" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(73) "Self-contained breathing apparatus" (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(74) "Shallow-dose equivalent" (HS), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²) averaged over an area of one square centimeter.

(75) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(76) "Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these regulations, "probabilistic effect" is an equivalent term.

(77) "Supplied-air respirator" (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(78) "Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of radioactive material or other sources of radiation. When appropriate, such an evaluation includes a physical survey of the location of radioactive material and measurements or calculations of levels of radiation, or concentrations or quantities of radioactive material present.

(79) "Tight-fitting facepiece" means a respiratory inlet covering that forms a complete seal with the face.

(80) "Total Effective Dose Equivalent" (TEDE) means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(81) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee.

(82) "User seal check" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(83) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of five gray (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

(84) "Weighting factor" (WT) for an organ or tissue means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of WT are:

Organ Dose Weighting Factors
Organ or Tissue – WT
Gonads – 0.25
Breast – 0.15
Red bone marrow – 0.12
Lung – 0.12
Thyroid – 0.03
Bone surfaces – 0.03
Remainder – 0.30 (see (a) below)
Whole Body – 1.00 (see (b) below)

(a) 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye that receives the highest doses.

(b) For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, WT = 1.0, has been specified. The use of other weighting factors for external exposure will be

ADMINISTRATIVE RULES

approved on a case-by-case basis until such time as specific guidance is issued.

(85) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(86) "Working level" (WL) is any combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy.

(87) "Working level month" (WLM) means an exposure to one working level for 170 hours (2,000 working hours per year/12 months per year equals approximately 170 hours per month).

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.605 - 453.807

Hist.: PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-120-0800

Reports of Transactions Involving Nationally Tracked Sources

Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report as specified in sections (1) through (5) of this rule for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit a National Source Tracking Transaction report. The report must include the following information:

- (a) The name, address, and license number of the reporting licensee;
- (b) The name of the individual preparing the report;
- (c) The manufacturer, model, and serial number of the source;
- (d) The radioactive material in the source;
- (e) The initial source strength in becquerels (curies) at the time of manufacture; and

- (f) The manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit a National Source Tracking Transaction report. The report must include the following information:

- (a) The name, address, and license number of the reporting licensee;
- (b) The name of the individual preparing the report;
- (c) The name and license number of the recipient facility and the shipping address;

(d) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the sources;

- (e) The radioactive material in the source;
- (f) The initial or current source strength in becquerels (curies);
- (g) The date for which the source strength is reported;
- (h) The shipping date;
- (i) The estimated time of arrival date; and

(j) For nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked sources.

(3) Each licensee that receives a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

- (a) The name, address, and license number of the reporting licensee;
- (b) The name of the individual preparing the report;
- (c) The name, address, and license number of the person that provided the source;

(d) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

- (e) The radioactive material in the source;
- (f) The initial or current source strength in becquerels (curies);
- (g) The date for which the source strength is reported;
- (h) The date of receipt; and

(i) For material received under a Uniform Low-Level radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

- (a) The name, address, and license number of the reporting licensee;
- (b) The name of the individual preparing the report;
- (c) The manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
- (d) The radioactive material in the source;
- (e) The initial or current source strength in becquerels (curies);

- (f) The date for which the source strength is reported; and

- (g) The disassemble date of the source.

(5) Each Licensee who disposes of a nationally tracked source shall complete and submit a National Source Tracking Transaction Report. The report must include the following information:

- (a) The name, address, and license number of the reporting licensee;
- (b) The name of the individual preparing the report;
- (c) The waste manifest number;
- (d) The container identification with the nationally tracked source;
- (e) The date of disposal; and
- (f) The method of disposal.

(6) The reports discussed in sections (1) through (5) of this rule must be submitted by the close of the next business day after the transactions. The report must be submitted to the National Source Tracking System by using:

- (a) The online National Source Tracking System;
- (b) Electronically using a computer readable format;
- (c) By facsimile;
- (d) By mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
- (e) By telephone with follow up by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by sections (1) through (5) of this rule. By January 31 of each year, each licensee must submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(8) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by January 31, 2009. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. The information may be submitted by using any of the methods identified by subsection (6)(a) through (6)(e) of this rule. The initial inventory report must include the following information:

- (a) The name, address, and license number of the reporting licensee;
- (b) The name of the individual preparing the report;
- (c) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

- (d) The radioactive material in the sealed source;

- (e) The initial or current source strength in becquerels (curies); and
- (f) The date for which the source strength is reported.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.635

Hist.: PH 14-2008, f. & cert. ef. 9-15-08; PH 4-2010, f. & cert. ef. 2-16-10

333-124-0001

Purpose and Scope

The rules in this division establish civil penalties for failure to comply with the statutory and administrative rule requirements in divisions 100 through 123.

Stat. Auth.: ORS 431.262, 431.950 & 453.771

Stats. Implemented: ORS 431.262, 431.950 & 453.771

Hist.: PH 4-2010, f. & cert. ef. 2-16-10

333-124-0010

Civil Penalties

(1) The Department may impose a civil penalty on:

(a) A tanning facility for violations of ORS 431.925 through 431.955 or any rules in divisions 100, 103, 111, 119 and this chapter.

(b) An X-ray machine registrant for a violation of ORS 453.605 through 453.807 or any rules in division 100, 101, 103, 106, 108, 111, 112, 115, 120, 122, 123 of this chapter, and this division.

(c) A radioactive materials licensee for a violation of ORS 453.605 through 453.807 or any rules in divisions 100, 102, 103, 105, 109, 111, 113, 116, 117, 118, 120, 121 of this chapter, and this division.

ADMINISTRATIVE RULES

(2) For a first violation, unless the violation poses a serious public health threat, the Department shall provide a tanning facility, X-ray machine registrant or radioactive materials licensee with a Notice of Violation that explains the violation and informs the facility, registrant or licensee of the violation and that it must be corrected within a time frame specified in the Notice, or the facility, registrant or licensee may be subject to a civil penalty.

(3) For violations that pose a significant public health threat, or for second or subsequent violations of any level of severity, the Department may, but is not required to, issue a Notice of Violation as described in section (2) of this rule prior to issuing a Notice of Imposition of Civil Penalty.

(4) Each day that a facility, registrant or licensee is in violation is considered a new violation until the facility, registrant or licensee is in compliance.

(5) Each device that is out of compliance with applicable statutes or rules is a separate violation.

(6) A civil penalty will be imposed based on the severity of the violation and whether it is a first or repeat offense.

(a) Level 1 violation: A violation that has the potential to cause a significant health and safety problem or has caused a significant health and safety problem.

(b) Level 2 violation: A violation that has the potential to cause a moderate health and safety problem or has caused a moderate health and safety problem.

(c) Level 3 violation: A violation that has the potential to cause a minor health and safety problem or has caused a minor health and safety problem.

(d) Level 4 violation: A violation that, if it continues, could result in a condition that may cause a health and safety problem.

(e) Level 5 violation: An action that violates a statute or rule but will not result in a direct health and safety problem. (Minor statutory or administrative rule infraction)

(7) Civil penalty amounts are as follows, except as provided in section (8) of this rule:

- (a) Level 1 violation, first offense: \$200.00.
- (b) Level 1 violation, second offense: \$350.00.
- (c) Level 1 violation, third and subsequent offenses: \$500.00.
- (d) Level 2 violation, first offense: \$150.00.
- (e) Level 2 violation, second offense: \$200.00.
- (f) Level 2 violation, third and subsequent offenses: \$250.00.
- (g) Level 3 violation: \$100.00.
- (h) Level 3 violation, second offense: \$150.00.
- (i) Level 3 violation, third and subsequent offenses: \$200.00.
- (j) Level 4 violation, first offense: \$75.00.
- (k) Level 4 violation, second offense: \$100.00.
- (l) Level 4 violation, third and subsequent offenses: \$125.00.
- (m) Level 5 violation, first offense: \$50.00.
- (n) Level 5 violation, second offense: \$75.00.
- (o) Level 5 violation, third and subsequent offenses: \$100.00.

(8) For failure to properly pay registration or licensing fee in whole within 30 days of the due date, the registrant or licensee will be subject to a civil penalty of:

(a) Three percent of the applicable fee outlined in division 103 of these rules per day per device for the first 30 days, followed by;

(b) Five percent of the applicable fee outlined in division 103 of these rules per day per device for the next 30 days, followed by;

(c) Ten percent of the applicable fee outlined in division 103 of these rules per day per device for the next 30 days or subsequent periods and calculated from the due date until the registration or licensing fee is paid in full.

(9) The Department will issue a Notice of Intent to Assess Civil Penalties and the Notice will explain the right of the facility to request a hearing, in accordance with ORS 183.745.

Stat. Auth.: ORS 431.262, 431.950 & 453.771
Stats. Implemented: ORS 431.262, 431.950 & 453.771
Hist.: PH 4-2010, f. & cert. ef. 2-16-10

Rule Caption: New Disease Reporting Requirements.

Adm. Order No.: PH 5-2010

Filed with Sec. of State: 3-11-2010

Certified to be Effective: 3-11-10

Notice Publication Date: 2-1-2010

Rules Adopted: 333-018-0013, 333-018-0017, 333-026-0030

Rules Amended: 333-017-0000, 333-017-0005, 333-018-0000, 333-018-0010, 333-018-0015, 333-018-0018, 333-019-0017, 333-019-0027, 333-019-0036

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

Rules Coordinator: Brittany Sande—(971) 673-1291

333-017-0000

Definitions

For purposes of OAR chapter 333, divisions 17, 18, and 19, the following definitions shall apply.

(1) "AIDS": AIDS is an acronym for acquired immunodeficiency syndrome. An individual is considered to have AIDS when their illness meets criteria published in Morbidity and Mortality Weekly Report, Volume 41, Number RR-17, pages 1-4, December 18, 1992.

(2) "Animal Suspected of Having Rabies": An animal is suspected of having rabies when:

(a) It is a dog, cat, or ferret not known to be satisfactorily vaccinated against rabies (as defined in OAR 333-019-0017), or it is any other mammal; and

(b) It exhibits one or more of the following aberrant behaviors or clinical signs: unprovoked biting of persons or other animals, paralysis or partial paralysis of limbs, marked excitation, muscle spasms, difficulty swallowing, apprehensiveness, delirium, or convulsions; and it has no other diagnosed illness that could explain the neurological signs.

(3) "Approved Fecal Specimen": a specimen of feces from a person who has not taken any antibiotic orally or parenterally for at least 48 hours prior to the collection of the specimen. Improper storage or transportation of a specimen, or inadequate growth of the culture suggestive of recent antibiotic usage can, at the discretion of public health microbiologists, result in disapproval.

(4) "Bite, Biting, Bitten": The words bite, biting, and bitten refer to breaking of the skin by the teeth of an animal, or mouthing a fresh abrasion of the skin by an animal.

(5) "Case": A case is a person who has been diagnosed by a health care provider as having a particular disease, infection, or condition, or whose illness meets defining criteria published in the Department's Investigative Guidelines.

(6) "Child Care Facility": A child care facility is any facility as defined in ORS 657A.250(5) where care is provided to three or more children.

(7) "Department": Department is the Department of Human Services of the State of Oregon.

(8) "Food Handler": A food handler is any business owner or employee who handles food utensils or who prepares, processes, handles or serves food for people other than members of their immediate household, for example restaurant, delicatessen, and cafeteria workers, caterers, and concession stand operators.

(9) "Food Service Facility": A food service facility is an establishment that processes or serves food for sale.

(10) "Health Care Facility": A health care facility means any facility as defined in ORS 442.015(16), any local public health authority, or any home health agency as defined in ORS 443.005.

(11) "Health Care Provider": A health care provider is any person who has direct or supervisory responsibility for the delivery of health care or medical services. This includes but is not limited to: licensed physicians, nurse practitioners, physician assistants, nurses, dentists, and administrators, superintendents and managers of clinics and Health Care Facilities.

ADMINISTRATIVE RULES

(12) "HIV": The human immunodeficiency virus, the causative agent of AIDS.

(13) "HIV Test": A Food and Drug Administration (FDA)-approved test for the presence of HIV, or for antibodies or antigens that result from HIV infection, or for any other substance specifically associated with HIV infection and not with other diseases or conditions.

(14) "HIV Positive Test": A positive result on the most definitive HIV test procedure used to test a particular individual. In the absence of the recommended confirming tests, this means the results of the initial test done.

(15) "Licensed Laboratory": A licensed laboratory is a medical diagnostic laboratory that is inspected and licensed by the Department or otherwise licensed according to the provisions of the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a). Any laboratory operated by the U.S. Centers for Disease Control and Prevention shall also be considered a Licensed Laboratory.

(16) "Licensed Physician": A licensed physician is any physician who is licensed by the Board of Medical Examiners for the State of Oregon, State Board of Podiatry Examiners, State Board of Chiropractic Examiners, or Naturopathic Board of Examiners.

(17) "Licensed Veterinarian": A licensed veterinarian is a veterinarian licensed by the Oregon Veterinary Medical Examining Board.

(18) "Local Public Health Authority": The local public health authority is the agency to which has been delegated the authority at the county or local level to administer and enforce the public health laws of Oregon under ORS 431.416.

(19) "Novel Influenza": Influenza A virus that cannot be subtyped by commercially distributed assays.

(20) "Onset": Unless otherwise qualified, onset refers to the earliest time of appearance of signs or symptoms of an illness.

(21) "Outbreak": An outbreak is an increased number of cases of a particular disease that is or may be due to common or related exposures. Outbreaks are defined with respect to time interval, location, the normal frequency of the disease, and the characteristics of the persons or animals affected.

(22) "Pesticide Poisoning": Illness in a human that is caused by acute or chronic exposure to:

(a) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or

(b) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant as defined in ORS 634.006(8).

(23) "Suspected Case": A suspected case is a person whose illness is thought by a health care provider to be likely due to a reportable disease, infection, or condition. This suspicion may be based on signs, symptoms, or laboratory findings.

(24) "Suspected Lead Poisoning": A person with suspected lead poisoning is any person who may be at risk for having elevated blood lead levels, defined as the presence of at least 25 micrograms of lead per deciliter of blood for individuals at least 18 years old; or at least 10 micrograms of lead per deciliter of blood for individuals less than 18 years old. Suspected lead poisoning also includes blood lead tests done to monitor those persons who have had previously documented blood lead levels in excess of these limits.

(25) "Uncommon Illness of Potential Public Health Significance": These illnesses include:

(a) Any infectious disease with potentially life-threatening consequences that is exotic to or uncommon in Oregon, for example, variola (smallpox) or viral hemorrhagic disease;

(b) Any illness related to a contaminated medical device or product; or

(c) Any acute illness suspected to be related to environmental exposure to any infectious or toxic agent or to any household product.

(26) "Veterinary Laboratory" means a laboratory whose primary function is handling and testing diagnostic specimens of animal origin.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 433.004, 437.010, 616.745 & 624.080

Stats. Implemented: ORS 433.004, 433.360, 437.030, 616.745 & 624.380

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 12-1983, f. & ef. 8-1-83; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 13-1990(Temp), f. 3-25-90, cert. ef. 8-1-90; HD 5-1991, f. 5-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 2-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 5-2010, f. & cert. ef. 3-11-10

333-017-0005

Reference Documents

The following publication, which is available for inspection at Department's Public Health Division, is incorporated by reference in whole or in part in OAR chapter 333, divisions 12, 17, 18, and 19: "Investigative

Guidelines": Investigative Guidelines for Reportable Diseases, published on an ongoing basis by the Department's Office for Disease Prevention and Epidemiology.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 433.004, 437.010, 616.745 & 624.080

Stats. Implemented: ORS 409.050, 433.004, 437.010, 616.745 & 624.080

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 2-2002, f. & cert. ef. 3-4-02; PH 5-2010, f. & cert. ef. 3-11-10

333-018-0000

Who Is Responsible for Reporting

(1) Each health care provider knowing of or attending a human case or suspected human case of any of the diseases, infections, or conditions listed in OAR 333-018-0015 shall report such cases as specified. Where no health care provider is in attendance, any individual knowing of such a case shall report in a similar manner.

(2) Each health care facility, where more than one health care provider may know or attend a human case or suspected human case, may establish administrative procedures to ensure that every case is reported.

(3) Each licensed laboratory shall report test results as specified in OAR 333-018-0015(5). When more than one licensed laboratory is involved in testing a specimen, the laboratory that is responsible for reporting the test result directly to the licensed physician caring for the patient shall be responsible for reporting.

(4) Each veterinary laboratory or licensed laboratory shall report animal test results as specified in OAR 333-018-0017. When more than one laboratory is involved in testing a specimen, the laboratory that is responsible for reporting the test result directly to the licensed veterinarian or client of record caring for the animal shall be responsible for reporting.

Stat. Auth.: ORS 409.050, 433.004 & 437.010

Stats. Implemented: ORS 433.004 & 437.030

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 29-1994, f. & cert. ef. 12-2-94; OHD 3-2002, f. & cert. ef. 3-4-02; PH 5-2010, f. & cert. ef. 3-11-10

333-018-0010

Form of the Report

(1) A health care provider required to report reportable diseases under ORS 433.004 and these rules shall submit to the local public health authority a report that includes but is not limited to:

(a) The identity, address, and telephone number of the person reporting;

(b) The identity, address, and telephone number of the attending licensed physician, if any;

(c) The name of the person affected or ill, that person's current address, telephone number, and date of birth;

(d) The diagnosed or suspected disease, infection, or condition; and

(e) The date of illness onset.

(2) A licensed laboratory required to report reportable diseases under ORS 433.004 and these rules shall submit to the local public health authority a report that includes but is not limited to:

(a) The name and telephone number of the reporting laboratory;

(b) The name, age or date of birth, and county of residence of the person from whom the laboratory specimen was obtained;

(c) The date the specimen was obtained;

(d) The name, address and telephone number of the health care provider of the person from whom the laboratory specimen was obtained;

(e) The name or description of the test;

(f) The test result; and

(g) Information required by the Department's Manual for Mandatory Electronic Laboratory Reporting, if electronic reporting is required under OAR 333-018-0013.

(3) Reportable disease reports shall be made in the following manner:

(a) Reports for diseases or suspected diseases that are immediately reportable under OAR 333-018-0015 shall be submitted orally, by telephone, with a follow-up written report via facsimile.

(b) Reports for diseases or suspected diseases that are required to be reported within one to seven days under OAR 333-018-0013 shall be submitted in writing via facsimile or by other means approved by the local public health authority, consistent with the need for timely reporting as provided in OAR 333-018-0015.

(c) Electronically, if required by OAR 333-018-0013.

(4) If requested by a local public health authority or the Oregon Public Health Division, health care providers and licensed laboratories shall provide additional information of relevance to the investigation or control of reportable diseases or conditions (e.g., reported signs and symptoms, laboratory test results (including negative results), potential exposures, contacts, and clinical outcomes).

ADMINISTRATIVE RULES

Stat. Auth.: ORS 409.050 & 433.004
Stats. Implemented: ORS 433.004
Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 13-1990(Temp), f. 5-25-90, cert. ef. 8-1-90; HD 5-1991, f. 3-29-91, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 29-1994, f. & cert. ef. 12-2-94; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 5-2010, f. & cert. ef. 3-11-10

333-018-0013

Electronic Laboratory Reporting

(1) A licensed laboratory that, pursuant to ORS 433.004 and OAR chapter 333, division 18, sends an average of greater than 30 records per month to the local public health authority shall electronically send all reportable disease data to the Department in accordance with the standards set forth in the Department's Manual for Mandatory Electronic Laboratory Reporting, dated February 2009, and incorporated by reference.

(2) Prior to reporting data electronically, a licensed laboratory shall seek and obtain approval from the Department for its electronic reporting, in accordance with the Department's Manual for Mandatory Electronic Laboratory Reporting.

(3) A licensed laboratory that fails to seek approval from the Department for electronic reporting or fails to obtain approval within one year from seeking approval from the Department may be subject to civil penalties in accordance OAR 333-026-0030.

(4) A licensed laboratory that is required to report data electronically shall have a state-approved continuity of operations plan for reporting continuity in the event of emergency situations disrupting electronic communications. At least two alternative methodologies should be incorporated, such as facsimile, mail, or courier service.

(5) A licensed laboratory required to report data electronically shall participate fully in Oregon's Data Quality Control program, as specified in the Department's Manual for Mandatory Electronic Laboratory Reporting.

(6) Electronic reports shall meet the reporting timelines in OAR chapter 333, division 18.

Stat. Auth.: ORS 409.050 & 433.004
Stats. Implemented: ORS 433.004
Hist.: PH 5-2010, f. & cert. ef. 3-11-10

333-018-0015

What Is to Be Reported and When

(1) Health care providers shall report all human cases or suspected human cases of the diseases, infections, microorganisms, and conditions specified below. The timing of health care provider reports is specified to reflect the severity of the illness or condition and the potential value of rapid intervention by public health agencies.

(2) When local public health authorities cannot be reached within the specified time limits, reports shall be made directly to the Department, which shall maintain an around-the-clock public health consultation service.

(3) Licensed laboratories shall report all test results indicative of and specific for the diseases, infections, microorganisms, and conditions specified below for humans. Such tests include but are not limited to: microbiological culture, isolation, or identification; assays for specific antibodies; and identification of specific antigens, toxins, or nucleic acid sequences.

(4) Human reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: *Bacillus anthracis* (anthrax); *Clostridium botulinum* (botulism); *Corynebacterium diphtheriae* (diphtheria); novel influenza; *Yersinia pestis* (plague); poliomyelitis; rabies (human); measles (rubeola); Severe Acute Respiratory Syndrome (SARS) and infection by SARS coronavirus; rubella; variola major (smallpox); *Francisella tularensis* (tularemia); *Vibrio cholerae* O1, O139, or toxigenic; hemorrhagic fever caused by viruses of the filovirus (e.g., Ebola, Marburg) or arenavirus (e.g., Lassa, Machupo) families; yellow fever; intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombroid); any known or suspected common-source outbreaks; any uncommon illness of potential public health significance.

(b) Within 24 hours (including weekends and holidays): *Haemophilus influenzae* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); *Neisseria meningitidis* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); pesticide poisoning.

(c) Within one local public health authority working day: *Bordetella pertussis* (pertussis); *Borrelia* (relapsing fever, Lyme disease); *Brucella* (brucellosis); *Campylobacter* (campylobacteriosis); *Chlamydia* (Chlamydia) *psittaci* (psittacosis); *Chlamydia trachomatis* (chlamydia); lymphogranuloma venereum; *Clostridium tetani* (tetanus); *Coxiella bur-*

netii (Q fever); Creutzfeldt-Jakob disease and other transmissible spongiform encephalopathies; *Cryptosporidium* (cryptosporidiosis); *Cyclospora cayentanensis* (cyclosporiasis); *Escherichia coli* (Shiga-toxigenic, including *E. coli* O157 and other serogroups); *Giardia* (giardiasis); *Haemophilus ducreyi* (chancroid); hantavirus; hepatitis A; hepatitis B (acute or chronic infection); hepatitis C; hepatitis D (delta); HIV infection (does not apply to anonymous testing) and AIDS; *Legionella* (legionellosis); *Leptospira* (leptospirosis); *Listeria monocytogenes* (listeriosis); mumps; *Mycobacterium tuberculosis* and *M. bovis* (tuberculosis); *Neisseria gonorrhoeae* (gonococcal infections); pelvic inflammatory disease (acute, non-gonococcal); *Plasmodium* (malaria); *Rickettsia* (all species: Rocky Mountain spotted fever, typhus, others); *Salmonella* (salmonellosis, including typhoid); *Shigella* (shigellosis); *Taenia solium* (including cysticercoasis and unidentified Taenia infections); *Treponema pallidum* (syphilis); *Trichinella* (trichinosis); *Yersinia* (other than pestis); any infection that is typically arthropod vector-borne (for example: Western equine encephalitis, Eastern equine encephalitis, St. Louis encephalitis, dengue, West Nile fever, California encephalitis, ehrlichiosis, babesiosis, Kyasanur Forest disease, Colorado tick fever, etc.); a human bitten by any other mammal; and hemolytic uremic syndrome.

(d) Within seven days: suspected lead poisoning (for laboratories; this includes all blood lead tests performed on persons with suspected lead poisoning).

(5) Licensed laboratories shall report, within seven days, the results of all tests of CD4+ T-lymphocyte absolute counts and the percent of total lymphocytes that are CD4 positive, and HIV nucleic acid (viral load) tests.

(6) Laboratory-confirmed influenza resulting in or associated with hospitalization or death is reportable within seven days. This reporting requirement is not applicable on or after September 1, 2010.

Stat. Auth.: ORS 409.050, 433.004 & 433.006
Stats. Implemented: ORS 433.004 & 437.010

Hist.: HD 15-1981, f. 8-13-81, ef. 8-15-81; HD 20-1985(Temp), f. & ef. 9-30-85; HD 4-1987, f. 6-12-87, ef. 6-19-87; HD 15-1988, f. 7-11-88, cert. ef. 4-1-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; OHD 22-2001, f. & cert. ef. 10-19-01; OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 7-2006, f. & cert. ef. 4-17-06; PH 13-2006(Temp), f. 6-27-06, cert. ef. 7-1-06 thru 12-27-06; PH 19-2006, f. & cert. ef. 9-13-06; PH 11-2007(Temp), f. & cert. ef. 8-22-07 thru 2-18-08; PH 13-2007, f. & cert. ef. 11-7-07; PH 8-2009(Temp), f. & cert. ef. 9-1-09 thru 2-26-10; PH 5-2010, f. & cert. ef. 3-11-10

333-018-0017

Reporting of Veterinary Diseases

(1) Laboratories shall report to the Oregon Public Health Division all test results indicative of and specific for the following diseases, infections, microorganisms, and conditions, within the following time frames, as follows:

- (a) Immediately, day or night: anthrax, rabies, and plague;
- (b) Within one day: psittacosis, leptospirosis, Q fever, and tularemia;

and

(c) Within one week: *Baylisascaris*, *Borrelia burgdorferii*, *Campylobacteriosis*, *Cryptococcus*, *Cryptosporidium*, *Escherichia coli* O157:H7, giardiasis, lymphocytic choriomeningitis, methicillin-resistant *Staphylococcus aureus*, Rocky Mountain spotted fever, salmonellosis, toxoplasmosis, West Nile virus, yersiniosis; and any other disease that could potentially be a zoonotic illness.

(2) "Test" as used in this rule, includes but is not limited to:

- (a) Microbiological culture, isolation, or identification;
- (b) Assays for specific antibodies; and
- (c) Identification of specific antigens, toxins, or nucleic acid sequences.

Stat. Auth.: ORS 409.050 & 433.004
Stats. Implemented: ORS 433.004
Hist.: PH 5-2010, f. & cert. ef. 3-11-10

333-018-0018

Submission of Isolates to the Public Health Laboratory

Licensed laboratories are required to forward aliquots or subcultures of the following to the Oregon State Public Health Laboratory:

(1) Suspected *Neisseria meningitidis* and *Haemophilus influenzae* from normally sterile sites.

(2) Suspected Shiga-toxigenic *Escherichia coli* (STEC), including *E. coli* O157, *Salmonella* spp., *Shigella* spp., *Vibrio* spp., *Listeria* spp., *Yersinia* spp., and *Mycobacterium tuberculosis*.

(3) Serum that tests positive for IgM antibody to hepatitis A virus.

(4) Serum that tests positive for IgM core antibody to hepatitis B virus.

Stat. Auth.: ORS 409.050, 433.004 & 438.450
Stats. Implemented: ORS 433.004 & 438.310

ADMINISTRATIVE RULES

Hist.: HB 248, f. 6-30-70, ef. 7-25-70; HD 28-1988, f. & cert. ef. 12-7-88; HD 20-1994, f. & cert. ef. 7-20-94; HD 6-1995, f. & cert. ef. 9-13-95; OHD 11-2001, f. & cert. ef. 5-16-01, Renumbered from 333-024-0050(5); OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 28-2006, f. 11-30-06, cert. ef. 12-18-06; PH 5-2010, f. & cert. ef. 3-11-10

333-019-0017

Rabies Vaccination for Animals

(1) Except where specifically exempt, all dogs at least three months old shall be immunized against rabies by the age of six months. The following are exempt:

(a) Dogs brought temporarily into the state for periods of less than 30 days and kept under strict supervision by their owners;

(b) Dogs for which rabies immunization is contraindicated for health reasons, as determined by a licensed veterinarian subsequent to an examination. The reasons for the exemption and a specific description of the dog, including name, age, sex, breed, and color, shall be recorded by the examining veterinarian on a Rabies Vaccination Certificate, which shall bear the owner's name and address. The veterinarian shall also record whether the exemption is permanent, and if it is not, the date the exemption ends;

(c) Dogs that are owned by dealers, breeders, or exhibitors exclusively for sale or exhibition purposes and that are confined to kennels except for transportation under strict supervision to and from dog shows or fairs.

(2) Vaccination of an animal against rabies is valid only when performed:

(a) By a licensed veterinarian as specified by ORS 686.350 through 686.370 and OAR 875-010-0006;

(b) By a veterinary technician (certified according to OAR 875-030-0010) under the direct supervision of a licensed veterinarian; or

(c) In the case of a need to vaccinate and the lack of an available veterinarian, by another person approved for this purpose by the State Public Health Veterinarian.

(3) To be considered immunized against rabies, dogs and cats must be vaccinated according to guidelines published by the U.S. Centers for Disease Control and Prevention in the *Compendium of animal rabies prevention and control*, MMWR April 18, 2008; 57 (No. RR-2).

(4) A Rabies Vaccination Certificate shall be completed and signed by a licensed veterinarian; electronic signatures are acceptable. That individual shall give the original and one copy to the dog's owner and retain one copy for the period for which the vaccination is in force. The Certificate must include at least the following information: owner's name and address; dog description by age, sex, color, breed; date of vaccination; due date for revaccination; type and lot number of vaccine used; and name and address of vaccinator.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 433.365

Stats. Implemented: ORS 433.365

Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 6-2003, f. & cert. ef. 5-22-03; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 5-2010, f. & cert. ef. 3-11-10

333-019-0027

Management of Possibly Rabid Animals

(1) An animal is considered to have been in close contact with an animal suspected of having rabies when, within the past 180 days, it has been bitten, mouthed, mauled by, or closely confined with a rabid animal or any mammal suspected of having rabies.

(2) The disposition of such animals and of animals suspected of having rabies that have not bitten humans shall be determined by the local public health authority as follows:

(a) Inadequately vaccinated dogs, cats, and ferrets shall be destroyed immediately, if the owner permits. If the owner does not agree to this, the animal shall be confined as prescribed by the local public health authority for a period of six months under the observation of a licensed veterinarian or a person designated by the local public health authority. It should be vaccinated against rabies one month before release.

(b) Dogs, cats, and ferrets that are adequately vaccinated shall be revaccinated immediately and observed in confinement for 45 days by a person designated by the local public health authority. If the owner prefers, such animals can be destroyed (in lieu of confinement) with the concurrence of the local public health authority.

(c) Unless the owner prefers to hold any unvaccinated livestock or wild animals born and raised in captivity in confinement for six months, such animals shall be destroyed.

(d) Unless otherwise specified, all other mammals shall be destroyed.

(e) For the purposes of this rule, confinement shall be within an enclosure or with restraints deemed adequate by the local public health authority to prevent contact with any member of the public or any other animal.

Nothing in these rules or in OAR 333-019-0024 shall be interpreted to require any public authority to bear the costs of such confinement.

(3) Nothing in these rules is intended or shall be construed to limit the power of any city, city and county, county or district in its authority to enact more stringent requirements to regulate and control animals within its jurisdiction.

Stat. Auth.: ORS 409.050 & 433.360

Stats. Implemented: ORS 433.360

Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 5-2010, f. & cert. ef. 3-11-10

333-019-0036

Special Precautions Relating to Pregnancy and Childbirth

(1)(a) Blood samples drawn from women during pregnancy or at delivery pursuant to ORS 433.017 shall be submitted for standard tests for reportable infectious diseases or conditions which may affect a pregnant woman or fetus. Routine tests submitted shall include syphilis, hepatitis B, and HIV. Tests using bodily fluids other than blood that have equal or better sensitivity and specificity may be substituted for the blood test.

(b) "Consent of the patient to take a sample of blood" (as stated in ORS 433.017, section 3) or other bodily fluid, is defined as notifying the patient or her authorized representative of the tests which will be conducted on that specimen. The patient or her authorized representative shall be informed that she may decline any or all of the tests.

(c) If a patient declines any of the offered tests, documentation shall be included in the medical record.

(2) Any health care provider attending the birth of an infant shall evaluate whether the newborn is at risk for gonococcal ophthalmia neonatorum. The primary means of assessing risk shall be review of results of prenatal testing and maternal history of risk factors for gonococcal. If the infant is determined to be at risk, or risk cannot be adequately assessed, the person attending the birth shall ensure that the newborn receives erythromycin or tetracycline ophthalmic ointment or silver nitrate 1 percent aqueous solution into each eye within two hours after delivery.

Stat. Auth.: ORS 409.050 & 433.017

Stats. Implemented: ORS 433.017, 433.006 & 433.110

Hist.: OHD 4-2002, f. & cert. ef. 3-4-02; PH 20-2005, f. 12-30-05, cert. ef. 1-1-06; PH 5-2010, f. & cert. ef. 3-11-10

333-026-0030

Civil Penalties for Violations of OAR Chapter 333, Divisions 18 and 19

(1) A civil penalty may be imposed against a person or entity for a violation of any provision in OAR chapter 333, division 18 or 19, including but not limited to:

(a) Failing to report a reportable disease in accordance with OAR chapter 333, division 18;

(b) Reporting to work in a communicable stage of any restrictable disease in violation of OAR 333-019-0010 or 333-019-0046;

(c) Permitting a child to attend school in violation of OAR 333-019-0010;

(d) Failing to immunize an animal against rabies in accordance with OAR 333-019-0017;

(e) Failing to license a dog in accordance with OAR 333-019-0019;

(f) Failing to euthanize an animal in accordance with OAR 333-019-0024 or 333-019-0027;

(g) Euthanizing an animal or destroying the head of a mammal that has bitten a person without authorization under OAR 333-019-0024 from the local public health authority; and

(h) Failing to confine an animal in accordance with OAR 333-019-0027.

(2) Prior to issuing a notice of imposition of civil penalty, the Department of Human Services or the local public health authority shall send a written warning letter advising the person or entity that they are not in compliance with a rule in OAR chapter 333, division 18 or 19 and that continued noncompliance may result in the issuance of a notice of imposition of civil penalty. A person or entity's assertion that they did not receive the warning letter is not a defense to a notice of imposition of civil penalty.

(3) Civil penalties shall be imposed as follows:

(a) First violation: \$100;

(b) Second violation: \$200;

(c) Third or subsequent violation: \$500.

(4) Each day a person or entity is out of compliance with a provision of OAR chapter 333, division 18 or 19 will be considered a new violation.

(5) A civil penalty may not exceed \$500 a day per violation.

(6) A notice of imposition of civil penalty shall comply with ORS 183.745.

Stat. Auth.: ORS 431.262

Stats. Implemented: ORS 431.262 & 433.040

Hist.: PH 5-2010, f. & cert. ef. 3-11-10

ADMINISTRATIVE RULES

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 Adult Foster Homes, Residential Care Facilities, and Assisted Living Facilities.

Adm. Order No.: SPD 1-2010(Temp)

Filed with Sec. of State: 3-11-2010

Certified to be Effective: 3-11-10 thru 6-30-10

Notice Publication Date:

Rules Amended: 411-050-0412, 411-054-0025

Rules Suspended: 411-050-0412(T), 411-054-0025(T)

Subject: To correctly reflect the July 28, 2009 implementation date of House Bill 2442, Section 6 (2009), the Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-050-0412, relating to adult foster homes (AFHs), and OAR 411-054-0025, relating to residential care facilities (RCFs) and assisted living facilities (ALFs).

Rules Coordinator: Christina Hartman—(503) 945-6398

411-050-0412

Criminal Records Check

(1) No person may be a licensee, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, employed by a licensee or reside in or on the property of an adult foster home who has not been approved by the Department to work with adults who are elderly or physically disabled in accordance with OAR 407-007-0200 to 407-007-0370, Criminal Records Check Rules. The approval must be maintained as required.

(a) On or after July 28, 2009, no person may be a licensee, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, employed in an adult foster home, or reside in or on the property of an adult foster home, who has a conviction for the delivery or manufacture of drugs in the past ten years.

(b) On or after July 28, 2009, no person may be approved to be a licensee, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, employed in an adult foster home, or reside in or on the property of an adult foster home, who has ever been convicted:

(A) Of a crime listed in Exhibit 50-1;

(B) Of an attempt, conspiracy, or solicitation to commit a crime listed in Exhibit 50-1; or

(C) Of a crime in another jurisdiction that is substantially equivalent to a crime listed in Exhibit 50-1.

(2) Section (1) of this rule does not apply to:

(a) Residents of the adult foster home;

(b) Anyone under the age of 16 years old; or

(c) Persons who live or work on the property who do not access the home for meals, or use the appliances or facilities, and do not have unsupervised access to residents or their personal property.

(3) In a relative adult foster home, the person receiving payment for providing services to the client is the only person who must be approved by the Department, in accordance with OAR 411-050-0412.

(4) The Department shall conduct criminal records checks and obtain information from the Law Enforcement Data System (LEDS) and if necessary, the Federal Bureau of Investigation (FBI), other law enforcement agencies or the courts.

(5) A national criminal records check is required for any subject individual who has lived outside the State of Oregon for 60 or more consecutive days during the previous three years or for the reasons described in OAR 407-007-0200 to 407-007-0370, Criminal Records Check Rules. Resident managers, shift caregivers and substitute caregivers may work in the home pending the outcome of the national criminal records check if the Oregon criminal records check does not reveal any potentially disqualifying crimes and no out-of-state convictions were self-disclosed on the Department's Criminal Records Request form. The Department may determine a national criminal records check is not required if the subject individual, according to the Department's Criminal Records Check, passed a national check within the previous three years and has not lived outside of Oregon during those three years.

(6) An Authorized Designee (AD) shall make the fitness determination on all licensee applicants, all licensed providers and all subject individuals.

(7) A subject individual must NOT work, receive training or reside in an adult foster home if the subject individual refuses to cooperate with the criminal records check process (e.g., refuses to be fingerprinted when requested, refuses to complete the Department's Criminal Records Request form).

(8) The licensee must have written verification from the Division that the required criminal records checks have been completed for all employees, trainees, and occupants of the home other than residents. (See OAR 411-050-0444(6)(a)(A))

(9) The Division must provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

Stat. Auth.: ORS 181.534, 410.070 & 443.004

Stats. Implemented: ORS 181.534, 443.004, & 443.735

Hist.: SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 1-2010(Temp), f. & cert. ef. 3-11-10 thru 6-30-10

411-054-0025

Facility Administration

(1) FACILITY OPERATION. The licensee is responsible for the operation of the facility and the quality of care rendered in the facility.

(2) CRIMINAL RECORDS CHECK REQUIREMENTS.

(a) On or after July 28, 2009, no person may be a licensee, or employed in any capacity in a residential care or assisted living facility, who has a conviction for the delivery or manufacture of drugs in the past ten years.

(b) On or after July 28, 2009, no person may be approved to be a licensee, or employed in any capacity, who has ever been convicted:

(A) Of a crime listed in Exhibit 54-1;

(B) Of an attempt, conspiracy, or solicitation to commit a crime listed in Exhibit 54-1; or

(C) Of a crime in another jurisdiction that is substantially equivalent to a crime listed in Exhibit 54-1;

(3) EMPLOYMENT APPLICATION. An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse.

(4) Reasonable precautions must be exercised against any condition that could threaten the health, safety, or welfare of residents.

(a) The licensee is responsible for the supervision, training, and overall conduct of staff when acting within the scope of their employment duties.

(b) The licensee must obtain a criminal records check from any person 16 years of age or older, who operates, receives training, or works in a facility. A criminal records check must be submitted to an authorized division representative for a criminal fitness determination in accordance with the criminal records check rules in OAR chapter 407, division 007.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(5) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license;

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility;

(c) The current facility-staffing plan;

(d) A copy of the most recent survey and plan of correction as applicable;

(e) The Division's written notice issued under OAR 411-054-0105; and

(f) Other notices relevant to residents or visitors required by state or federal law.

(6) NOTIFICATION. The facility must notify SPD program staff in Salem Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

(a) Any change of the administrator of record.

(b) Severe interruption of physical plant services in which the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food;

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable;

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility;

(e) Unusual resident death or suicide; or

ADMINISTRATIVE RULES

(f) A resident who has eloped from the facility and has not been found within 24 hours.

(7) **POLICIES AND PROCEDURES.** The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment.

(a) The facility must develop and implement a policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in their daily living.

(b) The facility must develop and implement a written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) The facility must develop and implement effective methods of responding to and resolving resident complaints.

(d) The facility must develop all additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), 411-054-0040 (Change of Condition Monitoring), 411-054-0045 (Resident Health Services), and 411-054-0085 (Refunds and Financial Management).

(e) The facility must develop and implement a policy on smoking.

(A) The smoking policy must be in accordance with:

(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(ii) The rules in OAR chapter 333, division 015; and

(iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(8) **RECORDS.** The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility the licensee must provide SPD with written notification of the location of all records.

(9) **QUALITY IMPROVEMENT PROGRAM.** The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

(10) **DISCLOSURE — RESIDENCY AGREEMENT.** The facility must provide a SPD designated Uniform Disclosure Statement (form SDS 9098A) to each person who requests information about the facility. The residency agreement and the disclosure information described in section (7)(a) of this rule are required to be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by SPD prior to distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition;

(B) Payment provisions, including the basic rental rate, and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable;

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided;

(D) Policy for increases, additions, or changes to the rate structure. Disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan;

(E) Refund and proration conditions;

(F) A description of the scope of services available according to OAR 411-054-0030 (Resident Services);

(G) A description of the service planning process;

(H) Additional available services;

(I) The philosophy of how health care and ADL services are provided to the resident;

(J) Resident rights and responsibilities;

(K) The facility system for packaging medications and that residents may choose a pharmacy that meets the requirements of ORS 443.437;

(L) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move;

(M) Resident's rights pertaining to notification of involuntary move-out;

(N) Notice that DHS has the authority to examine resident records as part of the evaluation of the facility; and

(O) Staffing plan.

(b) The facility may not include any provision in the residency agreement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence;

(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to their designated representative; and

(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed or mailed to SPD before distribution.

Stat. Auth.: ORS 181.534, 410.070, 443.004 & 443.450

Stats. Implemented: ORS 181.534, 443.004, 443.400 to 443.455 & 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 1-2010(Temp), f. & cert. ef. 3-11-10 thru 6-30-10

Department of Justice

Chapter 137

Rule Caption: Amends Notice of Garnishment Model Forms to Respond to Changes in Oregon Law.

Adm. Order No.: DOJ 7-2010

Filed with Sec. of State: 3-12-2010

Certified to be Effective: 3-12-10

Notice Publication Date: 12-1-2009

Rules Amended: 137-060-0110, 137-060-0120, 137-060-0130, 137-060-0150, 137-060-0210, 137-060-0220, 137-060-0230, 137-060-0250, 137-060-0310, 137-060-0320, 137-060-0330, 137-060-0350, 137-060-0410, 137-060-0420, 137-060-0430, 137-060-0450

Subject: Amends existing model garnishment forms for notices of garnishment issued by state agencies and county tax collectors.

Rules Coordinator: Carol Riches—(503) 947-4700

137-060-0110

County Tax — Notice of Garnishment Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0120

County Tax — Garnishee Response Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0130

County Tax — Instructions to Garnishee Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.854 & 18.857

Hist.: DOJ 6-2002, f. & cert. ef. 9-24-02; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0150

County Tax — Notice of Exempt Property Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.850, 18.85 & 18.857

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0210

State Tax — Notice of Garnishment Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0220

State Tax — Garnishee Response Form

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

Stat. Auth.: ORS 18.854(8)

Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

ADMINISTRATIVE RULES

137-060-0230

State Tax — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0250

State Tax — Notice of Exempt Property Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0310

Debts other than State Tax — Notice of Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0320

Debts other than State Tax — Garnishee Response Form

Stats. Implemented: ORS 18.375, 18.385, 18.600 - 18.855
[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.900(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0330

Debts other than State Tax — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0350

Debts other than State Tax — Notice of Exempt of Property Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0410

Special Notice of Garnishment — Notice of Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0420

Special Notice of Garnishment — Garnishee Response Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0430

Special Notice of Garnishment — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

137-060-0450

Special Notice of Garnishment — Notice of Exempt Property Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.854(8)
Stats. Implemented: ORS 18.375, 18.385 & 18.600 - 18.855
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 7-2010, f. & cert. ef. 3-12-10

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Background Investigation for Tele/EMD, Multi-Discipline Training and Maintenance Training Reporting.

Adm. Order No.: DPSST 2-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 12-1-2009

Rules Amended: 259-008-0015, 259-008-0060, 259-008-0064

Subject: Adopts minimum standards related to pre-employment background investigations for telecommunicators and emergency medical dispatchers.

Updates and simplifies the process for reporting maintenance training for law enforcement officers who also hold certification as Telecommunicators or Emergency Medical Dispatchers.

Amends rules related to maintenance of certification for Telecommunicators and Emergency Medical Dispatchers.

Rules Coordinator: Marilyn Lorange—(503) 378-2431

259-008-0015

Background Investigation

(1) A personal history investigation must be conducted by the employing agency on each public safety professional being considered for employment to determine if applicant is of good moral fitness (professional fitness).

(2) Results of the personal history investigation on all public safety professionals must be retained by the employing agency and must be available for review at any reasonable time by representatives of the Department.

(3) All applicants for public safety professional must be interviewed personally, prior to employment, by the department head or an authorized representative.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0021, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10

259-008-0060

Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and shall be acquired by all police officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers shall be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers shall meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, telecommunicators must meet the Board's prescribed minimum employment standards as established by OAR 259-008-0011.

(6) To be eligible for the award of a certificate, law enforcement officers shall subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers shall subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T). [Form not included. See ED. NOTE.]

(7) Application for certification must be submitted on Form F7, with all applicable sections of the form completed. The form shall be signed by the applicant. In order to insure that the applicant does or does not meet the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative shall sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision shall be specified in writing and shall accompany the Application for Certification (Form F7). [Form not included. See ED. NOTE.]

(8) When a department head is the applicant, the above recommendation shall be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the appli-

ADMINISTRATIVE RULES

cant's superior. Elected department heads are authorized to sign as both applicant and department head.

(9) In addition to the requirements set forth above, each applicant, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate, shall have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule shall equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule shall equal one and one half (1-1/2) education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(10) Training Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)

(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved.

(b) The Department may award training points for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records shall include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented may be accepted, subject to staff evaluation and approval. These records shall include the subject, date, and classroom hours, and shall be certified true copies of the original.

(d) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or it's designated staff may award training points for correspondence courses.

(e) College credits earned may be counted for either training points or education credits, whichever is to the advantage of the applicant.

(f) College credit awarded based on training completed may be applied toward either training points or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under paragraph (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level(s).

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(g) Notwithstanding subsection (e) and (f) above, no credit can be applied toward both an education credit and training point when originating from the same training event.

(11) Experience/Employment:

(a) Experience acquired as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, creditable service time for experience will cease to accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on "leave." This includes, but is not limited to, medical leave, a leave of absence or military leave;

(C) Notwithstanding section (B) of this rule, a public safety professional may submit a written request for credit for military time served upon return from a military leave. The Department may approve credit for military time served if the public safety professional's military duties are determined to be equivalent to the duties the public safety professional was performing prior to the public safety professional's military leave. Any credit received for time served will be at the discretion of the Department.

(D) From the date a public safety professional's certification is recalled until it is reinstated by the Department;

(E) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional;

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator, emergency medical dispatcher as defined in OAR 259-008-0005(12) and (32) respectively, or part time parole and probation officer, as defined under 259-008-0005(20) and (21) and 259-008-0066, shall count on a pro-rated basis.

(d) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(12) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants shall have completed a period of service of not less than nine (9) months with one or more law enforcement units, or public or private safety agencies in a certifiable position, in the field in which certification is being requested.

(b) Applicants shall have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department.

(c) Applicants shall have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(13) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants shall possess a Basic Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants shall possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(15) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants shall possess or be eligible to possess the Advanced Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department approved supervisory level training within five (5) years prior to application for the Supervisory Certificate.

(d) Applicants shall be presently employed in, or have satisfactorily performed the duties associated with the position of a first level supervisor, as defined in ORS 181.610 and OAR 259-008-0005(16), as attested to by the applicant's department head during the time such duties were performed, for a period of one (1) year. The required experience shall have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(16) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants shall possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.

ADMINISTRATIVE RULES

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department approved management level training within five (5) years prior to application for the Management Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in ORS 181.610 and OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(17) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants shall possess or be eligible to possess the Management Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed 100 hours of Department approved executive level training within five (5) years prior to application for the Executive Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(18) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification: A law enforcement officer who is certified in one discipline may apply for multi-discipline certification, if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months experience in the discipline in which they are requesting certification, and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD discipline since it only exists at the basic certification level.

(c) Retention of Multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds EMD certification; a minimum of four (4) hours of training, specific to the EMD discipline, must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds Telecommunicator certification, a minimum of twelve (12) hours of training, specific to the Telecommunicator discipline, must be reported annually as required under OAR 259-008-0064.

(C) A minimum of twenty (20) hours of training, specific to each law enforcement discipline in which certification is held, must be reported annually as required under subsections (h) through (l) of this rule.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by an F-6 Course Roster.

(h) On or after July 1 of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency.

(i) Within 30 days of receipt of the notification in (h) above, the agency or individual must:

(A) Notify the Department of the training status of any law enforcement officer identified as deficient in submitting a Form F-15M or F-15T to the Department; and

(B) Submit an F-15M, or F-15T if multi-discipline includes certification as a telecommunicator or emergency medical dispatcher, identifying the maintenance training completed during the previous one (1) year reporting period.

(C) Maintenance training hours reported to the Department on an F-15M or F-15T will be used solely to verify completion of maintenance training requirements and will not be added to an officer's DPSST training record.

(j) Failure to notify the Department of completion of any required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(k) The Department will recall a law enforcement officer's certification for:

(A) Failure to complete or report any required maintenance training identified in section (c) above on or before June 30th of each year; or

(B) Failure to submit a Form F-15M or F-15T within 30 days after a warning notification letter has been sent.

(l) A law enforcement officer with a recalled certification is prohibited from being employed in any position that has been recalled.

(m) Upon documentation of compliance with subsection (i) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

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

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654, 181.665
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, 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 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10

259-008-0064

Maintenance of Certification for Telecommunicators and Emergency Medical Dispatchers

(1) Basic Certification:

(a) All certified telecommunicators must complete 12 hours of maintenance training annually, regardless of whether they are employed as a telecommunicator.

(b) All certified emergency medical dispatchers must complete four (4) hours of maintenance training annually, regardless of whether they are employed as an emergency medical dispatcher.

(c) The maintenance training cycle begins on July 1st each year and ends on June 30th the following year.

(2)(a) The employing agency must maintain documentation of all required telecommunicator or emergency medical dispatcher maintenance training completed;

(b) An individual who is certified as a telecommunicator or emergency medical dispatcher, but is no longer employed in a certifiable posi-

ADMINISTRATIVE RULES

tion, is responsible for meeting all maintenance training requirements and maintaining documentation of any maintenance training completed.

(3)(a) If reported on an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an F-6 will result in credit for training hours. No training hours will be added to an individual's record, unless accompanied by an F-6 Course Roster.

(b) On or after July 1 of each year, the Department will identify all telecommunicators and emergency medical dispatchers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency.

(c) Within 30 days of receipt of the notification in (3)(b) above, the agency or individual must notify the Department of the training status of any telecommunicator or emergency medical dispatcher identified as deficient by submitting a Form F-16 to the Department identifying the maintenance training completed during the previous one (1) year reporting period.

(d) Maintenance training hours reported to the Department on an F-16 will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(4) Failure to notify the Department of completion of the required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(5) The Department will recall a telecommunicator's or emergency medical dispatcher's certification for:

(a) Failure to complete or report any required maintenance training identified in sections (1) or (2) above on or before June 30th of each year; or

(b) Failure to submit a Form F-16 within 30 days after a warning notification letter has been sent.

(6) A telecommunicator or emergency medical dispatcher with a recalled certification is prohibited from being employed in a certifiable position as a telecommunicator or emergency medical dispatcher.

(7)(a) Instructors may apply hours spent instructing a class one (1) time annually toward maintenance training, but instructed hours reported for a class may not exceed the lesser of:

(A) The actual class hours; or

(B) The actual number of hours the instructor spent instructing the class.

(b) The total number of instructed hours applied towards the annual maintenance training requirement may not exceed:

(A) Six (6) hours for a telecommunicator; or

(B) Two (2) hours for an emergency medical dispatcher;

(8) Recertification following a recall may be obtained at the approval of DPSST by submitting the following to DPSST:

(a) A written request from the employing agency head, or individual if unemployed, requesting recertification, along with a justification of why the maintenance training was not completed; and

(b) Verification that the missed training was completed.

(9) Notwithstanding paragraph (5) of this subsection, the failure of a telecommunicator or emergency medical dispatcher to complete required maintenance training will not result in recall of certification if the telecommunicator or emergency medical dispatcher on authorized leave of absence from a public or private safety agency;

(10) The Department may grant an extension of time for completion of any required training or in-service training based upon good cause. A written request for an extension of time must be submitted to the Department by the agency head.

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

Stat. Auth.: ORS 181.640 & 181.644

Stats. Implemented: ORS 181.640 & 181.644

Hist.: PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 5-2001, f. & cert. ef. 8-22-01; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 15-2008, f. & cert. ef. 10-15-08; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10

Department of Revenue Chapter 150

Rule Caption: Conform rule: inheritance tax return filing requirement to statute.

Adm. Order No.: REV 1-2010(Temp)

Filed with Sec. of State: 2-19-2010

Certified to be Effective: 2-19-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 150-118.160-(B)

Subject: The current rule contains provisions that are contrary to the statutory requirements for filing inheritance tax returns. The temporary rule deletes the obsolete language.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-118.160-(B)

Inheritance Tax Return; Extension of Time to File

(1) The executor shall, not more than nine months after the date of the decedent's death, file with the Department an inheritance tax return, Form IT-1. A copy of the federal estate tax return must be filed with the return.

(2) If the executor cannot file a return within nine months, the Department may allow additional time, usually not to exceed six months, to file the return. A request for an extension of time must be filed with the Department within nine months after the date of death, and must show a good and sufficient cause for being unable to file a timely return. However, the Department will consider that an extension of time to file an Oregon inheritance tax return has been granted if the executor has obtained from the Internal Revenue Service an extension of time to file the federal estate tax return. In such event, no request need be made to the Department prior to filing the Oregon return. A copy of the approved federal extension must be attached to the front of the Oregon return and will serve as evidence of a granted extension by the Department. If the Internal Revenue Service denies the extension request, but grants a period of time from the date of denial in which to file the federal return without imposition of delinquency charges, the Department will not impose delinquency charges if the Oregon return is received by the Department within one month from the last date on which the Internal Revenue Service would accept the federal return without imposition of delinquency charges. A copy of the denied extension request must be attached to the front of the Oregon return at the time of filing. An extension of time to file shall not relieve the estate from the five percent penalty for failure to pay. Also, interest shall accrue during the extension period.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 118.160

Hist.: TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-188.160(2); RD 15-1987, f. 12-10-87 cert. ef. 12-31-87; RD 4-1997, f. 9-12-97, cert. ef. 12-31-97; REV 1-2010(Temp), f. & cert. ef. 2-19-10 thru 7-31-10

Rule Caption: "Oregon sales" definition under Measure 67 (2009 Oregon Laws Ch. 745).

Adm. Order No.: REV 2-2010

Filed with Sec. of State: 2-19-2010

Certified to be Effective: 2-19-10

Notice Publication Date: 11-1-2009

Rules Amended: 150-317.090

Subject: 150.317.090, *Minimum Tax*, is amended to clarify the meaning of "Oregon sales" for the purposes of the minimum tax changes contained in HB 3405. The statute is also amended to reflect HB 3409's provision that the corporate minimum tax is not applied to each affiliate in a consolidated filing but instead is imposed once per return. Because HB 3405 is subject to a referendum vote on January 26, 2010, the department will consider public comment on the proposed amendment but will not adopt the rule until the outcome of the election is final.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-317.090

Minimum Tax

(1)(a) For tax years beginning on or after January 1, 2009, the tax liability of an affiliated group of corporations filing a consolidated return may not be less than the minimum tax as defined in ORS 317.090. Only one minimum tax is charged per return, regardless of the number of corporations in the group that are doing business in Oregon.

Example 1: X Corporation and its only subsidiary, Y Corporation, are doing business in Oregon and file a consolidated Oregon Excise Tax Return showing a net loss for the 2009 tax year. The consolidated Oregon excise tax return properly shows Oregon sales for X of \$500,000 and for Y of \$250,000. The minimum tax for the year is \$500 based on Oregon sales of \$750,000.

(b) For tax years beginning on or after January 1, 2006, and before January 1, 2009 the tax liability of an affiliated group of corporations filing a consolidated return may not be less than the \$10 minimum tax multiplied by the number of corporations in the group that are doing business in Oregon.

Example 2: Alpha Corporation and its only subsidiary, Beta Corporation, are doing business in Oregon and file a consolidated Oregon Excise Tax Return showing a net loss for the 2006 tax year. The Oregon minimum tax for the year is \$20.

ADMINISTRATIVE RULES

(c) For consolidated returns filed for tax years beginning before January 1, 2006, the department determines that a \$10 minimum tax is due for the consolidated group and the \$10 minimum tax due for each affiliate included in the return doing business in Oregon is cancelled. This determination is made under authority of ORS 305.145(3).

Example 3: On July 1, 2006, Corporation A and Affiliates filed an amended tax return for 2005. The return included three affiliates doing business in Oregon and showed a net loss for the tax year. Although ORS 317.090 provides that each of the four corporations owes \$10 of minimum tax, the department will cancel the tax attributable to the affiliates and only one \$10 tax is owed by Corporation A and Affiliates.

(2) For tax years beginning on or after January 1, 1999, the excise tax is measured by the corporation's Oregon taxable income as computed in accordance with the provisions of the statute, but the tax cannot be less than the specified minimum. The minimum tax is due even though the corporation had a net loss and it must be paid in full even though the taxpayer was subject to the statute for only a part of the year, except that it may be apportioned in the case of a change of accounting periods. A corporation with no business activity in Oregon is not subject to the \$10 minimum tax.

(3) For tax years beginning before January 1, 1999, the provisions of section (2) of this rule apply, except that a corporation qualified to do business in Oregon, but engaging in no business activity in the state, is subject to the \$10 minimum tax.

(4) Definition of "Oregon Sales". For tax years beginning on or after January 1, 2009, the minimum excise tax is determined by referencing the taxpayer's "Oregon sales." Corporations using the apportionment method described in ORS 314.650 to 314.665 compute Oregon sales as provided under ORS 314.665. For corporations that apportion business income using a method different from that prescribed by ORS 314.650 to 314.665, "Oregon sales" means the numerator of the sales factor for:

(a) Carriers of freight or passengers in general, as provided in OAR 150-314.280-(G);

(b) Railroads, as provided in OAR 150-314.280-(H);

(c) Airlines, as provided in OAR 150-314.280-(I);

(d) Trucking companies, as provided in OAR 150-314.280-(J);

(e) Companies engaged in sea transportation service, as provided in OAR 150-314.280-(K);

(f) Companies involved in interstate river transportation service, as provided in OAR 150-314.280-(L);

(g) Public utilities (other than those provided for in subsections (a) through (f)), as provided in OAR 150-314.280-(E)(5), 150-314.280-(F), and ORS 314.650;

(h) Financial organizations, as defined in ORS 314.610(4), as provided in OAR 150-314.280-(N);

(i) Taxpayers with income from long-term construction contracts, as provided in OAR 150-314.615-(F);

(j) Motion picture and television film producers, as provided in OAR 150-314.615-(H);

(k) Publishers, as provided in OAR 150-314.670-(A);

(l) Interstate broadcasters, as provided in ORS 314.684;

(m) Insurers (as defined in ORS 317.010(11)), as provided in ORS 317.660(1); and

(n) Title insurers, and health care service contractors not classed as insurers under ORS 317.010(11), as provided in OAR 150-314.280-(E)(4), including gross premium receipts.

Stat. Auth.: ORS 305.100 & 317.090

Stats. Implemented: ORS 317.090

Hist.: 1953; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2006(Temp), f. 11-20-06, cert. ef. 11-21-06 thru 12-31-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; REV 2-2010, f. & cert. ef. 2-19-10

Rule Caption: "Estimates of Expenditures for Assessment and Taxation."

Adm. Order No.: REV 3-2010(Temp)

Filed with Sec. of State: 3-9-2010

Certified to be Effective: 3-9-10 thru 8-31-10

Notice Publication Date:

Rules Amended: 150-294.175(2)-(B)

Subject: This rule will allow counties to file an amended estimate of expenditures with the Department of revenue on or before May 1 but no later than June 1, if a county determines there is a need to increase or decrease its estimated expenditures. The rule requires counties to notify the Department of revenue on or before May 1 if they plan to increase or decrease their estimated budgeted expenditures.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-294.175(2)-(B)

Estimates of Expenditures for Assessment and Taxation

(1) On or before May 1 of each year, each county must file with the Department of Revenue an estimate of expenditures for assessment and taxation as required by ORS 294.175 in order to participate in the grant program provided under 294.178 for the tax year beginning on July 1.

(2) The county must notify the department on or before May 15 if it intends to increase or decrease its estimated expenditures.

(3) The county must file an amended estimate of expenditures no later than June 1 if it determines there is a need to increase or decrease its estimated expenditures.

(4) The amended filing must be filed in the same manner as the original application.

(5) The department will review the amended filing using the review standards and criteria for determining adequacy of resources that were applicable to the original filing.

Stat. Auth.: ORS 305.100 & 294.175

Stats. Implemented: ORS 294.175

Hist.: REV 6-2003, f. & cert. ef. 12-31-03; REV 3-2010(Temp), f. & cert. ef. 3-9-10 thru 8-31-10

Rule Caption: Tax amnesty program; 25 percent annually.

Adm. Order No.: REV 4-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-19-10

Notice Publication Date: 2-1-2010

Rules Adopted: 150-305.100-(C)

Rules Repealed: 150-305.100-(C)(T)

Subject: 150-305.100-(C), Tax Amnesty, clarifies the processes and procedures that apply to tax returns filed after the conclusion of the tax amnesty program established by 2009 Oregon Laws chapter 710. **Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

150-305.100-(C)

Tax Amnesty

(1) Definitions. For purposes of Chapter 710, Oregon Laws 2009 (Senate Bill 880) and this rule:

(a) "Amnesty program" refers to the tax amnesty program created by Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) "Amnesty period" refers to the time in which the application is required to be filed (October 1 through November 19, 2009).

(c) "Amnesty return" refers to the Oregon original or amended qualified tax return filed in accordance with section (3) of this rule.

(d) "Amnesty liability" is a liability that is reported on an original amnesty return or additional liability that is reported on an amended amnesty return filed in conjunction with the amnesty program.

(d) "Application" is the department-produced form entitled "Amnesty Application" that is referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(e) "Participant" means the person, entity, or corporation taking part in the amnesty program.

(f) "Post amnesty penalty" means the 25 percent penalty established by Section 4, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(g) "Tax program" means a type of tax that is collected and administered by the Department of Revenue and that is eligible for amnesty. The following are tax programs eligible for amnesty:

(A) Personal Income Tax;

(B) Corporate Income or Excise Tax;

(C) Inheritance Tax;

(D) Fiduciary (trust/estate) Tax;

(E) Transit District (self-employment) Tax.

(2) Applications. To be eligible for amnesty, a participant must have filed an application within the amnesty period on a form prescribed by the department. Applications were due on or before November 19, 2009 and must be complete and signed by the participant(s). Applications that were not complete or that were received after November 19, 2009 will not be accepted and the participant will not qualify for the amnesty being sought on that application.

(3) Amnesty Returns. Amnesty returns must have been filed no later than January 19, 2010. Amnesty returns that were not complete or are received after January 19, 2010 will not qualify for the amnesty being sought and all amnesty-related waivers of penalty and interest will be disallowed. Disqualified amnesty returns will be processed as if there had been no amnesty program.

(4) Installment Payments.

ADMINISTRATIVE RULES

(a) Amnesty participants may enter into an installment payment agreement with the department to satisfy an amnesty liability by making regular monthly, or more frequent, payments over a designated period of time.

(A) No agreement may extend beyond May 31, 2011 and participant(s) must satisfy all amnesty liabilities on or by May 31, 2011.

(B) If an amnesty participant fails to fully comply with the terms of an installment payment agreement, all amnesty-related waivers of penalty and interest will be disallowed. However, the participant may ask the department to find that the failure to fully comply with the terms of the installment payment agreement was due to "reasonable cause" as that term is defined in subsection (b) of this section. If the department makes such a finding, the installment payment agreement may resume, notwithstanding the failure to fully comply, subject to further conditions satisfactory to the department and provided that full payment is received no later than May 31, 2011. Upon a department finding of "reasonable cause," the participant will remain eligible for the penalty and interest waivers referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) For purposes of this section, "reasonable cause" exists when the participant exercises ordinary care and prudence in abiding by the terms of the installment agreement but was unable to comply with the agreement due to circumstances beyond the participant's control. To determine if the participant used ordinary care and prudence, the department will consider the participant's reasons for not abiding by the terms of the installment plan, and;

(A) The length of time between the event cited as a reason for the non-compliance and the missed or reduced installment payment(s); and

(B) Whether or not the participant could have reasonably anticipated the event(s) causing the noncompliance and taken reasonable steps to avoid it.

(c) The following nonexclusive list describes circumstances when reasonable cause may exist:

(A) Death or serious illness of the participant or a member of the participant's immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the participant's home, or place of business;

(C) Unavoidable and unforeseen absence of the participant from the state immediately prior to the due date of the missed or reduced installment payment;

(D) An unplanned and significant change in the participant's financial circumstances, through no fault of the participant, such that the participant demonstrates to the department's satisfaction that they are unable to meet reasonably necessary living expenses and also comply with the terms of the agreement; or

(E) Erroneous written information from the department, which caused the failure of the participant to timely pay.

(d) The following nonexclusive list describes circumstances that do not, in isolation, result in a determination of reasonable cause:

(A) Reliance on an employee or tax professional to pay on time; or

(B) Inability of, or failure of oversight by, the participant to pay the amnesty liability.

(5) The department will waive penalty and interest under Chapter 710, Oregon Laws 2009 (Senate Bill 880) only after the participant has paid all of the tax and one-half of the interest due.

(6) Closing Agreements.

(a) Policy. To assure that the amnesty program is administered efficiently and equitably, the department may waive penalties and interest for taxpayers entering into a closing agreement, under subsections (b) and (c) of this section, for the period of time immediately prior to, or during, the amnesty period. Or, if the taxpayer has filed a timely and complete application, a closing agreement may be executed through January 19, 2010.

(b) Interest waiver. Consistent with its authority under ORS 305.145(3) and notwithstanding OAR 150-305.145(3), the department may, when it determines that "good and sufficient cause" exists, based on the facts and circumstances of each case, waive up to 50% of the interest normally imposed. For purposes of this paragraph, "good and sufficient cause" exists when the department determines that entering into a closing agreement will result in an equity or efficiency by providing a streamlined alternative filing mechanism for taxpayers.

(c) Penalty waiver. Consistent with its authority under ORS 305.145(4) the department may, based on the facts and circumstances of each case and when it determines that entering into a closing agreement under this section will enhance the long-term effectiveness, efficiency or administration of the tax system, waive all, or a portion of, penalties otherwise imposed.

(7) Post amnesty penalty.

(a) The department will impose the post amnesty penalty on the total amount of unpaid tax for any tax year or reporting period for which the taxpayer meets any one of the conditions described in subparagraph (A) and either subparagraph (B) or (C):

(A) The taxpayer:

(i) Failed to file an application and amnesty return;

(ii) Filed an original or amended amnesty return that either failed to report or underreported tax liability;

(iii) Failed to file an original return where the department assesses a tax under ORS 305.265(10) or 314.400.

(B) The taxpayer could be subject to a penalty for one or more of the following (whether or not the penalty is actually imposed):

(i) ORS 314.402 (substantial understatement of income);

(ii) ORS 305.265(10) (failure to file a report or return with intent to evade the tax);

(iii) ORS 314.403, 314.404 or 314.406 (abusive tax avoidance transaction);

(iv) ORS 314.075 (evasion of any requirement of any law imposing income taxes);

(v) ORS 305.815 (false return, statement, or document);

(vi) ORS 305.265(13) (return falsely prepared and filed with intent to evade tax);

(vii) ORS 118.260, 305.992, or 314.400(2) or (3) (failure to file).

(C) The taxpayer claimed a credit on the return for which there was no reasonable basis in fact or law. "No reasonable basis in fact or law" means that the taxpayer knows or should have known that the department would disallow the credit being claimed because:

(i) The department adjusted a credit on a return previously filed by the taxpayer based on a substantially similar set of facts;

(ii) The credit being claimed is based on fraudulent substantiation;

(iii) The credit cannot be confirmed with a certifying agency, if applicable; or

(iv) The taxpayer takes a position in claiming the credit for which there is or was no substantial authority for such treatment.

(b) Exception. The post amnesty penalty will not be imposed when based upon a corresponding adjustment made to an Oregon tax return as a result of change or correction by the Internal Revenue Service (IRS) unless the IRS has also finally imposed a penalty under sections 6662, 6662A, 6663 or 7201 of the Internal Revenue Code upon the change. Nothing in this subsection precludes the department from assessing the post amnesty penalty if an adjustment is made on a return that is unrelated to an IRS change or correction.

(c) The post amnesty penalty will only be imposed on deficiencies or assessments that apply to tax years 2007 or earlier. The post amnesty penalty will not be imposed after January 1, 2014.

(d) Waiver. The department may waive the post amnesty penalty if the taxpayer demonstrates, to the department's satisfaction, that the failure to participate in the amnesty program was due to circumstances beyond their control.

[Publications: Publications referenced are available from the Agency]

Stat. Auth.: ORS 305.100, 305.145, 305.229

Stats. Implemented: Ch 710, 2009 OL (SB 880)

Hist.: REV 8-2009(Temp), f. & cert. ef. 10-15-09 thru 3-31-10; REV 4-2010, f. 3-15-10, cert. ef. 3-19-10

Rule Caption: 2009 Legislation Conformity.

Adm. Order No.: REV 5-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 11-1-2009

Rules Amended: 150-315.204-(A)

Subject: 150-315.204-(A), *Dependent Care Credits: General Information*, is amended to reflect statutory changes made in 2009 that extended the date on which the credit is scheduled to sunset. This filing is to delete text that was inserted by mistake in the filing that was effective January 1, 2010.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-315.204-(A)

Dependent Care Credits: General Information

(1) For tax years beginning on or after January 1, 2002, taxpayers must apply to the Child Care Division of the Employment Department and receive certification before being eligible for the Dependent Care Assistance or Dependent Care Information and Referral Services credits.

ADMINISTRATIVE RULES

See chapter 414, division 300 of the Oregon Administrative Rules (e.g., OAR 414-300-0000 to 414-300-0410) and contact the Child Care Division of the Employment Department for more information.

(2) For taxable years beginning on or after January 1, 1988, the following credits are available to employers that provide dependent care assistance or information and referral services to their employees:

(a) Dependent Care Assistance Credit. This credit is available to employers for the expenses paid or incurred by the employer for the care of employees' dependents.

(b) Dependent Care Information and Referral Services Credit. This credit is available to employers that provide information and referral services to assist their employees in obtaining dependent care.

(3) Any tax credit otherwise allowable that is not used by the taxpayer in a tax year may be carried forward and offset against the taxpayer's tax liability for up to five tax years. The amount of credit carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other credits, for all prior tax years that are within the carryover period.

(a) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must use the credit from the prior year first and then the current year's credit.

(b) If a credit carried forward from a prior year and a current year's credit are available, the two credits may be combined and taken up to the amount of tax liability for the year.

(4) If the taxpayer is an individual and the tax year is changed resulting in a short period return (a return covering a period of less than 12 months), the credit must be computed in a manner consistent with ORS 314.085.

(5) If the taxpayer is a part-year resident individual, the credit must be computed in a manner consistent with ORS 316.117.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.204

Hist.: RD 5-1988, f. 5-25-88, cert. ef. 6-1-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.134-(A); REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 5-2010, f. & cert. ef. 3-15-10

Department of State Lands Chapter 141

Rule Caption: Rules Governing the Essential Salmon Habitat Designations.

Adm. Order No.: DSL 1-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 4-1-10

Notice Publication Date: 10-1-2009

Rules Amended: 141-102-0000, 141-102-0010, 141-102-0020, 141-102-0030, 141-102-0040

Subject: The division 102 rules have been amended to update the Department of State Lands' Essential Indigenous Anadromous Salmonid Habitat mapped designations based upon newly available, more accurate data from the Oregon Department of Fish and Wildlife on the spawning and rearing habitat of federally listed threatened and endangered runs of indigenous, anadromous salmonids and state listed sensitivity runs of these same species.

Rules Coordinator: Elizabeth Martino—(503) 986-5239

141-102-0000

Purpose

Pursuant to ORS 196.810(b), these rules:

(1) Designate "essential indigenous anadromous salmonid habitat (ESH)" on maps that are made a part of this rule;

(2) Establish the process to amend the designation; and

(3) Require an authorization from the Department for activities involving the fill or removal of any amount of material in ESH unless the activity is exempt.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

141-102-0010

Policy

(1) It is the policy of the State of Oregon to protect ESH.

(2) To achieve this policy, the Department shall:

(a) Consult with the Department of Fish and Wildlife (ODFW) concerning the status of Oregon's indigenous anadromous salmonid species;

(b) Identify ESH in consultation with ODFW and the public through rulemaking; and

(c) Review all projects proposed in ESH pursuant to the standards set forth in the state's Removal-Fill Law (ORS 196.600 to 196.990) and rules (OAR 141-085)

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

141-102-0020

Definitions

(1) "Essential" means those portions of a stream reach that fill all or part of the basic or indispensable spawning or rearing needs of indigenous anadromous salmonids and are those areas necessary to prevent the depletion of indigenous anadromous salmonids. Such areas include "spawning habitat" and "rearing habitat" as defined below under subsections (3) and (4) of this section (*Oregon Fish Habitat Distribution Data Standard, Version 1.0, March 2008: <http://gis.oregon.gov/DAS/EISPD/GEO/docs/bioscience/OregonFishHabitatDistributionDataStandardv1.pdf>*).

(2) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho Salmon, and steelhead and cutthroat trout, that are members of the family of Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(3) "Spawning Habitat" " includes areas where eggs are deposited and fertilized. For some species, including salmonids, this also includes areas where gravel emergence occurs and where at least some juvenile development occurs.

(4) "Rearing Habitat" includes areas outside primary spawning habitats where juvenile fish take up residence during some stage of juvenile development and use the area for feeding, shelter, and growth. Some migration also occurs as juvenile and adult fish move between the ocean and spawning grounds.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

141-102-0030

Designation of Essential Salmon Habitat

(1) Areas designated as ESH shall include the waters of this state as described in OAR 141-085, including streams and any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to the stream.

(2) The streams and stream segments designated as ESH are shown on maps that are incorporated by reference in this rule.

(3) The Department will make available detailed maps of ESH at cost and the maps are also available for downloading and viewing on the Department's website (<http://oregonstatelands.us/>).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

141-102-0040

Revisions to ESH

Revisions, additions to or deletions from the list and maps of ESH shall be made by amendment to these administrative rules according to the following procedure:

(1) The Department will consult annually with ODFW on the accuracy of the ESH designations.

(2) In consultation with ODFW and other affected parties, the Department may revise the maps when new or higher quality data become available and/or when new state or federal listings or delistings occur that would substantially change the extent of designated habitat.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10

ADMINISTRATIVE RULES

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

Rule Caption: Implements Section 44, Chapter 865, Oregon Laws 2009 & ORS 803.570, Relating to Registration Plate Fees.

Adm. Order No.: DMV 4-2010

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10

Notice Publication Date: 1-1-2010

Rules Amended: 735-032-0010

Rules Repealed: 735-032-0010(T)

Subject: This rulemaking implements legislation enacted by the 2009 Legislative Assembly. Specifically section 44, chapter 865, Oregon Laws 2009 (HB 2001), which amends ORS 803.570, relating to registration plate fees. ORS 803.570 requires DMV to collect a fee amount each time it issues a single registration plate or pair of plates. Prior to the amendment of ORS 803.570, DMV was required to establish the fee amounts it could retain to cover its cost to manufacture registration plates not to exceed \$3 for a single registration and \$5 for pair of plates — regardless of the actual cost to manufacture the plates. On January 1, 2004, DMV amended OAR 735-032-0010 to establish the fee amounts at \$3 for a single registration plate and \$5 for a pair of plates.

Pursuant to ORS 803.570, as amended by section 44, chapter 865, OL 2009, DMV is establishing the registration plate fee amounts collected upon issuance of a single registration plate and for each pair of plates by calculating:

(1) DMV's costs to manufacture a single registration plate and a pair of registration plates, and rounding those costs to the next higher half-dollar; and

(2) Adding \$10 for a single plate and \$20 for a pair of plates.

Based on the required calculation, the fee for a single registration plate is \$12 (\$2 cost + \$10 = \$12). The fee for a pair of registration plates is \$23 (\$3 cost + \$20 = \$23).

Rules Coordinator: Lauri Kunze — (503) 986-3171

735-032-0010

Registration Plate Fees

(1) ORS 803.570 requires DMV to establish the fee amounts for each registration plate issued and for each pair of plates issued.

(2) The plate fee amounts are calculated by:

(a) Determining the cost to manufacture a single registration plate and a pair of registration plates (cost), respectively, and rounding the cost amount(s) to the next higher half-dollar; and

(b) Adding \$10 for a single plate and \$20 for a pair of plates, respectively.

(3) Based on the calculation under section (2) of this rule, registration plate fees are:

(a) \$12 for a single plate issued (\$2 cost + \$10 = \$12).

(b) \$23.00 for a pair of plates issued (\$3 cost + \$20 = \$23).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.570 & 2009 OL Ch. 865, Sec. 44

Stats. Implemented: ORS 803.570 & 2009 OL Ch. 865, Sec. 44

Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0310; MV 21-1988, f. 6-29-88, cert. ef. 7-1-88; DMV 4-1997, f. 1-24-97, cert. ef. 4-1-97; DMV 5-2003(Temp), f. 5-14-03, cert. ef. 7-1-03 thru 12-27-03; DMV 32-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 8-2004, f. & cert. ef. 5-24-04; DMV 18-2009(Temp), f. 9-29-09, cert. ef. 10-1-09 thru 3-29-10; DMV 4-2010, f. & cert. ef. 2-25-10

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Rule Caption: Amends rule language to comply with ORS 802.370.

Adm. Order No.: DMV 5-2010

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10

Notice Publication Date: 1-1-2010

Rules Amended: 735-150-0005

Rules Repealed: 735-150-0005(T)

Subject: The amendment of OAR 735-150-0005 brings the rule into compliance with ORS 802.370.

OAR 735-150-0005 establishes the Oregon Dealer Advisory Committee (ODAC) as the advisory committee required under ORS

802.370. The rule includes provisions for the designation of members, committee member terms and the appointment and interest of member representation.

During a recent review of the rule, it was found that section (9) of the rule does not fully comply with ORS 802.370(2).

The amendment of OAR 735-150-0005, section (9), clarifies that DMV will consult with ODAC before taking immediate disciplinary action against a dealer who is jeopardizing the public health and safety.

Rules Coordinator: Lauri Kunze — (503) 986-3171

735-150-0005

Oregon Dealer Advisory Committee

(1) The Oregon Dealer Advisory Committee is established pursuant to ORS 802.370.

(2) The committee's membership will consist of the following individuals appointed by the DMV administrator:

- (a) Two individuals who represent franchise dealers of new vehicles;
- (b) Two individuals who represent dealers of used vehicles;
- (c) Two individuals who represent Oregon dismantlers;
- (d) Two individuals who represent the interests of the general public;
- (e) One individual who represents recreational vehicle dealers;
- (f) One individual who represents vehicle dealership office management interests;
- (g) One individual who represents auto auctions;
- (h) One individual who represents Oregon towing businesses; and
- (i) One individual who represents dealers of motorcycles, mopeds, or all-terrain vehicles.

(j) In addition to the committee membership described under subsections (a) through (i) of this section, membership may also include one individual, whose term of appointment and interest of representation is determined by the DMV Administrator.

(3) DMV will designate one member listed in section (2) of this rule as chair of the committee. The chair's term expires December 31 of each year.

(4) Committee members are appointed to a three-year term and may be reappointed by the DMV administrator to serve an additional term(s). However, members serve at the pleasure of the DMV Administrator. Member terms will be staggered in a manner determined by DMV. In the event of a vacancy, the DMV administrator will appoint a new committee member to serve the duration of the three-year term.

(5) DMV will seek the recommendation of existing ODAC committee members or a trade or professional association generally recognized to represent a membership category before appointing a committee member, however, DMV is not bound by any recommendation.

(6) Meetings will be held quarterly beginning in January of each year, unless a meeting is cancelled, postponed or rescheduled as agreed to by DMV and a majority of the committee members. A committee member may be replaced by the DMV administrator for missing two consecutive quarterly meetings without good cause.

(7) DMV will consult with the committee before:

(a) Adopting administrative rules under ORS 822.035;

(b) Taking disciplinary action against a dealer under ORS 822.050 to revoke, suspend or place a dealer on probation;

(c) Levying a civil penalty against a dealer under ORS 822.009(1); or

(d) Taking disciplinary action against an Oregon dismantler under OAR 735-152-0050 to revoke, suspend or place a dismantler on probation.

(8) DMV may consult with the committee as required by section (7) of this rule at a committee meeting, or by mail, telephone, or other electronic means. DMV will provide written information on a proposed action described in section (7) of this rule to the committee members at least seven days before a committee meeting or the date a recommendation from the committee members is due. DMV may provide the written information by mail, fax, or other electronic means.

(9) The requirements of section (8) of this rule do not apply if DMV determines it must take immediate disciplinary action because the continued operation of a business regulated under ORS Chapter 822 jeopardizes public health or safety. DMV will consult with the committee before taking any action described under this section. Following the action, DMV will provide written notification of DMV's action to the committee.

(10) Recommendations of the committee and the individual committee members are advisory only and the Department of Transportation, including DMV, is not bound by any recommendation.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 802.370

ADMINISTRATIVE RULES

Hist.: MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 7-2009, f. & cert. ef. 3-20-09; DMV 19-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; DMV 5-2010, f. & cert. ef. 2-25-10

Rule Caption: Implements section 10 of chapter 448, Oregon Laws 2009 & ORS 803.015 regarding branded vehicle titles.

Adm. Order No.: DMV 6-2010

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10

Notice Publication Date: 1-1-2010

Rules Amended: 735-024-0015, 735-024-0025

Rules Repealed: 735-024-0015(T), 735-024-0025(T)

Subject: This rulemaking implements legislation enacted by the 2009 Legislative Assembly. Chapter 448, Oregon Laws 2009, amends Oregon's vehicle consumer warranty laws concerning lemon vehicles under ORS chapter 646.

Section 10, chapter 448, Oregon Laws 2009 requires a vehicle manufacturer that is required to replace a vehicle or refund the full price of a vehicle to a consumer to make a request to DMV to:

(1) Title the vehicle in the manufacturer's name and inscribe (brand) the vehicle's title "Lemon Law Buyback;" and

(2) Record the "Lemon Law Buyback" brand on DMV's records for the vehicle.

ORS 803.015 requires Oregon vehicle titles to contain any brand or notation specified by DMV. In order to implement section 10, chapter 448, Oregon Laws 2009, DMV has amended to OAR 735-024-0015 and 735-024-0025, relating to title brands. The amendments update definitions and circumstances when DMV will add or remove a Lemon Law Buyback title brand on an Oregon vehicle title or Oregon Salvage Title Certificate.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-024-0015

Definitions; Title Brands

As used in this rule through 735-024-0025, the following definitions apply:

(1) "Brand," "branded title," or "title brand" means a notation, inscription, indicator, symbol or phrase that is or has been printed, inscribed, stamped or otherwise affixed to a certificate of title to indicate the history, condition, or circumstances of a vehicle. A title brand does not necessarily indicate the extent to which a vehicle may have been damaged, whether a vehicle has been repaired or to what degree a damaged vehicle has been repaired.

(2) "Assembled vehicle" as defined in ORS 801.130 and these rules means a vehicle:

(a) With a body that does not resemble any particular year model or make of vehicle;

(b) That is not a vehicle rebuilt by a manufacturer;

(c) That is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(d) That is not an antique vehicle, a vehicle of special interest, a reconstructed vehicle or a replica.

(3) The following title brands defined under this section are adopted pursuant to 2009 Or. Laws, Ch. 448 and ORS 803.015. Title brands indicate a determination of a vehicle's condition made by another jurisdiction, or in the case of "glider kit," "reconstructed," "replica vehicle," "totaled" or "Lemon Law Buyback," a determination made by Oregon DMV:

(a) "Branded" means:

(A) A listing of two or more brands on an out-of-state title or similar document; or

(B) A brand not specifically defined or identified under this rule.

(b) "Flood damaged," "flood," or a word of similar import means a brand to indicate that a vehicle has been submerged in water to the point that the vehicle sustained damage;

(c) "Glider kit" or a word of similar import means a brand to indicate:

(A) A kit consisting of a new truck cab or cab and hood assembly, including a front axle assembly and frame rails, with or without an engine, transmission and rear axle, manufactured and sold with a manufacturer's statement of origin, has been used to replace damaged or worn components of an existing heavy truck or tractor; or

(B) A heavy truck or tractor was assembled using a kit consisting of all new component parts, including engine, transmission and rear axle,

manufactured and sold with a manufacturer's statement of origin, and assembled by a person other than the manufacturer of the components.

(C) For purposes of this subsection, "heavy truck or tractor" means truck or tractor with a gross vehicle weight rating of more than 16,000 pounds.

(d) "Lemon," "lemon-defective," "Lemon Law Buyback;" "returned to manufacturer," or a word of similar import means a brand to indicate a vehicle was returned to the manufacturer because of a defect or condition that could not be corrected or repaired and that substantially impaired the safety, market value, or the use, or intended use, of the vehicle.

(e) "Previous damage" means a title brand issued by DMV prior to August 20, 2004, to indicate that DMV had received information from another jurisdiction that a vehicle was damaged, destroyed, wrecked or salvaged, or words of similar import. The term "previous damage" does not apply to vehicles issued a junk title or similar ownership document by another jurisdiction as described under OAR 735-020-0070;

(f) "Reconstructed vehicle," or "reconstructed" as defined in ORS 801.408 and these rules, means either:

(A) A vehicle that:

(i) Has a body that resembles and primarily is a particular year model or make of vehicle;

(ii) Is not a vehicle rebuilt by a manufacturer;

(iii) Is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(iv) Is not a replica; or

(B) A motor truck that has been rebuilt using a component kit if the manufacturer of the kit assigns a vehicle identification number and provides a manufacturer's certificate of origin for the kit.

(g) "Totaled vehicle" or "totaled" as defined in ORS 801.527 and these rules means a vehicle that:

(A) Is declared a total loss by an insurer that is obligated to cover the loss or that the insurer takes possession of or title to.

(B) Is stolen, if it is not recovered within 30 days of the date that it is stolen and if the loss is not covered by an insurer.

(C) Has sustained damage that is not covered by an insurer and the estimated cost to repair the vehicle is equal to at least 80 percent of the retail market value of the vehicle before it was damaged. For purposes of this subsection, "retail market value" shall be as reflected in publications relied upon by financial institutions doing business in this state, including but not limited to the Title and Registration Textbook of the National Automobile Dealers Association (N.A.D.A. Guide), the Automobile Red Book or the Kelley Blue Book .

(h) "Replica" as defined in ORS 801.425 and these rules, means a vehicle with a body built to resemble and be a reproduction of another vehicle of a given year and given manufacturer.

(4) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation;

(5) "Oregon Certificate of Title" or "Oregon title" means a certificate of title, as that term is defined in ORS 801.185, issued by DMV.

(6) "Oregon Salvage Title Certificate" means a written document issued by DMV under the provisions of ORS 803.140 and 819.016 as evidence of vehicle ownership. An Oregon Salvage Title Certificate is not an Oregon Certificate of Title.

(7) "Salvage title," "salvage certificate" and "dismantler (wrecker) bill of sale" means a document issued by another jurisdiction to indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. "Salvage title" does not refer to an Oregon salvage title certificate as defined by ORS 801.454 and this rule, unless the Oregon salvage title certificate reflects a brand that indicates the vehicle was damaged in another jurisdiction, before being titled in Oregon.

(8) "Word(s) of similar import" means any word, term, indicator, symbol or phrase that means the same or has the same effect as the terms described under OAR 735-020-0070 (junk titles) and defined under sections (2) and (3) of this rule.

(9) For purposes of this rule, OAR chapter 735, division 024, division 152, ORS Chapters 819 and 822, "Auto Recycler" has the same meaning as "dismantler" as defined under ORS 801.236 and means a person issued a dismantler certificate under 822.110.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.140, 819.016, 821.060 & 2009 OL Ch. 448

Stats. Implemented: ORS 803.015, 803.420 & 2009 OL Ch. 448

Hist.: DMV 18-2004, f. & cert. ef. 8-20-04; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 17-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; DMV 6-2010, f. & cert. ef. 2-25-10

ADMINISTRATIVE RULES

735-024-0025

Title Brands; When Issued, Removed and Exceptions

(1) When Issued. DMV will issue a branded title or a title with an "assembled" make when an application for an Oregon title is submitted and:

(a) The vehicle's title carries a brand(s) described under OAR 735-024-0015(2) and (3);

(b) Pursuant to 2009 Or. Laws, Ch. 448, DMV receives notice from a vehicle manufacturer to inscribe "Lemon Law Buyback" on the certificate of title for the vehicle.

(c) The vehicle meets the definition of an "Assembled vehicle" as defined under OAR 735-024-0015(2); or

(d) The vehicle meets the definition of a "Reconstructed Vehicle," a "Replica" or a "Totaled vehicle" as those terms are defined under OAR 735-024-0015.

(e) Will be issued with a brand or "assembled" make described under OAR 735-024-0015 when:

(2) An Oregon title issued under section (1) of this rule:

(a) Will not necessarily be issued with the same brand that appeared on the vehicle's previous certificate of title or other ownership document(s);

(b) Will be issued with a brand described under OAR 735-024-0015 determined by DMV to be most comparable to the brand that appeared on the previous certificate of title. This subsection does not apply to a "branded" brand or an Oregon title with a "Lemon Law Buyback" brand, issued pursuant to 2009 Or. Laws, Ch. 448;

(c) Will indicate the name of the jurisdiction that issued the title brand, unless the title brand was issued by DMV; and

(d) Will be issued with a brand or "assembled" make described under OAR 735-024-0015 when DMV determines from a previous title or vehicle record, from the application for title or from information obtained from any source that a brand or "assembled" make should be placed on the Oregon title as set forth in section (1) of this rule. DMV may require documentation to determine if a vehicle should be issued an Oregon title with an "assembled" make, or a "reconstructed" or "replica" brand.

(3) Except as specifically provided in section (4) of this rule, once a title brand or "assembled" make has been placed on a vehicle's Oregon Certificate of Title that brand or "assembled" make will appear on any subsequent Oregon title issued for the vehicle.

(4) DMV may omit, remove, add or change a title brand or "assembled" make when:

(a) DMV receives information that indicates an Oregon title or Oregon Salvage Title Certificate was issued with an incorrect brand or "assembled" make. For example, DMV receives written information from an originating jurisdiction that indicates its title incorrectly reflects a title brand;

(b) DMV is satisfied the title brand or "assembled" make was placed on the Oregon title or Oregon Salvage Title Certificate in error;

(c) DMV failed to place a title brand or "assembled" make on the Oregon title or Oregon Salvage Title Certificate when required under section (1) of this rule or subsections (d), (e) and (f) of this section.

(d) A subsequent accident or occurrence causes the vehicle to be identified with a brand or different brand such as "totaled," "reconstructed," or "Lemon Law Buyback" issued pursuant to 2009 Or. Laws, Ch. 448.

(e) A vehicle issued an Oregon title with any brand or an "assembled" make other than totaled is reported to DMV as a totaled vehicle under ORS 819.012 or 819.014. Except as described in subsection (f) of this section, if DMV issues a new Oregon title, it will include a totaled brand, which replaces any previous brand shown on the Oregon title. For example, a vehicle issued an Oregon title with a flood brand will be issued an Oregon title with a totaled-reconstructed brand when the vehicle is reported to DMV as a totaled vehicle and is subsequently titled as a reconstructed vehicle;

(f) Notwithstanding subsection (e) of this section, a vehicle issued an Oregon title with an "assembled" make, or glider kit, "Lemon Law Buyback" issued pursuant to 2009 Or. Laws, Ch. 448, reconstructed or replica brand is reported to DMV as a totaled vehicle. If DMV issues a new Oregon title, it will include the original brand and a totaled brand. For example, a vehicle issued an Oregon title with a "replica" brand that is later reported to DMV as "totaled" under ORS 819.020 or 819.014, will be issued an Oregon title with a "replica-totaled-reconstructed" brand when the vehicle is reported to DMV as a totaled vehicle and is subsequently titled as a reconstructed vehicle; or

(g) The reason the vehicle was reported to DMV as a totaled vehicle is theft and the vehicle is recovered and no longer meets the definition of a "totaled vehicle" under ORS 801.527.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.0140, 819.016, 821.060 & 2009 OL Ch. 448

Stats. Implemented: ORS 803.015, 803.420 & 2009 OL Ch. 448

Hist.: DMV 18-2004, f. & cert. ef. 8-20-04; DMV 10-2005, f. 3-18-05; DMV 17-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; DMV 6-2010, f. & cert. ef. 2-25-10

Department of Transportation, Transportation Safety Division Chapter 737

Rule Caption: Adopts Minimum Safety Standards for Low-Speed Vehicles and for Medium Speed Electric Vehicles.

Adm. Order No.: TSD 1-2010

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10

Notice Publication Date: 1-1-2010

Rules Adopted: 737-010-0000, 737-010-0010, 737-010-0020

Rules Repealed: 737-010-0000(T), 737-010-0010(T), 737-010-0020(T)

Subject: This rulemaking implements legislation enacted by the 2009 Legislative Assembly. Section 14, Chapter 865, Oregon Laws 2009 (HB 2001) requires the Oregon Department of Transportation to adopt rules establishing minimum safety standards for low-speed vehicles and medium-speed electric vehicles. Minimum safety standards adopted by the department must be consistent with, but may exceed safety standards adopted by the federal government. The department is prohibited from issuing registration to a low-speed vehicle or medium-speed electric vehicle if it has reason to believe the vehicle does not meet the safety standards adopted by the department.

OAR 737-010-0010 adopts by reference the federal motor vehicle safety standards (FMVSS) for low-speed vehicles, as set forth under Title 49 CFR Part 571.500 (October 1, 2008), as the minimum vehicle safety standards for low-speed vehicles.

The U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA) has not established safety standards specific to medium-speed electric vehicles. NHTSA has indicated it has no plans to establish FMVSS for medium-speed electric vehicles and that medium-speed electric vehicles are subject to the FMVSS established for light (passenger) vehicles. Consequently, OAR 737-010-0020 adopts by reference the FMVSS, as set forth in Title 49 CFR Part 571 (October 1, 2008), applicable to light passenger vehicles and FMVSS Standard no. 305 relating to electrolyte spillage and electrical shock protection as the minimum vehicle safety standards for medium speed electric vehicles.

OAR 737-010-0000 defines terms applicable to OAR Chapter 737, Division 010 and these rules.

Rules Coordinator: Lauri Kunze—(503) 986-3171

737-010-0000

Definitions Relating to Low-Speed Vehicles and Medium-Speed Electric Vehicles

As used in division 10 rules and Chapter 865, Oregon Laws 2009, the following definitions apply:

(1) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to revision 63 FR 33216, June 17, 1998, as amended at 68 FR 43972, July 25, 2003.

(2) "Crushproof body design" means the vehicle has been certified by the National Highway Traffic Safety Administration that the vehicle is in compliance with FMVSS No. 216 Roof crush resistance;

(3) "TSD" means the Transportation Safety Division of the Oregon Department of Transportation;

(4) "Enclosed" means a complete shell comprised of a top, bottom and sides meant to protect the vehicle and occupants;

(5) "FMVSS" means Federal Motor Vehicle Safety Standards and Regulations as specified by NHTSA under 49 CFR, Part 571;

(6) "Low-speed vehicle" means a four wheeled motor vehicle with a top speed of more than 20 miles per hour but not more than 25 miles per hour.

(7) "Medium-speed electric vehicle" means an electric motor vehicle with four wheels that is equipped with a roll cage or a crushproof body design, can attain a maximum speed of 35 miles per hour on a paved, level surface, is fully enclosed and has at least one door for entry;

ADMINISTRATIVE RULES

(8) "NHTSA" means the U.S. Department of Transportation, National Highway Traffic Safety Administration.

(9) "Open-body type vehicle" means a vehicle having no occupant compartment doors and/or top or a vehicle having readily detachable occupant compartment doors and/or top; and

(10) "Roll cage" is an enclosure that will support the vehicle's weight and be so designed as to protect the occupants when the vehicle is resting on this enclosure.

Publications: Publications referenced are available from the agency.
Stat. Auth.: ORS 184.616, 184.619, 802.010, 815.010, 815.030 & 2009 OL Ch 865
Stats. Implemented: ORS 815.010, 815.030 & 2009 OL Ch 865
Hist.: TSD 1-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; TSD 1-2010, f. & cert. ef. 2-25-10

737-010-0010

Minimum Safety Standards for Low-Speed Vehicles

(1) As the minimum vehicle safety standards for low-speed vehicles, TSD adopts the Federal Motor Vehicle Safety Standards (FMVSS) applicable to low-speed vehicles as set forth in 49 CFR, Part 571.500 (October 1, 2008).

(2) The vehicle safety equipment requirements for low-speed vehicles described under this rule apply to original and replacement equipment.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 815.010, 815.030 & 2009 OL Ch 865
Stats. Implemented: ORS 815.010, 815.030 & 2009 OL Ch 865
Hist.: TSD 1-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; TSD 1-2010, f. & cert. ef. 2-25-10

737-010-0020

Minimum Safety Standards for Medium-Speed Electric Vehicles

(1) As the minimum vehicle safety standards for medium-speed electric vehicles, TSD adopts the Federal Motor Vehicle Safety Standards (FMVSS) applicable to light vehicles as set forth in 49 CFR, Part 571 (October 1, 2008). In addition, TSD adopts FMVSS Standard no. 305, Electric-powered vehicles: electrolyte spillage and electrical shock protection, as set forth in 49 CFR 571.305 (October 1, 2008).

(2) A medium-speed electric vehicle must be fully enclosed and may not be an open-body type vehicle.

(3) The vehicle safety equipment requirements for medium-speed electric vehicles described under this rule apply to original and replacement equipment.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 815.010, 815.030 & 2009 OL Ch 865
Stats. Implemented: ORS 815.010, 815.030 & 2009 OL Ch 865
Hist.: TSD 1-2009(Temp), f. & cert. ef. 9-29-09 thru 3-20-10; TSD 1-2010, f. & cert. ef. 2-25-10

Rule Caption: Updates Transportation Safety Division rules regarding changes to the driver education program.

Adm. Order No.: TSD 2-2010(Temp)

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10 thru 8-20-10

Notice Publication Date:

Rules Amended: 737-015-0020, 737-015-0030, 737-015-0090, 737-015-0100, 737-015-0110

Subject: This rulemaking is needed to implement legislation enacted by the 2009 Legislative Assembly. In part, chapter 394, Oregon Laws 2009 (SB 125) amends many of the statutes pertaining to student traffic safety education courses and adds new provisions. These statutory changes became effective July 1, 2009. This temporary rulemaking updates OAR 737-015-0020, 737-015-0030, 737-015-0090, 737-015-0100, and 737-015-0110 to bring these administrative rules into compliance with the law changes.

Rules Coordinator: Lauri Kunze—(503) 986-3171

737-015-0020

Definitions

As used in division 15 rules, unless the context otherwise requires:

(1) "Approved certification" means any form, sticker, or validation, approved by the Department, that serves as proof of completion of a traffic safety education course.

(2) "Approved provider" is an educational facility or a driving school that provides instruction using a Division-approved curriculum by instructors who have completed a Division-approved instructor course of study:

(a) An educational facility is a public provider; and

(b) A driving school is a private provider. To qualify as an approved provider, the driving school owner, operator or instructor must certify and provide verification annually that an instructor meet all requirements of

employment and remain in compliance with OAR 735-160-0003 through 735-160-0130

(3) "Audits" means the Division's audits of approved providers performed on-site to review student, curriculum, and instructor records to ensure that the providers are in compliance with OAR 737-015-0010 through 737-015-0110. An audit may include observation of the instructor during behind-the-wheel and classroom instruction.

(4) "Behind-the-wheel" instruction means the portion of the traffic safety education course that requires the student to be located behind the steering wheel of a motor vehicle or simulated vehicle, operating it either in real or simulated traffic situations, through the direct guidance of a driver education instructor.

(a) Four hours of simulation is equal to one hour of behind the wheel instruction

(b) One hour of operating a motor vehicle is equal to one hour of behind the wheel instruction.

(5) "Classroom instruction" means that portion of traffic safety education instruction that is given in a classroom situation and is not included as a portion of the behind-the-wheel instruction.

(6) "Completing the course" means completing an Oregon Department of Transportation, Transportation Safety Division approved traffic safety education course.

(7) "Concurrent" means the integration of classroom instruction and behind the wheel instruction. No less than four and no more than 10 hours of classroom instruction will be completed before starting behind-the-wheel instruction. The classroom and behind-the-wheel instruction will be well organized and coordinated.

(8) "Curriculum guide" means a document that describes what the students need to learn and provides a guide for instructors as they prepare for instruction. It is a document that assists traffic safety instructors and district coordinators in meeting the needs of the regulations identified in OAR 737-015-0030 and 735-015-0040.

(9) "Department" or "ODOT" means the Oregon Department of Transportation.

(10) "Division" or "TSD" means the Transportation Safety Division of the Oregon Department of Transportation.

(11) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(12) "Driving school" means a commercial vendor, owner, operator or instructor who teaches traffic safety education directly to teen drivers and the school is certified by DMV under OAR 735-160-0003 through 735-160-0130, relating to Commercial Driver Training Schools.

(13) "Driving school owner, operator or instructor" means a person who is certified by DMV under OAR 735-160-0003 through 735-160-0130, relating to Commercial Driver Training Schools.

(14) "Driving simulator" means an electromechanical device designed to represent the driver's compartment of the automobile and with the use of films or video programs attempts to develop judgment, decision-making skills, behavior response, and manipulative skills essential in learning the driving task.

(15) "Dual control" means an additional brake pedal installed as specified by the manufacturer, for use by the traffic safety education instructor to assist in an emergency when a student driver is at the regular controls during behind-the-wheel instruction. Dual controls consist of a foot brake for both the student driver and the instructor, connected either by mechanical or hydraulic means.

(16) "Educational facility" includes any public school district, education service district, community college district, any facility for the deaf operated under ORS 346.010, schools located at youth correctional facilities, tribal schools, state and federal schools, public agencies, and any parochial, private- or home-school facility meeting the requirements of OAR 581-045-0535 and ORS 345.505.

(17) "Eligible student" means a student that is at least 15 years of age, who has not reached 18 years of age and has a valid instruction driver permit.

(18) "Hours" means clock hours, not including breaks or other time that does not apply to actual instruction.

(19) "Lesson plan" means a written outline of the content and method of instruction. Required elements are specified in OAR 737-015-0030.

(20) "Practice driving observation" means that portion of traffic safety education instruction given in a dual control vehicle as the instructor observes the student driver and engages the back seat passengers in discussion of the student driver operation of the motor vehicle.

ADMINISTRATIVE RULES

(21) "Public school" means a school district, education service district, community college district, any facility for the deaf operated under ORS 346.010, and schools located at youth correctional facilities.

(22) "Scope and sequence" means a written outline that provides a framework for the knowledge, skills, driving behaviors and habits that students are expected to acquire in the classroom and behind-the-wheel portion of a traffic safety education program.

(23) "Simulation" means the portion of the behind-the-wheel traffic safety education course given in a driving simulator.

(24) "Traffic safety education" means a course consisting of classroom instruction, practice driving, and in some cases practice driving observation, all devoted to educating teen student drivers in safe and proper driving practices.

(25) "Valid instruction driver permit" means an instruction permit issued by the State of Oregon under ORS 807.280 or an interim driver card issued by the State of Oregon under 807.310 that is in the student's name and is not expired, canceled, suspended or revoked.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07; TSD 2-2010(Temp), f. & cert. ef. 2-25-10 thru 8-20-10

737-015-0030

Curriculum Requirements

(1) Each approved provider must appoint a person responsible for ensuring that all driver education requirements are met and to be the contact person with the Division.

(2) Each approved provider must develop a lesson plan that includes:

- (a) The title of the lesson or module to be taught;
- (b) Prerequisites;
- (c) Overall objectives;
- (d) Performance objectives;
- (e) Materials and resources;
- (f) Instructor and student activities;
- (g) Time breakdown;
- (h) Methods of assessment; and
- (i) Assignments.

(3) Each approved provider must adopt written policies that include:

- (a) Enrollment criteria;
- (b) Student fees and refunds;
- (c) Course failures and repeats; and
- (d) Minimum and maximum course duration.

(4) Each approved provider must submit in writing, all reportable motor vehicle accidents that involve a driver education motor vehicle to the Division within three working days of the accident.

(5) A traffic safety education program curriculum must include:

(a) A minimum of 30 hours of classroom instruction not exceeding six hours per week or three hours per day that includes:

(A) Instructing students about driving on all types of Oregon roads to enable the student to acquire knowledge about driving techniques and experiences and sharing the road with other highway users such as bicycles, motorcycles, pedestrians, trains, cars, trucks, and rail in a positive and courteous manner;

(B) Driver responsibility of automobile maintenance, fuel efficient driving, potential distractions, safety restraint (belt) use, and legal and moral responsibilities;

(C) Preparing and controlling the vehicle;

(D) Identification and proper use of signs, signals, markings, roadway types and variations such as county, city, expressways, freeways, and interstates;

(E) How to enter, use, and exit different types of intersections;

(F) Basic automobile maneuvers and traffic flow;

(G) Management of time and space using accepted and current practices, including targeting, line of sight/path of travel, model driving habits and reference point concepts;

(H) Defensive driving practices;

(I) Rules of the road;

(J) How the laws of physics and natural laws affect driving;

(K) How physical, emotional, and psychological conditions such as personal attitudinal traits affect driving;

(L) How alcohol and other drugs affect driving; and

(M) Emergency situations and vehicle malfunctions.

(b) A minimum of six hours of behind-the-wheel instruction not exceeding 90 minutes of driving per day per student that includes:

(A) The rules and procedures of operating an automobile;

(B) The visual skills to obtain correct information and make reduced-risk decisions about driving maneuvers;

(C) Vehicle movement in a precise and timely manner to avoid conflict with others;

(D) Pre-drive procedures that include use of vehicle controls, door locks and head restraints, having headlights on at all times and use of safety (belt) restraints;

(E) Basic maneuvers that include starting, stopping, backing, vehicle control, speed control, parking, pulling to and from the curb, right-of-way, and push/pull and hand-over-hand steering;

(F) Complex maneuvers that include entering and exiting an intersection, entering and exiting curves, lane changes, merging, passing, turns in traffic, city driving, and three-point turnabouts; and

(G) Visual skills, including automobile mirror usage, using current and accepted practices, including targeting, line of sight, path of travel, model driving habits, and reference point concepts.

(c) A minimum of six hours of practice driving observation not exceeding three hours of observation per day per student.

(d) Parent, legal guardian, or supervising adult involvement that includes participating in a parent meeting and submitting documentation, in the form of a log or other means, demonstrating to the provider that a minimum of five hours of supervised home practice was conducted prior to the completion of the course. This supervised home practice is not counted as a part of the classroom, behind-the-wheel, and practice driving observation of the provider course.

(e) A skill assessment for each student driver that covers, at a minimum:

(A) Positioning a vehicle based on visual referencing skills, space management, fender judgment and road position control;

(B) Procedures and sequencing for vehicle operations from the simple to the complex skill based on vehicle operation control, vehicle maneuvering, vehicle control options, and vehicle balance;

(C) Processing traffic and vehicle information into speed and position changes based on visual skills, space management, vehicle speed control, and control of the road; and

(D) Precision movements for maintaining vehicle control and balance in expected and unexpected situations based on vehicle speed control, vehicle balance, collision avoidance, traction control, response to mechanical failures and traction loss.

(6) A traffic safety education curriculum guide shall be approved by ODOT-TSD prior to program implementation. The guide must be reviewed and updated every three years thereafter from the initial approval date. The guide shall be available for review by ODOT-TSD on request. A curriculum guide shall include the following elements:

(a) Philosophy;

(b) Goals and objectives;

(c) Scope and sequence;

(d) Major instructional activities;

(e) Suggested teaching strategies;

(f) Lists of available materials and resources;

(g) Procedures for student and program evaluation;

(h) A written lesson plan with a coordinated flow chart for each classroom and behind-the-wheel session; and

(i) A written drive route that supports each behind-the-wheel lesson plan with specific driving behaviors to be practiced, directions and strategies to improve student performance and habit development. The drive route cannot duplicate the DMV drive test route.

(7) Classroom and behind-the-wheel instruction and practice driving observation must be offered concurrently. Behind-the-wheel instruction and practice driving observation of a particular skill or behavior may not precede the classroom instruction of that same skill or behavior.

(8) No program will be completed in less than 35 days and no more than 180 days. An extension beyond the 180 days may be provided if there is compelling reason dealing with school, family or medical circumstances and has been agreed upon with provider and student before the completion of the course.

(9) At the end of each program, the provider will issue a Department approved certification to each student that successfully completes the traffic safety education course.

(10) Exception —The classroom portion of a driver education program, required under section (5) (a) of this rule, offered from June through August may be conducted over a shorter period of time and for longer hours. The classroom instruction must be conducted over no less than a three-week period with no more than 10 hours of classroom instruction per

ADMINISTRATIVE RULES

week, not exceeding three hours per day. In no case shall the student complete the course in fewer than 35 days.

(11) Waivers — Waivers may be requested by the approved provider. A waiver of the minimum of six hours of practice driving observation, required under section (5)(c) of this rule, may be requested from the Division Administrator or his or her designee if a particular student and his or her parent, legal guardian or supervising adult requests that the student be given one-on-one instruction.

(12) A waiver request under section (11) of this rule must include:

(a) A compelling reason for the request;

(b) Why granting such a waiver will not adversely affect the learning of the participating student(s); and

(c) Parental support of such scheduling.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07; TSD 2-2010(Temp), f. & cert. ef. 2-25-10 thru 8-20-10

737-015-0090

Recordkeeping

(1) To ensure accurate recording and reporting, an approved provider must complete and return all required traffic safety education course recording and reporting forms supplied by the Division before or on the required dates.

(2) The approved provider must maintain the following records:

(a) A record for each student who begins, regardless of whether or not the student completes, a traffic safety education course including:

(A) The dates the course was taken;

(B) The final grade achieved, if course is completed;

(C) Verification that the student had a valid instruction driver permit on the first day of class;

(D) The student's mailing address;

(E) The student's progress;

(F) A record of home practice;

(G) Time involvement;

(H) Evaluation results; and

(I) Attendance — classroom and behind-the-wheel start and end times and dates.

(b) A record for all instructors, including current and past instructors, who have conducted the classroom or behind-the-wheel portion of a traffic safety course including documentation showing compliance with 737-015-0070(2) through 737-015-0070(4) during the period of time the instructor taught.

(c) A copy of the curriculum guide currently in use.

(d) A copy of all accident reports for reportable accidents relating to a driver education motor vehicle owned or operated by the approved provider.

(e) A copy of written policies and procedures required by OAR 737-015-0030 and ORS 336.805.

(f) Record of the tuition charged a student.

(g) Expenditure and reimbursement records that support the request for reimbursement as provided by ORS 336.805 and as required by OAR 737-015-0100(8).

(3) Approved providers' records must be retained for five years for instructors and 10 years for all other program records.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07; TSD 2-2010(Temp), f. & cert. ef. 2-25-10 thru 8-20-10

737-015-0100

Reimbursement for Traffic Safety Education Courses

(1) The ODOT-TSD will reimburse approved providers for traffic safety education courses that meet the requirements of OAR 737-015-0010 through 737-015-0110.

(2) Approved public providers amount of reimbursement shall not be greater than the net cost of conducting the course, nor shall it exceed \$210 per pupil completing the course. In no case shall the public provider receive more than its eligible expenses less tuition received.

(3) Approved private providers amount of reimbursement shall not be greater than the net cost of conducting the course plus a profit under (8)(e), nor shall it exceed \$210 per pupil completing the course. In no case shall the private provider receive more than its eligible expenses plus profit under (8)(e) less tuition received.

(4) If funds available to the ODOT-TSD for the Student Driver Training Fund are not adequate to pay all approved claims in full, approved

providers will receive a pro rata reimbursement based upon the ratio that the total amount of funds available to the total amount of funds required for maximum allowable reimbursement. Calculation for pro rata reimbursement will be as follows: the total amount of funds available in the Student Driver Training Fund will be divided by the statewide total number of students eligible for reimbursement. This calculation will generate a prorated per student amount. Each approved provider's reimbursement will be determined by multiplying the prorated amount times the number of eligible students claimed by the approved provider.

(5) Claims received after the published deadline will not be considered for reimbursement at any time.

(6) Accurate and complete records of the cost of conducting a traffic safety education course must be kept, and reports must be submitted to the ODOT-TSD by each approved provider seeking reimbursement. All student fees must be received by the approved provider.

(7) Distribution of funds available in the Student Driver Training Fund shall be made no more than once a month by the ODOT-TSD Administrator based on the reimbursement form submitted by the approved provider.

(8) The ODOT-TSD will reimburse costs of traffic safety education courses that comply with OAR 737-015-0010 to 737-015-0110. Allowable costs may include:

(a) Salary for classroom, behind-the-wheel and simulation instructors;

(b) Motor vehicle expenses, whether leased or owned by the approved provider, including vehicle insurance and operating expenses (i.e., gas, oil, repairs);

(c) Instructional materials;

(d) Direct program coordination costs, including administrative costs, clerical and office personnel wages, and cost of facilities, e.g., rent, electricity, heating; and

(e) Profit of no more than 12% of the allowable costs identified under (8)(a) through (8)(d), for private providers that are not under contract to a public provider.

(9) Approved providers shall receive reimbursement only for eligible students who have completed the traffic safety education course prior to issuance of their Oregon provisional driver license and who have not reached the age of 18.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSS 2-2001, f. & cert. ef. 8-13-01; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07; TSD 2-2010(Temp), f. & cert. ef. 2-25-10 thru 8-20-10

737-015-0110

Audits and Investigation

(1) The ODOT-TSD may periodically audit all approved providers to determine compliance with laws and rules pertaining to the operation of the approved provider's program and instructor certification requirements. Approved providers must allow the ODOT-TSD to conduct audits with prior notice during regular school or business hours:

(a) Periodic audits may include examination of:

(A) Student driver records for which division approved driver training was conducted by the provider regardless of whether the student driver completed or failed to complete the school's driver training program;

(B) Qualifications of traffic safety instructors;

(C) Other items the ODOT-TSD deems necessary such as classroom and behind-the-wheel instructor observations, vehicle equipment, vehicles and instructional materials; and

(D) Financial and fiscal information used to determine the reimbursable costs and profit as outlined in 737-015-0100.

(b) Refusal to permit an audit will result in notice from the ODOT-TSD requiring the provider to cease and desist from classroom and behind-the-wheel instruction and the use of the ODOT-TSD-approved completion seal.

(c) An ODOT-TSD representative will prepare a written report of each audit. A copy of the ODOT-TSD representative's report, including any corrective action, will be sent to the provider.

(d) Approved providers must correct any deficiency identified by an ODOT-TSD inspector during an on-site audit within 30 calendar days of the date of the audit. A corrective action report must be provided to the ODOT-TSD. If not corrected, approved providers will not be eligible for reimbursement. When non-compliance of rules continues the ODOT-TSD may revoke or cancel recognition of the provider and notify DMV.

(2) The ODOT-TSD may investigate any complaint it receives about an approved provider or instructor. The authorized provider or provider's employees must cooperate with the ODOT-TSD during the investigation. If

ADMINISTRATIVE RULES

requested by the ODOT-TSD, the approved provider must provide a written response to the complaint within 10 working days by either mail or facsimile from the date the ODOT-TSD notifies the provider of the complaint. The ODOT-TSD must prepare a written report of each investigation. A copy of the ODOT-TSD report, including any corrective action, will be sent to the provider. If not corrected, approved providers will not be eligible for reimbursement. When non-compliance of rules continue the ODOT-TSD may revoke or cancel recognition of the provider and notify the DMV.

(3) The ODOT-TSD may revoke its approval of a provider or instructor upon providing five days advance notice when ODOT-TSD determines, through an audit or investigation, that the safety of students or members of the general public is being endangered because of unsafe practices or use of unsafe equipment.

(4) An approved provider or instructor whose approval has been suspended, revoked, or cancelled is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(5) When ODOT-TSD takes action to suspend, revoke or cancel an approved provider ODOT-TSD will send notice to the approved provider or instructor listed. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current address on record with ODOT-TSD.

(6) When ODOT-TSD takes action to suspend, revoke or cancel an instructor approval ODOT-TSD will send notice to the instructor listed on the Instructor Report. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (for an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current school address on record with ODOT-TSD.

(7) Except as provided for in section (9) of this rule, a request for a hearing must be submitted in writing to, and received by, ODOT-TSD within 20 days of the date of the notice. If a hearing request is received in a timely manner the suspension, revocation or cancellation will not go into effect pending the outcome of the hearing, unless the approval is immediately suspended or cancelled.

(8) If the approval is immediately suspended or cancelled as set forth in subsection (6) and (7) of this section, the request for hearing shall be submitted in writing to, and received by, ODOT-TSD within 90 days of the date of notice of suspension. The suspension or cancellation shall remain in effect pending the outcome of the hearing.

(9) Except as provided in OAR 137-003-0003, when no request for a hearing is received by the deadline, the approved provider or instructor has waived the right to a hearing, ODOT-TSD's file shall constitute the record of the case, and a default order shall be issued by ODOT-TSD.

(10) If a provider or instructor approval has been revoked, the provider or instructor may reapply after a period of revocation of five years and must meet all the requirements for approval.

(11) If the provider or instructor approval is cancelled, the provider or instructor may reapply when they have met all of the requirements.

(12) At the end of a suspension period, ODOT-TSD will reinstate the provider or instructor approval unless the provider or instructor does not meet the qualification requirements for the approval. If the approval has expired, the provider or instructor must reapply and must meet all the requirements for new certification.

Stat. Auth.: ORS 184.616, 184.619, 802.345
Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345, 807.065
Hist.: TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07; TSD 2-2010(Temp), f. & cert. ef. 2-25-10 thru 8-20-10

Employment Department Chapter 471

Rule Caption: Allow federal extension of 100% Extended Benefits to apply to additional qualified individuals.

Adm. Order No.: ED 2-2010(Temp)

Filed with Sec. of State: 3-3-2010

Certified to be Effective: 3-3-10 thru 8-29-10

Notice Publication Date:

Rules Adopted: 471-030-0225

Subject: Allow federal extension of 100% Extended Benefits to apply to qualified individuals. This rule will permit additional individuals to qualify beyond their benefit year.

Rules Coordinator: Courtney Brooks—(503) 947-1250

471-030-0225

Extended Benefits Look Back

As used in ORS 657.321 to 657.329, when an individual's benefit year ends before the start of an Extended Benefits period and federal law provides funding greater than 50% of Extended Benefits, the Director shall allow for an eligibility period that begins within the Extended Benefits period.

Stat. Auth.: ORS 657.610

Stats. Implemented:

Hist.: ED 2-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10

Landscape Architect Board Chapter 804

Rule Caption: Numerous revisions including sole proprietors, business renewal, LAIT supervision, delinquent registration; new signature rule.

Adm. Order No.: LAB 1-2010

Filed with Sec. of State: 2-17-2010

Certified to be Effective: 2-17-10

Notice Publication Date: 1-1-2010

Rules Adopted: 804-030-0003

Rules Amended: 804-003-0000, 804-022-0000, 804-025-0020, 804-035-0010, 804-035-0020, 804-035-0030, 804-040-0000

Subject: OAR 804-030-0003: A newly adopted rule outlining the use of signatures and digital signatures.

OAR 804-003-0000: Revise three definitions: business entity, delinquent, and renewal of registration.

OAR 804-022-0000: Clarifies how an LAIT is to validate supervised work experience by an RLA to the Board.

OAR 804-025-0020: Clarifies PDH requirement for a registrant with 25 consecutive years experience as a Landscape Architect and provides general housekeeping by changing shall to will and clarifying PDH for structured activities.

OAR 804-035-0010: Clarify that a business is a business entity; revises 'shall' in numerous locations.

OAR 804-0350-0020: revises application information to reflect that Certificate of Authorization is for a business entity.

OAR 804-035-0030: Revises language about the Certificate of Authorization for a business entity so that the certificate information reflects a one-year renewal period rather than the previous two-year renewal period.

OAR 804-040-0000: A housekeeping process to reorganize how fees are presented in the rule from one disconnected list into categories representing: examination, registration, business, and miscellaneous fees.

Rules Coordinator: Susanna Knight—(503) 589-0093

804-003-0000

Definitions

The definitions of terms used in ORS 671.310 to 671.459, and the rules of this chapter are:

(1) "Assumed or Fictitious Name" — A false name taken as one's own.

(2) "Business entity" — a sole proprietor Landscape Architect operating under either the registrant name or an assumed business name or any corporation, limited liability company, partnership, or other entity or association of persons providing landscape architectural design or consulting services.

(3) "Deceit" — An attempt to portray as true or valid something that is untrue or invalid.

(4) "Delinquent" — a registrant who fails to renew his/her certificate on or before the renewal date.

(5) "Emeritus" — Retired but retaining an honorary title corresponding to that held immediately before retirement.

(6) "Employing" — Hiring a person, not an independent contractor, for compensation.

(7) "Fraud" — Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.

(8) "Grossly Negligent" — Reckless and wanton disregard for exercising care and caution.

(9) "Impersonate" — To assume, without authority or with fraudulent intent, the identity of another person.

ADMINISTRATIVE RULES

(10) Late fee: a fee assessed when a payment is received after the date due.

(11) "Material Misrepresentation" — An untrue statement that is significant under the circumstances.

(12) "Renewal of Registration" — To annually maintain the current status of a valid registration or to bring a delinquent certificate of registration to current, valid status.

Stat. Auth.: ORS 183 & 671.415

Stats. Implemented:

Hist.: LAB 1-1984, f. & ef. 1-5-84; LAB 1-1985, f. & ef. 7-1-85; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2006, f. & cert. ef. 8-14-06; LAB 1-2010, f. & cert. ef. 2-17-10

804-022-0000

Landscape Architect in Training (LAIT)

(1) An LAIT may only engage in the practice of landscape architecture under the direct supervision of a Registered Landscape Architect (RLA).

(2) A candidate who has successfully completed two or more sections of the LARE and is working toward registration as a Landscape Architect is qualified to register with the Board as a Landscape Architect in Training (LAIT).

(3) The initial LAIT registration application must include a validation of supervision of the LAIT by the supervising RLA.

(4) An LAIT registration must be renewed annually. An LAIT registration may only be renewed if the LAIT renewal form is signed by the RLA supervising the LAIT that is working toward registration as a Landscape Architect.

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 671.316(3), 671.325, 671.335, 671.365

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1986, f. & ef. 1-3-86; LAB 3-1989, f. 6-23-89, cert. ef. 7-1-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2005, f. & cert. ef. 12-13-05; Renumbered from 804-020-0055, LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2008, f. & cert. ef. 7-7-08; LAB 1-2010, f. & cert. ef. 2-17-10

804-025-0020

Uniform Continuing Education Standards

(1) Definitions:

(a) Activity — any course or educational endeavor that has a clear purpose and objective and maintains, improves or expands the professional knowledge or skill of the registrant.

(b) Professional Development Hour (PDH) — one hour (with no less than 50 minutes of direct involvement, commonly referred to as a contact hour) of an activity that meets the requirements of these regulations.

(c) Structured educational activity — any activity that has:

(A) a sponsor other than the registrant;

(B) evidence of pre-planning including a written objective and format;

(C) an assessment component; and

(D) is documented and verifiable.

(d) Health, safety and welfare issue — any issue related to the practice of landscape architecture exemplified by the most current examination required for licensure.

(e) Common conversions:

(A) One university quarter credit hour = 30 PDHs

(B) One university semester credit hour = 45 PDHs

(C) One IACET Continuing Education Unit (CEU) = 10 PDHs

(2) Basic Requirements as a condition of renewal:

(a) Each landscape architect shall complete 12 PDH of acceptable continuing education requirements during the one-year period immediately preceding each annual renewal date.

(b) At least 9 PDH of the continuing education requirement must be earned by completing structured educational activities that directly address the health, safety, and welfare issues of the public as related to the practice of landscape architecture.

(c) If a registrant exceeds the total continuing education requirement in a renewal period, the registrant may carry a maximum of 12 PDH forward into the next renewal period.

(3) Conditions For Acceptance:

(a) To be accepted as a PDH, a structured educational activity must be related to the practice of landscape architecture, performed outside of the normal performance of one's occupation, and contemporaneously documented.

(b) The following are types of PDH that may be accepted by the Board:

(A) Professional or Technical presentations; making professional or technical presentations at recognized professional meetings, conventions or conferences may qualify for up to one PDH per reporting period.

(B) Teaching or instructing a qualified presentation may be eligible for up to two PDH for each contact hour spent in the classroom. Teaching PDH may be available only for teaching a course or seminar in its initial presentation. Teaching PDH are not available to full-time faculty of any college or university.

(C) Authoring; Authoring (publishing) or presenting an original paper, article or book may be eligible for up to 20 PDH per publication. PDH may be available for authorship or presentation of that activity, but not for both. PDH cannot be requested until the paper, article, or book is actually published or presented. PDH may be available only for authorship or presentation in its initial version.

(D) Professional societies or organizations; Serving as an elected officer or appointed chair of a committee of an organization in a professional society or organization may qualify for the equivalent of up to 4 PDH per reporting period. PDH of this type are limited to 4 PDH per organization and may be eligible only at the completion of each year of service.

(E) Professional boards or commissions; Serving as an elected officer or appointed member of a professional board or commission may qualify for up to 4 PDH per reporting period. PDH of this type are limited to 4 PDH per elected office or appointment and may be eligible only at the completion of each year of service.

(F) Professional examination grading or writing; Serving as an exam grader or on a committee writing exam materials for a professional registration examination may be eligible for up to 4 PDH per exam. A maximum of 8 PDH of this type may be accepted per biennium.

(G) Attaining specialty certifications through examination from a qualified professional society or organization may be eligible for PDHs equal to two times the allotted examination time (i.e. 4 PDHs may be granted for a certification exam of 2 hours in length). A maximum of 4 PDH of this type may be accepted per reporting period.

(H) Pro-bono service that has a clear purpose and objective and maintains, improves, or expands the professional knowledge or skill of the registrant may be eligible for up to 1 PDH for every 4 hours of service. A maximum of 4 PDH of this type may be accepted per year.

(I) Extended travel outside the State of Oregon may be eligible for up to 2 PDH per week of travel.

(J) Attendance at industry related exhibitions such as home and garden shows may be eligible for up to 1 PDH per show. A maximum of 2 PDH of this type may be accepted per year.

(K) Mentoring one or more students for one day at the University of Oregon Landscape Architecture Shadow Mentor Day program or other mentoring event may be eligible for up to 1 PDH per mentor day. A maximum of 4 PDH of this type may be accepted per year.

(L) Membership on the regulatory board for the practice of landscape architecture may be eligible for up to 8 HSW PDH per year of membership.

(4) The board has final authority with respect to approval for courses, specific activities, and other PDH.

(5) A Landscape Architect registered for 25 consecutive years or more in Oregon or other states requiring registration may meet Oregon's continuing education requirement upon completing 4 PDH per year. This can be accomplished through formal continuing education or self study.

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 671.395

Hist.: LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2008, f. & cert. ef. 2-4-08; LAB 1-2010, f. & cert. ef. 2-17-10

804-030-0003

Signature

(1) After the registrant's seal has been applied to the original or record copy, the registrant shall place the registrant's handwritten signature in permanent ink across the seal.

(2) For electronic or digital documents, a digital signature is acceptable as allowed by ORS 84.001 to 84.061.

(3) A digital signature transforms a message through the use of an algorithm or series of algorithms that provide a key pair, private and public, for signer verification, document security, and authentication.

(4) A digital signature must be:

(a) Unique to the registrant using it;

(b) Under the direct control of the registrant;

(b) Verifiable; and

(c) linked to the document being signed in such a manner that the digital signature is invalidated if any data in the document is altered. in place of the handwritten signature.

ADMINISTRATIVE RULES

(6) Each displayed copy of, and each hard copy printed from, a transmitted or stored electronic document containing a digital signature shall bear the seal and the signature, and shall be a confirmation that the electronic document was not altered after the initial digital signing of the document.

(a) If the electronic document is altered, both the digital signature and electronic seal are void.

(b) A registrant is responsible for the custody and proper use of the electronic or digital signature.

(c) Improper use of the electronic or digital signature will be grounds for disciplinary action.

Stat. Auth.: ORS 671.415
Stats. Implemented: ORS 671.379
Hist.: LAB 1-2010, f. & cert. ef. 2-17-10

804-035-0010

Qualifications for a Certificate of Authorization for Business Providing Landscape Architecture Services

(1) A business entity is required to obtain a Certificate of Authorization from the board.

(2) Each such business entity must meet the following requirements:

(a) For purposes of ORS 671.318, an "officer" of the business entity means an individual owning, operating, or employed by the business entity in Oregon and having the authority on behalf of the business entity to enter into contracts for landscape architectural services and to otherwise make decisions regarding the execution and outcome of such services.

(b) Each business entity must designate one or more Registered Landscape Architects as being in responsible charge of the landscape architectural services and decisions of the business entity. In the case of a business entity with multiple offices, each office in Oregon will have a designated Registered Landscape Architect in responsible charge of that office.

(c) Each Landscape Architect designated as being in responsible charge of the business entity's landscape architectural activities and decisions must file an affidavit of responsibility with the board.

(3) Each certified business entity must notify the board in writing within 30 days of any change in:

- (a) Address;
- (b) Business status; or

(c) Status of the person or persons designated as being in responsible charge of the landscape architectural services and decisions of the business entity.

Stat. Auth.: ORS 671.415
Stats. Implemented: ORS 671.315
Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006 f. & cert. ef. 6-26-06, Renumbered from 804-030-0011; LAB 2-2008, f. & cert. ef. 3-20-08; LAB 1-2010, f. & cert. ef. 2-17-10

804-035-0020

Application for Certificate of Authorization for a Business Entity

(1) A business entity must submit an application for a Certificate of Authorization to the board, accompanied by the appropriate fee. See OAR 804-040-0000.

(2) The application must be on forms prescribed by the board and will contain the following information:

(a) Name and address of each landscape architect designated as being in responsible charge of the business entity's landscape architectural activities and decisions.

(b) Affidavit of responsibility from each landscape architect designated as being in responsible charge of the business entity's landscape architectural activities and decisions.

Stat. Auth.: ORS 671.415
Stats. Implemented: ORS 671.315
Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006 f. & cert. ef. 6-26-06, Renumbered from 804-030-0011; LAB 1-2010, f. & cert. ef. 2-17-10

804-035-0030

Issuance and Renewal of Certificate of Authorization

(1) Upon satisfactory completion of all requirements, the board may issue or renew a Certificate of Authorization for a business entity (Certificate). The Certificate expires one year from the date of issuance or renewal unless earlier revoked, suspended, or not renewed.

(2) The Certificate may be renewed prior to its expiration date on the last day of the renewal month or within 30 days of the expiration date without payment of a late fee.

(3) A Certificate of Authorization issued by the board shall be displayed at the business entity's primary place of business in Oregon where the public can readily view it.

(4) A Certificate that is not renewed within 30 days of its expiration date may be reinstated only as provided in OAR 804-035-0035.

Stat. Auth.: ORS 671.415
Stats. Implemented: ORS 671.315
Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006 f. & cert. ef. 6-26-06, Renumbered from 804-030-0011; LAB 1-2010, f. & cert. ef. 2-17-10

804-040-0000

Fees

The following are fees established by the board:

(1) Examination Fees

(a) Exam application fee for each section: \$50.00.

(b) Landscape Architect Registration Examination: an amount equal to the cost of purchasing the exam, or portions of the exam, from CLARB, plus the cost of postage, handling, examination site facilities and staff time for administration of the exam.

(2) Registration Fees

(a) Initial Landscape Architect in Training registration: \$50.00.

(b) Annual renewal for Landscape Architect in Training: \$50.00.

(c) Application fee for initial Landscape Architect registration: \$100.00.

(d) Application fee for Landscape Architect registration by reciprocity: \$100.00.

(e) Initial Landscape Architect registration: \$250.00.

(f) Annual renewal for Landscape Architect: \$250.00.

(g) Emeritus Annual fee: \$25.00.

(3) Business Fees:

(a) Application fee for business registration: \$100.00.

(b) Initial certification as an Authorized Business Entity in Landscape Architecture: \$112.50.

(c) Annual renewal fee for an Authorized Business Entity in Landscape Architecture: \$112.50.

(4) Miscellaneous Fees

(a) Late fee: \$100.00 for each delinquent year.

(b) Duplicate certificate: \$50.00.

(c) Fee for registrant list: \$50.00.

Stat. Auth.: ORS 671.415
Stats. Implemented: ORS 671.365
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 1-2006, f. & cert. ef. 3-17-06; LAB 2-2008, f. & cert. ef. 3-20-08; LAB 2-2009, f. & cert. ef. 12-11-09; LAB 1-2010, f. & cert. ef. 2-17-10

Office for Oregon Health Policy and Research Chapter 409

Rule Caption: Adoption of All-Payer Healthcare Claims Data Reporting Program.

Adm. Order No.: OHP 1-2010

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 3-1-10

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Rules Adopted: 409-025-0100, 409-025-0110, 409-025-0120, 409-025-0130, 409-025-0140, 409-025-0150, 409-025-0160, 409-025-0170

Subject: The purpose of these rules is to implement the healthcare claims data collection mandates within Sections 1200 to 1206 of House Bill 2009, which was enacted by the 75th Legislative Assembly. House Bill 2009 also appropriated resources to fund the program. The Office for Oregon Health Policy and Research (OHPR) will administer the healthcare claims data collection. The proposed rules specify the entities and lines of business that are subject to the rules; the format, layout, and coding of the healthcare claims data to be collected; the data collection schedule; the process for seeking waivers or exceptions to the proposed rules; and civil penalties for failure to comply. The rules also allows OHPR to create public use and limit-

ADMINISTRATIVE RULES

ed data sets and allows OHPR and the Department of Human Services to publish data and reports that serve the public's interest.

Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-025-0100

Definitions

The following definitions apply to OAR 409-025-0100 to 409-025-0170:

(1) "Accident policy" means an insurance policy that provides benefits only for a loss due to accidental bodily injury.

(2) "Administrator" means the administrator of the Office for Oregon Health Policy and Research.

(3) "Allowed amount" means the actual amount of charges for health-care services, equipment, or supplies that are covered expenses under the terms of an insurance policy or health benefits plan.

(4) "Attending provider" means the individual health care provider who delivered the health care services, equipment, or supplies specified on a health care claim.

(5) "Association" means any organization, including a labor union, that has an active existence for at least one year, that has a constitution and bylaws and that has been organized and is maintained in good faith primarily for purposes other than that of obtaining insurance.

(6) "Billing provider" means the individual or entity that submits claims for health care services, equipment, or supplies delivered by an attending provider.

(7) "Capitated services" means services rendered by a provider through a contract in which payments are based upon a fixed dollar amount for each enrolled member on a monthly basis.

(8) "Carrier" shall have the meaning given that term in ORS 743.730(6).

(9) "Certificate of authority" shall have the meaning given that term in ORS 731.072.

(10) "Charges" means the actual dollar amount charged on the claim.

(11) "Claim" means an encounter or request for payment under the terms of an insurance policy, health benefits plan, Medicare, or Medicaid.

(12) "Co-insurance" means the percentage an enrolled member pays toward the cost of a covered service.

(13) "Co-payment" means the fixed dollar amount an enrolled member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

(14) "Current Procedural Terminology" (CPT) means a medical code set of physician and other services, maintained and copyrighted by the American Medical Association, and adopted by the U.S. Secretary of Health and Human Services as the standard for reporting physician and other services on standard transactions.

(15) "Data set" means a collection of individual data records, whether in electronic or manual files.

(16) "DCBS" means the Oregon Department of Consumer and Business Services.

(17) "Deductible" means the total dollar amount an enrolled member pays toward the cost of covered services over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

(18) "De-identified health information" means health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

(19) "Department" means the Oregon Department of Human Services.

(20) "Direct personal identifier" means information relating to an individual patient or enrolled member that contains primary or obvious identifiers, including:

(a) Names;

(b) Business names when that name would serve to identify a person;

(c) Postal address information other than town or city, state, and 5-digit zip code;

(d) Specific latitude and longitude or other geographic information that would be used to derive postal address;

(e) Telephone and fax numbers;

(f) Electronic mail addresses;

(g) Social security numbers;

(h) Vehicle identifiers and serial numbers, including license plate numbers;

(i) Medical record numbers;

(j) Health plan beneficiary numbers;

(k) Certificate and license numbers;

(l) Internet protocol (IP) addresses and uniform resource locators (URL) that identify a business that would serve to identify a person;

(m) Biometric identifiers, including finger and voice prints; and

(n) Personal photographic images.

(21) "Disability policy" means an insurance policy that provides benefits for losses due to a covered illness or disability.

(22) "Disclosure" means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

(23) "Eligible employee" shall have the meaning given that term in ORS 743.730(12).

(24) "Employee" shall have the meaning given that term in ORS 654.005(4).

(25) "Employer" shall have the meaning given that term in ORS 654.005(5).

(26) "Encrypted identifier" means a code or other means of identification to allow individual patients or enrolled members to be tracked across data sets without revealing their identity.

(27) "Encryption" means a method by which the true value of data has been disguised in order to prevent the identification of individual patients or enrolled members and does not provide the means for recovering the true value of the data.

(28) "Enrolled member" means enrollee as defined in ORS 743.730(14).

(29) "Facility" means a health care facility as defined in ORS 442.015(16).

(30) "Genetic tests" shall have the meaning given that term in ORS 192.531(14).

(31) "Group health insurance" shall have the meaning given that term in ORS 743.522.

(32) "Health benefit plan" shall have the meaning given that term in ORS 743.730(19).

(33) "Healthcare claims data file" means electronic health information including medical claims files, medical eligibility files, pharmacy claims files, pharmacy eligibility files, and any other related information specified in this rule.

(34) "Healthcare Common Procedure Coding System" (HCPCS) means a medical code set, maintained by the Department of Health and Human Services, that identifies health care procedures, equipment, and supplies for claim submission purposes.

(35) "Health care" shall have the meaning given that term in ORS 192.519(3).

(36) "Health care provider" shall have the meaning given that term in ORS 192.519(5).

(37) "Health information" shall have the meaning given that term in ORS 192.519(6).

(38) "HIPAA" means Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d, et seq. and the federal regulations adopted to implement the Act.

(39) "Hospital indemnity policy" means an insurance policy that provides benefits only for covered hospital stays.

(40) "Indirect personal identifier" means information relating to an individual patient or enrolled member that a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods could apply to render such information individually identifiable by using such information alone or in combination with other reasonably available information.

(41) "Individual", when used in a list of required lines of business, means individual health benefit plans.

(42) "Individually identifiable health information" shall have the meaning given that term in ORS 192.519(8).

(43) "Insurance" shall have the meaning given that term in ORS 731.102.

(44) "Labor union" means any organization which is constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(45) "Large group" means health benefit plans for employers with more than 50 employees.

(46) "Limited data set" means protected health information that excludes direct personal identifiers and is disclosed for research, program operations, or to a public health authority for public health purposes.

(47) "Long-term care insurance" shall have the meaning given that term in ORS 743.652(4).

ADMINISTRATIVE RULES

(48) “Managed care organization” (MCO) means a prepaid managed care health services organization as defined in ORS 414.736.

(49) “Mandatory reporter” means any reporting entity defined as a mandatory reporter in OAR 409-025-0110.

(50) “Medicaid” means medical assistance provided under 42 U.S.C. section 1396a (section 1902 of the Social Security Act), as administered by the Division of Medical Assistance Programs.

(51) “Medicaid fee-for-service” (Medicaid FFS) means that portion of Medicaid where a health care provider is paid a fee for each covered health care service delivered to an eligible Medicaid patient.

(52) “Medical claims file” means a data set composed of health care service level remittance information for all adjudicated claims for each billed service including but not limited to member demographics, provider information, charge and payment information, and clinical diagnosis and procedure codes for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEGB group health insurance plan, or services provided in Oregon.

(53) “Medical eligibility file” means a data set containing demographic information for each individual enrolled member eligible for medical benefits for one or more days of coverage at any time during a calendar month for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEGB group health insurance plan, or services provided in Oregon.

(54) “Medical provider file” means a data set containing information about health care providers providing health care services, equipment, or supplies to enrolled members during the reporting period.

(55) “Medicare” means coverage under Part A, Part B, Part C, or Part D of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(56) “OEGB” means the Oregon Educators Benefit Board.

(57) “OHPR” means the Office for Oregon Health Policy and Research.

(58) “OMIP” means the Oregon Medical Insurance Pool.

(59) “Patient” means any person in the data set who is the subject of the activities of the claim performed by the health care provider.

(60) “Paid amount” means the actual dollar amount paid for claims.

(61) “PEBB” means the Oregon Public Employees’ Benefit Board.

(62) “Person” shall have the meaning given that term in ORS 731.116.

(63) “Pharmacy benefit manager” (PBM) means a person or entity that performs pharmacy benefit management, including a person or entity in a contractual or employment relationship with a person or entity performing pharmacy benefit management for a health benefits plan.

(64) “Pharmacy claims file” means a data set containing service level remittance information from all adjudicated claims including, but not limited to, enrolled member demographics, provider information, charge and payment information, and national drug codes for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEGB group health insurance plan, or services provided in Oregon.

(65) “Pharmacy eligibility file” means a data set containing demographic information for each individual enrolled member eligible for pharmacy benefits for one or more days of coverage at any time during a calendar month for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEGB group health insurance plan, or services provided in Oregon.

(66) “Policy” shall have the meaning given that term in ORS 731.122.

(67) “Portability” means portability health benefit plans as defined in ORS 743.760.

(68) “Prepaid amount” means the fee for the service equivalent that would have been paid for a specific service if the service had not been capitated.

(69) “Premium” shall have the meaning given that term in ORS 743.730.

(70) “Principal investigator” (PI) means the person in charge of a research project that makes use of limited data sets. The PI is the custodian of the data and shall comply with all state and federal restrictions, limitations, and conditions of use associated with the data release.

(71) “Protected health information” shall have the meaning given that term in ORS 192.519(11).

(72) “Public health authority” means the Public Health Division of the Department or local public health authority as defined in ORS 431.414(7).

(73) “Public health purposes” means the activities of a public health authority for the purpose of preventing or controlling disease, injury, or disability including, but not limited to, the reporting of disease, injury, vital

events such as birth or death, and the conduct of public health surveillance, investigations, and interventions.

(74) “Public use data set” means a publicly available data set of de-identified health information containing only the data elements specified by OHPR for inclusion.

(75) “Reporting entity” means:

(a) An insurer as defined in ORS 731.106 or fraternal benefit society as defined in ORS 748.106 required to have a certificate of authority to transact health insurance business in Oregon.

(b) A health care service contractor as defined in ORS 750.005 that issues medical insurance in Oregon.

(c) A third-party administrator required to obtain a license under ORS 744.702.

(d) A pharmacy benefit manager or fiscal intermediary, or other person that is by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service.

(e) A prepaid managed care health services organization as defined in ORS 414.736.

(f) An insurer providing coverage funded under Part A, Part B, or Part D of Title XVIII of the Social Security Act, subject to approval by the United States Department of Health and Human Services.

(76) “Registered entity” means any person required to register with DCBS under ORS 744.714.

(77) “Research” means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

(78) “Small employer health insurance” means health benefit plans for employers whose workforce consists of at least two but not more than 50 eligible employees.

(79) “Self-insured plan” means any plan, program, contract, or any other arrangement under which one or more employers, unions, or other organizations provide health care services or benefits to their employees or members in this state, either directly or indirectly through a trust or third-party administrator.

(80) “Specific disease policy” means an insurance policy that provides benefits only for a loss due to a covered disease.

(81) “Strongly-encrypted” means an encryption method that uses a cryptographic key with a large number of random keyboard characters.

(82) “Subscriber” means the individual responsible for payment of premiums or whose employment is the basis for eligibility for membership in a health benefit plan.

(83) “Third-party administrator” (TPA) means any person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on, residents of Oregon or residents of another state from offices in Oregon, in connection with life insurance or health insurance coverage; or any person or entity who must otherwise be licensed under ORS 744.702.

(84) “Transact insurance” shall have the meaning given that term in ORS 731.146.

(85) “Trust” means a fund established by:

(a) Two or more employers in the same or related industry; or

(b) One or more labor unions; or

(c) One or more employers and one or more labor unions; or

(d) An association as described in ORS 743.522(1)(b).

(86) “Vision policy” means a health benefits plan covering only vision health care.

(87) “Voluntary reporter” means any registered or reporting entity, other than a mandatory reporter, that voluntarily elects to comply with the reporting requirements in OAR 409-025-0100 to 409-025-0170.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425

Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

409-025-0110

General Reporting Requirements

(1) Definition of “mandatory reporter”

(a) For carriers and licensed third-party administrators, OHPR shall identify mandatory reporters using information collected by DCBS including, but not limited to, data from the Health Insurance Member Enrollment Report.

(A) OHPR shall aggregate the most recent four quarters of data.

(B) OHPR shall calculate the mean total lives for each carrier and licensed third-party administrator.

(C) All carriers and licensed third-party administrators with calculated mean total lives of 5,000 or higher shall be mandatory reporters.

ADMINISTRATIVE RULES

(b) All PBMs shall be mandatory reporters.

(c) All MCOs shall be mandatory reporters.

(2) Voluntary reporters may elect to participate by notifying the Administrator in writing.

(3) Mandatory and voluntary reporters shall submit healthcare claims data files for all required lines of business and shall not submit claims for any excluded lines of business.

(a) Required lines of business:

(A) Medicare;

(B) Medicaid;

(C) Portability;

(D) Individual;

(E) Small employer health insurance;

(F) Large group;

(G) Associations and trusts; and

(H) Self-insured plans.

(b) Excluded lines of business:

(A) Accident policy;

(B) Disability policy;

(C) Long-term care insurance;

(D) Hospital indemnity policy;

(E) Medicare supplemental policy;

(F) Specific disease policy;

(G) Vision; and

(H) Workers compensation.

(4) Mandatory and voluntary reporters shall comply with healthcare claims data file layout, format, and coding requirements in OAR 409-025-0120.

(5) Mandatory and voluntary reporters shall comply with healthcare claims data submission requirements in OAR 409-025-0130.

(6) Unless otherwise required by state or federal rules, regulations or statutes, mandatory and voluntary reporters shall not submit the following types of claims:

(a) Claims related to screening for, diagnosis of, or treatment of Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome;

(b) Claims related to genetic tests; or

(c) Any claims subject to stricter disclosure limits imposed by state or federal rules, regulations, or statutes.

(7) OHPR shall provide written notification to all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170.

(a) Beginning March 1, 2010 OHPR shall notify all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170 during the calendar year 2010.

(b) By July 1, 2010 OHPR shall notify all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170 for the calendar year 2011.

(c) Beginning January 1, 2011, OHPR shall notify by July 1 all mandatory reporters subject to the reporting requirements of OAR 409-025-0100 to 409-025-0170 for the following calendar year.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425

Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

409-025-0120

Healthcare Claims Data File Layout, Format, and Coding Requirements

(1) Required healthcare claims data files shall include:

(a) Medical claims;

(b) Medical eligibility;

(c) Medical provider;

(d) Pharmacy claims; and

(e) Pharmacy eligibility.

(2) The medical claims file shall be submitted using the approved layout, format, and coding described in Appendix A.

(3) The medical eligibility file shall be submitted using the approved layout, format, and coding described in Appendix B.

(4) The medical provider file shall be submitted using the approved layout, format, and coding described in Appendix C.

(5) The pharmacy claims file shall be submitted using the approved layout, format, and coding described in Appendix D.

(6) The pharmacy eligibility file shall be submitted using the approved layout, format, and coding described in Appendix E.

(7) All data elements are required unless specified as optional.

(8) All required healthcare claims data files shall be submitted as asterisk-delimited ASCII files.

(a) Text data shall not include asterisks.

(b) Numeric data are positive integers unless otherwise specified.

(A) Negative values are allowed for charges, payment, co-payment, co-insurance, deductible, and prepaid amount.

(B) Negative values shall be preceded by a minus sign.

(9) OHPR shall convene a technical advisory group to advise OHPR and associated contractors on submission specifications including but not limited to Appendices A-E, Schedule A and any additional data submission requirements. The advisory group shall include, but not be limited to representatives from:

(a) Carriers;

(b) TPAs;

(c) PBMs;

(d) MCOs; and

(e) Other stakeholders and interested parties.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425

Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

409-025-0130

Healthcare Claims Data Submission Requirements

(1) OHPR shall notify mandatory reporters of the submission start date for program initiation in 2010, which shall occur when the following conditions are met:

(a) Final versions of Appendices A-C have been published on the OHPR web site for at least 120 days; and

(b) OHPR is satisfied that the data vendor is prepared to test transmission of healthcare claims data files from mandatory reporters.

(2) Mandatory reporters shall submit healthcare claims data files as specified in Schedule A. Voluntary reporters may consult with OHPR to submit healthcare claims data files on an alternative schedule.

(3) Mandatory and voluntary reporters shall submit healthcare claims data files directly to the data vendor unless otherwise specified by OHPR.

(4) Mandatory and voluntary reporters shall transmit healthcare claims data files using one of the following approved processes:

(a) Secure internet (HTTPS) data upload;

(b) Secure file transfer protocol (SFTP);

(c) Digital media, such as a CD or DVD, delivered directly to the data vendor provided that healthcare claims data files contained on the digital media must be strongly encrypted; or

(d) Any process incorporating strong encryption that is approved in writing by both OHPR and the data vendor.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425

Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

409-025-0140

Waivers and Exceptions

(1) OHPR may grant a waiver of the reporting requirements.

(a) A mandatory reporter requesting a waiver of the reporting requirements shall submit a Waiver of Reporting Requirements Form (APAC-1) to OHPR. The request must be received by OHPR 60 calendar days prior to the applicable reporting deadline.

(A) OHPR shall approve a request for a waiver from a mandatory reporter when the mandatory reporter is already subject to substantially similar claims data reporting requirements under a contract with the Department. The waiver shall remain in force so long as the mandatory reporter is in compliance with its claims data reporting requirements under its contract with the Department. A waiver approved under this section shall automatically expire as of the date the mandatory reporter is no longer required to submit substantially similar claims data under its contract with the Department.

(B) A mandatory reporter's lines of business that are not under a contract with the Department shall not be covered by a waiver approved under OAR-409-025-0140(1)(a)(A).

(C) If OHPR does not approve a request for a waiver from a mandatory reporter the written notification from OHPR shall include the reason(s) for the denial.

(b) OHPR shall approve or deny the request and provide written notification to the requester within 30 calendar days of receipt of the request.

(c) If OHPR denies the waiver, the requester may appeal the denial by requesting a contested case hearing. The appeal must be filed within 30 business days of the denial. The appeal process is conducted pursuant to

ADMINISTRATIVE RULES

ORS chapter 183 and the Attorney General's Uniform and Model rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 to 137-003-0700. The requester shall have the burden to prove a compelling need for the waiver.

(d) The waiver shall expire at the end of the calendar year unless otherwise specified by OHPR.

(2) OHPR may grant an exception to healthcare claims data file layout, format, and coding requirements, and submission requirements:

(a) A mandatory reporter requesting an exception for healthcare claims data file layout, format, or coding requirements shall submit a Healthcare Claims Data File Format Exception Form (APAC-2) to OHPR. The request must be received by OHPR prior to the applicable reporting deadline.

(b) The mandatory reporter requesting an exception to healthcare claims data submission requirements shall submit a Healthcare Claims Data File Submission Requirement Exception Form (APAC-3) to OHPR. The request must be received by OHPR prior to the applicable reporting deadline.

(c) OHPR shall approve or deny the request and provide written notification to the requester within 30 calendar days of receipt of the request.

(d) If OHPR denies the waiver, the requester may appeal the denial by requesting a contested case hearing. The appeal must be filed within 30 business days of the denial. The appeal process is conducted pursuant to ORS chapter 183 and the Attorney General's Uniform and Model rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 to 137-003-0700. The requester shall have the burden to prove a compelling need for the waiver.

(e) The exception shall expire at the end of the calendar year unless otherwise specified by OHPR.

[ED. NOTE: Forms referenced are available from the agency]
Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425
Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460
Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

409-025-0150

Compliance and Enforcement

Penalties for failure to comply shall be enforced by OHPR.

(1) Unless approved by a waiver or exception, failure to comply with general reporting requirements shall include but is not limited to:

(a) Failure to submit healthcare claims data files for a required line of business; and

(b) Submitting health information for an excluded line of business.

(2) Unless approved by a waiver or exception, failure to comply with healthcare claims data file requirements shall include but is not limited to:

(a) Submitting a healthcare claims data file in an unapproved layout;

(b) Submitting a data element in an unapproved format;

(c) Submitting a data element with unapproved coding; or

(d) Failure to submit a required data element.

(3) Unless approved by a waiver or exception, failure to comply with healthcare claims data submission requirements shall include but is not limited to:

(a) Failure to submit test files as specified by the data vendor;

(b) Submitting healthcare claims data files later than 30 days after the end of the month;

(c) Rejection of a healthcare claims data file by the data vendor that is not cured by the submitter; or

(d) Transmitting healthcare claims data files using an unapproved process.

(4) OHPR shall provide mandatory reporters written notification of each failure to comply.

(5) OHPR may impose fines of up to \$500 per day for each failure to comply that is not cured within 30 calendar days of written notification.

(6) If a mandatory reporter has made documented efforts to comply with OAR 409-025-0100 to 409-025-0170, the Administrator may consider this a mitigating factor.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425
Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460
Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

409-025-0160

Limited and Public Use Data Sets

(1) Public use data sets.

(a) OHPR shall define a set of data elements that are not directly identifiable to be included in a public use data set.

(b) OHPR shall publish on its web site the process for requesting public use data sets.

(c) The requester shall sign a data use agreement with OHPR.

(2) Limited data sets.

(a) OHPR shall define a set of data elements to be made available for legitimate research, program operations, or public health purposes.

(b) OHPR shall publish on its web site the process for requesting limited data sets.

(c) PI shall provide detailed justification for the requested data elements.

(d) PI shall protect patient privacy and confidentiality according to all applicable federal, state, and Department policies, rules, regulations, and statutes.

(e) The PI shall sign a data use agreement with OHPR.

(3) OHPR shall approve or deny each request in accordance with all applicable federal, state, Department policies, rules, regulations, and statutes.

(4) OHPR may adopt a fee schedule to reimburse the cost of fulfilling data requests in accordance with applicable state and federal rules, regulations, and statutes.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425

Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

409-025-0170

Public Disclosure

(1) OHPR shall convene an advisory group to provide recommendations for developing a comprehensive health information system no later than June 1, 2010. The advisory group shall include, but not be limited to representatives from:

(a) Carriers;

(b) TPAs;

(c) PBMs;

(d) MCOs; and

(e) Other stakeholders and interested parties.

(2) OHPR, applicable contractors, and other entities inside the Department shall perform data analyses and publish data and reports that serve the public's interest. This may include, but is not limited to:

(a) Comparing healthcare cost and quality;

(b) Assessing health care utilization;

(c) Assessing the capacity and distribution of healthcare resources;

(d) Assessing health care purchasing decisions;

(e) Assessing the effectiveness of public health programs; or

(f) Assessing disparities in health care delivery and outcomes.

(3) OHPR may convene advisory groups to advise OHPR on topics related to the All-Payer Healthcare Claims Data Reporting Program. The advisory groups shall include, but not be limited to representatives from:

(a) Carriers;

(b) TPAs;

(c) PBMs;

(d) MCOs; and

(e) Other stakeholders and interested parties.

Stat. Auth.: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.425

Stats. Implemented: 2009 OL Ch. 595 (HB 2009, Sec. 1200 - 1206) & ORS 442.400 - 442.460

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10

Oregon Board of Naturopathic Medicine Chapter 850

Rule Caption: Updates OAR 850 to allow prescribing to partners of patients under (EPT) Expedited Partner Therapy.

Adm. Order No.: OBNM 1-2010

Filed with Sec. of State: 2-16-2010

Certified to be Effective: 2-16-10

Notice Publication Date: 1-1-2010

Rules Amended: 850-060-0220

Subject: Allows ND's to prescribe antibiotics to partner(s) of patients diagnosed with a sexually transmitted disease without a patient visit by the partner of the patient for Expedited Partner Therapy (EPT) per OAR 855-041-8000 to 855-041-8005 of the Department of Human Services.

Rules Coordinator: Anne Walsh—(971) 673-0193

ADMINISTRATIVE RULES

850-060-0220

Authority to Prescribe, Dispense, and Order

Naturopathic physicians shall be allowed to prescribe, dispense, and order the following:

(1) All substances recommended by the Formulary Council and approved by the Board;

(a) All biological substances including extracts and/or their products and residues;

(b) All topical preparations;

(c) All vitamins, minerals, trace minerals, enzymes, and food;

(3) All mechanical devices, except those that require major surgical intervention;

(4) All homeopathic preparations;

(5) All laboratory and diagnostic procedures;

(6) Antibiotics to partner(s) of patients diagnosed with a sexually transmitted disease without a patient visit by the partner of the patient for Expedited Partner Therapy (EPT) per OAR 855-041-8000 to 855-041-8005 of the Department of Human Services.

Stat. Auth.: ORS 685.125

Stats. Implemented: 685.030

Hist.: NE 2-1984, f. & ef. 2-28-84; BNE 2-2005, f. & cert. ef. 2-4-05; Renumbered from 850-010-0220, BNE 8-2005, f. & cert. ef. 10-27-05; OBNM 1-2010, f. & cert. ef. 2-16-10

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Oregon Business Development Department Chapter 123

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

Adm. Order No.: OBDD 6-2010

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 3-1-10

Notice Publication Date: 2-1-2010

Rules Adopted: 123-500-0010, 123-500-0015, 123-500-0035, 123-500-0045, 123-500-0055, 123-500-0075, 123-500-0080, 123-500-0150, 123-500-0160, 123-500-0170, 123-500-0175

Rules Amended: 123-500-0000, 123-500-0005

Rules Ren. & Amend: 123-500-0020 to 123-500-0090, 123-500-0030 to 123-500-0100, 123-500-0040 to 123-500-0110, 123-500-0050 to 123-500-0120, 123-500-0060 to 123-500-0130

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

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-500-0000

Purpose

The Arts Program, under the direction of the Cultural Trust Board, awards grants for the Oregon Cultural Trust through three grant programs: Cultural Development Grants to cultural organizations, Community Cultural Participation Grants to county and tribal cultural coalitions and Cultural Partner Grants to statewide cultural partner entities.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0005

Definitions

(1) "Cultural Organization" means an organization defined in ORS 359.400.

(2) "Cultural Trust Board" means the board established by ORS 359.410.

(3) "Cultural Coalition" is a group organized in an Oregon county or within a federally recognized Indian Tribe, in Oregon to identify priorities and specific strategies for building public participation in culture. Each coalition will include representation from the arts, heritage, humanities and other organizations relevant to community cultural participation, including without limitation, educational institutions, libraries, media or businesses, and reflect the diversity of the County or Tribe. The primary purpose of the coalition is to develop a cultural plan for the area served and to award and monitor grant funds awarded to address cultural goals.

(4) "Cultural Plan" means a local plan that identifies priorities and specific strategies to build public participation in cultural disciplines and

organizations within the local area. Plans will include benchmarks to measure progress against stated goals.

(5) "Core Partner Agencies" means the agencies described in ORS 359.400(2).

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0010

Purpose

(1) The purpose of the Cultural Trust's Cultural Development Grant program is to provide state recognition and support to cultural organizations undertaking significant cultural programs and projects, preserving and enhancing Oregon's diverse arts, heritage and humanities efforts. "Cultural Development Grant Program" means the program created by ORS 359.431.

(2) Cultural Development Grants are awarded annually on a competitive basis pursuant to a process that is initiated when the Cultural Trust Board issues a request for proposals (RFP). The RFP will request proposals that address one or more of the following themes:

(a) Access: Making culture broadly available to Oregonians;

(b) Preservation: Investing in Oregon's cultural heritage by recovering and preserving historic assets and achievements;

(c) Creativity: The making or presentation of artistic or scholarly work, and the development of artists, cultural experts and scholars;

(d) Capacity: The strengthening of cultural organizations to build stability and generate public confidence.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0015

Applications and Eligibility

(1) Applications must be submitted in the form required, and by a deadline set, in the RFP.

(2) Applicants for Cultural Development Grants must be an Oregon cultural organization.

(3) Proposals submitted by institutions of higher learning must be for programs and activities that focus on, benefit, and are open to the general public, and the general public must form the majority of the total audience.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0035

Evaluation Criteria

Cultural Development Grant applications are evaluated according to how they address the themes described in OAR 123-500-0010(1). Additional evaluation criteria include:

(1) Significance of the activity or the project, including the quality of the organization(s), structures, works of art, or services that will be involved;

(2) The potential to broaden or deepen public knowledge, understanding, appreciation of, and access to culture;

(3) The appropriateness of the budget, the quality and clarity of the project goals and design, the resources involved, and the qualifications of the project's personnel;

(4) Evidence of sound fiscal management;

(5) Evidence of public or private matching funds or in-kind services;

(6) The process by which the project will be evaluated and plans in place to sustain or maintain the activity or project, if appropriate, following the period of the grant.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0045

Use of Grant Funds

(1) Cultural Development Grant funds must be used:

(a) To address significant opportunities to advance, preserve or stabilize cultural resources;

(b) To invest in the development of new resources;

(c) To support proposals that have a broad cultural impact beyond the applicant itself; and

(d) To support proposals from applicants with culture as a priority within the mission of the organization.

(2) Cultural Development Grant funds may not be used for:

(a) Indirect costs;

(b) Tuition assistance or scholarships for college, university, or other formal courses of study;

ADMINISTRATIVE RULES

- (c) Projects that have been substantially completed by August 1, the start date of the grant period;
- (d) Grants to offset previous project deficits; and
- (e) Events whose primary focus is to raise funds for a non-cultural cause.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0055

Grant Award Process; Administration of Grants

(1) Applications submitted to the Oregon Cultural Trust pursuant to its RFP will be reviewed by staff to determine whether the applicant is eligible to receive a Cultural Development Grant. Ineligible applications will be returned to applicants with an explanation.

(2) Applications from applicants eligible to receive a Cultural Development Grant will be reviewed by a panel of cultural professionals designated by the Cultural Trust Board who will make funding recommendations to the Cultural Trust Board.

(3) The Cultural Trust Board evaluates qualified proposals and determines final grant awards. Announcement of grants are made as provided in the RFP.

(4) Grants are administered by the Arts Program of the Oregon Business Development Department.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0075

Grant Contract; Final Reports

Grant recipients are required to enter into a contract with the Arts Program of the Oregon Business Development Department. Pursuant to that contract, each grant recipient must complete a final expense and narrative report. Final financial reports must reflect the application budget as originally submitted unless the budget is revised with the approval of the Cultural Trust Board or its designee. Grant reports must be submitted within thirty (30) days of the end date of the grant period.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0080

Purpose

The purpose of the Cultural Trust's Community Cultural Participation Grant program is to provide funds to counties and federally recognized Indian Tribes to support local cultural activities involving the arts, heritage and humanities.

(1) This program is intended to increase public participation in culture to actively support and enjoy the cultural resources in their communities and foster the development of a unique cultural identity for counties and tribes.

(2) The program's focus is on local cultural planning, with each county, and each federally-recognized Indian Tribe, building participation in, gaining access to, and shaping priorities of local culture.

(3) The program encourages inter-organization and inter-disciplinary collaboration, along with support for excellence.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0090

Eligibility

(1) Each Oregon county, and each federally-recognized Indian Tribe, may establish a Cultural Coalition responsible for developing, implementing and monitoring a local cultural plan.

(2) The Cultural Trust will award Cultural Participation Grant funds annually to each cultural coalition working within a cultural plan that has been approved by the Cultural Trust Board.

(3) In accordance with its plan, the Cultural Coalition may decide how these funds are allocated locally.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0020 by OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0100

Structure of Cultural Coalition

(1) The structure of the Cultural Coalition reflects the cultural needs, assets and resources of each county and tribe.

(2) To qualify for grant funds, a Cultural Coalition must:

(a) Include representation from the arts, heritage, and humanities activities in their area;

(b) Include representation of other organizations that are relevant to community cultural participation, including without limitation educational institutions, libraries, media or businesses;

(c) Reflect the diversity of the population of the county or tribe.

(3) The size of the Cultural Coalition will vary depending on local needs. There should be sufficient numbers to represent arts, heritage and humanities plus other "at large" members from the community, including but not limited to business, education, media and libraries.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0030 by OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0110

Fiscal Oversight

(1) Coalitions that are recognized by the Internal Revenue Service as a 501-c-3 private non-profit organization, or are a local public entity is eligible to receive Community Cultural Participation Grants directly from the Cultural Trust.

(2) Those coalitions that do not have IRS 501-c-3 non-profit status must identify a fiscal sponsor to accept grant funds on behalf of the coalition. The Cultural Trust Board will review and approve the proposed fiscal agent prior to the release of grant funds.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0040 by OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0120

Standards for Cultural Plans

(1) Cultural Participation Grant funds may be awarded to any Oregon cultural coalition that operates under a cultural plan that has been approved by the Cultural Trust Board.

(2) A cultural plan may be approved by the Cultural Trust Board if it has determined that a local cultural plan:

(a) Identifies priorities and specific strategies for building public cultural participation across cultural disciplines and organizations. The strategies may include the involvement of partners outside of the cultural sector such as business organizations, schools and health and human service organizations;

(b) Identifies annual benchmarks to determine the impact of grant funds; and

(c) Specifies local leadership and governance for grant fund management and for ongoing planning and development of benchmarks.

(3) Local cultural plans shall be broadly disseminated within each county or tribe. The local cultural plans shall be used to encourage public discussion, planning and collaboration among cultural entities and to stimulate County and Tribal cultural programs, including collaborations with other entities.

(4) Grant funds received by a county or tribe shall be distributed locally as specified in the approved local cultural plan.

(5) A portion of the grant funds received each fiscal year by a county or tribe may be used for costs associated with grant management, community technical assistance and accounting.

(6) The Trust for Cultural Development Board shall allocate grant amounts for counties and tribes using a base amount, plus a per capita amount for each county or tribe that has adopted a cultural plan approved by the Trust for Cultural Development Board.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0050 by OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0130

Cultural Participation Grant Allocation Process

(1) Annually, on a date established each year by the Cultural Trust Board and on a form or online system provided by the board, a cultural coalition must submit to the board current contact information for the coalition chair, coalition members and fiscal sponsor, if applicable.

(2) The Cultural Trust Board will allocate final grant awards pursuant to a formula determined by the board. The formula includes a base allocation per county and tribe plus an additional amount factored on population.

(3) The Arts Program, under the direction of the Cultural Trust Board, shall distribute the grant amounts to the cultural coalitions.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

ADMINISTRATIVE RULES

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0060 by OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0150

Purpose

The Arts Program, under the direction of the Cultural Trust Board, awards grant funds to five statewide cultural entities to promote arts, heritage and humanities programs across Oregon and leverage existing resources to benefit more Oregonians.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0160

Distribution of Funds

The Arts Program, under the direction of the Cultural Trust Board, shall distribute the amount disbursed from the Trust for Cultural Development Account under ORS 359.426(3)(c) to the core partner agencies as follows:

(1) 20 percent of the amount disbursed under ORS 359.426 (3)(c) for joint efforts by the core partner agencies in fostering cooperative cultural projects, including but not limited to cultural education, cultural tourism and other cultural activities; and

(2) 80 percent of the amount disbursed under ORS 359.426(3)(c) to the core partner agencies for the purposes described in 359.444. The Cultural Trust Board shall determine the amount or percent of available funds that each core partner agency shall receive under this paragraph.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0170

Limitations

The core partner agencies are not eligible to apply for grants from the Community Cultural Participation Grant Program or the Cultural Development Grant Program.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

123-500-0175

Allowable Uses of Funds by Core Partner Agencies.

(1) A core partner agency may use Cultural Partner Grant funds to:

- (a) Carry out the mission and mandate of the agency;
- (b) Serve more grantees; and
- (c) Encourage new cultural undertakings.

(2) Each core partner agency shall expend a portion of the amount received under ORS 359.426 as determined by the Cultural Trust Board each fiscal year to fund development of qualitative benchmarks and culture within Oregon.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

Oregon Government Ethics Commission Chapter 199

Rule Caption: Adopts rules providing guidelines to public officials and lobbyists.

Adm. Order No.: GEC 1-2010

Filed with Sec. of State: 3-12-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 10-1-2009

Rules Adopted: 199-001-0007, 199-001-0014, 199-001-0015, 199-005-0003, 199-005-0027, 199-020-0008

Rules Amended: 199-001-0000, 199-001-0005, 199-001-0010, 199-001-0020, 199-001-0035, 199-001-0040, 199-005-0005, 199-005-0010, 199-005-0015, 199-005-0020, 199-005-0025, 199-005-0035, 199-020-0005

Subject: Adopts rules interpreting 2009 revision to ORS Chapter 244. These rules address the following topics: determining the value of items to services received by public official; specifying the methods for calculating and collecting the agency's funding through rates and charges; specify when a continuing violation is considered a single violation or a separate and distinct violation for each day the violation occurs; set criteria for determining the amount of civil penalties that the Commission may impose; ensuring accurate reporting

of and compliance with gift and honoraria limits; determining the value of unsolicited tokens or awards; defining terms in the exceptions for receptions, meals or meetings; payments for travel, entertainment and other gift exceptions, and determining the source of gifts. These rules are intended to provide guidelines for compliance through defining terms and clarifying substantive provisions of government ethics laws. Various housekeeping changes including name change and renumbering of statutes.

Rules Coordinator: Virginia Lutz—(503) 378-5105

199-001-0000

Notice of Proposed Rule

Prior to the adoption, amendments or repeal of any rule other than a temporary rule, the Oregon Government Ethics Commission will give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(2) By mailing or e-mailing a copy of the notice to persons on the Oregon Government Ethics Commission's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(3) By mailing or e-mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(4) By mailing or e-mailing, or furnishing a copy of the notice to:

- (a) Oregon Common Cause;
- (b) League of Oregon Cities;
- (c) Association of Oregon Counties;
- (d) Capitol Club;
- (e) Oregon School Boards Association;
- (f) Special Districts Association of Oregon;
- (g) Confederation of Oregon School Administrators;
- (h) Director, Department of Administrative Services;
- (i) Capitol Press Room;
- (j) Associated Press;
- (k) State Court Administrator.

(5) The Oregon Government Ethics Commission may update the mailing list described in section two of this rule annually by requesting persons to confirm that they wish to remain on the mailing list. If a person does not respond to a request for confirmation within 28 days of the date the Commission sends the request, the Commission will remove the person from the mailing list. Any person removed from the mailing list will be immediately returned to the mailing list upon request, provided that the person provides a mailing address or e-mailing address to which notice may be sent.

Stat. Auth.: ORS 244.290 & 183.341

Stats. Implemented: ORS 183.335 & 183.341

Hist.: EC 8, f. & ef. 12-24-75; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-15-10, cert. ef. 3-15-10

199-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Oregon Government Ethics Commission adopts the Attorney General's Model Rules of Procedure, January 1, 2008 version, as its rule of procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the agency.]

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 183.341

Hist.: EC 1(Temp), f. 1-2-75, ef. 1-25-75 thru 5-25-75; EC 11, f. & ef. 7-28-76; EC 1-1982, f. & ef. 3-2-82; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-001-0007

Commission Funding

(1) Beginning July 1, 2009, the Commission will charge assessments to State Agencies and Local Governments, Local Service Districts and Special Government Bodies that are subject to the Municipal Audit Law:

(a) State Agencies will be assessed one half of the legislatively approved amount. For the 2009-11 biennium, State Agencies will be assessed \$14.78 per Full-Time Equivalent (FTE) employee.

(b) Local Governments, Local Service Districts and Special Government Bodies that are subject to the Municipal Audit Law will be assessed the remaining half of the Legislatively approved amount as indicated in the following chart: [Chart not included, See ED. NOTE]

(2) The Department of Administrative Services will collect the assessments for State Agencies and Local Governments, Local Special Districts and Special Government Bodies through an annual billing. The Department

ADMINISTRATIVE RULES

of Administrative Services will notify all non-paying entities with a final notice that allows 30 days to remit the required payment. After 30 days, the account will be forwarded to the Oregon Department of Revenue for collection.

[ED. NOTE: Chart referenced is available from the agency.]
Stat. Auth.: ORS 244.255 & 244.290
Stats. Implemented: ORS 244.255
Hist.: GEC 1-2010, f. 3-12-10, cert. eff. 3-15-10

199-001-0010

Commission Meetings

(1) Definitions:

(a) "Commission" means Oregon Government Ethics Commission;

(b) "Commissioner" means a duly appointed member of the Oregon Government Ethics Commission;

(c) "Director" means the Executive Director appointed by the Commission pursuant to ORS 244.310;

(d) "Public Official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee or agent, irrespective of whether the person is compensated for such services;

(e) "Staff" means the Executive Director and all other persons employed by the Commission.

(2) The Commission shall be governed by the statutes of the State of Oregon, these rules and the Attorney General's Model Rules of Procedure for the conduct of contested cases as provided in ORS Chapter 183. In event of a conflict, precedence shall be in that order.

(3) The Commission has adopted the following rules of procedure:

(a) A quorum consists of four Commissioners. No decision may be made without an affirmative vote of four members. In the absence of a quorum, Commissioners present may meet to discuss any matter before the Commission, but no action shall be taken.

(b) The Commission shall vote by roll call vote on any action taken to initiate or conclude preliminary review or investigative phases, adopt any final order, or adopt an advisory opinion.

(c) The Commission may utilize a consent calendar for action on agenda items when appropriate. In preparation of the consent calendar, the Director shall group together as separate categories preliminary reviews, dismissal of a case at conclusion of investigation, stipulated final orders, and default final orders on the agenda. The Director shall also submit a recommended action for each item. Any Commissioner may request of the chair to have a matter removed from the consent calendar and considered separately. All consent calendar items not removed as such, shall be disposed of upon the motion of any Commissioner and a roll call vote.

(d) The Commission will use the following processes in making decisions:

(A) Consensus to approve meeting minutes;

(B) Voice vote of a quorum of Commissioners in all other matters.

(c) A motion does not require a second.

(f) Annually, at the last regular meeting of the Commission before January 1, the Commission shall select from its members a Chair and a Vice-Chair who shall serve until their successors are selected and qualified. The Chair or Vice-Chair may resign as such or may be removed from that position by vote of four Commissioners. If the Chair or Vice-Chair shall cease to be a Commissioner, the position shall be vacant and a successor shall be selected at the next regular meeting of the Commission.

(g) The Chair shall preside over all meetings of the Commission. Except for final orders and advisory opinions, the Director may execute all documents that are executed in the name of the Commission. Only the Chair shall execute final orders and advisory opinions in the name of the Commission.

(h) The Vice-Chair shall act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

(i) The Director shall serve as Secretary to the Commission.

(j) Where permitted by law and conforming to the requirement of the Public Meetings Law, ORS 192.670, the Commission may meet by means of a telephone conference.

(k) The Director, in consultation with the Chair, shall set the agenda and cause all notices of time and place of the meeting of the Commission to be given. Commissioners may request items to be placed on the agenda prior to its being distributed.

(l) All meetings of the Commission shall be open to the public unless otherwise permitted or required by statute.

(m) The agenda of meetings of the Commission shall set forth all matters expected to come before the Commission. The Agenda shall contain items in the following order:

(A) Minutes of previous meetings;

(B) A consent calendar composed of reports of investigation with dismissal recommended by staff, stipulated final orders and final orders by default;

(C) Adoption of contested case final orders, including those which impose a civil penalty or financial forfeiture;

(D) Reports of investigation with preliminary finding of violation recommended by staff;

(E) Adopt advisory opinions pursuant to ORS 171.776 and 244.280;

(F) Presentation of correspondence, publications, or any issue introduced by the Chair related to the Commission and its duties.

(n) Exercising the authority provided by ORS 192.660 and 244.260, the Commission may meet in executive session.

(o) In action on any agenda item, the Commission may dismiss any proceeding or rescind any motion.

(p) The Chair shall be responsible for order and decorum at all meetings of the Commission.

(q) The Chair may suspend or bar from further participation any person who engages in conduct which intentionally delays or disrupts commission proceedings.

(r) Parties may appear in person or be represented by attorneys who are active members of the Oregon State Bar. Others may appear before the Commission on behalf of a party with the permission of the Chair.

(s) The Chair may, at the Chair's discretion, change the order of an agenda in order to accommodate parties appearing before the Commission or for other cause shown.

(t) Commissioners will be advised in writing by the Director or staff of the issues, perceived facts, and arguments during the preliminary review phase. An oral statement from the public official or other respondent will be permitted at the discretion of the Chair when the Commissioners are considering any matter during this phase. The Chair will determine the duration of any oral statement permitted.

(u) Oral statements by the affected public official or any other respondent, their representative or Staff may be permitted by the Chair at any consideration of a motion to move to a contested case, approval of a stipulated disposition of a matter or the adoption of any final order.

(v) The Director shall maintain complete files of all documents submitted in any matter and shall summarize for the Commissioners in an impartial and objective manner all relevant favorable and unfavorable material collected and all documents filed in the Commission's office on any matter before the Commission. At the request of any respondent or complainant any written material submitted to the Director in a timely manner will be reviewed and if the Director determines the information is relevant the material may be provided to each Commissioner for consideration. A document shall be considered filed in a timely manner if submitted in a form permitting it to be copied no less than eight business days before any meeting of the Commission in which the subject matter of the document will be an item on the agenda.

(w) Ex-parte communications with Commissioners by persons other than the staff are not permitted. Documents must be submitted to the Commission through the Director. Oral and written communications to Commissioners concerning matters pending before the Commission other than during the course of formal Commission proceedings, are ex-parte communications.

(x) A subpoena authorized by ORS 244.260(6)(b) may be issued by the Chair, Vice-Chair, or Director:

(A) The subpoena may require the witness to testify to an inquiry which is not privileged and which is relevant to an investigation or inquiry of the Commission including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at a hearing pursuant to ORS 183.413 et seq. if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(B) Upon motion by the witness subpoenaed, or the person under investigation or inquiry, and for good cause shown, the Commission may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That the inquiry not be had;

ADMINISTRATIVE RULES

(ii) That the inquiry may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That certain matters not be inquired into, or that the scope of the inquiry be limited to certain matters;

(iv) That the inquiry be conducted with no one present except persons designated by the Commission; or

(v) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(C) A motion for a protective order under this subsection shall be in writing filed with the Director and shall be heard and first decided by the Chair, or in the absence of the Chair, the Vice-Chair, within three business days of the date filed. If the motion for a protective order is denied in whole or in part by the Chair or Vice-Chair, the person making the motion may within three business days thereafter request that the full Commission hear and decide the motion which shall occur within three business days. If the full Commission denies the motion, the party making the motion may within three business days request a contested case hearing pursuant to ORS 183.413 et seq.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.250, 244.260, 244.290 & 244.310

Hist.: EC 1-1993, f. & cert. ef. 4-22-93; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-001-0014

Guidelines on how multiple violations will be charged:

The Commission will identify each action that appears to constitute a violation of ORS Chapter 244 and that does not qualify as part of an official compensation package as defined in OAR 199-005-0035(3), and when multiple violations are committed will charge them in the following manner:

(1) When a public official appears to have committed two or more violations by subsequent equivalent actions, the Commission will charge the public official with a single violation and count the repeated actions using the number of the equivalent acts as aggravating factors when imposing any sanction as discussed in (2) of this rule. The following examples are offered to illustrate this rule and not meant to limit its application:

(a) Each personal use of a government agency's wireless telephone could be a distinct violation of ORS 244.040(1). If a public official makes personal calls with the agency's wireless telephone on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional personal call being counted as an equivalent action.

(b) Each occasion a public official uses the government agency's equipment (vehicle, tractor, chainsaw, trailer, etc.) for personal purposes could be a distinct violation of ORS 244.040(1). If a public official makes personal use of the agency's equipment on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional personal use of equipment being counted as an equivalent action.

(c) Each occasion a public official uses the government agency's resources (storage space, fuel, cash or other financial transactions, internet connection, computer, etc.) for personal purposes could be a violation of ORS 244.040(1). If a public official makes personal use of the agency's resources on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional personal use of the resource being counted as an equivalent action.

(d) The source that provides a public official with paid expenses for an event defined in ORS 244.020(6)(b)(F) or with honorarium defined in ORS 244.020(7) could violate ORS 244.100 each time the source fails to provide a written notice to the public official as to the value of the paid expenses. If a source fails to notify two or more public officials, who participated in the same event, the multiple violations will be combined into the charge of one violation with each additional failure to notify being counted as an equivalent action.

(e) Each time a public official is met with a conflict of interest, as defined in ORS 244.020(1) or (12), and fails to disclose the nature of the conflict the public official could violate ORS 244.120. If a public official, under similar circumstances, fails to disclose the nature of the same conflict of interest on two or more occasions, the multiple violations will be combined into the charge of one violation with each additional failure to disclose the nature being counted as an equivalent action.

(2) When two or more single violations are charged as one violation, each additional violation by this rule will be counted as equivalent acts. Each of the equivalent acts will be identified as an aggravating factor and included in the calculation of any assessment of a civil penalty or forfeiture that would constitute a sanction as set out in OAR 199-001-0015.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.290, 244.350, 244.370, 244.390

Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-001-0015

Oregon Government Ethics Commission Guidelines on Sanctions

(1) The Commission will identify alleged violations of statutes or rules within the Commission's jurisdiction during the preliminary review phase or by preliminary finding of violations at the end of an investigative phase. This rule will standardize the method for setting sanctions to be imposed when a matter before the Commission is to be concluded by a stipulated final order, final order or a final order by default.

(2) TABLE A lists the factors that the staff and Commission may consider as mitigating or aggravating any violation of Oregon Government Ethics law in ORS Chapter 244, Oregon Lobbying Regulation in ORS Chapter 171 or the executive session provisions in ORS 192.660. [Table not included, See ED. NOTE]

(a) Points will be assigned from the factors listed in TABLE A. A total of the points assigned will be calculated.

(b) The total of the points assigned from TABLE A will be applied to TABLE B to determine the type and severity of any sanction imposed.

(A) If the point total indicates a civil penalty, TABLE B will be used to determine the percentage of the maximum civil penalty that may be imposed.

(B) If forfeiture is available as a sanction, TABLE B will be used to determine the percentage of the maximum forfeiture that may be imposed.

(3) If there are aggravating or mitigating factors that are not listed on TABLE A, the director will prepare a summary of those factors for the Commission to consider. This method will not limit the Commission's authority to exercise its discretion to deviate from the calculated sanctions from TABLE B and modify the civil penalty or the forfeiture.

(4) This rule does not apply in cases where the sanction is limited under ORS 244.280, 244.282, 244.284, 244.320 or 244.350(2)(b). This rule also does not apply to sanctions imposed by the Commission for the late filing of reports required by ORS 244.050(2) to (4) or 171.752.

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.290, 244.350, 244.370, 244.390

Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-001-0020

Settlement

(1) The Oregon Government Ethics Commission encourages the settlement of a case by stipulated final order. As used in this rule, a stipulated final order is an agreement between the Commission and the party which resolves all of the issues pending in the matter.

(2) The stipulated final order shall be in writing and shall be signed by the person who is the subject of a complaint or against whom an investigation has commenced or by the attorney representing such person, if any, before being submitted to the Commission.

(3) The stipulated final order shall contain a short and plain:

(a) Statement of the nature of the complaint and the basis of the jurisdiction of the Oregon Government Ethics Commission;

(b) Statement of all agreed facts and of all facts, if any, that are not agreed;

(c) Statement of the terms of settlement;

(d) Statement that both the commission and respondent have had an opportunity to seek the advice of counsel;

(e) Statement of the effect of the agreement including that it is subject to final approval of the Government Ethics Commission, and that it is binding upon both parties and that the respondent waives the right to a contested case hearing and waives the right to judicial review.

(4) The stipulated final order is a final order of the Commission.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.260

Hist.: EC 1-1993, f. & cert. ef. 4-22-93; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-001-0035

Criteria and Procedures for Exercise of Prosecutorial Discretion

(1) The purpose of this rule is to establish how the Commission uses prosecutorial discretion to decide whether to proceed with an inquiry of a potential violation of ORS Chapter 244, 171.725 to 171.785 or 192.660 (collectively, matters within the Commission's jurisdiction).

(2) All complaints from members of the public concerning alleged violations of matters within the Commission's jurisdiction shall be submitted to the Commission's staff in writing and signed with the person's true name. No anonymous complaints or oral complaints will be accepted. The

ADMINISTRATIVE RULES

Director shall review each complaint to determine if the matters alleged come within the Commission's jurisdiction, if the matters alleged occurred within four years of the date the complaint was submitted, and if the complaint contains enough specific information to warrant further review. If the Director determines that the complaint contains allegations without any corroborative information, the Director shall, within 10 days of the complaint's receipt, notify the person filing the complaint that the complaint lacks sufficient information to warrant further review. If the Director is able to determine the nature of additional information that would enable the Commission to pursue the matter, the person filing the complaint shall likewise be also notified.

(3) The Director shall submit all complaints that meet the requirements of subsection (2) to the Commission to be acted upon within the time lines established by law. In addition, the Director or any member of the Commission may propose that the Commission initiate a preliminary review based on information received from objective sources, such as media accounts or information obtained from the Commission's own records or from other public agencies that indicates that a violation within the Commission's jurisdiction may have occurred.

(4) The Commission shall consider fully all matters presented for preliminary review, or initiated by the Commission's own motion, to determine whether there is "cause" to investigate the matter, as that term is defined in 244.260(13)(a). Following the investigation phase, the Commission shall move a matter to a contested case hearing when the Commission determines that the information presented is sufficient to make a preliminary finding of violation of a statute or statutes within the Commission's jurisdiction. All matters before the Commission may also be settled, at any point in the proceedings, in compliance with OAR 199-001-0020. No settlement negotiated by the Director shall be binding on the parties unless approved by the Commission by motion and vote.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.290(5)(d)
Hist.: GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-001-0040

Exercise of prosecutorial discretion in enforcement of ORS 244.040(1)

(1) In addition to the criteria described in OAR 199-001-0035 for the exercise of prosecutorial discretion in all matters subject to the Commission's jurisdiction, this rule describes criteria for the exercise of prosecutorial discretion in enforcement of ORS 244.040(1) when the receipt of financial benefit or avoidance of financial detriment is minimal and does not substantially conflict with the purposes of ORS Chapter 244.

(2) The Commission will not proceed following investigation to move a matter to a contested case proceeding for a violation of ORS 244.040(1) in the following circumstances:

(a) If it appears to the Executive Director that a complaint filed with the Commission involves only allegations that fall within one of the exceptions, the Director need not submit the matter to the Commission.

(b) If sufficient information is available prior to the conclusion of the investigatory phase to determine that the alleged violation falls within one of the exceptions, the matter may be dismissed at any earlier stage of the proceeding.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.290 & 244.040
Hist.: GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0003

Legislative or Administrative Interest Defined in ORS 244.020(9)

(1) If the source of a gift has a legislative or administrative interest, any gift offered to a public official or candidate, a relative or member of a public official's or candidate's household, may only be offered and accepted under conditions set forth as permitted in ORS Chapter 244. If, however, the source of a gift does not have a legislative or administrative interest, gifts are not restricted or prohibited.

(2) "Decision" as used in ORS 244.020(9)(a) and (b) means an act that commits the public body to a particular course of action within the public official's scope of authority and that is connected to the source's economic interest. A decision is not a recommendation or work performed in an advisory capacity. The following examples illustrate the types of acts that are considered to be "decisions":

(a) An employee makes a decision when issuing or denying a permit.

(b) An enforcement employee makes decisions on whether to cite, warn or arrest.

(c) An employee who approves contracts makes a decision on a contract.

(d) An employee with the authority to purchase office supplies makes a decision when making those purchases.

(e) Should a chief executive officer, director or manager with authority to make a final decision on a matter delegate the decision to a subordinate, the chief executive officer, director or manager would retain responsibility as the final decision maker. The subordinate's action on the delegated matter would also be a decision.

(3) As required by ORS 244.050, any public official or candidate who completes an Annual Verified Statement of Economic Interest (SEI) form will apply the meaning of "decision" in OAR 199-005-0003(2) when identifying a legislative or administrative interest held by any creditor, debtor, business or person, or entity that paid a service fee when listing the information required by ORS 244.060 and 244.070.

(4) The following definitions are provided for words or terms as they are used in ORS Chapter 244, especially in the exceptions to the definition of a gift in ORS 244.020(6)(b):

(a) "Entertainment" means amusement or diversion. Entertainment may be provided by others (such as athletes at sporting events) but also includes events where the public official, relative, or member of household personally participates. Examples of entertainment include, but are not limited to concerts, plays, movies, operas, sporting events, participating in sports (golf, skiing, hunting or fishing, etc), comedy shows, and similar events.

(b) A "fact finding mission or trip" is any activity related to a cultural or educational purpose, or any activity aimed at providing intergovernmental assistance, such as for the purpose of international aid or sharing best practices, or developing intergovernmental relationships directly related to the public official's duties. The sponsor of a fact finding mission should be directly and immediately associated with the event or location being visited.

(c) "Incidental" means secondary or minor, but associated to something more important. Anything with financial value provided in conjunction with a primary event but of secondary in importance to the time and attention to the main purpose of the event is incidental.

(d) A "Meeting" is an event that includes multiple attendees who are members of an organization or members of the general public who have been invited to the event. The purpose or agenda for the meeting would be included in any advance notice of the event.

(e) "Official capacity" means that the public official attends an activity while engaged in duties or responsibilities that are customary to their office or position.

(f) "Organization" means any public body, corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust, or other entity other than an individual.

(g) "Representing Government" means that a public official is representing a state or local government or a special government body when the public official attends an event on behalf of the government agency. The following examples are offered to illustrate the meaning of "representing government," but are not meant to be the only circumstances that would define representing government:

(A) A fire chief attends an event to honor protection services representatives and attends on behalf of the station in an official capacity.

(B) A department manager attends a conference being sponsored by a vendor that has in the past sold products to the agency in which the manager is employed. The manager's official duties include the responsibility of attending conferences on behalf of the governing body.

(C) An executive director for a state agency attends ceremonial events; the director's official duties include representing the agency at such events.

(D) A state employee who works in the IT department whose responsibilities include reviewing and recommending software attends a workshop on software applications held by a professional membership organization.

(E) A planning commissioner speaks to a non-profit organization on behalf of the county planning department.

(F) A volunteer for a city park department attends an event representing the department at a meeting to discuss issues surrounding volunteerism.

(G) A legislator attends an event being sponsored by a Native American tribe on behalf of a legislative committee on which the legislator serves.

(H) A city councilor attends the local chamber of commerce breakfast.

(h) "Reception" means a social gathering. Receptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal.

Stat. Auth.: ORS 244.290

ADMINISTRATIVE RULES

Stats. Implemented: ORS 244.020, 244.025, 244.040 & 244.060
Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0005

Determining the Value Received by Public Officials

(1) Purpose. The purpose of this rule is to guide public officials, candidates and others in determining the value of items or services received by public officials to ensure accurate reporting in ORS 244.060 and to comply with gift and honoraria limits in ORS 244.025 and 244.042.

(2) The fair market value of the merchandise, goods, or services received shall be used to determine benefit or value. Fair market value is the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obligated, to sell and purchased by one who is willing, but not obligated, to buy.

(a) In calculating the benefit or value conferred to a public official, any portion of the benefit transferred to an entity that is tax-exempt under section 501(c) of the Internal Revenue Code shall not be included as part of the benefit or value to the public official, if the public official does not claim the charitable contribution on personal tax returns.

(b) In calculating the per person cost at receptions or meals, the payer of the public official's admission or meal shall include all costs other than any amount donated to a charity.

(c) The following example demonstrates how the value of a charitable dinner would be calculated. A person with a legislative or administrative interest buys a table for a charitable dinner at \$100 per person. If the cost of the meal was \$25 and the amount donated to charity was \$75, the benefit conferred on the public official is \$25. This example requires that the public official does not claim the charitable contribution on personal tax returns.

(3) For receptions and meals with multiple attendees, but with no price established to attend, the source of the public official's meal or reception shall use reasonable methods to determine the per-person value or benefit conferred. The following examples are deemed reasonable methods of calculating value or benefit conferred:

(a) The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons whom the payer reasonably expects to attend the reception or dinner;

(b) The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons who actually attend the reception or dinner; or

(c) The source calculates the actual amount spent on the public official.

(4) Upon request by the public official, the source shall give notice of the value of the merchandise, goods, or services received.

(5) Attendance at receptions that qualify as an exception to the gift definition under ORS 244.020(6)(b)(L) is permitted without regard to the fair market value of the food and beverage provided.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020, 244.025, 244.042 & 244.100

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0010

Resale Value of Unsolicited Tokens or Awards

(1) The purpose of this rule is to assist public officials in determining the resale value of items provided under ORS 244.020(6)(b)(C).

(2) Engraved or otherwise personalized items that include a public official's name are deemed to have a resale value under \$25, unless the personalized item is made from gold or some other valuable material that would have value over \$25 as a raw material.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0015

Attendance at Receptions, Meals or Meetings under ORS 244.020(6)(b)(E)

The purpose of this exception is to allow public officials to attend organized, planned events and engage with the members of organizations when representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117. This exception to the gift definition does not authorize private meals where the participants engage in discussion. The following list of factors may indicate whether paid expenses may be accepted under this exception:

(1) A large number of people or groups are invited. For example, all members of an organization are invited.

(2) The invitations or programs are sent in advance.

(3) The event is publicized.

(4) The reception, meal, or meeting is open to the public.

(5) Written materials such as a printed program are available.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0020

Gift Exceptions in ORS 244.020(6)(b)(F) and (H)

(1) The purpose of this rule is to provide clarification for these gift exceptions that permit public officials to accept payment of reasonable expenses while in their official capacity. The exceptions are for certain limited purposes. Travel that meets the requirements of ORS 244.020(6)(b)(F) or (H) and this rule may be either within the United States or international.

(2) As provided in ORS 244.020(6)(b)(F) the expenses offered to and accepted by a public official may only be accepted by a public official and not relatives or members of the public official's household.

(a) The event in which the public official participates may be a convention, fact-finding mission or trip or other meeting and the public official must be representing government, making a speech, participating in a panel discussion or making a presentation. "Speech" means to give a formal address. Self introductions or other perfunctory remarks do not constitute speaking for purposes of this exception. "Panel discussion" means to engage in a formal discussion with other members of the panel or audience. To "make a presentation" may range from presenting prepared remarks on a topic to a brief statement when giving an award.

(b) The source of the payment for a public official's expenses must provide the public official with a written notice that includes the aggregate sum paid for the expenses over \$50 as required in ORS 244.100.

(c) Any public official who is required to file the Annual Verified Statement of Economic Interest form with this Commission must report the expenses paid on the public official's behalf and provide the details for the event on the form as required by ORS 244.060.

(3) As provided in ORS 244.020(6)(b)(H), when a public official is representing government, expenses may be offered to and accepted by the public official. Payment of expenses may also be offered to and accepted by a public official's relatives, members of the public official's household and members of the public official's staff. The following conditions must be met before the offer of paid expenses may be made to and accepted by a public official:

(a) The purpose for the activity must be for either an officially sanctioned trade promotion or fact-finding trip/mission or for officially designated negotiations or economic development activities.

(b) "Officially sanctioned or officially designated" means written approval by a state or local public body or by a person authorized by the public body to provide that approval. When the activity is officially designated as negotiations or economic activity, the written notice will include approval for the public official to accept the payment of reasonable expenses. Unless the public body determines otherwise, the written notice from the following is sufficient to constitute an officially sanctioned or officially designated activity under ORS 244.020(6)(b)(H):

(A) A supervisor;

(B) A governing body of a public body;

(C) The President of the Senate, Speaker of the House, the designated majority or minority leaders of either chamber or appointed committees of the Legislative Assembly for any elected member;

(D) Elected state officials holding the positions of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, and Superintendent of Public Instruction have authority to officially sanction or designate events for themselves;

(E) Elected state court judges and district attorneys have authority to officially sanction or designate events for themselves;

(F) Elected county sheriffs, surveyors, treasurers, assessors and justices of the peace have authority to officially sanction or designate events for themselves;

(G) The chief administrators of state executive departments, commissions or boards have authority to officially sanction or designate events for themselves;

(H) The chief administrator of a city or county government or a special district has authority to officially sanction or designate events for themselves.

(c) "Trade Promotion" means an activity for the purpose of encouraging or developing commerce or the buying and selling of goods and services.

(d) "Economic Development Activities" mean activities undertaken for the purpose of strengthening, expanding, or enhancing the economy, or activities that provide community development or cultural enhancement.

ADMINISTRATIVE RULES

Specific activities include, but are not limited to: promoting tourism; promoting a favorable investment climate to strengthen businesses; creating jobs; raising real wages; assisting Oregon communities to build a capacity to retain, expand or attract business; improving national and global competitiveness of Oregon companies; improving transportation access; and marketing products, services, or opportunities.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.020
Hist.: GEC 2-2008, f. & cert. ef. 3-7-08; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0025

Entertainment permitted under ORS 244.020(6)(b)(M) and (N)

(1) Entertainment is incidental when it is secondary to the main purpose of the primary event and provided in conjunction with the primary event (such as a singer or band at an awards dinner). Incidental entertainment is secondary in importance and in time devoted to the entertainment compared to the primary, non-entertainment event. Entertainment that involves personal participation is not incidental to another event (such as a golf tournament at a conference).

(2) Entertainment is ceremonial when a public official appears at an entertainment event for a “ceremonial purpose” at the invitation of the source of the entertainment who requests the presence of the public official at a special occasion associated with the entertainment. Staff members accompanying a public official may also attend if they are performing official duties. An example of an appearance by a public official at an entertainment event for a ceremonial purpose includes, but is not limited to, throwing the first pitch at a professional or college baseball game, appearing in a parade, and ribbon cutting for an opening ceremony. To qualify, the entertainment must be provided by the source of the entertainment, and the public official must have an official role in the entertainment event.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.0020
Hist.: GEC 2-2008, f. & cert. ef. 3-7-08; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0027

Usual and Customary Practice as used in ORS 244.020(6)(b)(O)

(1) The purpose of this rule is to clarify the exception in ORS 244.020(6)(b)(O) that permits public officials and candidates or a relative or member of the household of a public official or candidate to accept or solicit anything of economic value when provided as part of the usual and customary practice of the person’s private business, or the person’s employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value and the offer or solicitation bears no relationship to the public official’s or candidate’s holding of, or candidacy for, the official position or public office.

(2) “Usual and customary practice” means an offer that is part of a historical or established custom. Such offers are long standing traditions that embody ordinary or expected practices resulting in economic benefits for those that are not public officials or candidates. As this term is used in ORS 244.020(6)(b)(O), anything of economic value offered or solicited as a “usual and customary practice” must bear no relationship to a public position or office held by the public official or candidate. Examples of usual and customary practice may include:

(a) A pharmacist is elected and becomes a member of the Oregon Legislative Assembly. In the past, as with other pharmacists, the pharmacist and her spouse were invited to dinners hosted by representatives of pharmaceutical manufacturers to discuss products and services. The pharmacist, now a legislator, and her spouse would be able to continue the usual and customary practice of accepting or soliciting these paid expenses for meals received in the practice of her private employment as long as the offer or solicitation bears no relationship to the position held in the Oregon Legislative Assembly and is made to other pharmacists who are not public officials.

(b) A county commissioner owns a lumber mill. In the past, as owner of the lumber mill, sales representatives of equipment manufacturers have offered to pay food, lodging and travel expenses for the owner to view new products and observe manufacturing processes as is offered to other lumber mill owners. Although a county commissioner, the lumber mill owner would be able to continue the usual and customary practice of accepting or soliciting these paid expenses for food, lodging and travel received in the conduct of his private business as long as the offer or solicitation bears no relationship to the position held as a county commissioner and is made to other lumber mill owners who are not public officials.

(c) A member of the board of directors for a local chapter of the American Red Cross is elected to the city council. For the past 15 years the

local chapter has provided all board members and their spouses paid food, lodging and travel expenses to attend an annual leadership retreat. The board member, now a city councilor, and his spouse would be able to continue with the other board members in the usual and customary practice of accepting or soliciting these paid expenses for food, lodging and travel expenses in the conduct of his volunteer duties as long as the offer or solicitation bears no relationship to the position held as a city councilor and is made to other board members who are not public officials.

(d) A cattle rancher is a volunteer youth leader in a local 4-H club and was recently appointed to the county fair board. Prior to serving on the fair board, the rancher accompanied 4-H members to livestock competition at the county fair and would receive paid admission and parking passes for her and her family members for each day of the county fair. Although a fair board member, the rancher would be able to continue with the other volunteer youth leaders in the usual and customary practice of accepting or soliciting these paid expenses for herself and her family to attend the county fair while continuing her volunteer position with the 4-H as long as the offer or solicitation bears no relationship to the position held as a fair board member and is made to other youth leaders who are not public officials.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.020(6)(b)(O)
Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0035

Guidelines for compliance with ORS 244.020(6), 244.025, 244.040, 244.042 and 244.047

(1) The purpose of this rule is to define certain terms and to clarify substantive provisions of ORS 244.020(6), 244.025, 244.040, 244.042 and 244.047.

(2) The term “official duties” means that the public official’s actions are directly related to serving the state of Oregon or any of its political subdivisions or any other public body as a public official.

(3) An “official compensation package” means the wages and other benefits provided to the public official. To be part of the public official’s “official compensation package”, the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. “Official compensation package” also includes the direct payment of a public official’s expenses by the public body, in accordance with the public body’s policies.

(4) As used in ORS 244.040(2)(c), “reimbursement of expenses” means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060.

(5) “Confidential information” means any record that is exempt from public disclosure or inspection under state law, or any information obtained in the course of or by reason of holding position as a public official that is not publicly disclosed. The record or information is no longer confidential if it has been voluntarily disclosed by the public body, or been disclosed through a public records disclosure order or court order.

(6) As used in ORS 244.047, a public contract is “authorized by” a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

(7) As defined in ORS 244.020(14), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent.” An “agent” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.020, 244.025, 244.040, 244.042, 244.047
Hist.: GEC 2-2008, f. & cert. ef. 3-7-08; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

ADMINISTRATIVE RULES

199-020-0005

Identification of Public Officials Required to File Annual Verified Statements of Economic Interest

Cities, counties, and those state boards and commissions, special districts and others affected by the filing requirements of ORS 244.050 shall inform the Oregon Government Ethics Commission of the following information related to individuals required to file the Annual Verified Statement of Economic Interest forms:

(1) Each public body shall provide in writing to the Commission the name, title, mailing address, phone number and e-mail address of a designated contact person. Any changes to the designated contact person or their information shall be submitted in writing to the Commission within 10 working days.

(2) Each designated public body contact person shall provide annual written notification to the Commission no later than February 15 of the name, position or office held and mailing address of each individual required to file the Annual Verified Statement of Economic Interest form. Any changes, additions or deletions of this information that occur between the submission of the annual written notification and April 15 must be made in writing to the Commission within three working days.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.050, 244.060, 244.070 & 244.090
Hist.: EC 4(Temp), f. & ef. 5-29-75; EC 6, f. & ef. 10-8-75; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; EC 1-1993, f. & cert. ef. 4-22-93; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; Suspended by GEC 1-2008(Temp), f. & cert. ef. 3-7-08 thru 5-6-08; GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

199-020-0008

Exemption Procedure for Annual Verified Statements of Economic Interest

(1) This rule implements ORS 244.290(2)(b), directing the Commission to allow exemptions for public officials who are otherwise required by ORS 244.050 to file an annual statement of economic interest when the public body on which the public official serves meets so infrequently so as not to warrant the public disclosure. Public officials shall submit a request for an exemption from the filing requirements of ORS 244.050 on a form prescribed by the Commission.

(2) Only public officials required to file under ORS 244.050(1)(j) are eligible to request the exemption under this rule. The Commission will accept requests that are submitted on behalf of all of the public officials serving on a particular city or county planning, zoning or development commission.

(3) The Commission will grant the exemption if the following criteria are met:

(a) The public body on which the public official serves has met no more frequently than twice annually for the last three calendar years.

(b) The public body has no decision making authority, but limits its function to making recommendations to an accountable public body or public official.

(c) The request for exemption is accompanied with copies of agendas and meeting minutes for all meetings conducted by the public body within the last three calendar years, as well as documentation of the authority or role of the public body.

(4) Applications for an exemption from filing the annual verified statement of economic interest due April 15 of a given year, must be received in the office of the Oregon Government Ethics Commission not later than 5:00 pm March 31 of that year. Public officials who do not meet that deadline, or whose application is not approved by the Commission, must file the annual verified statement of economic interest as required by April 15. Public officials who receive the exemption will be notified in writing.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.050, 244.290
Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10

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Rule Caption: Housekeeping to move terminology definitions to a separate rule.

Adm. Order No.: GEC 2-2010

Filed with Sec. of State: 3-12-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 1-1-2010

Rules Adopted: 199-005-0001

Rules Amended: 199-005-0003

Subject: Housekeeping to move terminology definitions to a separate rule. No substantive change.

Rules Coordinator: Virginia Lutz—(503) 378-5105

199-005-0001

Definitions

The following definitions are provided for words or terms as they are used in ORS Chapter 244, especially in the exceptions to the definition of a gift in ORS 244.020(6)(b):

(1) "Entertainment" means amusement or diversion. Entertainment may be provided by others (such as athletes at sporting events) but also includes events where the public official, relative, or member of household personally participates. Examples of entertainment include, but are not limited to concerts, plays, movies, operas, sporting events, participating in sports (golf, skiing, hunting or fishing, etc), comedy shows, and similar events.

(2) A "fact finding mission or trip" is any activity related to a cultural or educational purpose, or any activity aimed at providing intergovernmental assistance, such as for the purpose of international aid or sharing best practices, or developing intergovernmental relationships directly related to the public official's duties. The sponsor of a fact finding mission should be directly and immediately associated with the event or location being visited.

(3) "Incidental" means secondary or minor, but associated to something more important. Anything with financial value provided in conjunction with a primary event but of secondary in importance to the time and attention to the main purpose of the event is incidental.

(4) A "Meeting" is an event that includes multiple attendees who are members of an organization or members of the general public who have been invited to the event. The purpose or agenda for the meeting would be included in any advance notice of the event.

(5) "Official capacity" means that the public official attends an activity while engaged in duties or responsibilities that are customary to their office or position.

(6) "Organization" means any public body, corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust, or other entity other than an individual.

(7) "Representing Government" means that a public official is representing a state or local government or a special government body when the public official attends an event on behalf of the government agency. The following examples are offered to illustrate the meaning of "representing government," but are not meant to be the only circumstances that would define representing government:

(a) A fire chief attends an event to honor protection services representatives and attends on behalf of the station in an official capacity.

(b) A department manager attends a conference being sponsored by a vendor that has in the past sold products to the agency in which the manager is employed. The manager's official duties include the responsibility of attending conferences on behalf of the governing body.

(c) An executive director for a state agency attends ceremonial events; the director's official duties include representing the agency at such events.

(d) A state employee who works in the IT department whose responsibilities include reviewing and recommending software attends a workshop on software applications held by a professional membership organization.

(e) A planning commissioner speaks to a non-profit organization on behalf of the county planning department.

(f) A volunteer for a city park department attends an event representing the department at a meeting to discuss issues surrounding volunteerism.

(g) A legislator attends an event being sponsored by a Native American tribe on behalf of a legislative committee on which the legislator serves.

(h) A city councilor attends the local chamber of commerce breakfast.

(8) "Reception" means a social gathering. Receptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal.

Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.020, 244.025, 244.040 & 244.060
Hist.: GEC 2-2010, f. 3-12-10, cert. ef. 3-15-10

199-005-0003

Legislative or Administrative Interest Defined in ORS 244.020(9)

(1) If the source of a gift has a legislative or administrative interest, any gift offered to a public official or candidate, a relative or member of a public official's or candidate's household, may only be offered and accepted under conditions set forth as permitted in ORS Chapter 244. If, however, the source of a gift does not have a legislative or administrative interest, gifts are not restricted or prohibited.

ADMINISTRATIVE RULES

(2) "Decision" as used in ORS 244.020(9)(a) and (b) means an act that commits the public body to a particular course of action within the public official's scope of authority and that is connected to the source's economic interest. A decision is not a recommendation or work performed in an advisory capacity. The following examples illustrate the types of acts that are considered to be "decisions":

(a) An employee makes a decision when issuing or denying a permit.

(b) An enforcement employee makes decisions on whether to cite, warn or arrest.

(c) An employee who approves contracts makes a decision on a contract.

(d) An employee who commits their public body's funds for goods and services, such as office supplies, makes a decision.

(e) Should a chief executive officer, director or manager with authority to make a final decision on a matter delegate the decision to a subordinate, the chief executive officer, director or manager would retain responsibility as the final decision maker. The subordinate has also made a decision.

(3) As required by ORS 244.050, any public official or candidate who completes an Annual Verified Statement of Economic Interest (SEI) form will apply the meaning of "decision" in OAR 199-005-0003(2) when identifying a legislative or administrative interest held by any creditor, debtor, business or person, or entity that paid a service fee when listing the information required by ORS 244.060 and 244.070.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020, 244.025, 244.040 & 244.060

Hist.: GEC 1-2010, f. 3-12-10, cert. ef. 3-15-10; GEC 2-2010, f. 3-12-10, cert. ef. 3-15-10

Rule Caption: Amend rules that provide registration and reporting guidelines to lobbyists and client/employers they represent.

Adm. Order No.: GEC 3-2010

Filed with Sec. of State: 3-12-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 1-1-2010

Rules Amended: 199-010-0005, 199-010-0025, 199-010-0035, 199-010-0060, 199-010-0070, 199-010-0075, 199-010-0080, 199-010-0085, 199-010-0090, 199-010-0095, 199-010-0100, 199-010-0150

Subject: Amendment of the rules to recognize legislative changes in 207 and 2009. The rules explain lobbying registration requirements, expenditure allocations and reporting requirements, and penalty calculations. The amendments further address miscellaneous changes.

Rules Coordinator: Virginia Lutz—(503) 378-5105

199-010-0005

Definitions

As used in these rules:

(1) "Commission" means the Oregon Government Ethics Commission.

(2) "Entertainment" means amusement or diversion. Entertainment may be provided by others (such as athletes at sporting events) but also includes events where the public official, relative, or member of household personally participates. Examples of entertainment include, but are not limited to concerts, plays, movies, operas, sporting events, participating in sports (golf, skiing, hunting or fishing, etc), comedy shows, and similar events.

(3) "Goodwill", as used in the definition of "lobbying", ORS 171.725(8), means kindness, friendliness, benevolence or generosity by a person or entity directed toward a "legislative official", ORS 171.725(7) that could cause the legislative official to have a favorable impression of or thankfulness to the person or entity.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.725, 171.745, 171.750

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0025

Lobbyist Registration

(1) Individuals not exempted in ORS 171.735 from the lobbying registration law must register within three working days after spending either \$100 or 24 hours during a calendar quarter on lobbying activities.

(2) All lobbyists must register by submitting an official Lobbyist Registration Statement form. The form is available on the Commission's website at www.oregon.gov/ogec/forms_publications.shtml or from the Oregon Government Ethics Commission by telephone to (503) 378-5105 or by email to ogec.mail@state.or.us.

(3) Lobbyists must file a registration statement for each person, business or organization they represent. This requirement also applies to persons who lobby on behalf of public agencies. An organization or business comprised of more than one lobbyist may file one registration statement on behalf of the lobbyists with that organization or business. The registration statement must include the names of all the individual lobbyists authorized to lobby on behalf of the person, business or organization represented. The form must otherwise conform to the requirements of OAR 199-010-0035. Each named lobbyist shall sign the form certifying to the accuracy of the information on the statement.

(4) All lobbyist registrations expire on December 31 of each odd-numbered year. Renewals must be filed by March 31 of the following even-numbered year to be considered a continuous registration.

(5) Once registered with the Commission, a lobbyist must file a registration statement for each additional client/employer within three working days of engaging in representation of that client/employer.

(6) Either a lobbyist or a represented client/employer may terminate a lobbyist registration at any time by submitting a lobbyist termination form or by providing a written notification to the Commission. Terminations are effective on the date they are received in the Commission offices.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.740

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2002, f. & cert. ef. 10-18-02; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0035

Instructions for Completing Lobbyist Registration Statement

Unless otherwise exempted by ORS 171.735, a lobbyist must file a registration statement on a form provided by the Commission that includes the following information:

(1) Section 1 — Lobbyist Contact Information:

(a) The mailing address where the expenditure reports are to be sent, telephone and fax numbers, and an email address where the lobbyist or a designated contact person may be reached;

(b) The name of any member of the Legislative Assembly employed, retained or otherwise compensated by the lobbyist.

(2) Section 2 — Lobbyist Verification: Each lobbyist must certify that the information provided in the registration statement is true and correct by signing and dating the form.

(3) Section 3 — Client/Employer Information:

(a) The name of the business, organization, person or public agency that the lobbyist represents along with the name of a designated contact person;

(b) The mailing address where the expenditure reports are to be sent, telephone and fax numbers, and an email address where the client's contact person may be reached;

(c) A general description of the client/employer's type of business or activity;

(d) Whether or not the client/employer is a public or governmental agency;

(e) The general subject of legislative action or interest of the client/employer;

(f) The name of any member of the Legislative Assembly employed, retained or otherwise compensated by the client/employer.

(4) Section 4 — Designation: A responsible representative of the client/employer must sign the registration form to certify that the lobbyist has been authorized to lobby on behalf of the client/employer.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.740

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2002, f. & cert. ef. 10-18-02; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0060

Who Must File

(1) Any person registered as a lobbyist must file quarterly expenditure reports.

(2) An expenditure report must be filed even if there were no expenditures during the reporting period.

(3) An expenditure report must be filed for any portion of a reporting period prior to a registration termination.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.745

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-

ADMINISTRATIVE RULES

1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0070

When Reports Must Be Made

Lobbyist expenditure reports must be filed by the 15th of the month following each calendar quarter (January 15, April 15, July 15, and October 15). Postmark dates will be used as the filing date for those expenditure reports returned by U.S. Postal Service. Expenditure reports returned by fax or email will be considered filed on the date they are received.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.752

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 14, f. & ef. 1-31-77; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0075

Content of Lobbyist Quarterly Expenditure Report (ORS 171.745)

(1) Part A: A lobbyist must list the total amount of money spent during the reporting period for all lobbying activity expenditures that were made for food, refreshment and limited entertainment during the reporting period as required by ORS 171.745(1)(a).

(a) Except for entertainment provided under the conditions set forth in ORS 244.020(6)(b)(M) or (N), entertainment expenses paid for a public official are subject to a \$50 limit on the aggregate value of gifts from a source who could reasonably be known to have a legislative or administrative interest as provided in ORS 244.025.

(b) The lobbyist must list the total amount reimbursed to them for food, refreshment and entertainment and must identify each client or employer and the amount of reimbursement that each provided.

(c) If a lobbyist initiates and participates in the lobbying activity and uses or arranges for payment with a credit card, debit card or any other form of payment, it is the lobbyist's responsibility to report the expense. In the following examples, the methods of payment are the equivalent of a reimbursed expense that must be reported by the lobbyist:

(A) A lobbyist arranges a lobbying activity and those arrangements include placing the charges on a credit or debit card account belonging to the lobbyist's client or employer.

(B) A lobbyist registered to represent a client or employer is also an employee or executive official of that same client or employer. The client or employer is the holder of a credit or debit card and authorizes the lobbyist to use the credit or debit card.

(C) A lobbyist places a lobbying activity expense on a personal or business account. When the billing statement is received, it is submitted to and paid by the represented client or employer.

(d) The lobbyist must list the net expenditures made for food, refreshment and entertainment, which is the result of subtracting the total of expenditures reimbursed by the client or employer from the total of all expenditures reported.

(e) If lobbying services are provided by two or more registered lobbyists from the same business, public agency or other organization, a quarterly expenditure report may be filed that consolidates the lobbying activity expenditures of the lobbyists. The lobbying activity expenses reimbursed to each individual lobbyist must be detailed as required in (1)(b), (1)(c) and (1)(d) of this rule. To use this method of reporting lobbying expenditures, contact the Oregon Government Ethics Commission for additional information (ORS 171.745(4)).

(2) Part B: A lobbyist must list each occasion when an amount exceeding \$50 was spent for a lobbying purpose that was for the benefit of a legislative or executive official. The information listed must include the date, payee, name of the official, purpose and amount (ORS 171.745(1)(b)).

(a) If a legislative or executive official was accompanied by a relative or a member of the official's household on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household must be included in the aggregate value of the lobbying expenditure that was for the benefit of the legislative or executive official. The relative or member of the household that accompanied the official must be identified.

(b) If a relative or a member of the household of a legislative or executive official is not accompanied by the legislative or executive official on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household is reported as a benefit to the legislative or executive official. The relative or member of the household that participated must be identified.

(c) When a legislative or executive official receives a benefit exceeding \$50 and the expense is shared by two or more lobbyists, one lobbyist must be designated to itemize the occasion in Part B of the designated lobbyist's quarterly expenditure report. The lobbyist designated to itemize the occasion must also identify the other lobbyists and the amount paid by each (ORS 171.745(1)(b) and 244.025(1)).

(d) If a client or employer of the lobbyist has itemized the expenditure as required by ORS 171.750(1)(b) and OAR 199-010-0095 in Part B of the client's or employer's quarterly expenditure report, the expenditure does not have to be itemized by the lobbyist.

(e) If a business, public agency or other organization, with two or more lobbyists, chooses to file a quarterly expenditure report that consolidates the lobbying activity expenditures, the itemization of the occasion must include the identity of the individual lobbyists responsible for the itemized lobbying activity expense (ORS 171.745(4)).

(3) The lobbyist must attach to the quarterly expenditure report copies of any written notices that were provided to legislative or executive officials as required by ORS 244.100(1) and 244.100(2).

(4) The lobbyist must certify that the information contained in the report is correct by signing and dating the expenditure report form.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.745

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1980(Temp), f. & ef. 12-24-80; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-28-99; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 1-2008(Temp), f. & cert. ef. 3-7-08 thru 5-6-08; Administrative correction 5-20-08; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0080

How to Report Expenditures

(1) A lobbyist must report all lobbying related expenditures made during reporting periods, as defined in OAR 199-010-0075.

(2) The expenditures must be reported on a quarterly expenditure report form provided by the Commission.

(3) If the amount of any expenditure required to be included in the statement is not accurately known at the time of the report, an estimate thereof should be submitted and updated in a subsequent report when more accurate information is available.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.745

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1980(Temp), f. & ef. 12-24-80; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2002, f. & cert. ef. 10-18-02; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0085

Who Must File

(1) Any person, business, organization or public agency that engages anyone to lobby, who is registered as a lobbyist under OAR 199-010-0025 of these regulations, must file a report for its lobbying expenditures.

(2) The expenditures must be reported on a Quarterly Client/Employer Expenditure Report form provided by the Commission.

(3) A report must be filed even if there were no expenditures during the reporting period.

(4) A report must be filed for any portion of a reporting period prior to a registration termination.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.750

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; Suspended by EC 1-1980(Temp), f. & ef. 12-24-80; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2002, f. & cert. ef. 10-18-02; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0090

When Must Reports Be Filed

(1) Client/Employer Expenditure Reports must be filed by the 15th of the month following each calendar quarter (January 15, April 15, July 15, October 15).

(2) Postmark dates will be used as the filing date for those reports returned by U.S. Postal Service. Reports returned by fax or e-mail will be considered filed on the date they are received.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.752

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 14, f. & ef. 1-31-77; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

ADMINISTRATIVE RULES

199-010-0095

Content of Client/Employer Quarterly Expenditure Report (ORS 171.750)

(1) Part A: A client/employer of a lobbyist must list the total amount spent during the reporting period on lobbying related activities (ORS 171.750(1)(a)).

(a) Include overhead costs related to lobbying activity. Expenses related to travel for the purpose of lobbying are excluded from the reporting requirement (ORS 171.750(1)(c)).

(b) List each registered lobbyist who is compensated to provide lobbying services and include the amount paid in compensation and the amount paid in reimbursement to the lobbyist for food, refreshment and entertainment (ORS 171.750(1)(c)).

(c) If the lobbyist representing the client/employer has initiated and participated in a lobbying activity and has used or arranged for payment with the client's/employer's credit card, debit card or any other form of payment, it is the lobbyist's responsibility to report the expense as a reimbursement from the client/employer and the client/employer must list the expense as a reimbursement to the lobbyist. In the following examples, the methods of payment are the equivalent of a reimbursed expense to the lobbyist and must be reported as such by the client/employer:

(A) A lobbyist arranges a lobbying activity and those arrangements include placing the charges on a credit or debit card account belonging to the client/employer.

(B) A lobbyist registered to represent a client/employer is also an employee or executive official of that same client/employer. The client/employer is the holder of a credit or debit card and authorizes the lobbyist to use the credit or debit card.

(C) A lobbyist places a lobbying activity expense on a personal or business account. When the billing statement is received, it is submitted to and paid by the represented client/employer.

(d) If lobbying services are provided to a client/employer by two or more registered lobbyists from the same business, public agency or other organization, list the amounts paid for compensation and for reimbursed expenses to the business, public agency or organization (ORS 171.750(1)(c)). In listing reimbursed expenses, use the same criteria to identify a reimbursed expense as described in (1)(b) and (1)(c) of this rule.

(2) Part B: A client/employer must list each occasion when an amount exceeding \$50 was spent for a lobbying purpose that was for the benefit of a legislative or executive official. The information listed must include the date, payee, name of the official, purpose and amount (ORS 171.750(1)(b)).

(a) If a legislative or executive official was accompanied by a relative or a member of the official's household on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household must be included in the aggregate value of the lobbying expenditure that was for the benefit of the legislative or executive official. The relative or member of the household that accompanied the official must be identified.

(b) If a relative or a member of the household of a legislative or executive official is not accompanied by the legislative or executive official on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household is reported as a benefit to the legislative or executive official. The relative or member of the household that participated must be identified.

(c) When a legislative or executive official receives a benefit exceeding \$50 and the expense is shared by two or more client/employers, one client/employer must be designated to itemize the occasion in Part B of the designated client/employer's quarterly expenditure report. The client/employer designated to itemize the occasion must also identify the other contributing client/employers and the amount paid by each (ORS 171.750(1)(b) and 244.025(1)).

(d) If the lobbyist representing the client/employer has itemized the expenditure as required by ORS 171.745(1)(b) and OAR 199-010-0075 in Part B of the lobbyist's quarterly expenditure report, it does not need to be itemized by the client/employer.

(e) If the client/employer has reimbursed the lobbyist for an occasion that is itemized in Part B of the client/employer's quarterly expenditure report, the lobbyist who received the reimbursement must be identified.

(3) The client/employer must attach to the quarterly expenditure report copies of any written notices that were provided to legislative or executive officials as required by ORS 244.100(1) and (2).

(4) A representative of the client/employer must certify that the information contained in the report is correct by signing and dating the expenditure report form.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.750

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1989(Temp), f. & cert. ef. 1-18-89; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-28-99; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2002, f. & cert. ef. 10-18-02; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 1-2008(Temp), f. & cert. ef. 3-7-08 thru 5-6-08; Administrative correction 5-20-08; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0100

Filing Deadlines

Lobbyist Quarterly Expenditure Reports and Client/Employer Quarterly Expenditure Reports must be postmarked or received by the Commission on or before the due date indicated in the instructions provided with the reporting forms.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.745 & 171.750

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

199-010-0150

Civil Penalty for Late Filing

(1) The Commission may impose a civil penalty for each day a lobbyist expenditure report or client/employer expenditure report required by ORS 171.745 and 171.750 is late beyond the due date established in 171.752(2). The penalties will accrue at \$10 per day for the first 14 days and at \$50 per day thereafter. Such penalty shall not exceed the amount of \$5,000 pursuant to ORS 171.992(2)(c).

(2) Excluding violations of ORS 171.752, the Commission will identify each action that constitutes a violation of ORS Chapter 171 and when multiple violations are committed, will charge them in the following manner:

(a) When a lobbyist or client/employer of a lobbyist has committed two or more violations by subsequent equivalent actions, the Commission will charge the lobbyist or client/employer with a single violation and count the repeated actions using the number of the equivalent acts as aggravating factors when imposing any sanction as discussed in (2)(b) of this rule. The following examples are offered to illustrate this rule and not meant to limit its application:

(A) Each lobbyist must register with the Commission when exceeding the limits of time or expenditures set forth in ORS 171.735(4). Failure to register as a lobbyist for each client/employer could be a distinct violation of ORS 171.740(3). If a lobbyist fails to register for two or more client/employers, the multiple violations will be combined into the charge of one violation with each additional failure to register being counted as an equivalent action.

(B) When a lobbyist fails to list an occasion on the Lobbyist Quarterly Expenditure Report form when an amount exceeding \$50 is spent for the benefit of a legislative or executive official, the lobbyist violates ORS 171.745(1)(b). If a lobbyist fails to list two or more officials who participated in the same event, the multiple violations will be combined into the charge of one violation with each additional failure to list an official being counted as an equivalent action.

(C) When a client/employer represented by a lobbyist fails to list an occasion on the Client/Employer Quarterly Expenditure Report form when an amount exceeding \$50 is spent for the benefit of a legislative or executive official, the client/employer violates ORS 171.750(1)(b). If a client/employer fails to list two or more officials who participated in the same event, the multiple violations will be combined into the charge of one violation with each additional failure to list an official being counted as an equivalent action.

(b) When two or more single violations are charged as one violation, each additional violation by this rule will be counted as an equivalent action. The number of equivalent acts will be identified as an aggravating factor and included in the calculation of any assessment of a civil penalty that would constitute a sanction as set out in OAR 199-001-0015.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.745, 171.750, 171.752 & 171.992

Hist.: EC 14, f. & ef. 1-31-77; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GEC 3-2010, f. 3-12-10, cert. ef. 3-15-10

Oregon Health Licensing Agency Chapter 331

Rule Caption: Decrease temporary license fees for the Respiratory Therapy and align late fees with other agency programs.

ADMINISTRATIVE RULES

Adm. Order No.: HLA 1-2010
Filed with Sec. of State: 2-26-2010
Certified to be Effective: 3-1-10
Notice Publication Date: 1-1-2010
Rules Amended: 331-705-0060
Rules Repealed: 331-705-0060(T)

Subject: The Respiratory Therapy Licensing Board is amending OAR 331-705-0060 to decrease fees related to temporary licensure. The current application fee for temporary licensure is \$150, the new fee is \$50. The current temporary license fee is \$100 for 6 months, the new fee is \$50 for 6 months. Adjust late fee structure to align with other agency programs.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-705-0060

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) License: \$150.

(B) Temporary license: \$50.

(b) Examination — Oregon laws & rules: \$50.

(c) Original issuance of authorization to practice:

(A) License: \$100.

(B) Temporary license (six month, non renewable): \$50.

(d) Renewal of license: \$100.

(e) Delinquent (late) renewal of license: \$50 for each year in expired status up to two years.

(f) Restoration of license: \$100.

(g) Replacement of license, including name change: \$25.

(h) Duplicate license document: \$25 per copy with maximum of three.

(i) Affidavit of licensure: \$50.

(j) 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 688.830(9)

Stats. Implemented: ORS 688.830(9)

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 1-1998(Temp), f. & cert. ef. 3-20-98 thru 4-1-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HDLP 2-2002, f. 12-20-02 cert. ef. 1-1-03; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 7-2008, f. 9-15-08, cert. ef. 10-1-08; HLA 2-2009(Temp), f. 11-30-09, cert. ef. 12-1-09 thru 5-15-10; HLA 1-2010, f. 2-26-10, cert. ef. 3-1-10

Rule Caption: Align with agency rules, remove grandfathering provisions and integrate practice standards and guideline requirements.

Adm. Order No.: HLA 2-2010
Filed with Sec. of State: 3-15-2010
Certified to be Effective: 3-15-10
Notice Publication Date: 12-1-2009
Rules Adopted: 331-840-0070
Rules Amended: 331-800-0010, 331-800-0020, 331-810-0020, 331-810-0040
Rules Repealed: 331-810-0035

Subject: Continues to synchronize with current agency provisions and requires that all certified and associate sex offender therapists adhere to the same practice standards and guidelines when evaluating, treating, and managing sex offenders.

Division 800: Amends the definition for affidavit of licensure to streamline and align with procedures under the current agency model. Removes fee for certification under grandfathering provision, which expired on March 15, 2009. Amends current delinquent fee to be consistent with other agency programs.

Division 810: Amends language regarding affidavit of licensure to align with procedures under the current agency model and allow flexibility for receipt of information based on agency review. Repeals grandfathering language which expired on March 15, 2009.

Division 840: Adopt requirement that all certified clinical and associate sex offender therapists adhere to standardized practice stan-

dards and guidelines for the evaluation, treatment, and management of adult male sex offenders, juvenile sex offenders and adult sexual offenders with intellectual and other developmental disabilities. Practice standards and guidelines for adult male sex offenders can be purchased at <http://www.atsa.com/form.html>. Practice standards and guidelines for juvenile sex offenders and sexual offenders with intellectual and other developmental disabilities can be reviewed on the boards website at <http://www.oregon.gov/OHLA/SOTB/index.shtml>.
Rules Coordinator: Samantha Patnode—(503) 373-1917

331-800-0010

Definitions

The following definitions apply to OAR 331-800-0010 to 331-850-0010:

(1) "Active certificate" means a certificate issued when all requirements are met, fees paid and certificate is not expired, suspended or revoked.

(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 (OHLA). The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rule making, and record keeping.

(4) "Authorization" means the official document, the certificate, issued by the Oregon Health Licensing Agency.

(5) "Board" means pursuant to ORS 675.395, the entity that advises the agency in matters relating to the practice of sex offender treatment, including practice standards, education and training requirements, and advises the agency on all disciplinary issues in accordance with 676.612. The Oregon Health Licensing Agency Director controls the regulatory operations and has decision-making authority on all substantive matters.

(6) "Certified clinical sex offender therapist" means a person who is certified by the agency to provide services for the treatment and rehabilitation of sex offenders and who may supervise certified associate sex offender therapist; also referred to as "clinical therapist".

(7) "Certified associate sex offender therapist" means a person who is certified by the agency to provide services for the treatment and rehabilitation of sex offenders while under the direct supervision of a certified clinical sex offender therapist; also referred to as "associate therapist".

(8) "Continuing education hours" means the actual academic classroom or course work time, including but not limited to workshops, symposiums, seminars, excluding personal travel time to and from the training site, registration or check-in periods breaks or lunch periods.

(9) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(10) "Direct supervision" means a minimum of two hours of supervision by a certified clinical sex offender therapist for each 45 hours of direct clinical contact with a sex offender as specified in ORS 675.365(4).

(11) "Direct treatment services" means face-to-face individual, group or family therapy, provided by a clinical or associate therapist, to a client.

(12) "Director" means, pursuant to ORS Chapter 676.610, the individual who has sole responsibility for the administrative, fiscal, human resource and regulatory functions of the agency.

(13) "Ethical" means conforming to professional standards, as adopted by the Association for the Treatment of Sexual Abusers' Practice Standards (ATSA) and Guidelines adopted in 2005, and Professional Code of Ethics adopted in 2001, regarding professional practices authorized under ORS 675.360 to 675.410 and rules adopted by the agency.

(14) "Evaluation" means a comprehensive psychosexual assessment or intake assessment conforming to professional standards as adopted by the Association for Treatment of Sexual Abusers' Practice Standards and Guidelines adopted in 2005, to determine a client's risk to re-offend, identify dynamic risk factors, and develop appropriate treatment and supervision plans. Evaluation includes a written report including, but not limited to the following:

(a) Useful guidance to others, such as the courts, in making decisions affecting a client's future and whether the client's risk can be managed in a community setting;

ADMINISTRATIVE RULES

(b) Comprehensive description of the client's abusive and non-abusive sexual behavior;

(c) Amenability to treatment;

(d) Recommendations regarding the intensity and type of intervention that is required;

(e) Risk management strategies;

(f) Responsiveness to treatment, such as culture, ethnicity, age, IQ, learning style, neuropsychological disorders, personality style, mental and physical disabilities, medication, and motivation.

(15) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(16) "Informed consent" means consent obtained following a thorough and easily understood explanation to the client, or the client's guardian, of the proposed treatment plan, any available alternative procedures and any risks associated with the proposed plan. The therapist provides clients with information about the purpose, goals, techniques, procedures, limitations, and consequences of not consenting, the limits of confidentiality, and alternatives to the services offered, potential risks and benefits of services to be performed. Supervisors ascertain the client's ability to understand and utilize the information.

(17) "Functionally disabled" means a severe and chronic disability that is attributable to a mental or physical impairment or a combination of physical and mental impairments which result in substantial functional limitations in three or more of the major life activities.

(18) "Mental health professional" means a person licensed to practice without supervision in the state of Oregon as a physician, psychiatrist, psychiatric nurse practitioner, psychologist, psychological associate, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist, who provides sex offender treatment of adults, juveniles or functionally disabled individuals.

(19) "Official transcript" means an original document certified by an accredited educational institution, delivered from the school to the agency by mail or courier, which includes:

(a) School name and location;

(b) Student's name, address and date of birth;

(c) Enrollment and termination dates;

(d) Hours and types of course work;

(e) Degree issued;

(f) School seal or stamp;

(g) Signature of authorized school representative or registrar.

(20) "Oregon Health Licensing Agency" (OHLA) means the agency assigned to carry out the administrative, programmatic and daily operations, and regulatory functions of ORS 676.606.

(21) "Professional mental health licensing or certification agency" means the entity charged with the administrative functions and responsibilities for protecting the public through the licensing and regulating of certain professions practiced in Oregon, or in a county, other state, country or territory. The entity has the responsibility for decisions on qualifications, standards of practice, licensing, discipline and other discretionary functions relating to professional activities in the professional licensing boards, councils, or programs; also known as regulatory authority.

(22) "Reciprocity" means, according to ORS 675.380, certification, registration or licensure in another state based on standards of training, education and experience that are similar to those required for certification in Oregon as a certified clinical sex offender therapist or a certified associate sex offender therapist as specified in 675.375.

(23) "Sex offender specific treatment" means treatment modalities that are based on empirical research with regard to favorable treatment outcomes and are professionally accepted in the field of sex offender treatment of adults, juveniles, and functionally disabled individuals, with sexual behavior problems. Offense specific treatment is a comprehensive set of planned treatment experiences and interventions that modify sexually deviant thoughts, fantasies, and behaviors and that utilize specific strategies to promote change and to reduce the chance of re-offending.

(24) "Treatment plan" means an individualized written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

Stat. Auth.: ORS 675.410 & 676.615

Stat. Implemented: ORS 675.360 - 675.410

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 2-2010, f. & cert. ef. 3-15-10

331-800-0020

Fees

Fees established by the Oregon Health Licensing Agency are as follows:

(1) Application for certification: \$75.

(2) Original two year certification \$650.

(3) Application for renewal — two year certificate: \$650.

(4) Replacement certificate, including name change: \$25.

(5) Duplicate certificate document: \$25 per copy with a maximum of three.

(6) Delinquency fee: \$50 for each year in expired status up to two years.

(7) Examination — Oregon laws & rules: \$50.

(8) Affidavit of licensure: \$50.

(9) 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 675.405, 675.410 & 676.625

Stat. Implemented: ORS 675.405

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 8-2008, f. 9-15-08, cert. ef. 10-1-08; HLA 2-2010, f. & cert. ef. 3-15-10

331-810-0020

Clinical Sex Offender Therapist Requirements

To qualify for certification as a clinical sex offender therapist, an applicant shall provide satisfactory evidence to the agency that requirements of ORS 675.375(3) have been met regarding education, training, and experience in the evaluation, treatment, and management of individuals who sexually offend, in addition to other requirements specified in this rule. Required documentation includes the following:

(1) The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating agency may assess for producing the affidavit.

(2) Record of at least 2,000 hours of professional clinical experience, of which 1,000 hours relates to providing direct treatment services as defined in OAR 331-800-0010, within a period of not less than three nor more than six years immediately preceding the date of application.

(3) Record of 500 hours of evaluations as defined in OAR 331-800-0010, that includes but is not limited to the following types of professional activities:

(a) Evaluation experience credit:

(A) Primary or secondary responsibility for interviewing the client;

(B) Preparation of the written evaluation report;

(C) All contact with clients; and

(D) Preparation of limited assessments for the purpose of:

(i) Institution classification;

(ii) Treatment monitoring; and

(iii) Reporting.

(b) Treatment experience credit:

(A) Face-to-face treatment hours performed by affiliates under the supervision of certified therapists;

(B) Time spent as a co-therapist. Both therapists shall have formal responsibility for the group session; and

(C) Time spent maintaining collateral contacts and written case/progress notes.

(4) Record of 500 hours of professionally related activities, associated with the following type of work:

(a) At least 340 hours of documented activities, including but not limited to:

(A) Client charting or case management;

(B) Research;

(C) Peer review, consultations, or meetings with attorneys, parole officers or other officials;

(D) Court time or testimony;

(E) Profession related committee work or attendance at sex offender treatment related meetings; and

(b) At least 160 hours of professional activities engaged in as a sex offender therapist, while under the direct supervision of a qualified mental health professional; refer to OAR 331-810-0050.

(5) Record of 60 hours of formal training directly related to the treatment and evaluation of sex offenders or victims of abuse that was completed within the last three years immediately preceding the date of application.

(a) Completion of formal training shall include documenting 45 hours of the total required hours, in the following essential subjects:

(A) Assessment and diagnosis;

ADMINISTRATIVE RULES

- (B) Cognitive therapy;
 - (C) Counseling and psychotherapy;
 - (D) Cultural/ethnic issues;
 - (E) Ethics applicable to working with a forensic population;
 - (F) Human development with special attention to sexual development and healthy sexuality;
 - (G) Interviewing skills;
 - (H) Knowledge of family dynamics as related to sex offending;
 - (I) Psychometric and psycho-physiological testing;
 - (J) Psychopathology;
 - (K) Relapse prevention;
 - (L) Relationship and social skills training;
 - (M) Risk assessment;
 - (N) Sexual arousal control;
 - (O) Social support networks;
 - (P) Victim awareness and empathy.
- (B) Completion of formal training shall include documenting 15 hours of the total required hours, in the following areas of training and knowledge:

- (A) Supervision;
 - (B) Assessment and treatment of mental illness including neuropsychological disorders;
 - (C) Couples and family therapy;
 - (D) Family reunification;
 - (E) Pharmacological therapy;
 - (F) Substance abuse treatment.
- Stat. Auth.: ORS 675.375, 675.400 & 676.615
Stat. Implemented: ORS 675.375 & 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 2-2010, f. & cert. ef. 3-15-10

331-810-0040

Reciprocity; Equivalencies

Pursuant to ORS 675.380, an applicant who is recognized as a clinical sex offender therapist or associate sex offender therapist in another state may be issued Oregon certification as a sex offender therapist if the applicant's education, experience and formal training meet similar requirements for Oregon certification under ORS 675.375 and OAR 331-810-0020.

(1) Educational equivalency includes completion of the following:

(a) A masters or doctoral degree in social work, psychology, counseling, or educational psychology from a regionally accredited institution of higher education; or

(b) A masters or doctoral degree in an equivalent field from a regionally accredited institution of higher education and documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content listed in subsection (2) of this section.

(2) Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in counseling, psychotherapy, and personality theory, and five graduate semester hours or seven graduate quarter hours in at least two of the following content areas:

- (a) Counseling and psychotherapy;
- (b) Personality theory;
- (c) Behavioral science and research;
- (d) Psychopathology/personality disorders;
- (e) Assessment/tests and measurement;
- (f) Group therapy/family therapy;
- (g) Human growth and development/sexuality; and
- (h) Corrections/criminal justice.

(3) The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating agency may assess for producing the affidavit.

(4) Applicants must document active practice as a certified sex offender therapist in another state during the previous two years immediately preceding application for Oregon certification.

(5) Applicants shall provide required documentation listed in OAR 331-030-0000, 331-820-0010 and other information as may be requested by the agency to determine equivalent education, experience and formal training for Oregon certification as a sex offender therapist.

Stat. Auth.: ORS 675.375, 675.380, 675.400 & 676.615
Stat. Implemented: ORS 675.375, 675.380 & 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 2-2010, f. & cert. ef. 3-15-10

331-840-0070

Practice Standards and Guidelines

In accordance with ORS 675.400, all certified clinical and associate sex offender therapists as defined in ORS 675.365 and OAR 331-800-0010

must adhere to the following practice standards and guidelines for the evaluation, treatment and management of adult male sex offenders, juvenile sex offenders and sexual offenders with intellectual and other developmental disabilities:

(1) **Adult Male Sex Offenders:** The 2004 Association for the Treatment of Sexual Abusers (ATSA), Practice Standards and Guidelines. A copy of the Practice Standards and Guidelines may be purchased at the website: <http://www.atsa.com/form.html>. The information is also available by contacting ATSA: 4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon U.S.A. 97005, Phone: (503) 643-1023, Fax: (503) 643-5084, E-mail: atsa@atsa.com.

(2) **Juvenile Sex Offenders:** Practice Standards and Guidelines, adopted by the agency and board, January, 2010. A copy may be accessed on the agency website: <http://www.oregon.gov/OHLA/SOTB/index.shtml>. The information is also available by contacting the agency at: 700 Summer St. NE, Suite 320, Salem, OR 97301-1287. Phone: (503) 378-8667, Fax: (503) 585-9114, E-mail: ohla.info@state.or.us.

(3) **Sex Offenders with Intellectual and Other Developmental Disabilities:** Practice Standards and Guidelines, adopted by the agency and board, January, 2010. A copy of the Practice Standards and Guidelines may be accessed at the agency website: <http://www.oregon.gov/OHLA/SOTB/index.shtml>. The information is also available by contacting the agency at: 700 Summer St. NE, Suite 320, Salem, OR 97301-1287. Phone: (503) 378-8667, Fax: (503) 585-9114, E-mail: ohla.info@state.or.us.

(4) Failure to comply with OAR chapter 331, division 840 may result in disciplinary action under ORS 676.612.

Stat. Auth.: ORS 676.605, 676.606, 675.615, 675.400, 675.410 & 675.360
Stats. Implemented: ORS 676.360, 676.605, 676.606, 676.615, 675.400 & 676.410
Hist.: HLA 2-2010, f. & cert. ef. 3-15-10

Oregon Housing and Community Services Department Chapter 813

Rule Caption: Establishes Manufactured Dwelling Parks Preservation Fund. Authorizes assistance to eligible groups to acquire manufactured dwelling parks.

Adm. Order No.: OHCS 4-2010(Temp)

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10 thru 8-23-10

Notice Publication Date:

Rules Adopted: 813-027-0001, 813-027-0010, 813-027-0020, 813-027-0030, 813-027-0040, 813-027-0050, 813-027-0060, 813-027-0070, 813-027-0080, 813-027-0090

Subject: The rules establish the Housing and Community Services Department Manufactured Dwelling Parks Preservation Fund and authorizes the Department to provide assistance to community organizations and tenant groups in acquiring manufactured dwelling parks.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-027-0001

Purpose and Objectives

The rules of OAR chapter 813, division 027, are adopted for the purpose of administering section 7, chapter 906, Oregon Laws 2009, which establishes the Housing and Community Services Department Manufactured Dwelling Parks Preservation Fund and authorizes the Department to provide assistance to community organizations and tenant groups in acquiring manufactured dwelling parks.

Stat. Auth.: ORS 456.555
Stats. Implemented: 2009 OL Ch. 906 Sec. 7
Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0010

Definitions

All terms are used in OAR 813, division 027, as defined in the Act and as provided in 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) "Department" means the Oregon Housing and Community Services Department established in ORS 456.555.

(2) "Fund" means the Oregon Housing and Community Services Manufactured Dwelling Parks Preservation Fund.

Stat. Auth.: ORS 456.555
Stats. Implemented: 2009 OL Ch. 906 Sec. 7
Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

ADMINISTRATIVE RULES

813-027-0020

Eligibility for Moneys from Fund

(1) The Department may disburse moneys in the fund by grant, loan or otherwise as the Department determines appropriate, subject to the availability of funds and to limitations otherwise prescribed by law, to a community organization or a tenant group to facilitate the organization's or group's acquisition of a manufactured dwelling park in order to prevent the loss of housing units.

(2) In disbursing moneys under section (1) of this rule, the Department may give preference to:

(a) A community organization that is a nonprofit corporation established under ORS Chapter 65, a housing authority established under 456.055 to 456.235 or a local government as defined in 197.015; and

(b) A tenant group that is a tenant committee formed under ORS 90.600 or any of the following to which 456.581 applies:

(A) A tenants' association;

(B) A manufactured dwelling park nonprofit cooperative;

(C) A tenants' association supported nonprofit organization; and

(D) A facility purchase association.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0030

Application Procedure and Requirements

(1) The Department may provide a reservation of an award from the fund through a process that may include but is not limited to any of the following:

(a) A direct Department award;

(b) An application according to a first-come, first-reviewed process;

or

(c) An application according to a competitive review process.

(2) In the case of a direct award under section (1)(a) of this rule, the Department may request information that the Department determines appropriate to support the award. An applicant for an award under section (1)(b) or (c) of this rule shall submit, in an application form and according to a process prescribed by the Department, a proposal as required by the Department. The proposal shall include all of the following items, subject to waiver of one or more of the items by the Department:

(a) A written description that includes the number of units, the unit mix, proposed rents, the site location, the proposed program of services to occupants, amenities and any other pertinent information.

(b) A statement of purpose indicating the housing type and residents to be housed, and the length of time the units will be available as affordable.

(c) A pro forma of expenses and income.

(d) The requested amount of funds, with proposed loan repayment terms if the funds are requested as a loan.

(e) Total development costs, with a description of all additional funding and funding sources.

(f) A description of the experience of the sponsor, developer, owner or manager in developing and operating housing.

(g) Any other documentation requested by the Department.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0040

Criteria for Funding

(1) As the Department determines to be possible and appropriate, moneys from the fund are subject to distribution throughout the state and on the basis of identified needs and financial feasibility.

(2) Specific criteria for distributing moneys from the fund include but are not limited to the following:

(a) The Department may give preference to an application that does one or more of the following:

(A) Provides for acquisition of a manufactured dwelling park with the greatest number of low and very low income housing units for the least amount of account funds expended from or committed toward matching funds available from other loans, grants or eligible in-kind contributions.

(B) Ensures the longest possible use as low or very low income housing units, as determined by the State Housing Council.

(C) Provides housing for specific populations that historically have faced barriers in finding housing and that are identified as having a priority in the Department's Consolidated Plan or its successor, or in a state-acknowledged initiative.

(D) Meets other criteria established by the Department with respect to a particular project.

(b) The Department shall condition funding for a development on the continued use of the development for the targeted tenant group, on the provision of supportive services for the duration of the development and to the extent indicated in the funding application.

(c) Terms and conditions of an award shall be established in the funding agreement or other documents required by the Department and shall be recorded against the property. If the applicant does not own the property at the time of fund disbursement or is a long-term lessee, the applicant or the lessor shall open an escrow account and have the funding agreement or other required documents placed in escrow and recorded immediately upon obtaining title to or control of the property.

(3) The Department may require repayment of funding provided under this rule if all or part of the commitments to residents, supportive services or period of use for low- or very-low income housing is withdrawn or reduced.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0050

Application Review

(1) An application is subject to the Department's approval, denial or modification, in whole or in part, and is also subject to review by the State Housing Council.

(2) When a funding award is in excess of an applicable threshold established by the State Housing Council and the Council's review and approval are required under ORS 456.561, the Council shall approve or disapprove the application at a public hearing pursuant to 456.571.

(3) When reviewing an application, in addition to any specific evaluation criteria, the Department or the Council, as appropriate, may consider the following matters:

(a) The amount of available funds in the program;

(b) The ability of the applicant to meet proposed terms of loan repayment, when funding is awarded as a loan;

(c) The availability of other sources of assistance;

(d) The applicant's efforts to leverage public or private funds; and

(e) Any other criteria that the Department or Council determines to be appropriate.

(4) The Department or the Council at any time may request additional information with respect to an application or award.

(5) Approval, denial or modification of an application under this rule is subject to the Department's judgment as to which applications will best achieve the purposes of the program and will best meet applicable evaluation criteria in the program application forms and handbooks.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0060

Charges

(1) The Department may charge an applicant for costs incurred by the Department in evaluating and taking action on an application, and may also:

(a) Impose a transfer application charge on an owner who receives a contract, grant, loan or tax credit through the Department or who requests the Department's approval of a change in ownership; or

(b) Impose a transfer review charge on an owner and transferee who effects a change in ownership without prior written approval by the Department.

(2) The Department may charge for costs incurred by the Department for review of a transaction by the Department of Justice, including but not limited to a change requested by the applicant to a required document.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0070

General Administrative and Monitoring Requirements

(1) A recipient of fund moneys shall furnish annual reports and other materials to the Department as required by the Department.

(2)(a) A recipient of fund moneys:

(b) Is subject to reviews or field inspections, or both, by the Department that the Department determines to be appropriate for ensuring compliance.

(3) A recipient of fund moneys shall retain financial records, supporting documents and all other pertinent records for six years after affordabil-

ADMINISTRATIVE RULES

ity expires or after any litigation or audit claim is resolved, whichever is later. The recipient shall provide the Department access to all books, accounts, documents, records and other property belonging to or in use by the recipient and relating to the use of the fund moneys.

(4) A recipient must certify final uses of preservation proceeds for tax exempt eligible uses.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0080

Noncompliance

(1) At any time before the expiration of the affordability period, if the Department determines that a recipient is not in compliance with applicable requirements, the recipient shall take corrective actions required by the Department. Examples of noncompliance include but are not limited to the use of fund moneys for activities not approved in the funding agreement, the failure to complete activities in a timely manner, the failure to comply with applicable rules or regulations or the lack of a continued capacity by the recipient to carry out the approved activities. The Department may take any of the actions described in section (3) of this rule against a recipient who does not take the required corrective actions to the satisfaction of the Department.

(2) In addition to or in lieu of a requirement of corrective action under section (1) of this rule, the Department may take one or more of the actions described in section (3) of this rule against a recipient who is not in compliance with applicable requirements if the Department determines that one or more of the following circumstances exist:

(a) The Department or recipient has not disbursed moneys within one year of award by the Department.

(b) A public or private party funding agreement that is related to the project is not executed within six months of the award of moneys from the fund.

(c) A material breach of the funding agreement occurs, such as a failure to use the funds for eligible costs or a failure of the recipient to serve the population stated in the funding agreement.

(d) The funding agreement is not recorded on the property as required by OAR 813-0--0040 or pursuant to agreement.

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the award money and that the corrective actions are not or will not be made within a reasonable time.

(3) The Department may take one or more of the following actions under this rule:

(a) Prohibit a recipient from applying for future moneys from the fund or for other Department assistance;

(b) Revoke an existing award.

(c) Withhold unexpended moneys.

(d) Require return of moneys disbursed to the recipient but not yet expended by the recipient.

(e) Require repayment of expended moneys.

(f) Payment of any legal cost associated with a review of non-compliance.

(g) Invoke other remedies that may be incorporated into the funding agreement.

(4) Actions that the Department may take under this rule are cumulative and not exclusive and are in addition to any other rights and remedies provided by law or under a funding agreement.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-027-0090

Waiver

The Department may waive or modify any requirements of these rules, unless such waiver or modification would violate applicable federal or state law.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 7

Hist.: OHCS 4-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

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Rule Caption: Establishes Housing Preservation Fund; authorizes assistance for the acquisition, renovation or maintenance of eligible housing.

Adm. Order No.: OHCS 5-2010(Temp)

Filed with Sec. of State: 2-25-2010

Certified to be Effective: 2-25-10 thru 8-23-10

Notice Publication Date:

Rules Adopted: 813-028-0001, 813-028-0010, 813-028-0020, 813-028-0030, 813-028-0040, 813-028-0050, 813-028-0060, 813-028-0070, 813-028-0080, 813-028-0090

Subject: The rules establish the Housing Preservation Fund and authorizes the Department to provide financial assistance to aid in the acquisition, renovation or maintenance of section 8 housing or other housing with federal rent subsidies.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-028-0001

Purpose and Objectives

The rules of OAR chapter 813, division 028, are adopted for the purpose of administering section 5, chapter 906, Oregon Laws 2009, which establishes the Housing and Community Services Department Housing Preservation Fund and authorizes the Department to provide financial assistance to aid in the acquisition, renovation or maintenance of section 8 housing or other housing with federal rent subsidies.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0010

Definitions

All terms are used in OAR 813, division 028, as defined in the Act and as provided in 813-005-0005 and herein. As used in this division, unless the context indicates otherwise:

(1) "Department" means the Oregon Housing and Community Services Department established in ORS 456.555.

(2) "Fund" means the Housing and Community Services Department Housing Preservation Fund established in section 5, chapter 906, Oregon Laws 2009.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0020

Eligibility for Moneys from Fund

The Department may disburse moneys in the fund by grant, loan or otherwise as determined by the Department, subject to the availability of funds and limitations otherwise prescribed by law. The purposes for which the moneys may be disbursed include but are not limited to that of avoiding the expiration of federally contracted rent subsidies for affordable housing. These subsidies include but are not limited to subsidies under contracts with the U.S. Department of Housing and Urban Development and U.S. Department of Agriculture Rural Development that enable community organizations, for-profit entities and individuals to do the following:

(1) Acquire or rehabilitate existing structures; and

(2) Maintain housing with federally contracted rent subsidies.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0030

Application Procedure and Requirements

(1) The Department may provide a reservation of an award from the fund through a process that may include but is not limited to any of the following:

(a) A direct Department award;

(b) An application according to a first-come, first-reviewed process;

or

(c) An application according to a competitive review process.

(2) In the case of a direct award under section (1)(a) of this rule, the Department may request information that the Department determines appropriate to support the award. An applicant for an award under section (1)(b) or (c) of this rule shall submit, in an application form and according to a process prescribed by the Department, a proposal as required by the Department. The proposal shall include all of the following items, subject to waiver of one or more of the items by the Department:

(a) A written description that includes the number of units, the unit mix, proposed rents, the site location, the proposed program of services to occupants, amenities and any other pertinent information.

(b) A statement of purpose indicating the housing type and residents to be housed, and the length of time the units will be available as affordable.

(c) A pro forma of expenses and income.

(d) The requested amount of funds, with proposed loan repayment terms if the funds are requested as a loan.

ADMINISTRATIVE RULES

(e) Total development costs, with a description of all additional funding and funding sources.

(f) A description of the experience of the sponsor, developer, owner or manager in developing and operating housing.

(g) Any other documentation requested by the Department.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0040

Criteria for Funding

(1) As the Department determines to be possible and appropriate, moneys from the fund are subject to distribution throughout the state and on the basis of identified needs and financial feasibility.

(2) Specific criteria for distributing moneys from the fund include but are not limited to the following:

(a) The Department may give preference to an application that does one or more of the following:

(A) Provides the greatest number of low and very low income housing units for the least amount of account funds expended from or committed toward matching funds available from other loans, grants or eligible in-kind contributions.

(B) Ensures the longest possible use as low or very low income housing units, as determined by the State Housing Council.

(C) Provides housing for specific populations that historically have faced barriers in finding housing and that are identified as having a priority in the Department's Consolidated Plan or its successor, or in a state-acknowledged initiative.

(D) Meets other criteria established by the Department with respect to a particular project.

(b) The Department may condition funding for a development on the continued use of the development for the targeted population, on the provision of supportive services for the duration of the development and to the extent indicated in the funding application.

(c) Terms and conditions of an award must be established in the funding agreement or other documents required by the Department and shall be recorded against the property. If the applicant does not own the property at the time of fund disbursement or is a long-term lessee, the applicant or the lessor shall open an escrow account and have the funding agreement or other required documents placed in escrow and recorded immediately upon obtaining title to or control of the property.

(3) The Department may require repayment of funding provided under this rule if all or part of the commitments to residents, supportive services or period of use for low- or very-low income housing is withdrawn or reduced.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0050

Application Review

(1) An application is subject to the Department's approval, denial or modification, in whole or in part, and is also subject to review by the State Housing Council as appropriate.

(2) When a funding award is in excess of an applicable threshold established by the State Housing Council and the Council's review and approval are required under ORS 456.561, the Council shall approve or disapprove the application at a public hearing pursuant to ORS 456.571.

(3) When reviewing an application, in addition to any specific evaluation criteria, the Department or the Council, as appropriate, may consider the following matters:

(a) The amount of available funds in the program;

(b) The ability of the applicant to meet proposed terms of loan repayment, when funding is awarded as a loan;

(c) The availability of other sources of assistance;

(d) The applicant's efforts to leverage public or private funds; and (e) Any other criteria that the Department or Council determines to be appropriate.

(4) The Department or the Council at any time may request additional information with respect to an application or award at any time.

(5) Approval or denial of an application under this rule is subject to the Department's judgment as to which applications will best achieve the purposes of the program and will best meet applicable evaluation criteria in the program application forms and handbooks.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0060

Charges

(1) The Department may charge an applicant for costs incurred by the Department in evaluating and taking action on an application, and may also:

(a) Impose a transfer application charge on an owner who receives a contract, grant, loan or tax credit through the Department or who requests the Department's approval of a change in ownership; or

(b) Impose a transfer review charge on an owner and transferee who effects a change in ownership without prior written approval by the Department.

(2) The Department may charge for costs incurred by the Department for review of a transaction by the Department of Justice, including but not limited to a change requested by the applicant to a required document.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0070

General Administrative and Monitoring Requirements

(1) A recipient of fund moneys shall furnish annual reports and other materials to the Department as required by the Department.

(2) A recipient of fund moneys is subject to reviews or field inspections, or both, by the Department that the Department determines to be appropriate for ensuring compliance.

(3) A recipient of fund moneys shall retain financial records, supporting documents and all other pertinent records for six years after affordability expires or after any litigation or audit claim is resolved, whichever is later. The recipient shall provide the Department access to all books, accounts, documents, records and other property belonging to or in use by the recipient and relating to the use of the fund moneys.

(4) A recipient must certify final uses of preservation proceeds for tax exempt eligible uses.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0080

Noncompliance

(1) At any time before the expiration of the affordability period, if the Department determines that a recipient is not in compliance with applicable requirements, the recipient shall take corrective actions required by the Department. Examples of noncompliance include but are not limited to the use of fund moneys for activities not approved in the funding agreement, the failure to complete activities in a timely manner, the failure to comply with applicable rules or regulations or the lack of a continued capacity by the recipient to carry out the approved activities. The Department may take one or more of the actions described in section (3) of this rule against a recipient who does not take the required corrective actions to the satisfaction of the Department.

(2) In addition to or in lieu of a requirement of corrective action under section (1) of this rule, the Department may take one or more of the actions described in section (3) of this rule against a recipient who is not in compliance with applicable requirements if the Department determines that one or more of the following circumstances exist:

(a) The Department or recipient has not disbursed moneys within one year of award by the Department.

(b) A public or private party funding agreement that is related to the project is not executed within six months of the award of moneys from the fund.

(c) A material breach of the funding agreement occurs, such as a failure to use the funds for eligible costs or a failure of the recipient to serve the population stated in the funding agreement.

(d) The funding agreement is not recorded on the property as required by OAR 813-0---0090 or pursuant to agreement.

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the award money and that the corrective actions are not or will not be made within a reasonable time

(3) The Department may take one or more of the following actions under this rule:

(a) Prohibit a recipient from applying for future moneys from the fund or for other Department assistance;

(b) Revoke an existing award.

(c) Withhold unexpended moneys.

(d) Require return of moneys disbursed to the recipient but not yet expended by the recipient.

(e) Require repayment of expended moneys.

ADMINISTRATIVE RULES

(f) Payment of any legal cost associated with a review of non-compliance.

(g) Invoke other remedies that may be incorporated into the funding agreement.

(4) Actions that the Department may take under this rule are cumulative and not exclusive and are in addition to any other rights and remedies provided by law or under a funding agreement.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

813-028-0090

Waiver

The Department may waive or modify any requirements of these rules, unless such waiver or modification would violate applicable federal or state law.

Stat. Auth.: ORS 456.555

Stats. Implemented: 2009 OL Ch. 906 Sec. 5

Hist.: OHCS 5-2010(Temp), f. & cert. ef. 2-25-10 thru 8-23-10

Oregon Liquor Control Commission Chapter 845

Rule Caption: Adopt two rules governing new special events licenses for Oregon Distillery and Brewery-Public House licensees.

Adm. Order No.: OLCC 1-2010

Filed with Sec. of State: 2-22-2010

Certified to be Effective: 3-1-10

Notice Publication Date: 11-1-2009

Rules Adopted: 845-005-0413, 845-005-0414

Subject: The Commission is adopting 2 new rules, OAR 845-005-0413 & OAR 845-005-0414. These two rules describe the Special Events licenses that are now available to current Oregon Distillery licensees and Brewery-Public House licensees. The 2009 legislature passed Senate Bill (SB) 802 and House Bill (HB) 2528, effective January 1, 2010. SB 802 amends ORS 471.230 creating a new Special Events Distillery license. This new license authorizes providing only tastings of the distilled liquor manufactured by the licensee at a location other than that designated as the Distillery licensee's annually licensed premises for a period not to exceed five days. HB 2528 amends ORS 471.200 creating a new Special Events Brewery-Public House license. This new license authorizes the sale of wine, malt beverages and cider at retail for consumption on or off the licensed premises at a location other than that designated as the Brewery-Public House licensee's annually licensed premises for a period not to exceed five days. Adopting OAR 845-005-0413 Special Events Distillery License and OAR 845-005-0414 Special Events Brewery-Public House License implements the new statutory language regarding these two new special events licenses.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-005-0413

Special Events Distillery License

ORS 471.230 authorizes the Commission to issue a Special Events Distillery (SED) license to an Oregon Distillery licensee. This rule sets the qualifications and requirements for a Special Events Distillery license.

(1) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$10.00 per license day or any part of a license day.

(d) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(e) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(f) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(g) "Trade visitor" means a person whose job includes the purchase, or recommended purchase, of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(h) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(2) Only the holder of a Distillery license issued under ORS 471.230 may qualify for a Special Events Distillery license.

(a) The SED license is only for a location other than that designated as the Distillery licensee's annually licensed premises.

(b) A distillery licensee providing tastings of distilled liquor for retailers at an educational seminar that is not open to the public is not required to obtain a SED and is subject to OAR 845-013-0060.

(c) A distillery licensee providing tastings of distilled liquor at a retail liquor store must follow OAR 845-015-0155. A distillery licensee is not eligible for a SED at a retail liquor store.

(3) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than five days.

(4) Applicants must apply in writing for a Special Events Distillery license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(5) The application for a SED license under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (6) of this rule; and

(C) Alcohol consumption by adults.

NOTE: An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (4) of this rule to refuse to process any application that is not complete;

(b) Identification of the individuals to be employed by the licensee to manage events on the SED licensed premises;

(c) Identification of the premises or area proposed to be licensed;

(d) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, and proposed hours of operation;

(e) A description of how the licensee will distinguish trade visitors from members of the general public, such as by providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, by using distinctive glassware for trade visitors, or by the use of badges or name tags;

(f) The recommendation in writing of the local governing body where the licensed premises will be located; and

(g) License fees as established by ORS 471.311.

(6) A plan for managing patronage by minors under subsection (5)(a) of this rule must meet the following requirements:

(a) If the SED license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the SED license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission

ADMINISTRATIVE RULES

must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(7) Minors are prohibited from the SED licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(8) The Commission may deny, cancel or restrict a SED license for any reason for which the Commission may deny, cancel or restrict a regular license.

(9) The Commission may deny or restrict a SED license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(10) The Commission shall limit the issuance of a SED license to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year.

(11) The Commission may refund the SED license fee if the application is withdrawn by the applicant or denied by the Commission, or if the event does not take place because of circumstances beyond the licensee's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(12) When the Commission approves a written plan under subsection (5)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(13) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

(14) The tastings of distilled liquor are allowed only within the premises or area as identified in the Special Events Distillery application per subsection (5)(c) of this rule.

(15) A Distillery licensee may provide only tastings and only of distilled liquor manufactured by the Distillery licensee that are approved by the Commission for sale in Oregon.

(16) Tastings provided to the general public.

(a) A tasting provided to the general public shall be no more than one-half fluid ounce of distilled liquor in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A licensee may charge a member of the general public a fee for tastings.

(b) A distillery licensee shall not provide more than two and one-half fluid ounces of distilled liquor per person per license day.

(17) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three ounces. A licensee may not charge a trade visitor a fee for tastings.

(b) There is no daily limit on distilled liquor tastings provided to a trade visitor.

(c) Trade visitors must be distinguished from members of the general public per subsection (5)(e) of this rule.

(18) Alcohol servers who pour tastings must have valid service permits and be at least 21 years of age.

(19) A violation of sections (14)–(18) of this rule is a Category III violation.

Stat. Auth.: ORS 471.471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.230

Hist.: OLCC 1-2010, f. 2-22-10, cert. cf. 3-1-10

845-005-0414

Special Events Brewery-Public House License

ORS 471.200 authorizes the Commission to issue a Special Events Brewery-Public House (SEBPH) license to a Brewery-Public House licensee. This rule sets the qualifications and requirements for a Special Events Brewery-Public House license.

(1) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$10.00 per license day or any part of a license day.

(d) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(e) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(2) Only the holder of a Brewery-Public House license issued under ORS 471.200 may qualify for a Special Events Brewery-Public House license. The SEBPH license is only for a location other than that designated as the Brewery-Public House licensee's annually licensed premises and may allow the licensee to sell wine, malt beverages and cider at retail for consumption on or off the licensed premises.

(3) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than five days.

(4) Applicants must apply in writing for a Special Events Brewery-Public House license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(5) The application for a SEBPH license under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (6) of this rule; and

(C) Alcohol consumption by adults.

NOTE: An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (4) of this rule to refuse to process any application that is not complete;

(b) Identification of the individuals to be employed by the licensee to manage events on the SEBPH licensed premises;

(c) Identification of the premises or area proposed to be licensed;

(d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465(2)-(4);

(e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;

(f) The recommendation in writing of the local governing body where the licensed premises will be located; and

(g) License fees as established by ORS 471.311.

(6) A plan for managing patronage by minors under subsection (5)(a) of this rule must meet the following requirements:

(a) If the SEBPH license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the SEBPH license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission

ADMINISTRATIVE RULES

must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(7) Minors are prohibited from the SEBPH licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(8) The Commission may deny, cancel or restrict a SEBPH license for any reason for which the Commission may deny, cancel or restrict a regular license.

(9) The Commission may deny or restrict a SEBPH license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(10) The Commission shall limit the issuance of a SEBPH license to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year.

(11) The Commission may refund the SEBPH license fee if the application is withdrawn by the applicant or denied by the Commission, or if the event does not take place because of circumstances beyond the licensee's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(12) When the Commission approves a written plan under subsection (5)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(13) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.200
Hist.: OLCC 1-2010, f. 2-22-10, cert. ef. 3-1-10

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Rule Caption: Amendments to redemption center rules providing clarity on convenience factors considered when approving a center.

Adm. Order No.: OLCC 2-2010

Filed with Sec. of State: 2-22-2010

Certified to be Effective: 3-1-10

Notice Publication Date: 11-1-2009

Rules Amended: 845-020-0020, 845-020-0025, 845-020-0030

Subject: The Commission is responsible for regulation of the Beverage Container Act (Bottle Bill). Since its inception the Commission has had statutory authority to approve redemption centers if they will provide a convenient service to consumers for the return of empty beverage containers. However, in the past 30 plus years the Commission has never had to apply that authority in a review of a redemption center application. The Commission has had administrative rules since 1972 that address the approval of and the application for redemption centers (OAR 845-020-0020 & 845-020-0025), and also address sanitation and cleanliness standards (845-020-0030). But, again, until now, we have never had to apply them. In anticipation of our first redemption center applications, staff undertook to review our existing redemption center rules and amend them as appropriate in an effort to clarify redemption center requirements. In preparation for this rulemaking, staff formed a pre-rulemaking advisory committee made up of our state agency partners, industry, the public, and environmental stakeholders. This group provided the Commission with valuable input into the specific standards that should apply to prospective redemption centers. The Commission is amending 845-020-0025 to more completely reflect the key information required on an application for a redemption center as well as amending 845-020-0020 so that the major factors the Commission may consider in approving a redemption center correspond with the required application information. The Commission is also amending 845-020-0030 by removing references to specific agencies that do not in fact regulate redemption centers.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-020-0020

Redemption Centers

(1) The Commission shall approve a redemption center if it finds the redemption center will provide a convenient service to consumers for the return of empty beverage containers.

(2) The Commission considers factors such as the following in determining whether or not a redemption center provides a convenient service to consumers for the return of empty beverage containers:

(a) Location of the redemption center;

(b) Kinds of beverage containers accepted at the redemption center;

(c) Dealers to be served by the redemption center and their distance from the redemption center;

(d) Days and hours of operation of the redemption center;

(e) Parking facilities serving the redemption center;

(f) Evidence showing that the redemption center meets all applicable local ordinances and zoning requirements;

(g) The cap, if any, on the number of beverage containers per person per day that the redemption center will accept;

(h) Payment method(s) accepted by the redemption center for redeemed beverage containers;

(i) The projected volume of beverage container returns at the redemption center as compared to the actual returns at the dealers to be served by the redemption center;

(j) A description of how consumers will be notified of the redemption center's location, services, and service hours.

Stat. Auth.: ORS 459A.735(1), (3) & (4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0615; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

845-020-0025

Application for Approval of Redemption Center

Any person desiring approval of a redemption center shall make application to the Commission upon forms to be furnished by the Commission. The application shall include the following and such additional information as the Commission may require:

(1) Name and address of each person to be responsible for the establishment and operation of the redemption center;

(2) Exact location and mailing address of redemption center;

(3) Kinds of beverage containers that will be accepted at the redemption center;

(4) Names and addresses of the dealers to be served by the redemption center;

(5) Distances from the redemption center to the dealers to be served;

(6) Days and hours of operation of the redemption center;

(7) Description of parking facilities to serve the redemption center;

(8) Evidence showing that a redemption center meets the zoning requirements and other applicable local ordinances of the regulating local jurisdiction;

(9) The cap, if any, on the number of beverage containers per person per day that will be accepted at the redemption center;

(10) Payment method(s) for redeemed beverage containers;

(11) The projected volume of beverage container returns at the redemption center as compared to the actual returns at the dealers to be served by the redemption center;

(12) A description of how consumers will be notified of the redemption center's location, services, and service hours.

Stat. Auth.: ORS 459A, 459.992 & 471.730

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0620; OLCC 14-2008, f. 12-17-08, cert. ef. 1-1-09; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

845-020-0030

Standards of Cleanliness for Redemption Centers

All persons responsible for the establishment and operation of the redemption center shall at all times keep the redemption center premises, including the parking facilities serving the redemption center, in full compliance with the law. Such persons shall keep such redemption center premises in good repair, painted, clean, well lighted, free of litter and trash, and free of rodents, vermin, infestations of insects, and their harborage or breeding places.

Stat. Auth.: ORS 459A.735(1), (3) & (4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0625; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

ADMINISTRATIVE RULES

Oregon State Lottery Chapter 177

Rule Caption: Authorizes Specialty Games with Video LotterySM prizes over \$600, statewide Jackpot Prize funding.

Adm. Order No.: LOTT 4-2010(Temp)

Filed with Sec. of State: 3-10-2010

Certified to be Effective: 3-15-10 thru 9-4-10

Notice Publication Date:

Rules Adopted: 177-200-0077

Rules Amended: 177-040-0050, 177-040-0051, 177-200-0005, 177-200-0010, 177-200-0020, 177-200-0032

Subject: The Oregon State Lottery has adopted temporary rules to authorize the testing of Specialty Games, which are Video LotterySM games with "Jackpot" prizes greater than \$600, and to authorize the Lottery to establish statewide Jackpot Prize funding for these prizes.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0050

Retailer Duties

(1) **General:** This rule contains duties to be performed by a Lottery retailer beyond those duties described in the Lottery retailer contract. The duties listed herein are not meant to be exclusive. Other duties and requirements for retailers may be contained elsewhere in OAR division 177, ORS Chapter 461, or in the retailer contract as negotiated individually with each Lottery retailer.

(2) **All Retailers:** All Lottery retailers shall:

(a) **Stock Equipment:** Keep all Lottery equipment on the retailer's premises stocked with a variety of Scratch-itSM tickets, play slips, computer-generated tickets, and any other Oregon Lottery[®] product required to be sold. Unless exempted by the Lottery, if a Lottery retailer fails to stock or replenish these items as they are made available for sale by the Lottery, or as they are depleted because of purchase or use, the Lottery may remove the equipment.

(b) **Perform Minor Maintenance:** Replace ribbons, ticket stock, and clear paper jams as may be required for any of the equipment provided by the Lottery for the sale of Lottery tickets or shares.

(c) **Maintain Paper Stock:** Install and use only approved Lottery paper stock which has been specifically assigned to the selling retailer when selling Lottery tickets and shares.

(d) **Obtain Permits:** Be required to arrange for and obtain all necessary permits required by federal, state, and local governments for electrical installation, electrical power, telephone service, fiber optic lines and connections, and coaxial cable and connections required to sell Lottery tickets or shares at the retail site.

(e) **Pay Amounts Due:** Pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, this EFT shall occur at the end of the fourth day after the close of each Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites.

(3) **Traditional Lottery Game Retailers:** A Lottery retailer authorized to sell traditional Lottery games shall:

(a) **Scratch-ItSM Validation:** Validate a Scratch-ItSM ticket prize through equipment provided by the Lottery connected to the Lottery's central computer system and destroy it after validation and payment of the prize. Any Lottery retailer who does not destroy the ticket after validation and payment of a winning ticket shall be liable for a prize paid by another Lottery retailer who subsequently sight validates the ticket.

(b) **Draw Game Validation:** Validate Draw game prizes through the Draw game terminal before paying a Draw game prize.

(c) **Underage Play:** Monitor player-operated vending machines, as defined in OAR 177-045-0000, to prevent underage play.

(4) **Video Retailers:** A Video LotterySM game retailer shall:

(a) **Cash Slip Validation:** Validate all Video LotterySM cash slips, except those required to be validated and paid at Lottery Headquarters in Salem, through the Video Site Controller (VSC) before paying a Video LotterySM prize.

(b) **Restrict Visibility:** Restrict Video LotterySM game terminals from visibility from areas outside of the business and from view of dining areas or other areas where minors are permitted to linger.

(c) **Age-Posted Area:** Maintain Video LotterySM game terminals in an area of the business that is prohibited to minors. The area must be post-

ed as such by the Oregon State Lottery or the Oregon Liquor Control Commission. This restriction against minors does not apply to minors who qualify under the exceptions permitted by the Oregon Liquor Control Commission for access to areas normally prohibited to minors.

(5) **Sanctions:** The Director may sanction a Lottery retailer for the loss, damage, or destruction of any winning game ticket or share. This includes, but is not limited to: Imposing a requirement for remedial training for the retailer or the retailer's employees, and any other actions for failure to perform contract duties or requirements as described in the Lottery retailer contract or OAR chapter 177.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 5-1999(Temp), f. & cert. ef. 5-26-99 thru 6-26-99, Administrative correction 11-17-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09; LOTT 6-2009, f. 9-28-09, cert. ef. 10-1-09; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10

177-040-0051

Designated Employees and Payment of Prizes

(1) **Designated Employees:** A traditional Lottery retailer must designate employees authorized to redeem winning Lottery tickets and shares. A Video LotterySM retailer must designate employees authorized to redeem Video LotterySM cash slips as defined in OAR 177-200-0005(1).

(2) **Traditional Lottery Retailers:** A traditional Lottery retailer must redeem winning Lottery tickets and shares during all of the retailer's designated hours of redemption.

(3) **Video LotterySM Retailers:** A Video LotterySM retailer must redeem all Video LotterySM cash slips, except those required to be validated and paid at Lottery Headquarters in Salem, during all of the retailer's business hours of operations, except as follows:

(a) In the event of exceptional circumstances, a retailer may delay payment of a cash slip for a period of time not to exceed 24 hours from the time the cash slip is initially submitted to the retailer for payment. "Exceptional circumstances" means rare and unforeseen circumstances beyond the reasonable control of the retailer.

(b) Within 48 hours from the time the cash slip is initially submitted to the retailer for payment, the retailer must submit to the Lottery a written report of the delay of payment and the exceptional circumstances that required the delay.

(c) The Director may review claims of exceptional circumstances and whether delayed payment was appropriate under the circumstances. Upon the Director's request, the retailer must provide the Director with evidence supporting a claim of exceptional circumstances. If a retailer fails to comply with a request or fails to adequately support a claim of exceptional circumstances, the Director shall find that the delay was not appropriate.

(d) If the Director finds that the delay was not appropriate, the retailer's delay of payment shall be considered a failure to perform contract duties or requirements, and the Lottery may take appropriate action including termination of the retailer contract. The Director's decision is final.

(4) **Payment:** Except as provided in sections (2) and (3) of this rule, a retailer must immediately pay prizes in cash or by check, or any combination thereof, when a winning Lottery ticket or share is presented, including a Video LotterySM cash slip, for payment meeting the requirements of these rules. A retailer must not pay prizes in tokens, chips, or merchandise or charge a fee for paying a prize or for issuing payment.

(5) **Validation:** Notwithstanding sections (2) and (3) of this rule, once a Lottery retailer validates a winning ticket or share, including a Video LotterySM cash slip, the retailer must immediately pay it. The Lottery retailer's terminal will not validate a cash slip that is required to be validated and paid at Lottery Headquarters in Salem.

Stat. Auth.: ORS 461, 461.217, 461.250 & 461.300 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.217, 461.250 & 461.300

Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 2-2003(Temp), f. & cert. ef. 3-14-03 thru 9-5-03; LOTT 9-2003, f. & cert. ef. 6-30-03; LOTT 2-2008, f. & cert. ef. 6-2-08; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10

177-200-0005

Definitions

For purposes of division 200, the following definitions apply except as otherwise provided in OAR chapter 177, or unless the context requires otherwise.

(1) **"Cash slip"** means the receipt issued by a Video LotterySM game terminal for the payment of a player's credits remaining at the end of play or for the payment of a Jackpot Prize.

(2) **"Specialty Game(s)"** refers to Video LotterySM games that offer some prizes greater than \$600.

ADMINISTRATIVE RULES

(3) **“Jackpot Prize”** refers to a prize won during Specialty Game play that is greater than \$600.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461
Stats. Implemented: ORS 461.215 & 461.217
Hist.: LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10

177-200-0010

Game Requirements

(1) **General:** To play a Video LotterySM game, a player deposits cash into a Video LotterySM game terminal that displays the deposit as a number of credits to which the player is entitled. Each credit represents a monetary amount as specified in each Video LotterySM game. The player purchases a game play by wagering one or more credits. Prizes are paid on the terminal in the form of credits. A player may wager the credits that the player has won on additional game plays or may direct the terminal to issue a cash slip for the remaining credits. For Jackpot Prizes, the terminal will automatically cash out the Jackpot Prize and issue a cash slip for the amount of the prize to the player.

(2) **Bonus Game Plays:** In addition to the prizes paid as credits, and depending on the specific game, bonus game plays may be awarded to a player. A prize awarded on an individual bonus game play is independent of the original game play and except for a Jackpot Prize, may not exceed \$600.

(3) **Odds of Winning:** A close approximation of the odds of winning some prize for each game must be displayed on a Video LotterySM game terminal screen or a help screen. Each game also must display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered on a game play.

(4) **Payout Tables:** Each game shall provide a method for a player to view payout tables for that game.

(5) **Age Requirement:** To play a Video LotterySM game, a player must be at least 21 years of age.

Stat. Auth.: ORS 461
Stats. Implemented: ORS 461.210
Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 6-2006(Temp), f. 6-12-06, cert. ef. 6-26-06 thru 12-8-06; LOTT 7-2006, f. 8-30-06, cert. ef. 9-1-06; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10

177-200-0020

Payment of Video LotterySM Game Cash Slips

(1) **Original Cash Slip:** Except as set forth in sections (5) and (6) of this rule, an original cash slip is the only valid receipt for claiming prizes or for redeeming credits remaining on a terminal. A copy of a cash slip has no pecuniary or prize value and does not constitute evidence of a cash slip.

(2) **Retailer Validation Requirements:** A retailer shall pay a cash slip only if:

(a) The cash slip is presented for payment at the retailer location that issued the cash slip.

(b) The person presenting the cash slip is 21 years of age or older and authorized to play under these rules or Oregon statutes.

(c) The cash slip is presented to the retailer within 28 days of the date it was properly issued.

(d) It is intact and legible and meets all the Lottery's security requirements.

(e) It is not stolen, counterfeit, fraudulent, lacking the correct captions, altered, or tampered with in any manner.

(f) The information appearing on the cash slip corresponds with the computer record of the cash slip data recorded in the Lottery's central computer system.

(g) It has not been previously paid, and

(h) It is not a Jackpot Prize that must be validated and paid at Lottery Headquarters in Salem.

(3) **Validation Exception:** If a cash slip is not intact or legible, or did not print, the prize or credits that would have otherwise appeared on the cash slip may nevertheless be paid by the retailer or the Lottery as follows:

(a) **Software Validation:** Upon notification by a player that a Video LotterySM game terminal issued a cash slip that is not intact or legible, or did not print, the retailer shall request a validation number from the terminal. If the retailer is able to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player, then the retailer shall validate the prize or credits that would otherwise have appeared on the cash slip through the validation terminal and pay the player.

(A) **Software Validation Report:** If the retailer pays the player pursuant to section (3)(a) of this rule, the retailer must complete a Retailer Software Validation Report signed by the player and the retailer. The retail-

er must retain the report for one year. The retailer must group the reports by month and must make them available for audit by the Lottery immediately upon request. The retailer must retain and attach the damaged or illegible cash slips to the reports.

(B) **Validation Number Unavailable:** If the retailer is unable to obtain a validation number from the terminal that corresponds to the time and amount of the credits claimed by the player as required by subsection (3)(a), the player may request payment of the cash slip from the Lottery as provided in section (6) of this rule.

(b) **Jackpot Prize Cash Slip Not Issued, Intact, or Legible:** If a cash slip for a Jackpot Prize is not intact or legible, or did not print, the player and the retailer must complete a Video Problem Report form, attach the cash slip or all available portions of the cash slip to the form if available, and must submit the form and the cash slip to the Lottery for investigation. The Jackpot Prize may be paid as set forth in subsection (6) of this rule.

(4) **Retailer Payment of Cash Slip:** Upon validation of a cash slip as set forth in sections (2) and (3) of this rule, a retailer may pay the amount due in cash or check, or any combination thereof.

(a) **Dishonored Retailer Check:** If a retailer's check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to 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 Lottery Headquarters, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the cash slip is authorized, the retailer has not paid the cash slip, and it is unlikely that the retailer will pay the cash slip, the Lottery may then issue a check to the claimant in the amount of the cash slip.

(b) **Possible Contract Termination:** A retailer that pays a cash slip with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) **Lottery Validation and Payment of Cash Slips:** Payment of a cash slip may be made at Lottery Headquarters, Player Services, 500 Airport Road SE, Salem, Oregon. Validation and payment of a cash slip issued for a Jackpot Prize must be made at Lottery Headquarters in Salem. The cash slip presented for payment must meet all of the requirements in sections (1) and (2) of this rule and must be delivered to the Lottery in person or by mail at P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended) before 5:00 P.M. within one year of the date that the cash slip was issued. If the final day of the one-year claim period falls on a day when the Oregon Lottery Headquarters is not open to the general public, such as a weekend, Lottery holiday, or furlough closure day, the claim period shall be extended until 5:00 p.m. on the next day the Oregon Lottery Headquarters is open to the general public. Upon validation of a cash slip, the Lottery will pay the amount of the credits showing on the cash slip. For cash slips of \$600 or less, payment may be made by check or in cash, or any combination thereof. Cash prize payments are limited to \$50 per person per day. For cash slips of more than \$600, payment will be made by check. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(6) **Lack of Cash Slip or Validation Number:** If a player does not have a cash slip, or a retailer was unable to obtain a validation number, the Lottery will conduct an investigation of a claim presented for payment to the Lottery. The investigation will determine the reasons or causes for the failure of the terminal to produce a cash slip or to print an intact and legible cash slip, and why the retailer was unable to obtain a validation number.

(a) **Payment:** The Lottery may pay the claim if the Lottery can determine from its investigation that the credit was on the terminal identified by the player at the time claimed, and that no cash slip has been paid on the claim.

(b) **Signed Statement:** The Lottery will not pay any such claim without a signed statement by a player. The player's statement must contain game play information that can be compared to data in the Lottery's central computer system that substantiates that the player won a prize in the amount and at the time claimed, and information from which the Lottery reasonably can determine that the claim has not been paid.

(c) **Jackpot Prize:** The Lottery will not pay a claim for a Jackpot Prize without receipt of a Video Problem Report form as described in section (3)(b) of this rule.

(7) **Lottery Validation Exceptions:** If a cash slip cannot be validated because the cash slip data is not recorded on the Lottery's central computer system, the Director may still authorize payment if:

(a) The Lottery conducts an investigation of the claim, and

ADMINISTRATIVE RULES

(b) The Director concludes that the claimant was an authorized player and that the absence of a record of the cash slip data in the Lottery's central computer system was the result of either a technical problem in the Video LotterySM game terminal or a communications problem that prevented the recording of the credits in the Lottery's central computer system.

(8) **Subsequent Claims:** If a cash slip paid by a retailer is later submitted for payment to the Lottery, the Lottery may pay the cash slip and debit the retailer's account for the amount of the cash slip. The Lottery will conduct an investigation in accordance with section (6) of this rule to determine that the Lottery properly may make payment.

(9) **Withholding of Payment:** The Lottery may withhold payment of any cash slip claim presented to it until the expiration of the 28-day prize claim period at the retailer's location for prizes payable by the retailer or until the completion of any investigation by the Lottery to determine if payment is proper.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: LC 8-1991, f. & cert. ef. 11-25-91; LC 9-1993, f. 11-18-93, cert. ef. 12-1-93; LC 9-1994, f. 8-19-94, cert. ef. 9-1-94; LC 1-1995, f. 1-25-95, cert. ef. 3-1-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 4-1997, f. & cert. ef. 4-25-97; LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; 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 2-2010, f. 1-29-10, cert. ef. 2-1-10; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10

177-200-0032

Retailer Payment Credit/Debit

(1) **Credit:** The Lottery shall credit the retailer's electronic funds transfer (EFT) account with the amount of any cash slip, other than those from Jackpot Prizes, issued at that retailer during a business week as shown in the records of the Lottery's central computer system.

(2) **Debit:** The Lottery shall debit the retailer's EFT account with the amount of any cash slip, other than those from Jackpot Prizes, issued at that retailer that is presented for payment to the Lottery within 28 days of the date it was issued and any payments made by the Lottery under OAR 177-200-0020(6) or (7) unless the retailer's account has already been debited under section (3) of this rule.

(3) **Automatic Debit of Unredeemed Prizes:** If a cash slip, other than those from Jackpot Prizes, is not redeemed within 28 days of the date it was issued, the Lottery will debit the retailer's EFT account for the amount of that cash slip.

(4) **Limitation on Redemption:** A retailer must not attempt to redeem and may not pay a cash slip for any Jackpot Prize. A retailer shall only redeem cash slips for prizes awarded on terminals located on its premises. If a retailer redeems a cash slip from another location or redeems a cash slip for a Jackpot Prize, the Lottery will not credit the retailer's EFT account for the payment.

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

Stats. Implemented: ORS 461.215 & 461.217

Hist.: LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10

177-200-0077

Specialty Games

(1) **General:** The Lottery may offer Specialty Games. Specialty Games may be offered as Poker Games or Video Line Games.

(2) **Jackpot Prize Funding:** Lottery will establish statewide Jackpot Prize funding for Jackpot Prize payment. Lottery will allocate a percentage of the pay table for a Jackpot Prize payout. Each retailer offering a Specialty Game shall contribute to Jackpot Prize funding. The retailer's contribution is based on the retailer's portion of the payout percentage allocated to Jackpot Prizes. This is calculated weekly on total dollars played on Specialty Games within the retailer's establishment multiplied by the payout percentage allocated to Jackpot Prizes multiplied by the retailer's commission rate. For example, if the payout percentage attributed to Jackpot Prizes is 2.31%, the weekly amount played on Specialty Games at the retailer's establishment is \$19,935.15, and the retailer's commission rate is 23%, the contribution to Jackpot Prize funding is calculated as follows:

Amount Played	\$19,935.15
Percentage Payout for Jackpot Prizes	X 2.31%
Amount to Jackpot Prize funding	= \$460.50
Retailer's Commission Rate	X 23%
Retailer's Contribution	= \$105.92
Lottery's Contribution	\$460.50
	= \$105.92
	\$354.58

(3) **Payment of Jackpot Prizes:** A player must claim a Jackpot Prize of more than \$600 by:

(a) **Claiming in Person:** Bringing the cash slip issued for the Jackpot Prize to the Lottery Headquarters, Player Services Office, 500 Airport Road

SE, Salem, Oregon during Lottery business hours and presenting the cash slip to the Lottery; or

(b) **Claiming by Mail:** Signing the cash slip issued for the Jackpot Prize in the designated area on the cash slip, writing the winner's mailing address on the cash slip in the place indicated on the cash slip, completing a winner claim form, and mailing it together with the winning cash slip 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, from a Lottery kiosk, or from the Lottery Headquarters at the addresses listed above.

(4) **Validation of Jackpot Prize Cash Slip:** A cash slip issued for a Jackpot Prize may only be validated and may only be paid at Lottery Headquarters in Salem pursuant to subsection (3) of this rule.

Stat. Auth.: ORS 461 & OR Constitution Art. XV, Sec. 4(4)

Stats. Implemented: ORS 300, 461 & 461.335

Hist.: LOTT 4-2010(Temp), f. 3-10-10, cert. ef. 3-15-10 thru 9-4-10

Physical Therapist Licensing Board Chapter 848

Rule Caption: Several changes in Administrative Rules to reflect changes in Oregon Law by 2009 legislation.

Adm. Order No.: PTLB 1-2010

Filed with Sec. of State: 2-16-2010

Certified to be Effective: 3-1-10

Notice Publication Date: 1-1-2010

Rules Amended: 848-001-0005, 848-001-0010, 848-005-0020, 848-005-0030, 848-010-0015, 848-010-0022, 848-010-0026, 848-035-0020, 848-040-0100, 848-040-0147, 848-045-0020

Rules Repealed: 848-050-0100, 848-050-0110, 848-050-0120

Subject: The proposed rule changes will: Increase the amount of time to request a contested case hearing from 21 to 30 days; allow for collection of a convenience fee for on-line electronic transactions; allow for the Board to withhold personal contact information of licensees; remove the limit for attempts on the national licensure exam; specifically require the course work tool as the report for credentialing of endorsement candidates who are foreign educated; shorten the length of time for a valid temporary permit from 90 to 60 days and require national exam score transfer for endorsement applicants prior to issuing temp permit; exempt certain new licensees from continuing education requirement; clarify student PTs/PTAs from student patients in an educational setting; update grounds for discipline including extending jurisdiction over a licensee who has been, or is in the process of being, discipline and subsequently let's their license lapse; adding failure to report conviction of a misdemeanor or the arrest and/or conviction of a felony within 10 days; removing use of the term doctor as a disciplinary action; and , failing to report unprofessional conduct of another medical provider to that provider's Board, lastly, division 50 will be repealed in it's entirety.

Rules Coordinator: James Heider—(971) 673-0203

848-001-0005

Attorney General's Model Rules of Procedure

The following Model Rules of Procedure promulgated by the Attorney General of the State of Oregon, in effect January 1, 2008, are adopted by the Board by reference. These rules apply to rulemaking; OAR 137-001-0005 through 137-001-0080.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Physical Therapist Licensing Board.]

Stat. Auth: ORS 688.160

Stats. Implemented: ORS 183 & 688.160

Hist.: PT 1, f. 1-3-74, ef. 2-11-74; PT 9, f. & ef. 5-4-76; PT 1-1978, f. 6-19-78, ef. 6-28-78; PT 1-1982, f. & ef. 2-17-82; PT 2-1984, f. & ef. 11-30-84; PT 1-1986, f. & ef. 10-27-86; PT 1-1988, f. & cert. ef. 6-27-88; PT 1-1992, f. & cert. ef. 3-26-92; PT 6-1997, f. & cert. ef. 12-12-97; PTLB 4-2001, f. & cert. ef. 1-4-01; PTLB 1-2004, f. & cert. ef. 12-29-04; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-001-0010

Time for Requesting a Contested Case Hearing

A request for a contested case hearing must be in writing and must be received by the Board within thirty (30) days from the date the proposed notice of disciplinary action was served.

Stat. Auth. ORS 688.160

Stats. Implemented: ORS 183 & 688.160

ADMINISTRATIVE RULES

Hist.: PTLB 2-2001, f. & cert. ef. 1-4-01; Renumbered from 848-010-0115, PTLB 1-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-005-0020

Board Fees and Refunds

(1) The following fees shall be paid to the Board:

(a) Physical Therapist or Physical Therapist Assistant Examination Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(b) Physical Therapist or Physical Therapist Assistant Endorsement Application Fee of \$150.00, plus the actual cost to the Board of conducting a nationwide background check.

(c) Physical Therapist Annual License Renewal Fee of \$100.00, plus the actual cost to the Board of conducting a workforce demographics survey as required by HB 2009 Section 1174.

(d) Physical Therapist Assistant Annual License Renewal Fee of \$65.00, plus the actual cost to the Board of conducting a workforce demographics survey as required by HB 2009 Section 1174.

(e) Lapsed License Renewal Fee of \$50.00 for renewal applications postmarked or received by the Board after March 31st.

(f) On-line renewal and application convenience fee not to exceed the actual processing costs of an on-line electronic transaction.

(g) Physical Therapist or Physical Therapist Assistant Temporary Permits Fee of \$50.00.

(h) Duplicate License Fee of \$25.00.

(i) Physical Therapist or Physical Therapist Assistant Wall Certificate Fee of \$15.00.

(j) Physical Therapist or Physical Therapist Assistant Verification of Oregon Licensure Letters/Forms Fee of \$25.00.

(k) Non-Sufficient Funds (NSF) Check Fee of \$25.00.

(l) Miscellaneous Fees:

(A) Physical Therapist and/or Physical Therapist Assistant electronic mailing list fee of \$150.00.

(B) Photocopying Fee of ten cents (\$0.10) per copy.

(2) Board refunds of overpayments in any amount less than \$25.00 will be held by the Board unless the payor requests a refund in writing.

Stat. Auth.: ORS 182.466(4)

Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110

Hist.: PT 6-1996, f. & cert. ef. 9-5-96; PT 3-1997, f. & cert. ef. 6-9-97; PLTB 1-1998, f. & cert. ef. 2-9-98; PTLB 6-1999, f. 11-23-99, cert. ef. 1-1-00; PTLB 4-2000, f. & cert. ef. 12-21-00; Renumbered from 848-010-0110, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 3-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-005-0030

Name, Address and Telephone Number of Record

(1) Every applicant, licensee and temporary permit holder shall keep their legal name on file with the Board.

(2) Every applicant, licensee and temporary permit holder shall keep their home address on file with the Board. The home address must be a residential address and may not be a post office box number.

(3) Every applicant, licensee and temporary permit holder shall keep a current contact telephone number and electronic mail address, if available, on file with the Board.

(4) Every applicant, licensee and temporary permit holder shall keep the name, address and telephone number of their current employer or place of business on file with the Board.

(5) Every applicant, licensee and temporary permit holder shall keep a current designated mailing address on file with the Board.

(6) Whenever an applicant, licensee or temporary permit holder legally changes their name, they shall notify the Board in writing within 30 days of the name change and provide the Board with legal documentation of the name change.

(7) Whenever an applicant, licensee or temporary permit holder changes their home address, their employer or place of business, their contact telephone number, electronic mail address or their mailing address, they shall within 30 days, notify the Board in writing. Written notification may be by regular mail, electronic mail or facsimile.

(8) Unless requested for a public health or state health planning purpose or unless extenuating circumstances exist, the Board will withhold the home address and personal telephone number of a licensee.

Stat. Auth.: ORS 182.466(4)

Stats. Implemented: ORS 182.466(4), 688.070(1)(2), 688.080, 688.100 & 688.110

Hist.: PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 3-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-010-0015

Examinations

(1) Examinations for licensing of physical therapists and of physical therapist assistants shall be provided by an examination service approved by the Board. The overall passing score shall be based on a formula using the criterion-referenced scoring system. An applicant may sit for the examination a maximum of three times in any jurisdiction within a 12-month period, measured from the date of the first examination.

(2) All completed applications for examination, the non-refundable examination fee and other necessary forms must be approved by the Board prior to the scheduling of each examination in Oregon. For applicants taking the examination in another state or territory of the United States, or other Board approved location, and applying to Oregon for licensure by examination, all completed applications, the non-refundable fee and other necessary forms must be approved by the Board prior to licensure.

(3) Unless qualified for licensure by endorsement under OAR 848-010-0022, a foreign educated physical therapists must submit directly to the Board, prior to obtaining an application:

(a) A Credentials Evaluation Statement (“the Report”) of professional education and training prepared by a Board-approved credentials evaluation agency. It is the applicant’s responsibility to pay the expenses associated with the credentials evaluation.

(A) The Report must provide evidence and documentation that the applicant’s education outside a state or territory of the United States is substantially equivalent to the education of a physical therapist who graduated from an accredited physical therapy education program approved by the Board pursuant to ORS 688.050(2).

(B) To determine substantial equivalency, the approved credentialing evaluation agency shall use the appropriate Course Work Tool (“CWT”) adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist graduated from their physical therapy program.

(b) English Language Proficiency

(A) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(B) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than 4.5 on the Test of Written English (TWE); or

(C) Verification that the applicant has achieved the following minimum scores for each category of the new internet based TOEFL (iBTOEFL) examination: writing, 24; speaking, 26; reading, 21; listening, 18; with an overall score of not less than 89.

(c) If applicant has taken a Board-approved national licensing examination prior to application for licensure in Oregon, a report of applicant’s examination scores must be submitted to the Board directly from the Board-approved examination service.

(d) If applicant holds or has held a license in the country in which the applicant received their physical therapy education, the applicant must provide primary source verification of the license.

(e) For purposes of section (3) of this rule, the requirements and criteria considered for credentialing will be “as of” the date the most recent credentialing report was received by the Board from the Board-approved credentialing agency.

(4) The Examination must be given in the English language.

(5) No person shall be allowed to take the physical therapist examination or physical therapist assistant examination for licensure in Oregon until all academic requirements are completed.

(6) The examination will be administered at a location approved by the Board. Applicants taking the examination in Oregon must sit for the examination within 60 days from the date of the letter of authorization from the Board-approved examination service.

(7) Any applicant who has graduated from an approved school of physical therapy and passed a Board-approved examination or a Board-approved equivalent examination more than five years prior to application for licensure in the State of Oregon and who has not been actively licensed in any other state or territory of the United States for a five year period must demonstrate competence to practice physical therapy. If the applicant fails to demonstrate competence, the Board may require the applicant to serve an internship under a restricted license or satisfactorily complete a refresher course approved by the Board, or both, at the discretion of the Board. The Board may also require the applicant to pass an examination approved by the Physical Therapist Licensing Board as provided in OAR 848-010-0015.

Stat. Auth.: ORS 688.160

ADMINISTRATIVE RULES

Stats. Implemented: ORS 688.020, 688.040, 688.050, 688.055, 688.070, 688.090
Hist.: PT 2, f. 8-22-74, ef. 9-25-74; PT 6, f. 12-20-74, ef. 1-11-75; PT 10, f. & ef. 10-21-77; PT 11, f. & ef. 12-28-77; PT 1-1979, f. & ef. 2-14-79; PT 1-1983, f. & ef. 1-5-83; PT 1-1984, f. & ef. 5-3-84; PT 1-1989, f. & cert. ef. 8-8-89; PT 1-1990 (Temp), f. & cert. ef. 7-16-90; PT 2-1990, f. & cert. ef. 10-2-90; PT 1-1996, f. 1-16-96, cert. ef. 2-1-96; PT 2-1996, f. & cert. ef. 9-5-96; PT 1-1997, f. & cert. ef. 2-4-97; PTLB 4-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 1-2000, f. & cert. ef. 5-4-00; PTLB 3-2003, f. & cert. ef. 8-22-03; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-010-0022

Endorsement of Out-of-State Foreign Educated Physical Therapists

A foreign educated physical therapist not licensed in the State of Oregon may be licensed by endorsement if the applicant meets or fulfills the requirements of subsections (1), (2), (4) and (5) of OAR 848-010-0020 and the Board receives all of the following additional items:

(1) A certified copy of the Course Work Tool (CWT) used by a physical therapy licensing authority of a state or territory of the United States to make the determination to issue a license in that state or territory. The report must indicate that the applicant's foreign physical therapy education was determined to be substantially equivalent to the education of a physical therapist who graduated from an accredited physical therapy program approved by the Oregon Board pursuant to ORS 688.050(2). To determine substantial equivalency, the approved credentialing evaluation agency shall use the appropriate CWT adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist graduated from their physical therapy program. The licensing authority of the state or territory must certify the report and must send it directly to the Oregon Board.

(2) Proof of completion of a minimum of 1000 hours of clinical practice each year in a state or territory of the United States for three of the last ten years immediately prior to application. To meet this requirement, however, no more than five years can have elapsed since the applicant has had clinical practice in a state or territory of the United States. The applicant's current or prior employer(s) must send this proof directly to the Oregon Board.

(3) A written statement from the applicant's most recent employer stating that the applicant practiced safely and competently. The employer must send this proof directly to the Oregon Board.

(4) A foreign educated physical therapist who does not meet the requirements of this section may apply for licensure under OAR 848-010-0015(3).

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160(6)(c)
Hist.: PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-010-0026

Temporary Permits

(1) The Board may issue a temporary permit to practice as a physical therapist or physical therapist assistant for a period of 60 calendar days to an applicant who meets the requirements of this rule.

(a) A person who has completed a CAPTE accredited physical therapist or physical therapist assistant program in a state or territory of the United States and who is applying for the first time to take the licensing examination in Oregon shall:

(A) Submit a completed application for license by examination and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee; and

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program.

(b) A person who holds a valid current license to practice in another state or territory of the United States shall:

(A) Provide written primary source verification of current licensure in another state or territory;

(B) Submit a completed application for license by endorsement and pay the required fee;

(C) Submit a completed application for a temporary permit and pay the required fee;

(D) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist or physical therapist assistant program; and

(E) Have passed the physical therapist or physical therapist assistant examination with the minimum overall passing score set out in OAR 848-010-0020(5).

(c) A person who is a foreign educated physical therapist who has graduated from a CAPTE accredited physical therapist program shall:

(A) Submit a completed application for license by examination or endorsement and pay the required fee;

(B) Submit a completed application for a temporary permit and pay the required fee;

(C) Submit a Board Certificate of Professional Education providing primary source verification of completion of a CAPTE accredited physical therapist program; and

(D) Submit proof of passing scores on the TOEFL, TSE and TWE tests or ibTOEFL test. However, this requirement does not apply if the physical therapist program was taught in English and English is the national language of the country where the physical therapist program was taught.

(2) A person who holds a temporary permit must practice under supervision as provided in this rule.

(3) A person who holds a temporary permit issued under subsection (1)(a) or (1)(c) of this rule must practice under on-site supervision, which means that at all times a supervising therapist is in the same building and immediately available for consultation. Entries made in the patient record by a temporary permit holder must be authenticated by the permit holder and by a supervising therapist.

(4) A person who holds a temporary permit issued under subsection (1)(b) of this rule must practice under general supervision, which means that at all times a supervising therapist must be readily available for consultation, either in person or by telecommunication.

(5) As used in this rule, "supervising therapist" means a physical therapist if the permit holder is a physical therapist or a physical therapist assistant. "Supervising therapist" also means a physical therapist assistant if the permit holder is a physical therapist assistant. A physical therapist assistant may not supervise a physical therapist permit holder.

(6) If a physical therapist assistant is supervising a physical therapist assistant permit holder, a physical therapist must be readily available for consultation, either in person or by telecommunication, as provided in OAR 848-015-0020.

(7) Within five (5) working days of beginning practice the permit holder must submit to the Board a completed "Temporary Permit Letter from Employer" form. The permit holder must notify the Board of any change in employment during the 60 day period by submitting a new "Temporary Permit Letter from Employer" within five (5) working days.

(8) A temporary permit issued under this rule shall terminate automatically by operation of law if the permit holder fails the Board-approved national licensing examination or the person's score on the Board-approved national licensing examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements. A permit holder must return the permit certificate to the Board immediately, by a method that provides delivery verification, upon notification that the permit has terminated.

(9) The Board may refuse to issue a temporary permit to an applicant or may revoke a permit after issuance on any of the grounds set out in OAR 848-010-0044 or 848-045-0020. A person whose permit is revoked must return the certificate to the Board immediately by a method that provides delivery verification.

(10) A permit holder whose permit has terminated or has been revoked is not eligible to apply for another permit.

(11) A person who has taken and failed the Board-approved national licensing examination is not eligible to apply for a temporary permit. A person who has failed and has not subsequently passed the national licensing examination in another state, or whose score on the examination taken for purposes of licensure in another state or territory does not meet Oregon Board requirements, is not eligible to apply for a temporary permit.

(12) In its discretion the Board may grant one 60 calendar day extension to a person who holds a temporary permit issued under (1)(b) of this rule.

(13) A person who holds a temporary permit issued under this rule is subject to all statutes and rules governing a licensee.

Stat. Auth.: ORS 688.110
Stats. Implemented: ORS 688.110
Hist.: PTLB 3-2000, f. & cert. ef. 12-21-00; PTLB 9-2004, f. & cert. ef. 12-29-04; PTLB 4-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-035-0020

Required Hours and Period for Completion

(1) A licensed physical therapist is required within each certification period to complete 24 hours of continuing education relating to the delivery or provision of physical therapy services.

(2) A licensed physical therapist assistant is required within each certification period to complete 12 hours of continuing education relating to the delivery or provision of physical therapy services.

ADMINISTRATIVE RULES

(3) Notwithstanding the provisions of subsection (1) of this rule, any person who is first issued an Oregon physical therapist license through examination pursuant to OAR 848-010-0015, or through endorsement pursuant to OAR 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education required for that certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(4) Notwithstanding the provisions of subsection (2) of this rule, any person who is first issued an Oregon physical therapist assistant license through examination pursuant to OAR 848-010-0015, or through endorsement pursuant to OAR 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist assistant license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(5) Notwithstanding the provisions of subsection (1) of this rule, a physical therapist whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to OAR 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person whose lapsed physical therapist license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 24 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(6) Notwithstanding the provisions of subsection (2) of this rule, a physical therapist assistant whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to OAR 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person whose lapsed physical therapist assistant license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 12 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(7) Any licensee whose license lapses on April 1st of an even numbered year, regardless of the reason, and who subsequently renews the lapsed license during the first 12 months of a new certification period, shall provide documentation of completion of the continuing education requirements for the immediately prior certification period before the license will be renewed.

(8) For purposes of determining whether a licensee has satisfied the continuing education requirement under section (3), (4), (5) or (6) of this rule, the Licensing Board will accept all qualifying continuing education hours completed from the beginning date of the 24 month certification period in which the license was issued or renewed, regardless of the specific date the license was issued or renewed. For example, a person whose license is issued or renewed on June 15, 2009 will receive credit for all qualifying continuing education hours completed at any time during the certification period of April 1, 2008 to March 31, 2010.

(9) The initial certification period for a licensee to complete the required hours shall be January 1, 2006, through and including March 31,

2008. Thereafter, each twenty-four month period for completion of the required hours shall be April 1st of the even numbered year through March 31st of the next even numbered year. For example, the second twenty-four month period will be from April 1, 2008, through March 31, 2010.

(10) Failure to complete the required continuing education by March 31st of an even-numbered year shall constitute a violation of this division 35.

(11) Notwithstanding the provisions of this rule and OAR 848-010-0033(6), a physical therapist or physical therapist assistant who is renewing a license during an even numbered year and who was first licensed in Oregon between January 1st to and including March 31st of that even numbered year, is not required to complete continuing education for the current certification period. Thereafter such licensees shall be subject to the continuing education requirement for all subsequent continuing education certification periods.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06; PTLB 1-2008(Temp), f. & cert. ef. 2-19-08 thru 4-2-08; Administrative correction 4-23-08; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-040-0100

Definitions

As used in this Division:

(1) "Authentication" means the process by which the licensee reviews and validates the accuracy of the record entry. By authenticating a record entry, the licensee certifies that the services described were performed by the authenticating licensee or performed by a person under that licensee's supervision.

(2) "IDEA" means Individuals with Disabilities Education Improvement Act.

(3) "IEP" means an Individualized Education Plan developed for a child/student qualified under the IDEA program.

(4) "IFSP" means an Individualized Family Services Plan developed for a child qualified under the IDEA Early Intervention Program.

(5) "Licensee" means a physical therapist or a physical therapist assistant and includes a temporary permit holder.

(6) "Patient" means one who seeks and receives physical therapy services. For purposes of these rules, patient may include a person receiving services in a home or clinical setting, a student in a school setting, a child receiving early intervention services, a resident of a care facility, or an animal.

(7) "Permanent Record" means the final version of the record of each evaluation, reassessment or treatment provided to a patient which becomes part of the patient's medical record.

(8) "Physical therapy intervention" means a treatment or procedure and includes but is not limited to: therapeutic exercise; gait and locomotion training; neuromuscular reeducation; manual therapy techniques (including manual lymphatic drainage, manual traction, connective tissue and therapeutic massage, mobilization/manipulation of soft tissue or spinal or peripheral joints, and passive range of motion); functional training related to physical movement and mobility in self-care and home management (including activities of daily living (ADL) and instrumental activities of daily living (IADL)); functional training related to physical movement and mobility in work (job/school/play), community, and leisure integration or reintegration (including IADL, work hardening, and work conditioning); prescription, application, and, as appropriate, fabrication of devices and equipment (assistive, adaptive, orthotic, protective, or supportive); airway clearance techniques; integumentary repair and protective techniques; electrotherapeutic modalities; physical agents and mechanical modalities; and patient related instruction and education.

(9) "Plan of care" means a written course of physical therapy treatment established by a physical therapist following an initial evaluation which integrates the evaluation data collected to determine the degree to which physical therapy interventions are likely to achieve anticipated goals and expected outcomes.

(10) "Record" means a written account of the detailed information gathered from each evaluation, reassessment, and the treatment provided to a patient. This documentation may be used to create the separate, permanent record, or it may serve as the permanent record.

(11) "Student" means a child ages 3 to 21 who is enrolled in an educational institution and who qualifies for services under IDEA or Section 504 of the Rehabilitation Act, or other designated plan of care, or a child ages 0-2 who qualifies under the IDEA Early Intervention Program.

(12) "Student PT or Student PTA" means a person enrolled in a CAPTE accredited physical therapist or physical therapist assistant

ADMINISTRATIVE RULES

program and who is providing patient care as part of the required clinical education.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010, 688.210
Hist.: PTLB 6-2004, f. & cert. ef. 12-29-04; PTLB 1-2007, f. 3-13-07, cert. ef. 4-1-07; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-040-0147

Standards for Treatment by a Student PT or Student PTA

(1) A physical therapist may allow a student physical therapist (SPT) or student physical therapist assistant (SPTA), as defined in OAR 848-040-0100(12), to provide treatment consistent with the individual student's education, experience and skills.

(2) A physical therapist assistant may allow an SPTA to provide treatment consistent with the individual student's education, experience and skills.

(3) At all times, a supervising physical therapist must provide on-site supervision of an SPT or SPTA who provides treatment to a patient.

(4) For purposes of this rule "supervising physical therapist" means the physical therapist who is responsible for that patient's treatment on the day the SPT or SPTA provides treatment.

(5) For purposes of this rule "on-site supervision" means that at all times the supervising physical therapist is in the same building and immediately available to provide in person direction, assistance, advice or instruction to the student.

(6) A physical therapist may delegate supervision of an SPTA to a physical therapist assistant and the provision of subsections (3), (4) and (5) of this rule shall apply to the physical therapist assistant.

(7) Documentation by a student physical therapist (SPT) shall be authenticated on the same day by the student and by a supervising physical therapist. Documentation by a student physical therapist assistant (SPTA) shall be authenticated by the student and by a supervising physical therapist or supervising physical therapist assistant. A SPT's documentation must be completed pursuant to OAR 848-010-0110.

Stat. Auth.: ORS 688.160
Stats. Implemented: ORS 688.160, 688.010
Hist.: PTLB 8-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

848-045-0020

Grounds for Discipline of a Licensee

(1) The Board may impose a sanction as provided in 848-045-0010(1) on a licensee for illegal, unethical or unprofessional conduct. As used in this rule, "licensee" means a physical therapist or a physical therapist assistant, a temporary permit holder, and a person who was a licensee at the time the illegal, unethical or unprofessional conduct occurred regardless of whether the person's license has lapsed.

(2) A licensee commits or engages in illegal, unethical or unprofessional conduct if the licensee:

(a) Fails to disclose requested information, conceals material facts or provides false or materially misleading information on an application or during the application process for a temporary permit, license or renewal, or willfully makes a false statement on an application;

(b) Is disciplined by another Oregon state licensing board or out-of-state licensing board for conduct which if committed in Oregon would be grounds for discipline under this rule;

(c) Is convicted of violating any federal law or state law relating to controlled substances, subject to the provisions of ORS 670.280(2);

(d) Is convicted of any crime that is a felony or misdemeanor under the laws of any state or of the United States, subject to the provisions of ORS 670.280(2), or fails to notify the Board within 10 working days of a conviction of a misdemeanor, or an arrest for or conviction of a felony;

(e) Commits gross negligence or multiple acts of negligence in practice. The Board may take into account relevant factors and practices, including but not limited to the standard of practice generally and currently followed and accepted by persons licensed to practice physical therapy in this state, the current teachings at accredited physical therapy schools and relevant technical reports published in recognized physical therapy journals in determining the definition of gross negligence;

(f) Practices physical therapy while under the influence of intoxicating liquors or under the influence of a controlled substance;

(g) Has an addiction to or dependency on alcohol, legend drugs or controlled substances which impairs the licensee's ability or competency to practice physical therapy in a manner consistent with the public health and safety;

(h) Violates the provisions of ORS 688.010 to 688.220 or any administrative rule, or violates or fails to comply with any order of the Board;

(i) Engages in any act involving moral turpitude, including, but not limited to fraud, deceit, dishonesty, violence, or illegal activity undertaken for personal gain, subject to the provisions of ORS 670.280(3);

(j) Unnecessarily exposes a patient's body to the view of the therapist or other persons;

(k) Engages in a conversation with a patient that is not necessary for the provision of treatment and that is personally intrusive or otherwise inappropriate;

(L) Commits or engages in any act of sexual misconduct involving a patient, including but not limited to any acts or statements of a sexual nature that do not contribute to appropriate physical therapy treatment;

(m) Engages in any sexual conduct, including dating, with a patient, whether initiated by the patient or the licensee. For purposes of this subsection, "patient" includes any person who has not been discharged from that therapist's care;

(n) Obtains or attempts to obtain any fee by fraud or misrepresentation, or makes a false or fraudulent claim for health care payment as provided in ORS 165.690 to 165.694;

(o) Engages in exploitation of a patient, which includes but is not limited to the following:

(A) Failure to maintain an appropriate patient/therapist relationship;

(B) Obtaining or attempting to obtain compensation for physical therapy services that were not provided to the patient;

(C) Provides physical therapy services or participates in physical therapy services solely for reasons of personal or institutional financial gain;

(D) Provides physical therapy services under circumstances where there is no benefit to be obtained by the patient from such services;

(E) Accepting, soliciting or borrowing anything of more than nominal value from a patient or a member of the patient's family except for reasonable compensation for physical therapy services provided to the patient. Nominal value shall be determined in the context of the particular relationship and circumstances; or

(F) Influencing a patient or the patient's family to utilize, purchase or rent any equipment based on the direct or indirect financial interests of the licensee rather than on the therapeutic value to the patient. A licensee who owns or has a direct financial interest in an equipment or supply company must disclose the interest if the licensee sells or rents the equipment or recommends the purchase or rental of the equipment to the patient.

(p) Knowingly makes a false entry or false alteration in a patient record;

(q) Engages in deceptive consumer practices, including but not limited to:

(A) Using, disseminating or publishing any advertising matter, promotional literature, testimonial, claim or guarantee that is false, misleading or deceptive;

(B) Practicing under a false, misleading or deceptive name, impersonating another licensee or fraudulently using or permitting the use of a license number in any way;

(C) Making a representation as to the licensee's skill or the efficacy or value of a treatment that the licensee knows or should know is false or misleading; or

(r) Practices physical therapy with a lapsed license;

(s) Knowingly or with reason to know, employs, aids, abets or permits any unlicensed person or person with a lapsed license to practice physical therapy;

(t) Fails to report in writing to employer that licensee provided physical therapy services while unlicensed or with a lapsed license or fails to provide a copy to the Board of such report;

(u) Fails to cooperate with the Board, which includes but is not limited to the following:

(A) Failure to respond fully and truthfully to a question or request for information from the Board;

(B) Failure to provide information or documents to the Board within the time specified by the Board;

(C) Failure to appear and provide information at an interview requested by the Board;

(D) Failure to timely produce and temporarily surrender custody of an original patient record requested by the Board and which is in the possession or under the control of the licensee, or failure to produce all portions of the patient record requested;

(E) Deceiving or attempting to deceive the Board regarding any matter, including by altering or destroying any record or document; or

(F) Failure to comply with the terms, conditions and recommendations of a Confidential Advisory Letter as issued by the Board;

ADMINISTRATIVE RULES

(v) Interferes with or uses threats or harassment to delay or obstruct any person in providing information or evidence to the Board in any matter, investigation, contested case proceeding or other legal action instituted by the Board;

(w) Discharges an employee based primarily on the employee's attempt to comply or aid in the compliance with Board rules;

(x) Fails to notify the Board of any conduct by another licensee of this Board which reasonably appears to be illegal, unethical, unprofessional under the licensing statutes or these administrative rules, aids or causes another person, directly or indirectly, to violate ORS 688.010 to 688.220 or rules of the Board;

(y) Fails to notify the appropriate licensing board of any conduct by another licensed medical provider when the licensee has reasonable cause to believe that the medical provider has engaged in prohibited or unprofessional conduct. Notice must occur without undue delay, but in no event later than 10 days after the reporting licensee learns of the conduct. As used in this subparagraph, "prohibited conduct" means a criminal act against a patient or a criminal act that creates a risk of harm to a patient and "unprofessional conduct" means conduct unbecoming a medical provider or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the medical provider's profession or conduct that endangers the health, safety or welfare of a patient; or

(z) Fails to notify the Board of a change in the licensee's name, address, contact telephone number or place of employment or business as required by OAR 848-005-0030.

Stat. Auth.: ORS 688.140, 688.160 & 688.210
Stats. Implemented: ORS 688.140, 688.145, 688.220 & 688.235
Hist.: PTLB 7-2004, f. & cert. ef. 12-29-04; PTLB 9-2005, f. 12-29-05, cert. ef. 1-1-06; PTLB 2-2008, f. 12-16-08, cert. ef. 1-2-09; PTLB 1-2010, f. 2-16-10, cert. ef. 3-1-10

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

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

Adm. Order No.: CORP 4-2010

Filed with Sec. of State: 2-22-2010

Certified to be Effective: 3-1-10

Notice Publication Date: 2-1-2010

Rules Adopted: 160-100-0301

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

Rules Coordinator: Karen Hutchinson—(503) 986-2364

160-100-0301

Disposition of Notarial Records Upon Termination of Commission, Termination of Commission Due to Expiration — No Application for New Commission — ORS 194.154

(1) A notary public whose commission was terminated because of expiration, and who has not applied for a new commission within 30 days after the date of termination shall arrange for the storage of his/her notarial records, except records of protests of commercial paper (see OAR 160-100-0350), in any form and at any location. The records or any reproduction of the records must be readable and the notary public must be able to obtain possession of such records within 15 days of receipt of a request for such records.

(2) A notary public shall file a statement with the Secretary of State within ten days after the date the notary public stored such records. The statement shall include:

- (a) The name of the notary public;
- (b) The notary public's commission number;
- (c) The notary public's commission expiration date;
- (d) The cause of termination of the notary public's commission, i.e., expiration;

(e) The date the notary public stored such notarial records;

(f) The street address and exact location at such address where such records are stored and any subsequent relocation of such records.

(3) A notary public shall store such records for a period of seven years after the date of commission expiration. After the seven-year period, the notary public may destroy such records.

(4) A notary public shall destroy the official seal and/or official seal embosser immediately upon expiration of the commission.

Stat. Auth.: ORS 194.154
Stats. Implemented: ORS 194.154
Hist.: CORP 4-2010, f. 2-22-10, cert. ef. 3-1-10

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

Rule Caption: Adoption of Online Electronic Voter Registration System.

Adm. Order No.: ELECT 1-2010

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 2-26-10

Notice Publication Date: 2-1-2010

Rules Adopted: 165-005-0160

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

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-005-0160

Electronic Voter Registration System

(1) The Secretary of State provides an online electronic voter registration system for use by an individual who has a valid:

- (a) Oregon driver license, as defined in ORS 801.245;
- (b) Oregon driver permit, as defined in ORS 801.250; or
- (c) State identification card, issued under ORS 807.400; and an
- (d) Electronic signature image on file with the Oregon Department of Motor Vehicles

(2) The electronic voter registration system shall allow an individual to complete and submit a registration card electronically. The electronic voter registration system can be used by electors to:

- (a) Register for the first time in the state; and
- (b) Update address, contact information or party information on an existing registration.

(3) The registrant's electronic signature image will be provided to the appropriate election official by the Oregon Department of Motor Vehicles and matched with the electronically delivered registration card.

(4) The electronic voter registration system should not be used for name changes. A paper registration card as provided in ORS 247.012 may be required to obtain the new signature image.

(5) The electronic voter registration system shall create an electronic time and date record at the time of submission which shall be deemed the time submitted for voter registration purposes if the registration is accepted by the county elections official.

(a) All times and dates referenced shall be considered in the Pacific Time Zone.

(b) Registration updates submitted electronically after 8PM Pacific Time on Election Day shall be treated as if they were received on the following day.

(6) County elections officials shall receive the electronically delivered registration card matched with the electronic signature image provided by the Oregon Department of Motor Vehicles with the electronic time and date record.

(a) The county elections official will review the submission and either accept the registration, reject the application, or contact the registrant for additional information.

(b) Once the county elections official has made a determination they will notify the registrant of their voter registration status.

(7) If the signature obtained from the Oregon Department of Motor Vehicles is illegible or otherwise unusable for elections use, the county elections official shall contact the registrant to obtain a usable signature. An elector is not eligible to vote a ballot until complete registration information, including a usable signature or an attestation is accepted by the county elections official.

Stat. Auth.: ORS 246.150 & 247.019
Stats. Implemented: ORS 247.019
Hist.: ELECT 1-2010, f. & cert. ef. 2-26-10

Rule Caption: Timelines for HJR 101 on the May 18, 2010, Primary Election Ballot.

Adm. Order No.: ELECT 2-2010(Temp)

Filed with Sec. of State: 2-26-2010

Certified to be Effective: 2-26-10 thru 5-18-10

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Adopted: 165-007-2011

Subject: This rule adopts timelines, as directed by SB 998, necessary to place HJR 101 on the May 18, 2010, Primary Election. The rule addresses timelines for the filing of the explanatory statement and financial estimates, the timeline to conduct hearings for the explanatory statement and financial estimates and the appeal deadline.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-2011

Timelines for the HJR 101 at the May 18, 2010, Primary Election

(1) This rule adopts shortened timelines to place HJR 101 (2010) on the May 18, 2010, Primary Election.

(2) When a document is to be filed with the Secretary of State, Elections Division under this rule, the document must be delivered to and actually received, in its entirety, in the office of the Secretary of State, Elections Division not later than 5:00 p.m. on the designated filing deadline date.

(3) The following timeline is adopted for placing HJR 101 on the May 18, 2010, Primary Election as directed in SB 998, section (18):

(a) March 1, 2010: Last day to appoint 4 members for explanatory statement committee.

(b) March 2, 2010: Last day to select 5th member of explanatory statement committee.

(c) March 3, 2010: Last day for Secretary of State to appoint 5th member to explanatory statement committee, if committee fails to choose.

(d) March 4, 2010:

(A) Last day for explanatory statement committee to file explanatory statements with the Secretary.

(B) Last day for financial estimate committee to file financial estimates and estimate of fiscal effects, if necessary, as provided in ORS 250.125.

(e) March 5, 2010: Last day for Secretary to conduct hearing regarding financial estimates and statements, and explanatory statements.

(f) March 8, 2010:

(A) Last day for explanatory statement committee to file revised explanatory statements with the Secretary.

(B) Last day for financial estimate committee to file revised financial estimates and estimate of fiscal effects, if necessary, as provided in ORS 250.125.

(g) March 10, 2010:

(A) Last day for a person dissatisfied with any of the explanatory statements to petition the Oregon Supreme Court for a different explanatory statement.

(B) Last day for a person alleging that the procedures for preparing, filing or certifying an estimate described in ORS 250.125 were not followed to petition the Oregon Supreme Court for review.

Stat. Auth.: ORS 246.150, HJR 101 & SB 998

Stats. implemented: SB 998

Hist.: ELECT 2-2010(Temp), f. & cert. ef. 2-26-10 thru 5-18-10

Teacher Standards and Practices Commission

Chapter 584

Rule Caption: Adopts new Career and Technical Education License (CTE) rules to support the redesign of CTE programs ODE has implemented.

Adm. Order No.: TSPC 2-2010(Temp)

Filed with Sec. of State: 3-5-2010

Certified to be Effective: 3-5-10 thru 8-31-10

Notice Publication Date:

Rules Adopted: 584-042-0021, 584-042-0031, 584-042-0044

Rules Suspended: 584-042-0002, 584-042-0006, 584-042-0009

Subject: Adopt: (1) 584-042-0020: *Definitions* — Creates new rule with updated definitions to align with the new CTE licenses.

(2) 584-042-0030: *Career and Technical Education I Teaching License* — License will be issued for one year at a time for a maximum of three years total. Renewal subject to special conditions. Replaces the Three-year CTE license.

(3) 584-042-0045: *Career and Technical Education Endorsements* — Allows already-licensed general education teachers to add CTE

endorsements to their license once they fully qualify for the CTE II Teaching License.

Suspend: (1) 584-042-0002: *Definitions*.

(2) 584-042-0006: *Three-Year Career and Technical Education Teaching License*.

(3) 584-042-0009: *Adding Career and Technical Education Endorsements*.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-042-0002

Definitions

(1) "Approved Career and Technical Education Program:" A career and technical education program, normally at grades nine through twelve, approved by the Oregon Department of Education.

(2) "Instructor Appraisal Committee:" A seven-member committee approved by the district superintendent on behalf of the school board to evaluate applicants and make recommendations to the Commission and the employing superintendent relative to their licensure and assignment as career and technical education teachers.

(a) Five members of the committee must be employers or employees who are currently engaged in an occupation related to the career and technical education program area. One of these five members may be a community college instructor in a career and technical education program area related to the endorsement of the applicant.

(b) These five public members must all possess current and substantial knowledge of the technical, environmental, and attitudinal requirements of the occupational field.

(A) At least one of the five should also represent the school district's occupational advisory committee for the instructional program to be offered.

(B) One of the two remaining committee members shall be an ODE recognized Regional Coordinator of Career and Technical Education or an appropriate Oregon Department of Education program area specialist.

(C) The seventh member shall be a district administrator or a director of career and technical education.

(D) Ex officio members may also be appointed.

(c) A facilitator must be chosen and trained in operating an instructor appraisal committee. An ODE recognized Regional Coordinator of Career and Technical Education or an appropriate Oregon Department of Education program area specialist may serve as the facilitator.

(d) Reports of evaluations that are satisfactorily completed shall be verified by the signatures of the chair of the applicant's Instructor Appraisal Committee and the Regional Coordinator of Career and Technical Education.

(3) Career and Technical Education endorsements include:

(a) Communication Journalism;

(b) Communications Technologies;

(c) Design & Applied Arts;

(d) Administrative Services;

(e) Financial Services;

(f) Hospitality & Tourism;

(g) Marketing/Management;

(h) Health Sciences;

(i) Leisure & Fitness;

(j) Education;

(k) Family/Consumer Sciences;

(l) Personal Services;

(m) Legal & Protective Services;

(n) Social Services;

(o) Computer Technology;

(p) Construction;

(q) Engineering Technology;

(r) Mechanical Systems;

(s) Manufacturing Technology;

(t) Agricultural Science & Technology;

(u) Forestry/Natural Resources; and

(v) Integrated Environmental Technology.

(4) "Career and Technical Education Mentor:" A teacher holding a Five-Year Teaching License, Standard Teaching License, Initial Teaching License or Continuing Teaching License who guides and supports a beginning Career and Technical Education teacher on a Three-Year Career and Technical Education License with instructional planning and preparation, delivery of classroom instruction, classroom management, assessment of student performance, and professional development.

ADMINISTRATIVE RULES

(5) "Career and Technical Education (CTE) Professional Development Plan:" A plan for personal professional growth during the life of the Career and Technical Education license. A three-year CTE professional development plan is required for the Three-Year Career and Technical Education Teaching License.

(a) The employing school district will keep a signed copy of the three-year CTE professional development plan agreement between the teacher and the district. (See OAR 584-042-0006.)

(b) The plan must include assurances that the district has assigned an appropriate administrator to monitor the progress and timely completion of the signed CTE professional development plan.

(c) For applicants holding an unrestricted teaching license prior to applying for the Three-Year Career and Technical Education Teaching License, the scope of the plan shall include activities that address relevant CTE professional development needs identified by the Instructional Appraisal Committee.

(d) For applicants who have not previously held an unrestricted teaching license, the three-year CTE professional development plan must outline how the applicant will acquire fifteen (15) quarter hours or ten (10) semester hours or the equivalent of teacher preparation required for eligibility for a Five-Year Career and Technical Education Teaching License. (See, OAR 584-042-0008.)

(6) "Work Experience:"

(a) Structured work experience is employment that is planned and coordinated to increase specific occupational competence as prescribed by the district's Instructor Appraisal Committee.

(b) Non-structured work experience is documented employment as a qualified worker, completed within the five years prior to application that is related to the instructional area.

(c) One hour of structured work experience related to the program area equals three hours of non-structured work experience.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 5-2007, f. & cert. ef. 8-15-07; Suspended by TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10

584-042-0006

Three-Year Career and Technical Education Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be granted a Three-Year Career and Technical Education Teaching License for one or more Career and Technical Education endorsements below. The Three-Year Career and Technical Education Teaching License is valid to teach in ODE approved Career and Technical Education programs for which the educator is specifically licensed. The license is not eligible for any other district assignment. The license is not eligible for a conditional assignment.

(2) A person may not work in a Career and Technical Education Program unless properly licensed regardless if the educator is licensed in another area.

(a) If an educator holding a Basic, Standard, Initial or Continuing Teaching License is not immediately eligible for a Three-Year Career and Technical Education Teaching License; the educator may be eligible for an Emergency Teaching License in the Career and Technical Education Endorsement area if the educator meets the requirements as it relates to criminal background checks;

(b) Applicants who are not yet licensed by TSPC may be eligible for employment only upon obtaining an Emergency Teaching License prior to employment while the application for the Three-Year Career and Technical Education Teaching License is pending. The Emergency Teaching License will be issued for a period generally not to exceed six (6) months. The Emergency Teaching License may be extended in cases where ODE program approval has not yet been obtained. (See, OAR 584-060-0210 for Emergency Teaching License.)

(3) The application shall be a joint application from the applicant and the school district who seeks to employ the applicant. The application must be directly submitted by the applicant only. TSPC will not accept application submitted by third parties.

(4) The application must provide documentation of the following to TSPC:

(a) Evidence the requesting school district has an Oregon Department of Education approved program in the requested Career and Technical Education endorsement area;

(b) The applicant has passed the district's Instructor Appraisal Committee examination and the Instructor Appraisal Committee's approval is submitted on the required form; (See, 584-042-0002 for definition of Instructor Appraisal Committee.)

(c) The district has a signed agreement outlining the three-year career and technical education professional development plan on file; a copy of which is submitted with the application; (See OAR 584-042-0002 for details regarding the plan.)

(d) The district has provided a career and technical education mentor in the career and technical education program area and such mentor is identified in the application materials; and

(e) Evidence the applicant meets the provisions of subsection (5) or (6) below or provides a recommendation from the Oregon Department of Education for a waiver. This evidence must include:

(A) Evidence that the structured or non-structured work experience has been completed and verified as having been completed in the past five years; or

(B) Transcripts documenting completion of an associate's degree; or

(C) The ODE waiver must be signed and dated within 90 days from the date of the application and submitted with the application materials; or

(D) A copy of the industry certification or licensure.

(5) For an applicant holding a teaching license, the work experience must have been performed in the last five years and must include:

(a) Non-structured related work of at least 1920 hours as defined in 584-042-0002(6)(b); or

(b) At least 640 hours of structured related work experience as defined in 584-042-0002(6)(a); or

(c) The equivalent combination of structured and non-structured related work at a technical skill level within the last five years. One hour of structured work experience related to the program area equals three hours of non-structured work experience; or

(d) Industry certification or licensure.

(6) For an applicant who does not hold a teaching license, the applicant must hold an associate's degree or obtain recommendation from the Oregon Department of Education for a waiver of the associate's degree; and

(a) Provide verification that the related work experience includes a minimum of 4,000 hours of non-structured related experience at a technical skill level within the last five years; or

(b) Provide industry certification or licensure; and

(c) Provide documentation that the school district has provided an assigned Career and Technical Education Mentor as defined in 584-042-0002.

(7) The Three-Year Career and Technical Education Teaching License is transferable to another Oregon school district if the new instructional assignment is comparable and in an Oregon Department of Education-approved career and technical education program. The receiving school district superintendent must ensure that the instructor's three-year improvement plan is successfully completed.

(8) The Three-Year Career and Technical Education Teaching License is not renewable.

(9)(a) Upon filing an application and fee in the form and manner required by the commission; a restricted extension to the Three-Year Career and Technical Education Teaching 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 Three-Year Career and Technical Education Teaching License within the life of the Three-Year Career and Technical Education Teaching License; and

(C) A description of the steps the district will take to ensure the applicant will qualify for the Five-Year Career and Technical Education Teaching License upon expiration of the restricted extension to the Three-Year Career and Technical Education Teaching License.

(10) If the application and fee for the Five-Year Career and Technical Education Teaching License is received prior to the expiration of the Three-Year Career and Technical Education Teaching License, the license will remain valid for another 120 days following the expiration of the license. The applicant and co-applicant district must provide documentation that the requirements for the Five Year Career and Technical Education Teaching License have been met prior to the expiration of the 120 days after the Three-Year Career and Technical Education Teaching License has expired to remain continuously licensed in this area.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TSPC 3-2002, f. 3-15-02, cert. ef. 1-15-03; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; Suspended by TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10

ADMINISTRATIVE RULES

584-042-0009

Adding Career and Technical Education Endorsements

Career and Technical Education endorsements may be added to initial, continuing, basic, standard, and five-year teaching licenses. Eligibility for the endorsement is determined under one of the following conditions:

(1) Recommendation by an approved teacher education institution in one or more of the career and technical education areas in one of the following endorsements:

- (a) Agricultural Science and Technology;
- (b) General Business Education;
- (c) Family and Consumer Sciences;
- (d) Marketing; or
- (e) Technology Education.

(2) Verification the applicant holds a current career and technical education teaching license issued by another state in the area of the endorsement seeking to be added; or

(3) Verification of one year of career and technical education teaching experience while holding a Three-Year Career and Technical Education Teaching License and verification by the district's superintendent that the three-year improvement plan designed by the Instructor Appraisal Committee has been completed.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 5-2007, f. & cert. ef. 8-15-07; Suspended by TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10

584-042-0021

Definitions

(1) "Approved Career and Technical Education Program:" A career and technical education program (CTE), approved by the Oregon Department of Education (ODE).

(2) "Career and Technical Education (CTE) Mentor:" A teacher holding a Five-Year, CTE II, Basic, Standard, Initial, Initial I, Initial II or Continuing Teaching License who guides and supports a beginning CTE teacher on a CTE I License with instructional planning and preparation, delivery of classroom instruction, classroom management, assessment of student performance, and professional development. The assigned mentor must be approved by ODE to be a CTE mentor.

(3) "Career and Technical Education Professional Development Plan:" A plan for personal professional growth during the life of the Career and Technical Education I Teaching License and the Career and Technical Education II Teaching License consistent with OAR 584-042-0050 *Career and Technical Education Professional Development Plan*.

(4) "Regional Coordinator:" An individual hired by a local educational agency or community college and officially recognized by the Oregon Department of Education (ODE) to specifically coordinate the ODE approved regional system of Career and Technical Education.

(5) "Instructor Appraisal Committee (IAC):" A committee organized in accordance with rules promulgated by the ODE.

(6) "Significant Progress:" Significant progress toward completion of CTE professional development plan requirements means the applicant has made a confirmed commitment in each year the license is held toward completing the CTE professional development plan submitted upon application. Significant progress may be evidenced by completion of at least one-third of the requirements contained within the professional development plan. The progress must have been completed within the last year preceding application for renewal.

(7) "Waivers:" A waiver of the work experience or academic requirements for the CTE I Teaching License in accordance with OAR 584-042-0060 *Waivers*.

(8) "Work Experience:" Planned and coordinated work experience or previous and documented work experience that meets the criteria included in OAR 584-042-0070 *Work Experience*.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10

584-042-0031

Career and Technical Education I Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be eligible for a Career and Technical Education Teaching I License in one or more Career and Technical Education endorsements. The license may be issued for up to three years.

(2) The Career and Technical Education I Teaching License is valid to teach in:

(a) An ODE-approved Career and Technical Education programs for which the educator is specifically licensed;

(b) Any CTE teaching license is valid for assignments in diversified occupations or as work experience coordinators.

(3) The application must be a joint application from the applicant and the school district who seeks to employ the applicant. The complete application must be directly submitted by the applicant. TSPC will not accept applications submitted by third parties.

(4) The application packet must include the following:

(a) A signed and dated TSPC application and the appropriate fees;

(b) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application;

(c) Evidence the requesting school district has an ODE-approved program in the requested Career and Technical Education endorsement area; or evidence that the district has submitted their application for approval of the CTE program to the ODE. The district must indicate the approximate date they expect to obtain ODE approval of their program;

(d) The Instructor Appraisal Committee's recommendation for licensure on an approved ODE form, including any course restrictions related to the recommended endorsement unless waived by ODE pursuant to OAR 584-042-0060 *Waivers* and 584-042-0070 *Work Experience*;

(e) A copy of the signed CTE Professional Development Plan indicating the expectations for the educator over the next three years. The application for licensure is deemed incomplete if the professional development plan does not align with OAR 584-042-0050 *CTE Professional Development Plan*.

(f) The name and credentials of the identified CTE mentor; and

(g) Transcripts of an associate's degree or equivalent; or in the alternative, the ODE waiver, consistent with OAR 584-042-0060 *Waivers*, that is signed and dated within 90 days from the date of the application to TSPC.

(h) Work experience evidence documented in one of the following ways:

(A) Planned and coordinated or previous and documented work experience in accordance with OAR 584-042-0070 *Work Experience* verified by ODE and completed within the past five years; or

(B) A copy of the industry certification or licensure.

(5) CTE I Teaching 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 signed and dated TSPC application and renewal fees as defined by rule;

(B) A letter of support from the co-applicant district;

(C) A passing score as currently specified by the commission on a test of basic verbal and computational skills; and

(D) Proof of significant progress toward completion of the requirements as outlined in the CTE professional development plan as defined in OAR 584-042-0020 *Definitions*.

(b) Second Renewal: The applicant must submit:

(A) A C-1 application and renewal fees as defined by rule;

(B) A letter of support from the co-applicant district;

(C) Passing score on a test of knowledge of U.S. and Oregon civil rights laws and professional ethics and

(D) Proof of significant additional progress beyond the first renewal toward completion of the requirements as outlined in the CTE professional development plan as defined in OAR 584-042-0020 *Definitions*.

(c) Renewal under this subsection 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) Failure to show significant progress is deemed to be an incomplete application for renewal.

(e) The Executive Director may grant renewal of the license upon failure to show progress if the circumstances preventing completion of progress are exceptional and extenuating. An Emergency Teaching License will be issued for the period of time it takes to cure the renewal deficit. Any time extensions under this subsection will be deducted from the next renewal cycle.

(6) The Career and Technical Education I Teaching License is not renewable. Holders of this license must finish their requirements for the CTE II Teaching License within three years from when the license is first issued, no exceptions. If the employment opportunity associated with first acquiring the license ceases, the license holder is encouraged to continue working toward completion of the CTE II Teaching License requirements.

ADMINISTRATIVE RULES

(7) If the application and fee for the Career and Technical Education II Teaching License is received prior to the expiration of the Career and Technical Education I Teaching License, the license will remain valid for another 120 days following the expiration of the license.

(a) The applicant and co-applicant district must provide documentation that the requirements for the Career and Technical Education II Teaching License have been met prior to the expiration of the 120 days after the Career and Technical Education I Teaching License has expired to remain continuously licensed in this area.

(b) In the event the co-applicant district is unable to provide the documentation required in subsection (a) above, the ODE may certify that the applicant is qualified for the CTE II Teaching License.

(8) In addition to the requirements for the CTE Professional Development Plan, the CTE licensee must meet all of the requirements for the CTE II Teaching License at the end of three years following the issuance of the CTE I.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10

584-042-0044

Career and Technical Education Endorsements

(1) Career and Technical Education (CTE) Endorsements are subject-matter endorsements in the career and technical fields.

(2) Only the Basic, Standard, Initial, Continuing or CTE teaching licenses are eligible to hold any CTE endorsement.

(3) Endorsements indicate the scope of the subject-matter that may be taught on the license which holds the endorsement. Endorsements include the following:

(a) Endorsements in the Agriculture, Food and Natural Resource Systems area include:

- (A) Agriculture Science and Technology;
- (B) Natural Resources Management; and
- (C) Environmental Services.

(b) Endorsements in the Arts, Information and Communications area include:

- (A) Publishing and Broadcasting;
 - (B) Information and Communications Technology; and
 - (C) Visual, Performing and Media Arts.
- (c) Endorsements in the Business and Management area include:
- (A) Business Management and Administration;
 - (B) Finance;
 - (C) Hospitality and Tourism;
 - (D) Information and Communications Technology; and
 - (E) Marketing.

(d) Endorsements in the Health Sciences area include: Health Sciences.

(e) Endorsements in the Human Resource Systems area include:

- (A) Education and Related Fields;
- (B) Hospitality and Tourism;
- (C) Human Services; and
- (D) Public Services.

(f) Endorsements in the Industrial and Engineering Systems area include:

- (A) Construction Technology;
- (B) Engineering Technology;
- (C) Information and Communications Technology;
- (D) Transportation Technology; and
- (E) Manufacturing Technology.

(2) Applicants for the CTE I Teaching License may be limited with regard to the courses they may teach in the first three years of licensure. The IAC will determine whether the applicant is fully prepared to teach all courses with the endorsement area in which the applicant seeks licensure.

(3) All CTE II Teaching License holders are eligible to teach within the full scope of the CTE endorsement.

(4) Holders of a Basic, Standard, Initial or Continuing teaching license who meet all of the requirements for a CTE II may add CTE endorsements onto their underlying teaching license. The endorsement shall be valid for the same amount of time as the underlying license.

(5) An applicant must satisfy all the requirements of the CTE I Teaching License in order to add any CTE endorsement onto their teaching license.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10

Travel Information Council Chapter 733

Rule Caption: Adopt rules to provide the free coffee program in specified interstate rest areas.

Adm. Order No.: TIC 1-2010

Filed with Sec. of State: 3-15-2010

Certified to be Effective: 3-15-10

Notice Publication Date: 1-1-2010

Rules Adopted: 733-030-0500, 733-030-0510, 733-030-0520

Subject: The travel Information Council held a quarterly meeting on March 12, 2010. The Council approved to permit the Free Coffee Program in these rest areas — Baldock, Interstate 5 northbound; Baldock, Interstate 5, southbound; Boardman, Interstate 84, eastbound; Boardman, Interstate 84, westbound; Manzanita, Interstate 5, northbound; Manzanita, Interstate 5, southbound; Ontario, Interstate 84, westbound; Santiam, Interstate 5, northbound; Santiam, Interstate 5, southbound.

Rules Coordinator: Diane Cheyne—(503) 378-4508

733-030-0500

Applicability and Purpose

(1) The purpose of these regulations is to establish rules for the “free coffee” program service sponsored by non-profit organizations in rest areas; permissible under federal regulations and state law; and found by the Council, in certain instances, to be in the interest of public safety.

(2) These regulations are applicable to these rest areas — Baldock, Interstate 5, northbound; Baldock, Interstate 5, southbound; Boardman, Interstate 84, eastbound; Boardman, Interstate 84, westbound; Manzanita, Interstate 5, northbound; Manzanita, Interstate 5, southbound; Ontario, Interstate 84, westbound; Santiam, Interstate 5, northbound; Santiam, Interstate 5, southbound.

(3) The authority for the issuance of these regulations is the Oregon Jobs and Transportation Act 2009 (HB 2001).

Stat. Auth.: Oregon Jobs & Transportation Act 2009 (HB 2001)
Stats. Implemented:
Hist.: TIC 1-2010, f. & cert. ef. 3-15-10

733-030-0510

Definitions

In addition to the definitions described in OAT 733-0303-0011, the following definitions shall apply unless the context clearly indicates otherwise:

(1) “Cookie” means cookies or brownies available from a licensed facility but not cake, bagels, donuts, coffee cake, candy bars, or other similar items.

(2) “Free Coffee” means coffee and any other non-alcoholic beverage not available in the rest area vending machines.

(3) “Free Coffee Program Application and Permit” means a permit available from the Council requesting permission to sponsor a free coffee service at a specified interstate rest area.

(4) “Non-profit organization” means an organization that has been granted non-profit status by the internal revenue service.

Stat. Auth.: Oregon Jobs & Transportation Act 2009 (HB 2001)
Stats. Implemented:
Hist.: TIC 1-2010, f. & cert. ef. 3-15-10

733-030-0520

Criteria

(1)(a) Organizations may make written requests for permission to sponsor a “free coffee” service at a specific rest area directed to the Council not more than 60 days prior to the date(s) requested. Requests must be submitted on form “Free Coffee Program Application and Permit” available from the Council;

(b) The organization must certify that they have been granted non-profit status by the Internal Revenue Service (IRS) and may be required at the discretion of the Council to provide a copy of the IRS determination letter;

(c) The Council will grant permission for the activity by way of a permit issued to the selected organization. The selection will be made not less than 30 days in advance of the date(s) requested from all permits received, and will be based on a random drawing conducted by the Council if multiple requests for the same date(s) and location are received. For purposes of issuing permits, if a rest area is sited on both sides of the highway, each side of the rest area will be considered a single location;

ADMINISTRATIVE RULES

(d) Permits will be issued for a single location in 24-hour increments (12:00 a.m.–11:59 p.m.) for up to 3 consecutive days per permit with a maximum of three permits per month;

(e) Only one organization will be granted a permit for a single location for any particular date or time;

(f) The Council may decline to issue any permits for a single location or for any particular date or time; and

(g) A copy of the permit must be on-site during operation of the “free coffee” service;

(2) The “free coffee” service will be located in a designated area of the rest area. The area will be designated by the Council. The service is not permitted to obstruct access to any building or other structure in the rest area. The area is to be kept neat and free of litter, cups, etc., associated with the service.

(3) The organization shall comply with all state and local health department rules and regulations.

(4) Carbonated beverages shall not be distributed under the “free coffee” program in rest areas where carbonated beverages are available in vending machines.

(5) Coffee and cookies are to be free of charge to the public. Donations may be received by the organization but not sought or requested, except for the allowed use of one opaque container with the words “donations” or “contributions” in a maximum of one-inch letters.

(6) No more than two signs or posters with a maximum area of ten square feet each may be used to identify the “free coffee” service and the organization by name only i.e. “Free Coffee — Served By — (organization name).” Signs or posters may only be placed in the area designated for the service including on vehicles within which the service is provided, and must be removed when the service is closed and upon expiration of the permit. No signs are to be placed outside the rest area confines by the organization other than official “Free Coffee” signs that may be provided by the Council.

(7) The organization is responsible for all products and supplies necessary to provide “free coffee” service in the rest area including any extraordinary costs incurred by the Council as a result of this service. The Council reserves the right to charge the non-profit organization a fee for the electrical usage while offering the “free coffee” service at the rest areas. The Council may provide access to limited electricity and water as determined by the Council.

(8) Permits are not transferable and are revocable for non-compliance with any state statute, rest area rules, or the terms of the permit. Repeated failure to comply with the rules and regulations may result in the organization’s forfeiture of right to future participation in the program.

Stat. Auth.: Oregon Jobs & Transportation Act 2009 (HB 2001)

Stats. Implemented:

Hist.: TIC 4-2009(Temp), f. & cert. ef. 11-10-09 thru 5-9-10; TIC 1-2010, f. & cert. ef. 3-15-10

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
104-030-0000	1-21-2010	Adopt	3-1-2010	111-050-0020(T)	2-1-2010	Repeal	3-1-2010
104-030-0010	1-21-2010	Adopt	3-1-2010	111-050-0025	2-1-2010	Amend	3-1-2010
104-030-0020	1-21-2010	Adopt	3-1-2010	111-050-0025(T)	2-1-2010	Repeal	3-1-2010
104-030-0030	1-21-2010	Adopt	3-1-2010	111-050-0080	2-1-2010	Amend	3-1-2010
104-030-0040	1-21-2010	Adopt	3-1-2010	111-050-0080(T)	2-1-2010	Repeal	3-1-2010
104-030-0050	1-21-2010	Adopt	3-1-2010	111-060-0001	12-17-2009	Amend	2-1-2010
104-030-0060	1-21-2010	Adopt	3-1-2010	111-060-0001(T)	12-17-2009	Repeal	2-1-2010
104-030-0070	1-21-2010	Adopt	3-1-2010	111-070-0001	3-15-2010	Adopt	4-1-2010
104-030-0080	1-21-2010	Adopt	3-1-2010	111-070-0005	3-15-2010	Adopt	4-1-2010
104-080-0000	2-5-2010	Amend	3-1-2010	111-070-0015	3-15-2010	Adopt	4-1-2010
104-080-0010	2-5-2010	Amend	3-1-2010	111-070-0020	3-15-2010	Adopt	4-1-2010
104-080-0020	2-5-2010	Amend	3-1-2010	111-070-0030	3-15-2010	Adopt	4-1-2010
104-080-0021	2-5-2010	Amend	3-1-2010	111-070-0040	3-15-2010	Adopt	4-1-2010
104-080-0022	2-5-2010	Amend	3-1-2010	111-070-0050	3-15-2010	Adopt	4-1-2010
104-080-0024	2-5-2010	Amend	3-1-2010	111-070-0060	3-15-2010	Adopt	4-1-2010
104-080-0025	2-5-2010	Amend	3-1-2010	111-070-0070	3-15-2010	Adopt	4-1-2010
104-080-0026	2-5-2010	Amend	3-1-2010	123-008-0005	12-1-2009	Amend	1-1-2010
104-080-0027	2-5-2010	Amend	3-1-2010	123-008-0010	12-1-2009	Amend	1-1-2010
104-080-0030	2-5-2010	Amend	3-1-2010	123-008-0015	12-1-2009	Amend	1-1-2010
104-080-0040	2-5-2010	Amend	3-1-2010	123-008-0020	12-1-2009	Amend	1-1-2010
104-080-0050	2-5-2010	Amend	3-1-2010	123-008-0025	12-1-2009	Amend	1-1-2010
104-080-0060	2-5-2010	Amend	3-1-2010	123-008-0030	12-1-2009	Amend	1-1-2010
104-080-0070	2-5-2010	Amend	3-1-2010	123-017-0007	12-1-2009	Amend	1-1-2010
105-040-0015	1-1-2010	Amend	2-1-2010	123-017-0008	12-1-2009	Amend	1-1-2010
105-050-0025	1-1-2010	Adopt	2-1-2010	123-017-0010	12-1-2009	Amend	1-1-2010
105-050-0030	1-1-2010	Adopt	2-1-2010	123-017-0015	12-1-2009	Amend	1-1-2010
111-010-0015	12-17-2009	Amend	2-1-2010	123-017-0025	12-1-2009	Amend	1-1-2010
111-010-0015(T)	12-17-2009	Repeal	2-1-2010	123-017-0030	12-1-2009	Amend	1-1-2010
111-020-0001	3-15-2010	Amend	4-1-2010	123-017-0035	12-1-2009	Amend	1-1-2010
111-030-0001	12-17-2009	Amend	2-1-2010	123-017-0037	12-1-2009	Amend	1-1-2010
111-030-0001(T)	12-17-2009	Repeal	2-1-2010	123-017-0040	12-1-2009	Repeal	1-1-2010
111-030-0005	12-17-2009	Amend	2-1-2010	123-017-0055	12-1-2009	Amend	1-1-2010
111-030-0005(T)	12-17-2009	Repeal	2-1-2010	123-022-0070	12-1-2009	Amend	1-1-2010
111-030-0020	12-17-2009	Adopt	2-1-2010	123-022-0080	12-1-2009	Amend	1-1-2010
111-030-0020(T)	12-17-2009	Repeal	2-1-2010	123-022-0090	12-1-2009	Amend	1-1-2010
111-030-0025	12-17-2009	Adopt	2-1-2010	123-022-0100	12-1-2009	Amend	1-1-2010
111-030-0025(T)	12-17-2009	Repeal	2-1-2010	123-022-0110	12-1-2009	Amend	1-1-2010
111-030-0030	12-17-2009	Adopt	2-1-2010	123-024-0011	12-1-2009	Amend	1-1-2010
111-030-0030(T)	12-17-2009	Repeal	2-1-2010	123-024-0031	12-1-2009	Amend	1-1-2010
111-040-0001	12-17-2009	Amend	2-1-2010	123-024-0046	12-1-2009	Adopt	1-1-2010
111-040-0001(T)	12-17-2009	Repeal	2-1-2010	123-043-0000	12-1-2009	Amend	1-1-2010
111-040-0025	12-17-2009	Amend	2-1-2010	123-043-0010	12-1-2009	Amend	1-1-2010
111-040-0025(T)	12-17-2009	Repeal	2-1-2010	123-043-0010	1-14-2010	Amend(T)	2-1-2010
111-040-0030	12-17-2009	Amend	2-1-2010	123-043-0015	12-1-2009	Amend	1-1-2010
111-040-0030(T)	12-17-2009	Repeal	2-1-2010	123-043-0015	1-14-2010	Amend(T)	2-1-2010
111-040-0040	12-17-2009	Amend	2-1-2010	123-043-0025	12-1-2009	Amend	1-1-2010
111-040-0040	3-3-2010	Amend(T)	4-1-2010	123-043-0025	1-14-2010	Amend(T)	2-1-2010
111-040-0040(T)	12-17-2009	Repeal	2-1-2010	123-043-0035	12-1-2009	Amend	1-1-2010
111-040-0050	12-17-2009	Amend	2-1-2010	123-043-0035	1-14-2010	Amend(T)	2-1-2010
111-040-0050(T)	12-17-2009	Repeal	2-1-2010	123-043-0041	1-14-2010	Adopt(T)	2-1-2010
111-050-0010	2-1-2010	Amend	3-1-2010	123-043-0045	12-1-2009	Repeal	1-1-2010
111-050-0010(T)	2-1-2010	Repeal	3-1-2010	123-043-0055	12-1-2009	Amend	1-1-2010
111-050-0015	2-1-2010	Amend	3-1-2010	123-043-0055	1-14-2010	Amend(T)	2-1-2010
111-050-0015(T)	2-1-2010	Repeal	3-1-2010	123-043-0065	12-1-2009	Amend	1-1-2010
111-050-0016	2-1-2010	Adopt	3-1-2010	123-043-0075	12-1-2009	Amend	1-1-2010
111-050-0020	2-1-2010	Amend	3-1-2010	123-043-0085	12-1-2009	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
123-043-0085	1-14-2010	Amend(T)	2-1-2010	123-500-0000	3-1-2010	Amend	4-1-2010
123-043-0095	12-1-2009	Amend	1-1-2010	123-500-0005	3-1-2010	Amend	4-1-2010
123-043-0095	1-14-2010	Amend(T)	2-1-2010	123-500-0010	3-1-2010	Adopt	4-1-2010
123-043-0102	12-1-2009	Amend	1-1-2010	123-500-0015	3-1-2010	Adopt	4-1-2010
123-043-0105	12-1-2009	Amend	1-1-2010	123-500-0020	3-1-2010	Am. & Ren.	4-1-2010
123-043-0115	12-1-2009	Amend	1-1-2010	123-500-0030	3-1-2010	Am. & Ren.	4-1-2010
123-043-0115	1-14-2010	Amend(T)	2-1-2010	123-500-0035	3-1-2010	Adopt	4-1-2010
123-049-0005	2-1-2010	Amend	3-1-2010	123-500-0040	3-1-2010	Am. & Ren.	4-1-2010
123-049-0010	2-1-2010	Amend	3-1-2010	123-500-0045	3-1-2010	Adopt	4-1-2010
123-049-0020	2-1-2010	Amend	3-1-2010	123-500-0050	3-1-2010	Am. & Ren.	4-1-2010
123-049-0030	2-1-2010	Amend	3-1-2010	123-500-0055	3-1-2010	Adopt	4-1-2010
123-049-0040	2-1-2010	Amend	3-1-2010	123-500-0060	3-1-2010	Am. & Ren.	4-1-2010
123-049-0050	2-1-2010	Amend	3-1-2010	123-500-0075	3-1-2010	Adopt	4-1-2010
123-049-0060	2-1-2010	Amend	3-1-2010	123-500-0080	3-1-2010	Adopt	4-1-2010
123-065-0010	1-5-2010	Amend(T)	2-1-2010	123-500-0150	3-1-2010	Adopt	4-1-2010
123-070-1000	12-1-2009	Amend	1-1-2010	123-500-0160	3-1-2010	Adopt	4-1-2010
123-070-1100	12-1-2009	Amend	1-1-2010	123-500-0170	3-1-2010	Adopt	4-1-2010
123-070-1150	12-1-2009	Amend	1-1-2010	123-500-0175	3-1-2010	Adopt	4-1-2010
123-070-1200	12-1-2009	Repeal	1-1-2010	125-045-0210	11-19-2009	Amend	1-1-2010
123-070-1300	12-1-2009	Amend	1-1-2010	125-045-0215	11-19-2009	Amend	1-1-2010
123-070-1500	12-1-2009	Amend	1-1-2010	125-045-0225	11-19-2009	Amend	1-1-2010
123-070-1600	12-1-2009	Amend	1-1-2010	125-246-0110	1-1-2010	Amend	2-1-2010
123-070-1700	12-1-2009	Repeal	1-1-2010	125-246-0130	1-1-2010	Amend	2-1-2010
123-070-1800	12-1-2009	Amend	1-1-2010	125-246-0150	1-1-2010	Amend	2-1-2010
123-070-1900	12-1-2009	Amend	1-1-2010	125-246-0165	1-1-2010	Adopt	2-1-2010
123-070-2000	12-1-2009	Repeal	1-1-2010	125-246-0170	1-1-2010	Amend	2-1-2010
123-070-2300	12-1-2009	Amend	1-1-2010	125-246-0200	1-1-2010	Amend	2-1-2010
123-070-2400	12-1-2009	Amend	1-1-2010	125-246-0210	1-1-2010	Amend	2-1-2010
123-080-0000	1-1-2010	Amend	2-1-2010	125-246-0220	1-1-2010	Amend	2-1-2010
123-080-0010	1-1-2010	Amend	2-1-2010	125-246-0310	1-1-2010	Amend	2-1-2010
123-080-0030	1-1-2010	Amend	2-1-2010	125-246-0312	1-1-2010	Adopt	2-1-2010
123-080-0040	1-1-2010	Amend	2-1-2010	125-246-0314	1-1-2010	Adopt	2-1-2010
123-087-0010	1-1-2010	Amend	2-1-2010	125-246-0330	1-1-2010	Amend	2-1-2010
123-087-0030	1-1-2010	Amend	2-1-2010	125-246-0333	1-1-2010	Amend	2-1-2010
123-087-0040	1-1-2010	Repeal	2-1-2010	125-246-0335	1-1-2010	Amend	2-1-2010
123-090-0000	1-1-2010	Amend	2-1-2010	125-246-0345	1-1-2010	Amend	2-1-2010
123-090-0010	1-1-2010	Amend	2-1-2010	125-246-0351	1-1-2010	Amend	2-1-2010
123-090-0030	1-1-2010	Amend	2-1-2010	125-246-0352	1-1-2010	Repeal	2-1-2010
123-090-0040	1-1-2010	Amend	2-1-2010	125-246-0360	1-1-2010	Amend	2-1-2010
123-090-0060	1-1-2010	Amend	2-1-2010	125-246-0365	1-1-2010	Amend	2-1-2010
123-155-0000	2-1-2010	Amend	3-1-2010	125-246-0550	1-1-2010	Repeal	2-1-2010
123-155-0050	2-1-2010	Amend	3-1-2010	125-246-0560	1-1-2010	Amend	2-1-2010
123-155-0100	2-1-2010	Amend	3-1-2010	125-246-0570	1-1-2010	Amend	2-1-2010
123-155-0150	2-1-2010	Amend	3-1-2010	125-246-0575	1-1-2010	Repeal	2-1-2010
123-155-0200	2-1-2010	Amend	3-1-2010	125-246-0576	1-1-2010	Amend	2-1-2010
123-155-0250	2-1-2010	Amend	3-1-2010	125-246-0621	1-1-2010	Adopt	2-1-2010
123-155-0270	2-1-2010	Amend	3-1-2010	125-246-0635	1-1-2010	Amend	2-1-2010
123-155-0300	2-1-2010	Amend	3-1-2010	125-247-0005	1-1-2010	Repeal	2-1-2010
123-155-0350	2-1-2010	Amend	3-1-2010	125-247-0110	1-1-2010	Adopt	2-1-2010
123-155-0400	2-1-2010	Amend	3-1-2010	125-247-0200	1-1-2010	Amend	2-1-2010
123-165-0010	1-14-2010	Adopt(T)	2-1-2010	125-247-0255	1-1-2010	Amend	2-1-2010
123-165-0020	1-14-2010	Adopt(T)	2-1-2010	125-247-0256	1-1-2010	Repeal	2-1-2010
123-165-0030	1-14-2010	Adopt(T)	2-1-2010	125-247-0260	1-1-2010	Amend	2-1-2010
123-165-0040	1-14-2010	Adopt(T)	2-1-2010	125-247-0261	1-1-2010	Repeal	2-1-2010
123-165-0045	1-14-2010	Adopt(T)	2-1-2010	125-247-0270	1-1-2010	Amend	2-1-2010
123-165-0050	1-14-2010	Adopt(T)	2-1-2010	125-247-0275	1-1-2010	Amend	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
137-049-0390	1-1-2010	Amend	1-1-2010	137-055-1120	1-4-2010	Amend	2-1-2010
137-049-0400	1-1-2010	Amend	1-1-2010	137-055-1140	1-4-2010	Amend	2-1-2010
137-049-0430	1-1-2010	Amend	1-1-2010	137-055-1145	1-4-2010	Amend	2-1-2010
137-049-0440	1-1-2010	Amend	1-1-2010	137-055-2160	1-4-2010	Amend(T)	2-1-2010
137-049-0620	1-1-2010	Amend	1-1-2010	137-055-2360	1-4-2010	Amend	2-1-2010
137-049-0645	1-1-2010	Amend	1-1-2010	137-055-2380	1-4-2010	Amend	2-1-2010
137-049-0650	1-1-2010	Amend	1-1-2010	137-055-3020	1-4-2010	Amend	2-1-2010
137-049-0670	1-1-2010	Amend	1-1-2010	137-055-3080	1-4-2010	Amend	2-1-2010
137-049-0680	1-1-2010	Amend	1-1-2010	137-055-3220	1-4-2010	Amend	2-1-2010
137-049-0800	1-1-2010	Amend	1-1-2010	137-055-3260	1-4-2010	Amend	2-1-2010
137-049-0815	1-1-2010	Amend	1-1-2010	137-055-3300	1-4-2010	Amend	2-1-2010
137-049-0820	1-1-2010	Amend	1-1-2010	137-055-3340	1-4-2010	Amend(T)	2-1-2010
137-049-0860	1-1-2010	Amend	1-1-2010	137-055-3340	1-12-2010	Amend(T)	2-1-2010
137-050-0320	1-4-2010	Repeal	1-1-2010	137-055-3340(T)	1-12-2010	Suspend	2-1-2010
137-050-0330	1-4-2010	Repeal	1-1-2010	137-055-3400	1-4-2010	Amend	2-1-2010
137-050-0333	1-4-2010	Repeal	1-1-2010	137-055-3420	1-4-2010	Amend	2-1-2010
137-050-0335	1-4-2010	Repeal	1-1-2010	137-055-3435	1-4-2010	Adopt	2-1-2010
137-050-0340	1-4-2010	Repeal	1-1-2010	137-055-3660	1-4-2010	Amend	2-1-2010
137-050-0350	1-4-2010	Repeal	1-1-2010	137-055-4210	1-4-2010	Adopt	2-1-2010
137-050-0360	1-4-2010	Repeal	1-1-2010	137-055-4420	1-4-2010	Amend	2-1-2010
137-050-0370	1-4-2010	Repeal	1-1-2010	137-055-4450	1-4-2010	Amend	2-1-2010
137-050-0390	1-4-2010	Repeal	1-1-2010	137-055-4455	1-4-2010	Amend	2-1-2010
137-050-0400	1-4-2010	Repeal	1-1-2010	137-055-4620	1-4-2010	Amend	2-1-2010
137-050-0405	1-4-2010	Repeal	1-1-2010	137-055-4640	1-4-2010	Amend	2-1-2010
137-050-0410	1-4-2010	Repeal	1-1-2010	137-055-5110	1-4-2010	Amend	2-1-2010
137-050-0420	1-4-2010	Repeal	1-1-2010	137-055-5220	1-4-2010	Amend	2-1-2010
137-050-0430	1-4-2010	Repeal	1-1-2010	137-055-6022	1-4-2010	Amend	2-1-2010
137-050-0450	1-4-2010	Repeal	1-1-2010	137-055-6024	1-4-2010	Amend	2-1-2010
137-050-0455	1-4-2010	Repeal	1-1-2010	137-055-6260	1-4-2010	Amend	2-1-2010
137-050-0465	1-4-2010	Repeal	1-1-2010	137-060-0110	3-12-2010	Amend	4-1-2010
137-050-0475	1-4-2010	Repeal	1-1-2010	137-060-0120	3-12-2010	Amend	4-1-2010
137-050-0485	1-4-2010	Repeal	1-1-2010	137-060-0130	3-12-2010	Amend	4-1-2010
137-050-0490	1-4-2010	Repeal	1-1-2010	137-060-0150	3-12-2010	Amend	4-1-2010
137-050-0700	1-4-2010	Adopt	1-1-2010	137-060-0210	3-12-2010	Amend	4-1-2010
137-050-0700	2-12-2010	Amend(T)	3-1-2010	137-060-0220	3-12-2010	Amend	4-1-2010
137-050-0710	1-4-2010	Adopt	1-1-2010	137-060-0230	3-12-2010	Amend	4-1-2010
137-050-0710	2-12-2010	Amend(T)	3-1-2010	137-060-0250	3-12-2010	Amend	4-1-2010
137-050-0715	1-4-2010	Adopt	1-1-2010	137-060-0310	3-12-2010	Amend	4-1-2010
137-050-0715	2-12-2010	Amend(T)	3-1-2010	137-060-0320	3-12-2010	Amend	4-1-2010
137-050-0720	1-4-2010	Adopt	1-1-2010	137-060-0330	3-12-2010	Amend	4-1-2010
137-050-0725	1-4-2010	Adopt	1-1-2010	137-060-0350	3-12-2010	Amend	4-1-2010
137-050-0730	1-4-2010	Adopt	1-1-2010	137-060-0410	3-12-2010	Amend	4-1-2010
137-050-0735	1-4-2010	Adopt	1-1-2010	137-060-0420	3-12-2010	Amend	4-1-2010
137-050-0740	1-4-2010	Adopt	1-1-2010	137-060-0430	3-12-2010	Amend	4-1-2010
137-050-0745	1-4-2010	Adopt	1-1-2010	137-060-0450	3-12-2010	Amend	4-1-2010
137-050-0750	1-4-2010	Adopt	1-1-2010	141-085-0506	1-1-2010	Amend	1-1-2010
137-050-0755	1-4-2010	Adopt	1-1-2010	141-085-0510	1-1-2010	Amend	1-1-2010
137-050-0760	1-4-2010	Adopt(T)	1-1-2010	141-085-0515	1-1-2010	Amend	1-1-2010
137-050-0760	1-8-2010	Amend(T)	2-1-2010	141-085-0530	1-1-2010	Amend	1-1-2010
137-050-0760	2-12-2010	Adopt(T)	3-1-2010	141-085-0534	1-1-2010	Adopt	1-1-2010
137-050-0760(T)	1-8-2010	Suspend	2-1-2010	141-085-0535	1-1-2010	Amend	1-1-2010
137-050-0760(T)	2-12-2010	Suspend	3-1-2010	141-085-0545	1-1-2010	Amend	1-1-2010
137-050-0765	1-4-2010	Adopt	1-1-2010	141-085-0550	1-1-2010	Amend	1-1-2010
137-055-1020	1-4-2010	Amend	2-1-2010	141-085-0555	1-1-2010	Amend	1-1-2010
137-055-1070	1-4-2010	Amend(T)	2-1-2010	141-085-0565	1-1-2010	Amend	1-1-2010
137-055-1090	1-4-2010	Amend	2-1-2010	141-085-0570	1-1-2010	Am. & Ren.	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
141-085-0575	1-1-2010	Amend	1-1-2010	150-311.688	1-1-2010	Amend	2-1-2010
141-085-0585	1-1-2010	Amend	1-1-2010	150-311.689	1-1-2010	Amend	2-1-2010
141-085-0590	1-1-2010	Amend	1-1-2010	150-311.691	1-1-2010	Amend	2-1-2010
141-085-0665	1-1-2010	Amend	1-1-2010	150-311.706	1-1-2010	Amend	2-1-2010
141-085-0670	1-1-2010	Repeal	1-1-2010	150-314.280-(N)	1-1-2010	Amend	2-1-2010
141-085-0675	1-1-2010	Amend	1-1-2010	150-314.610(4)	1-1-2010	Repeal	2-1-2010
141-085-0680	1-1-2010	Amend	1-1-2010	150-315.204-(A)	1-1-2010	Amend	2-1-2010
141-085-0685	1-1-2010	Amend	1-1-2010	150-315.204-(A)	3-15-2010	Amend	4-1-2010
141-085-0690	1-1-2010	Amend	1-1-2010	150-315.262	1-1-2010	Amend	2-1-2010
141-085-0700	1-1-2010	Amend	1-1-2010	150-317.090	2-19-2010	Amend	4-1-2010
141-085-0705	1-1-2010	Amend	1-1-2010	150-317.097	1-1-2010	Amend	2-1-2010
141-085-0720	1-1-2010	Amend	1-1-2010	150-317.326	1-1-2010	Repeal	2-1-2010
141-085-0725	1-1-2010	Amend	1-1-2010	150-323.500(9)	1-1-2010	Adopt	2-1-2010
141-085-0730	1-1-2010	Amend	1-1-2010	150-323.500(9)(T)	1-1-2010	Repeal	2-1-2010
141-085-0735	1-1-2010	Amend	1-1-2010	150-358.505	1-1-2010	Adopt	2-1-2010
141-085-0745	1-1-2010	Amend	1-1-2010	160-001-0000	2-1-2010	Amend	3-1-2010
141-085-0750	1-1-2010	Amend	1-1-2010	160-005-0008	1-1-2010	Adopt	2-1-2010
141-089-0095	1-1-2010	Adopt	1-1-2010	160-010-0200	1-1-2010	Amend	2-1-2010
141-089-0350	1-1-2010	Repeal	1-1-2010	160-010-0210	1-1-2010	Adopt	2-1-2010
141-089-0355	1-1-2010	Repeal	1-1-2010	160-010-0220	1-1-2010	Adopt	2-1-2010
141-089-0360	1-1-2010	Repeal	1-1-2010	160-010-0230	1-1-2010	Adopt	2-1-2010
141-089-0365	1-1-2010	Repeal	1-1-2010	160-010-0240	1-1-2010	Adopt	2-1-2010
141-089-0370	1-1-2010	Repeal	1-1-2010	160-040-0103	1-1-2010	Amend	2-1-2010
141-089-0375	1-1-2010	Repeal	1-1-2010	160-040-0104	1-1-2010	Amend	2-1-2010
141-089-0380	1-1-2010	Repeal	1-1-2010	160-040-0311	1-1-2010	Amend	2-1-2010
141-089-0385	1-1-2010	Repeal	1-1-2010	160-040-0507	1-1-2010	Adopt	2-1-2010
141-089-0390	1-1-2010	Repeal	1-1-2010	160-050-0140	2-27-2010	Amend(T)	3-1-2010
141-102-0000	4-1-2010	Amend	4-1-2010	160-050-0215	2-27-2010	Amend(T)	3-1-2010
141-102-0010	4-1-2010	Amend	4-1-2010	160-100-0040	1-1-2010	Amend	2-1-2010
141-102-0020	4-1-2010	Amend	4-1-2010	160-100-0100	2-3-2010	Amend	3-1-2010
141-102-0030	4-1-2010	Amend	4-1-2010	160-100-0301	3-1-2010	Adopt	4-1-2010
141-102-0040	4-1-2010	Amend	4-1-2010	160-100-0400	1-1-2010	Amend	2-1-2010
141-142-0010	12-15-2009	Adopt	1-1-2010	160-100-0610	1-1-2010	Amend	2-1-2010
141-142-0015	12-15-2009	Adopt	1-1-2010	160-100-0700	1-1-2010	Adopt	2-1-2010
141-142-0020	12-15-2009	Adopt	1-1-2010	161-002-0000	1-1-2010	Amend(T)	1-1-2010
141-142-0025	12-15-2009	Adopt	1-1-2010	161-010-0010	2-1-2010	Amend(T)	3-1-2010
141-142-0030	12-15-2009	Adopt	1-1-2010	161-010-0020	2-1-2010	Amend(T)	3-1-2010
141-142-0035	12-15-2009	Adopt	1-1-2010	161-010-0055	2-1-2010	Suspend	3-1-2010
141-142-0040	12-15-2009	Adopt	1-1-2010	161-010-0085	2-1-2010	Amend(T)	3-1-2010
150-118.160-(B)	2-19-2010	Amend(T)	4-1-2010	161-015-0000	2-1-2010	Amend(T)	3-1-2010
150-118.225	1-1-2010	Amend	2-1-2010	161-015-0010	2-1-2010	Amend(T)	3-1-2010
150-294.175(2)-(B)	3-9-2010	Amend(T)	4-1-2010	161-015-0025	2-1-2010	Amend(T)	3-1-2010
150-305.100-(C)	3-19-2010	Adopt	4-1-2010	161-015-0030	2-1-2010	Amend(T)	3-1-2010
150-305.100-(C)(T)	3-19-2010	Repeal	4-1-2010	161-020-0005	2-1-2010	Amend(T)	3-1-2010
150-305.220(1)	1-1-2010	Amend	2-1-2010	161-020-0110	2-1-2010	Amend(T)	3-1-2010
150-305.220(2)	1-1-2010	Amend	2-1-2010	161-020-0130	2-1-2010	Amend(T)	3-1-2010
150-305.290	1-1-2010	Repeal	2-1-2010	161-020-0150	2-1-2010	Amend(T)	3-1-2010
150-306.126(2)	1-1-2010	Amend	2-1-2010	161-025-0025	2-1-2010	Amend(T)	3-1-2010
150-307.250(1)(b)	1-1-2010	Am. & Ren.	2-1-2010	161-025-0030	2-1-2010	Amend(T)	3-1-2010
150-307.270(1)-(A)	1-1-2010	Amend	2-1-2010	161-025-0060	1-1-2010	Amend(T)	1-1-2010
150-307.330	1-1-2010	Amend	2-1-2010	161-030-0000	2-1-2010	Amend(T)	3-1-2010
150-307.547	1-1-2010	Adopt	2-1-2010	161-050-0000	2-1-2010	Amend(T)	3-1-2010
150-308.875-(A)	1-1-2010	Amend	2-1-2010	161-050-0050	2-1-2010	Amend(T)	3-1-2010
150-309.100-(D)	1-1-2010	Adopt	2-1-2010	165-001-0015	12-31-2009	Amend	2-1-2010
150-311.668(1)(a)-(A)	1-1-2010	Amend	2-1-2010	165-001-0025	12-31-2009	Amend	2-1-2010
150-311.668(1)(a)-(B)	1-1-2010	Amend	2-1-2010	165-001-0035	12-31-2009	Amend	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
165-001-0040	12-31-2009	Amend	2-1-2010	199-001-0015	3-15-2010	Adopt	4-1-2010
165-001-0045	12-31-2009	Amend	2-1-2010	199-001-0020	3-15-2010	Amend	4-1-2010
165-001-0050	12-31-2009	Amend	2-1-2010	199-001-0035	3-15-2010	Amend	4-1-2010
165-001-0055	12-31-2009	Amend	2-1-2010	199-001-0040	3-15-2010	Amend	4-1-2010
165-001-0065	12-31-2009	Repeal	2-1-2010	199-005-0001	3-15-2010	Adopt	4-1-2010
165-001-0080	12-31-2009	Amend	2-1-2010	199-005-0003	3-15-2010	Adopt	4-1-2010
165-002-0010	12-31-2009	Amend	2-1-2010	199-005-0003	3-15-2010	Amend	4-1-2010
165-002-0020	12-31-2009	Amend	2-1-2010	199-005-0005	3-15-2010	Amend	4-1-2010
165-005-0130	12-31-2009	Amend	2-1-2010	199-005-0010	3-15-2010	Amend	4-1-2010
165-005-0160	2-26-2010	Adopt	4-1-2010	199-005-0015	3-15-2010	Amend	4-1-2010
165-007-0035	12-31-2009	Amend	2-1-2010	199-005-0020	3-15-2010	Amend	4-1-2010
165-007-0290	12-31-2009	Amend	2-1-2010	199-005-0025	3-15-2010	Amend	4-1-2010
165-007-0300	12-4-2009	Adopt	1-1-2010	199-005-0027	3-15-2010	Adopt	4-1-2010
165-007-0310	12-31-2009	Adopt	2-1-2010	199-005-0035	3-15-2010	Amend	4-1-2010
165-007-2011	2-26-2010	Adopt(T)	4-1-2010	199-010-0005	3-15-2010	Amend	4-1-2010
165-010-0005	12-31-2009	Amend	2-1-2010	199-010-0025	3-15-2010	Amend	4-1-2010
165-010-0120	12-31-2009	Repeal	2-1-2010	199-010-0035	3-15-2010	Amend	4-1-2010
165-012-0005	12-31-2009	Amend	2-1-2010	199-010-0060	3-15-2010	Amend	4-1-2010
165-012-0050	12-31-2009	Amend	2-1-2010	199-010-0070	3-15-2010	Amend	4-1-2010
165-012-0240	12-31-2009	Amend	2-1-2010	199-010-0075	3-15-2010	Amend	4-1-2010
165-013-0010	12-31-2009	Amend	2-1-2010	199-010-0080	3-15-2010	Amend	4-1-2010
165-013-0020	12-31-2009	Amend	2-1-2010	199-010-0085	3-15-2010	Amend	4-1-2010
165-014-0005	12-31-2009	Amend	2-1-2010	199-010-0090	3-15-2010	Amend	4-1-2010
165-014-0100	12-31-2009	Amend	2-1-2010	199-010-0095	3-15-2010	Amend	4-1-2010
165-014-0280	12-31-2009	Amend	2-1-2010	199-010-0100	3-15-2010	Amend	4-1-2010
165-020-0005	12-31-2009	Amend	2-1-2010	199-010-0150	3-15-2010	Amend	4-1-2010
165-020-0020	12-31-2009	Amend	2-1-2010	199-020-0005	3-15-2010	Amend	4-1-2010
165-020-0050	12-31-2009	Amend	2-1-2010	199-020-0008	3-15-2010	Adopt	4-1-2010
165-020-0060	12-31-2009	Amend	2-1-2010	213-003-0001	1-1-2010	Amend	2-1-2010
166-150-0035	12-23-2009	Amend	2-1-2010	213-003-0001(T)	1-1-2010	Repeal	2-1-2010
170-040-0110	11-19-2009	Adopt	1-1-2010	213-017-0004	12-13-2009	Amend	1-1-2010
170-061-0000	2-2-2010	Amend	3-1-2010	213-017-0004	1-1-2010	Amend	2-1-2010
170-061-0015	1-15-2010	Amend	2-1-2010	213-017-0004(T)	12-13-2009	Repeal	1-1-2010
170-061-0015	1-26-2010	Amend(T)	3-1-2010	213-017-0005	1-1-2010	Amend	2-1-2010
170-061-0015(T)	1-15-2010	Repeal	2-1-2010	213-017-0006	12-13-2009	Amend	1-1-2010
170-063-0000	1-15-2010	Amend	2-1-2010	213-017-0006	1-1-2010	Amend	2-1-2010
170-063-0000(T)	1-15-2010	Repeal	2-1-2010	213-017-0006(T)	12-13-2009	Repeal	1-1-2010
177-020-0100	2-1-2010	Amend	3-1-2010	213-017-0009(T)	1-1-2010	Suspend	1-1-2010
177-036-0200	1-20-2010	Suspend	3-1-2010	213-018-0022	12-13-2009	Adopt	1-1-2010
177-040-0050	3-15-2010	Amend(T)	4-1-2010	213-018-0022(T)	12-13-2009	Repeal	1-1-2010
177-040-0051	3-15-2010	Amend(T)	4-1-2010	213-018-0058	1-1-2010	Adopt	2-1-2010
177-050-0027	2-1-2010	Amend	3-1-2010	250-010-0154	1-15-2010	Amend	2-1-2010
177-070-0025	2-1-2010	Amend	3-1-2010	250-010-0650	1-5-2010	Amend(T)	2-1-2010
177-099-0100	2-1-2010	Amend	3-1-2010	250-010-0650	1-15-2010	Amend(T)	2-1-2010
177-099-0100(T)	2-1-2010	Repeal	3-1-2010	250-010-0650(T)	1-15-2010	Suspend	2-1-2010
177-200-0005	3-15-2010	Amend(T)	4-1-2010	250-020-0221	1-15-2010	Amend	2-1-2010
177-200-0010	3-15-2010	Amend(T)	4-1-2010	250-020-0240	1-15-2010	Amend	2-1-2010
177-200-0020	2-1-2010	Amend	3-1-2010	250-030-0030	1-15-2010	Amend(T)	2-1-2010
177-200-0020	3-15-2010	Amend(T)	4-1-2010	255-062-0005	1-5-2010	Adopt(T)	2-1-2010
177-200-0032	3-15-2010	Amend(T)	4-1-2010	255-062-0010	1-5-2010	Adopt(T)	2-1-2010
177-200-0077	3-15-2010	Adopt(T)	4-1-2010	255-062-0015	1-5-2010	Adopt(T)	2-1-2010
199-001-0000	3-15-2010	Amend	4-1-2010	255-062-0020	1-5-2010	Adopt(T)	2-1-2010
199-001-0005	3-15-2010	Amend	4-1-2010	255-062-0025	1-5-2010	Adopt(T)	2-1-2010
199-001-0007	3-15-2010	Adopt	4-1-2010	255-062-0030	1-5-2010	Adopt(T)	2-1-2010
199-001-0010	3-15-2010	Amend	4-1-2010	255-070-0001	1-1-2010	Amend	2-1-2010
199-001-0014	3-15-2010	Adopt	4-1-2010	255-094-0000	2-26-2010	Am. & Ren.	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
255-094-0002	2-26-2010	Adopt	4-1-2010	291-084-0020	11-20-2009	Repeal	1-1-2010
255-094-0010	2-26-2010	Amend	4-1-2010	291-084-0030	11-20-2009	Repeal	1-1-2010
255-094-0015	2-26-2010	Amend	4-1-2010	291-084-0040	11-20-2009	Repeal	1-1-2010
255-094-0020	2-26-2010	Amend	4-1-2010	291-097-0005	11-20-2009	Amend	1-1-2010
257-001-0005	1-1-2010	Amend(T)	2-1-2010	291-097-0010	11-20-2009	Amend	1-1-2010
257-045-0010	1-1-2010	Adopt(T)	2-1-2010	291-097-0015	11-20-2009	Amend	1-1-2010
257-045-0020	1-1-2010	Adopt(T)	2-1-2010	291-097-0020	11-20-2009	Amend	1-1-2010
257-045-0030	1-1-2010	Adopt(T)	2-1-2010	291-097-0023	11-20-2009	Adopt	1-1-2010
257-045-0040	1-1-2010	Adopt(T)	2-1-2010	291-097-0025	11-20-2009	Amend	1-1-2010
257-045-0050	1-1-2010	Adopt(T)	2-1-2010	291-097-0040	11-20-2009	Amend	1-1-2010
257-050-0020	1-1-2010	Amend(T)	2-1-2010	291-097-0080	11-20-2009	Amend	1-1-2010
257-050-0040	1-1-2010	Amend(T)	2-1-2010	291-097-0100	11-20-2009	Amend	1-1-2010
257-050-0050	1-1-2010	Amend(T)	2-1-2010	291-180-0274	1-4-2010	Adopt(T)	2-1-2010
257-050-0060	1-1-2010	Amend(T)	2-1-2010	291-206-0005	2-24-2010	Adopt	4-1-2010
257-050-0070	1-1-2010	Amend(T)	2-1-2010	291-206-0010	2-24-2010	Adopt	4-1-2010
257-050-0090	1-1-2010	Amend(T)	2-1-2010	291-206-0015	2-24-2010	Adopt	4-1-2010
257-050-0095	1-1-2010	Amend(T)	2-1-2010	291-206-0020	2-24-2010	Adopt	4-1-2010
257-050-0100	1-1-2010	Amend(T)	2-1-2010	291-206-0025	2-24-2010	Adopt	4-1-2010
257-050-0110	1-1-2010	Amend(T)	2-1-2010	291-206-0030	2-24-2010	Adopt	4-1-2010
257-050-0115	1-1-2010	Amend(T)	2-1-2010	309-016-0000	3-4-2010	Amend(T)	4-1-2010
257-050-0125	1-1-2010	Amend(T)	2-1-2010	309-016-0005	3-4-2010	Amend(T)	4-1-2010
257-050-0130	1-1-2010	Amend(T)	2-1-2010	309-016-0010	3-4-2010	Amend(T)	4-1-2010
257-050-0140	1-1-2010	Amend(T)	2-1-2010	309-016-0015	3-4-2010	Amend(T)	4-1-2010
257-050-0145	1-1-2010	Amend(T)	2-1-2010	309-016-0020	3-4-2010	Amend(T)	4-1-2010
257-050-0150	1-1-2010	Amend(T)	2-1-2010	309-016-0027	3-4-2010	Suspend	4-1-2010
257-050-0155	1-1-2010	Amend(T)	2-1-2010	309-016-0030	3-4-2010	Amend(T)	4-1-2010
257-050-0157	1-1-2010	Amend(T)	2-1-2010	309-016-0035	3-4-2010	Amend(T)	4-1-2010
257-050-0170	1-1-2010	Amend(T)	2-1-2010	309-016-0040	3-4-2010	Amend(T)	4-1-2010
257-050-0180	1-1-2010	Amend(T)	2-1-2010	309-016-0070	3-4-2010	Amend(T)	4-1-2010
257-050-0200	1-1-2010	Amend(T)	2-1-2010	309-016-0072	3-4-2010	Amend(T)	4-1-2010
259-008-0000	12-15-2009	Amend	1-1-2010	309-016-0075	3-4-2010	Amend(T)	4-1-2010
259-008-0015	1-11-2010	Amend	2-1-2010	309-016-0077	3-4-2010	Amend(T)	4-1-2010
259-008-0015	3-15-2010	Amend	4-1-2010	309-016-0080	3-4-2010	Amend(T)	4-1-2010
259-008-0025	12-15-2009	Amend	1-1-2010	309-016-0085	3-4-2010	Amend(T)	4-1-2010
259-008-0025(T)	12-15-2009	Repeal	1-1-2010	309-016-0088	3-4-2010	Amend(T)	4-1-2010
259-008-0060	1-11-2010	Amend	2-1-2010	309-016-0095	3-4-2010	Amend(T)	4-1-2010
259-008-0060	3-15-2010	Amend	4-1-2010	309-016-0100	3-4-2010	Amend(T)	4-1-2010
259-008-0064	1-11-2010	Amend	2-1-2010	309-016-0102	3-4-2010	Amend(T)	4-1-2010
259-008-0064	3-15-2010	Amend	4-1-2010	309-016-0105	3-4-2010	Amend(T)	4-1-2010
259-009-0005	12-15-2009	Amend(T)	1-1-2010	309-016-0110	3-4-2010	Amend(T)	4-1-2010
259-009-0062	12-15-2009	Amend(T)	1-1-2010	309-016-0115	3-4-2010	Amend(T)	4-1-2010
274-006-0001	1-1-2010	Adopt	2-1-2010	309-016-0120	3-4-2010	Amend(T)	4-1-2010
274-006-0002	1-1-2010	Adopt	2-1-2010	309-016-0130	3-4-2010	Suspend	4-1-2010
274-006-0004	1-1-2010	Adopt	2-1-2010	309-016-0140	3-4-2010	Amend(T)	4-1-2010
274-006-0005	1-1-2010	Adopt	2-1-2010	309-016-0150	3-4-2010	Suspend	4-1-2010
274-006-0010	1-1-2010	Adopt	2-1-2010	309-016-0160	3-4-2010	Suspend	4-1-2010
274-006-0011	1-1-2010	Adopt	2-1-2010	309-016-0170	3-4-2010	Suspend	4-1-2010
274-006-0012	1-1-2010	Adopt	2-1-2010	309-016-0180	3-4-2010	Suspend	4-1-2010
274-006-0013	1-1-2010	Adopt	2-1-2010	309-016-0190	3-4-2010	Suspend	4-1-2010
274-006-0014	1-1-2010	Adopt	2-1-2010	309-016-0200	3-4-2010	Suspend	4-1-2010
274-006-0015	1-1-2010	Adopt	2-1-2010	309-016-0210	3-4-2010	Suspend	4-1-2010
274-006-0018	1-1-2010	Adopt	2-1-2010	309-016-0220	3-4-2010	Amend(T)	4-1-2010
274-006-0020	1-1-2010	Adopt	2-1-2010	309-016-0230	3-4-2010	Suspend	4-1-2010
291-058-0046	2-24-2010	Amend	4-1-2010	309-016-0300	3-4-2010	Suspend	4-1-2010
291-070-0130	11-20-2009	Amend	1-1-2010	309-016-0310	3-4-2010	Suspend	4-1-2010
291-084-0010	11-20-2009	Repeal	1-1-2010	309-016-0320	3-4-2010	Suspend	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
309-032-1520	3-4-2010	Adopt	4-1-2010	309-041-0715	12-9-2009	Renumber	1-1-2010
309-032-1525	3-4-2010	Adopt	4-1-2010	309-041-0720	12-9-2009	Renumber	1-1-2010
309-032-1530	3-4-2010	Adopt	4-1-2010	309-041-0730	12-9-2009	Renumber	1-1-2010
309-032-1535	3-4-2010	Adopt	4-1-2010	309-041-0740	12-9-2009	Renumber	1-1-2010
309-032-1540	3-4-2010	Adopt	4-1-2010	309-041-0750	12-9-2009	Renumber	1-1-2010
309-032-1545	3-4-2010	Adopt	4-1-2010	309-041-0760	12-9-2009	Renumber	1-1-2010
309-032-1550	3-4-2010	Adopt	4-1-2010	309-041-0770	12-9-2009	Renumber	1-1-2010
309-032-1555	3-4-2010	Adopt	4-1-2010	309-041-0780	12-9-2009	Renumber	1-1-2010
309-032-1560	3-4-2010	Adopt	4-1-2010	309-041-0790	12-9-2009	Renumber	1-1-2010
309-032-1565	3-4-2010	Adopt	4-1-2010	309-041-0800	12-9-2009	Renumber	1-1-2010
309-033-0270	12-17-2009	Amend	2-1-2010	309-041-0805	12-9-2009	Renumber	1-1-2010
309-034-0150	3-4-2010	Amend(T)	4-1-2010	309-041-0810	12-9-2009	Renumber	1-1-2010
309-034-0160	3-4-2010	Amend(T)	4-1-2010	309-041-0820	12-9-2009	Renumber	1-1-2010
309-034-0170	3-4-2010	Amend(T)	4-1-2010	309-041-0830	12-9-2009	Renumber	1-1-2010
309-034-0180	3-4-2010	Amend(T)	4-1-2010	309-114-0005	12-28-2009	Amend	2-1-2010
309-034-0190	3-4-2010	Amend(T)	4-1-2010	309-114-0005	3-12-2010	Amend(T)	4-1-2010
309-034-0205	3-4-2010	Amend(T)	4-1-2010	330-001-0005	1-27-2010	Amend	3-1-2010
309-034-0210	3-4-2010	Amend(T)	4-1-2010	330-001-0025	1-27-2010	Adopt	3-1-2010
309-034-0240	3-4-2010	Amend(T)	4-1-2010	330-075-0005	12-21-2009	Amend(T)	2-1-2010
309-034-0250	3-4-2010	Amend(T)	4-1-2010	330-075-0010	12-21-2009	Amend(T)	2-1-2010
309-034-0260	3-4-2010	Amend(T)	4-1-2010	330-075-0015	12-21-2009	Amend(T)	2-1-2010
309-034-0270	3-4-2010	Amend(T)	4-1-2010	330-075-0025	12-21-2009	Amend(T)	2-1-2010
309-034-0290	3-4-2010	Amend(T)	4-1-2010	330-075-0030	12-21-2009	Suspend	2-1-2010
309-034-0310	3-4-2010	Amend(T)	4-1-2010	330-075-0035	12-21-2009	Amend(T)	2-1-2010
309-034-0320	3-4-2010	Amend(T)	4-1-2010	330-090-0140	1-8-2010	Amend	2-1-2010
309-034-0400	3-4-2010	Amend(T)	4-1-2010	330-090-0140(T)	1-8-2010	Repeal	2-1-2010
309-034-0410	3-4-2010	Amend(T)	4-1-2010	331-705-0060	12-1-2009	Amend(T)	1-1-2010
309-034-0420	3-4-2010	Amend(T)	4-1-2010	331-705-0060	3-1-2010	Amend	4-1-2010
309-034-0430	3-4-2010	Amend(T)	4-1-2010	331-705-0060(T)	3-1-2010	Repeal	4-1-2010
309-034-0440	3-4-2010	Amend(T)	4-1-2010	331-800-0010	3-15-2010	Amend	4-1-2010
309-034-0450	3-4-2010	Amend(T)	4-1-2010	331-800-0020	3-15-2010	Amend	4-1-2010
309-034-0460	3-4-2010	Amend(T)	4-1-2010	331-810-0020	3-15-2010	Amend	4-1-2010
309-034-0470	3-4-2010	Amend(T)	4-1-2010	331-810-0035	3-15-2010	Repeal	4-1-2010
309-034-0480	3-4-2010	Amend(T)	4-1-2010	331-810-0040	3-15-2010	Amend	4-1-2010
309-034-0490	3-4-2010	Amend(T)	4-1-2010	331-840-0070	3-15-2010	Adopt	4-1-2010
309-035-0155	12-17-2009	Amend	2-1-2010	333-011-0106	2-3-2010	Amend	3-1-2010
309-035-0380	12-17-2009	Amend	2-1-2010	333-012-0500	1-14-2010	Amend	2-1-2010
309-040-0410	1-29-2010	Amend	3-1-2010	333-015-0035	1-14-2010	Amend	2-1-2010
309-040-0410(T)	1-29-2010	Repeal	3-1-2010	333-015-0040	1-14-2010	Amend	2-1-2010
309-041-0550	12-9-2009	Renumber	1-1-2010	333-015-0075	1-14-2010	Amend	2-1-2010
309-041-0560	12-9-2009	Renumber	1-1-2010	333-015-0085	1-14-2010	Amend	2-1-2010
309-041-0570	12-9-2009	Renumber	1-1-2010	333-015-0100	1-1-2010	Adopt	2-1-2010
309-041-0580	12-9-2009	Renumber	1-1-2010	333-015-0105	1-1-2010	Adopt	2-1-2010
309-041-0590	12-9-2009	Renumber	1-1-2010	333-015-0110	1-1-2010	Adopt	2-1-2010
309-041-0600	12-9-2009	Renumber	1-1-2010	333-015-0115	1-1-2010	Adopt	2-1-2010
309-041-0610	12-9-2009	Renumber	1-1-2010	333-015-0120	1-1-2010	Adopt	2-1-2010
309-041-0620	12-9-2009	Renumber	1-1-2010	333-015-0125	1-1-2010	Adopt	2-1-2010
309-041-0630	12-9-2009	Renumber	1-1-2010	333-015-0130	1-1-2010	Adopt	2-1-2010
309-041-0640	12-9-2009	Renumber	1-1-2010	333-015-0135	1-1-2010	Adopt	2-1-2010
309-041-0650	12-9-2009	Renumber	1-1-2010	333-015-0140	1-1-2010	Adopt	2-1-2010
309-041-0660	12-9-2009	Renumber	1-1-2010	333-015-0145	1-1-2010	Adopt	2-1-2010
309-041-0670	12-9-2009	Renumber	1-1-2010	333-015-0150	1-1-2010	Adopt	2-1-2010
309-041-0680	12-9-2009	Renumber	1-1-2010	333-015-0155	1-1-2010	Adopt	2-1-2010
309-041-0690	12-9-2009	Renumber	1-1-2010	333-015-0160	1-1-2010	Adopt	2-1-2010
309-041-0700	12-9-2009	Renumber	1-1-2010	333-015-0165	1-1-2010	Adopt	2-1-2010
309-041-0710	12-9-2009	Renumber	1-1-2010	333-017-0000	3-11-2010	Amend	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-017-0005	3-11-2010	Amend	4-1-2010	333-102-0115	2-16-2010	Amend	4-1-2010
333-018-0000	3-11-2010	Amend	4-1-2010	333-102-0190	2-16-2010	Amend	4-1-2010
333-018-0010	3-11-2010	Amend	4-1-2010	333-102-0245	2-16-2010	Amend	4-1-2010
333-018-0013	3-11-2010	Adopt	4-1-2010	333-102-0285	2-16-2010	Amend	4-1-2010
333-018-0015	3-11-2010	Amend	4-1-2010	333-102-0290	2-16-2010	Amend	4-1-2010
333-018-0017	3-11-2010	Adopt	4-1-2010	333-102-0305	2-16-2010	Amend	4-1-2010
333-018-0018	3-11-2010	Amend	4-1-2010	333-102-0325	2-16-2010	Amend	4-1-2010
333-019-0017	3-11-2010	Amend	4-1-2010	333-102-0340	2-16-2010	Amend	4-1-2010
333-019-0027	3-11-2010	Amend	4-1-2010	333-103-0001	2-16-2010	Amend	4-1-2010
333-019-0036	3-11-2010	Amend	4-1-2010	333-103-0010	2-16-2010	Amend	4-1-2010
333-026-0030	3-11-2010	Adopt	4-1-2010	333-106-0005	2-16-2010	Amend	4-1-2010
333-029-0025	12-23-2009	Amend	2-1-2010	333-106-0215	2-16-2010	Amend	4-1-2010
333-029-0030	12-23-2009	Repeal	2-1-2010	333-106-0320	2-16-2010	Amend	4-1-2010
333-029-0045	12-23-2009	Amend	2-1-2010	333-116-0020	2-16-2010	Amend	4-1-2010
333-029-0050	12-23-2009	Amend	2-1-2010	333-116-0035	2-16-2010	Amend	4-1-2010
333-029-0060	12-23-2009	Amend	2-1-2010	333-116-0140	2-16-2010	Amend	4-1-2010
333-029-0070	12-23-2009	Amend	2-1-2010	333-116-0170	2-16-2010	Amend	4-1-2010
333-029-0080	12-23-2009	Amend	2-1-2010	333-116-0190	2-16-2010	Amend	4-1-2010
333-029-0115	12-23-2009	Amend	2-1-2010	333-116-0300	2-16-2010	Amend	4-1-2010
333-050-0020	12-21-2009	Amend(T)	2-1-2010	333-116-0360	2-16-2010	Amend	4-1-2010
333-050-0050	12-21-2009	Amend(T)	2-1-2010	333-116-0485	2-16-2010	Adopt	4-1-2010
333-050-0120	12-21-2009	Amend(T)	2-1-2010	333-116-0660	2-16-2010	Amend	4-1-2010
333-060-0125	12-23-2009	Amend	2-1-2010	333-116-0670	2-16-2010	Amend	4-1-2010
333-060-0128	12-23-2009	Adopt	2-1-2010	333-116-0683	2-16-2010	Amend	4-1-2010
333-060-0505	12-23-2009	Amend	2-1-2010	333-116-0687	2-16-2010	Amend	4-1-2010
333-060-0510	12-23-2009	Amend	2-1-2010	333-116-0690	2-16-2010	Amend	4-1-2010
333-062-0100	12-23-2009	Amend	2-1-2010	333-116-0700	2-16-2010	Amend	4-1-2010
333-062-0103	12-23-2009	Adopt	2-1-2010	333-116-0810	2-16-2010	Amend	4-1-2010
333-092-0000	12-21-2009	Repeal	2-1-2010	333-116-0810	2-16-2010	Amend	4-1-2010
333-092-0005	12-21-2009	Repeal	2-1-2010	333-116-0905	2-16-2010	Amend	4-1-2010
333-092-0010	12-21-2009	Repeal	2-1-2010	333-118-0020	2-16-2010	Amend	4-1-2010
333-092-0015	12-21-2009	Repeal	2-1-2010	333-118-0050	2-16-2010	Amend	4-1-2010
333-092-0020	12-21-2009	Repeal	2-1-2010	333-118-0051	2-16-2010	Adopt	4-1-2010
333-092-0025	12-21-2009	Repeal	2-1-2010	333-118-0052	2-16-2010	Adopt	4-1-2010
333-092-0030	12-21-2009	Repeal	2-1-2010	333-118-0053	2-16-2010	Adopt	4-1-2010
333-092-0035	12-21-2009	Repeal	2-1-2010	333-118-0070	2-16-2010	Amend	4-1-2010
333-092-0040	12-21-2009	Repeal	2-1-2010	333-118-0110	2-16-2010	Amend	4-1-2010
333-092-0045	12-21-2009	Repeal	2-1-2010	333-118-0120	2-16-2010	Amend	4-1-2010
333-092-0050	12-21-2009	Repeal	2-1-2010	333-118-0125	2-16-2010	Adopt	4-1-2010
333-092-0055	12-21-2009	Repeal	2-1-2010	333-118-0140	2-16-2010	Amend	4-1-2010
333-092-0060	12-21-2009	Repeal	2-1-2010	333-118-0150	2-16-2010	Amend	4-1-2010
333-092-0065	12-21-2009	Repeal	2-1-2010	333-118-0160	2-16-2010	Amend	4-1-2010
333-092-0070	12-21-2009	Repeal	2-1-2010	333-118-0162	2-16-2010	Adopt	4-1-2010
333-092-0075	12-21-2009	Repeal	2-1-2010	333-118-0190	2-16-2010	Amend	4-1-2010
333-092-0080	12-21-2009	Repeal	2-1-2010	333-118-0200	2-16-2010	Amend	4-1-2010
333-092-0085	12-21-2009	Repeal	2-1-2010	333-119-0010	2-16-2010	Amend	4-1-2010
333-092-0090	12-21-2009	Repeal	2-1-2010	333-119-0020	2-16-2010	Amend	4-1-2010
333-092-0095	12-21-2009	Repeal	2-1-2010	333-119-0080	2-16-2010	Amend	4-1-2010
333-100-0020	2-16-2010	Amend	4-1-2010	333-119-0090	2-16-2010	Amend	4-1-2010
333-100-0065	2-16-2010	Amend	4-1-2010	333-119-0100	2-16-2010	Amend	4-1-2010
333-102-0010	2-16-2010	Amend	4-1-2010	333-120-0015	2-16-2010	Amend	4-1-2010
333-102-0015	2-16-2010	Amend	4-1-2010	333-120-0800	2-16-2010	Amend	4-1-2010
333-102-0020	2-16-2010	Repeal	4-1-2010	333-124-0001	2-16-2010	Adopt	4-1-2010
333-102-0035	2-16-2010	Amend	4-1-2010	333-124-0010	2-16-2010	Adopt	4-1-2010
333-102-0105	2-16-2010	Amend	4-1-2010	333-270-0010	12-3-2009	Adopt	1-1-2010
333-102-0110	2-16-2010	Amend	4-1-2010	333-270-0020	12-3-2009	Adopt	1-1-2010
				333-270-0030	12-3-2009	Adopt	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-270-0040	12-3-2009	Adopt	1-1-2010	340-252-0210	3-5-2010	Repeal	4-1-2010
333-270-0050	12-3-2009	Adopt	1-1-2010	340-252-0220	3-5-2010	Repeal	4-1-2010
333-270-0060	12-3-2009	Adopt	1-1-2010	340-252-0230	3-5-2010	Amend	4-1-2010
333-270-0070	12-3-2009	Adopt	1-1-2010	340-252-0240	3-5-2010	Repeal	4-1-2010
333-270-0080	12-3-2009	Adopt	1-1-2010	340-252-0250	3-5-2010	Repeal	4-1-2010
333-300-0000	12-21-2009	Repeal	2-1-2010	340-252-0260	3-5-2010	Repeal	4-1-2010
335-070-0065	11-16-2009	Amend	1-1-2010	340-252-0270	3-5-2010	Repeal	4-1-2010
335-095-0060	11-16-2009	Amend	1-1-2010	340-252-0280	3-5-2010	Repeal	4-1-2010
339-005-0000	3-1-2010	Amend	2-1-2010	340-252-0290	3-5-2010	Repeal	4-1-2010
340-045-0033	1-22-2010	Amend	3-1-2010	345-001-0010	11-24-2009	Amend	1-1-2010
340-071-0140	1-4-2010	Amend	2-1-2010	345-024-0590	11-24-2009	Amend	1-1-2010
340-200-0040	12-16-2009	Amend	2-1-2010	407-007-0000	1-1-2010	Amend	2-1-2010
340-200-0040	3-5-2010	Amend	4-1-2010	407-007-0010	1-1-2010	Amend	2-1-2010
340-209-0030	12-16-2009	Amend	2-1-2010	407-007-0020	1-1-2010	Amend	2-1-2010
340-210-0100	12-16-2009	Amend	2-1-2010	407-007-0030	1-1-2010	Amend	2-1-2010
340-210-0110	12-16-2009	Amend	2-1-2010	407-007-0040	1-1-2010	Amend	2-1-2010
340-210-0120	12-16-2009	Amend	2-1-2010	407-007-0050	1-1-2010	Amend	2-1-2010
340-215-0050	1-1-2010	Adopt(T)	2-1-2010	407-007-0060	1-1-2010	Amend	2-1-2010
340-216-0020	12-16-2009	Amend	2-1-2010	407-007-0065	1-1-2010	Adopt	2-1-2010
340-216-0020	1-1-2010	Amend(T)	2-1-2010	407-007-0070	1-1-2010	Amend	2-1-2010
340-216-0060	12-16-2009	Amend	2-1-2010	407-007-0075	1-1-2010	Adopt	2-1-2010
340-216-0062	12-16-2009	Adopt	2-1-2010	407-007-0080	1-1-2010	Amend	2-1-2010
340-216-0064	12-16-2009	Amend	2-1-2010	407-007-0090	1-1-2010	Amend	2-1-2010
340-220-0050	1-1-2010	Amend(T)	2-1-2010	407-007-0100	1-1-2010	Amend	2-1-2010
340-228-0606	12-16-2009	Amend	2-1-2010	407-007-0200	1-1-2010	Amend	2-1-2010
340-228-0621	12-16-2009	Amend	2-1-2010	407-007-0210	1-1-2010	Amend	2-1-2010
340-228-0623	12-16-2009	Amend	2-1-2010	407-007-0220	1-1-2010	Amend	2-1-2010
340-228-0625	12-16-2009	Amend	2-1-2010	407-007-0230	1-1-2010	Amend	2-1-2010
340-228-0627	12-16-2009	Amend	2-1-2010	407-007-0240	1-1-2010	Amend	2-1-2010
340-228-0639	12-16-2009	Adopt	2-1-2010	407-007-0250	1-1-2010	Amend	2-1-2010
340-238-0040	12-16-2009	Amend	2-1-2010	407-007-0280	1-1-2010	Amend	2-1-2010
340-244-0030	12-16-2009	Amend	2-1-2010	407-007-0290	1-1-2010	Amend	2-1-2010
340-244-0220	12-16-2009	Amend	2-1-2010	407-007-0300	1-1-2010	Amend	2-1-2010
340-244-0238	12-16-2009	Amend	2-1-2010	407-007-0315	1-1-2010	Adopt	2-1-2010
340-244-0240	12-16-2009	Amend	2-1-2010	407-007-0320	1-1-2010	Amend	2-1-2010
340-244-0242	12-16-2009	Amend	2-1-2010	407-007-0325	1-1-2010	Adopt	2-1-2010
340-244-0246	12-16-2009	Amend	2-1-2010	407-007-0330	1-1-2010	Amend	2-1-2010
340-252-0020	3-5-2010	Repeal	4-1-2010	407-007-0340	1-1-2010	Amend	2-1-2010
340-252-0030	3-5-2010	Amend	4-1-2010	407-007-0350	1-1-2010	Amend	2-1-2010
340-252-0040	3-5-2010	Repeal	4-1-2010	407-007-0355	1-1-2010	Repeal	2-1-2010
340-252-0050	3-5-2010	Repeal	4-1-2010	407-007-0370	1-1-2010	Amend	2-1-2010
340-252-0060	3-5-2010	Amend	4-1-2010	407-007-0440	1-8-2010	Adopt(T)	2-1-2010
340-252-0070	3-5-2010	Amend	4-1-2010	407-043-0010	1-1-2010	Amend	2-1-2010
340-252-0080	3-5-2010	Repeal	4-1-2010	407-043-0010(T)	1-1-2010	Repeal	2-1-2010
340-252-0090	3-5-2010	Repeal	4-1-2010	407-045-0260	1-1-2010	Amend(T)	2-1-2010
340-252-0100	3-5-2010	Repeal	4-1-2010	407-045-0290	1-1-2010	Amend(T)	2-1-2010
340-252-0110	3-5-2010	Repeal	4-1-2010	407-045-0350	1-1-2010	Amend(T)	2-1-2010
340-252-0120	3-5-2010	Repeal	4-1-2010	409-025-0100	3-1-2010	Adopt	4-1-2010
340-252-0130	3-5-2010	Repeal	4-1-2010	409-025-0110	3-1-2010	Adopt	4-1-2010
340-252-0140	3-5-2010	Repeal	4-1-2010	409-025-0120	3-1-2010	Adopt	4-1-2010
340-252-0150	3-5-2010	Repeal	4-1-2010	409-025-0130	3-1-2010	Adopt	4-1-2010
340-252-0160	3-5-2010	Repeal	4-1-2010	409-025-0140	3-1-2010	Adopt	4-1-2010
340-252-0170	3-5-2010	Repeal	4-1-2010	409-025-0150	3-1-2010	Adopt	4-1-2010
340-252-0180	3-5-2010	Repeal	4-1-2010	409-025-0160	3-1-2010	Adopt	4-1-2010
340-252-0190	3-5-2010	Repeal	4-1-2010	409-025-0170	3-1-2010	Adopt	4-1-2010
340-252-0200	3-5-2010	Repeal	4-1-2010	409-026-0100	1-1-2010	Adopt	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
409-026-0110	1-1-2010	Adopt	2-1-2010	410-138-0560	1-1-2010	Amend	1-1-2010
409-026-0120	1-1-2010	Adopt	2-1-2010	410-138-0620	1-1-2010	Repeal	1-1-2010
409-026-0120	1-1-2010	Adopt	2-1-2010	410-138-0680	1-1-2010	Amend	1-1-2010
409-026-0140	1-1-2010	Adopt	2-1-2010	410-138-0720	1-1-2010	Repeal	1-1-2010
409-040-0100	1-1-2010	Adopt	2-1-2010	410-140-0050	1-1-2010	Amend	1-1-2010
409-040-0105	1-1-2010	Adopt	2-1-2010	410-140-0115	1-1-2010	Repeal	1-1-2010
409-040-0110	1-1-2010	Adopt	2-1-2010	410-140-0140	1-1-2010	Amend	1-1-2010
409-040-0115	1-1-2010	Adopt	2-1-2010	410-140-0160	1-1-2010	Amend	1-1-2010
410-120-0030	1-1-2010	Amend	1-1-2010	410-140-0200	1-1-2010	Amend	1-1-2010
410-120-0030(T)	1-1-2010	Repeal	1-1-2010	410-140-0260	1-1-2010	Amend	1-1-2010
410-120-1200	1-1-2010	Amend	1-1-2010	410-141-0000	1-1-2010	Amend	1-1-2010
410-120-1210	1-1-2010	Amend	1-1-2010	410-141-0261	1-1-2010	Amend	1-1-2010
410-120-1230	1-1-2010	Amend	1-1-2010	410-141-0263	1-1-2010	Amend	1-1-2010
410-120-1295	12-4-2009	Amend(T)	1-1-2010	410-141-0264	1-1-2010	Amend	1-1-2010
410-120-1295	1-1-2010	Amend	1-1-2010	410-141-0405	1-1-2010	Amend	1-1-2010
410-120-1295(T)	12-4-2009	Suspend	1-1-2010	410-141-0420	1-1-2010	Amend	1-1-2010
410-120-1340	1-1-2010	Amend	1-1-2010	410-141-0520	1-1-2010	Amend(T)	1-1-2010
410-120-1380	1-1-2010	Amend	1-1-2010	410-141-0520	1-15-2010	Amend(T)	2-1-2010
410-120-1570	1-1-2010	Amend	1-1-2010	410-141-0520	3-17-2010	Amend	4-1-2010
410-120-1600	1-1-2010	Amend	1-1-2010	410-141-0520(T)	1-1-2010	Suspend	1-1-2010
410-121-0000	1-1-2010	Amend	1-1-2010	410-141-0520(T)	1-15-2010	Suspend	2-1-2010
410-121-0030	1-1-2010	Amend	1-1-2010	410-141-0520(T)	3-17-2010	Repeal	4-1-2010
410-121-0032	1-1-2010	Amend	1-1-2010	410-146-0021	1-1-2010	Amend	1-1-2010
410-121-0040	1-1-2010	Amend	1-1-2010	410-146-0085	1-1-2010	Amend	1-1-2010
410-121-0060	1-1-2010	Amend	1-1-2010	410-146-0240	1-1-2010	Amend	1-1-2010
410-121-0100	1-1-2010	Amend	1-1-2010	410-146-0340	1-1-2010	Repeal	1-1-2010
410-121-0135	1-1-2010	Amend	1-1-2010	410-147-0120	1-1-2010	Amend	1-1-2010
410-121-0145	2-5-2010	Amend	3-1-2010	410-147-0320	1-1-2010	Amend	1-1-2010
410-121-0420	1-1-2010	Amend	1-1-2010	410-147-0400	1-1-2010	Amend	1-1-2010
410-122-0182	1-1-2010	Amend	1-1-2010	410-147-0620	1-1-2010	Repeal	1-1-2010
410-122-0203	1-1-2010	Amend	1-1-2010	410-149-0000	1-1-2010	Repeal	1-1-2010
410-122-0660	1-1-2010	Amend	1-1-2010	410-149-0020	1-1-2010	Repeal	1-1-2010
410-122-0662	1-1-2010	Amend	1-1-2010	410-149-0040	1-1-2010	Repeal	1-1-2010
410-123-1000	1-1-2010	Amend	1-1-2010	410-149-0060	1-1-2010	Repeal	1-1-2010
410-123-1160	1-1-2010	Amend	1-1-2010	410-149-0080	1-1-2010	Repeal	1-1-2010
410-123-1220	1-1-2010	Amend	1-1-2010	410-150-0080	1-1-2010	Amend	1-1-2010
410-123-1260	1-1-2010	Amend	1-1-2010	410-150-0120	1-1-2010	Repeal	1-1-2010
410-136-0245	1-1-2010	Adopt	1-1-2010	410-150-0160	1-1-2010	Repeal	1-1-2010
410-138-0009	1-1-2010	Amend	1-1-2010	410-150-0240	1-1-2010	Repeal	1-1-2010
410-138-0020	1-1-2010	Amend	1-1-2010	411-001-0100	1-1-2010	Amend	2-1-2010
410-138-0300	11-16-2009	Amend(T)	1-1-2010	411-001-0110	1-1-2010	Amend	2-1-2010
410-138-0300	1-1-2010	Amend	1-1-2010	411-001-0115	1-1-2010	Adopt	2-1-2010
410-138-0300(T)	1-1-2010	Repeal	1-1-2010	411-001-0118	1-1-2010	Adopt	2-1-2010
410-138-0320	1-1-2010	Repeal	1-1-2010	411-001-0120	1-1-2010	Amend	2-1-2010
410-138-0340	11-16-2009	Suspend	1-1-2010	411-020-0002	1-1-2010	Amend(T)	2-1-2010
410-138-0340	1-1-2010	Repeal	1-1-2010	411-020-0020	1-1-2010	Amend(T)	2-1-2010
410-138-0360	11-16-2009	Amend(T)	1-1-2010	411-020-0025	1-1-2010	Adopt(T)	2-1-2010
410-138-0360	1-1-2010	Amend	1-1-2010	411-020-0030	1-1-2010	Amend(T)	2-1-2010
410-138-0360(T)	1-1-2010	Repeal	1-1-2010	411-020-0085	1-1-2010	Adopt(T)	2-1-2010
410-138-0380	11-16-2009	Amend(T)	1-1-2010	411-020-0100	1-1-2010	Amend(T)	2-1-2010
410-138-0380	1-1-2010	Amend	1-1-2010	411-020-0120	1-1-2010	Amend(T)	2-1-2010
410-138-0380(T)	1-1-2010	Repeal	1-1-2010	411-031-0040	12-1-2009	Amend(T)	1-1-2010
410-138-0390	11-16-2009	Adopt(T)	1-1-2010	411-050-0400	1-1-2010	Amend(T)	2-1-2010
410-138-0390	1-1-2010	Adopt	1-1-2010	411-050-0410	1-1-2010	Amend(T)	2-1-2010
410-138-0390(T)	1-1-2010	Repeal	1-1-2010	411-050-0412	1-1-2010	Amend(T)	2-1-2010
410-138-0520	1-1-2010	Repeal	1-1-2010	411-050-0412	3-11-2010	Amend(T)	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
411-050-0412(T)	3-11-2010	Suspend	4-1-2010	411-305-0010	1-1-2010	Amend(T)	2-1-2010
411-050-0415	1-1-2010	Amend(T)	2-1-2010	411-305-0020	1-1-2010	Amend(T)	2-1-2010
411-050-0420	1-1-2010	Amend(T)	2-1-2010	411-305-0023	1-1-2010	Amend(T)	2-1-2010
411-050-0440	1-1-2010	Amend(T)	2-1-2010	411-305-0110	1-1-2010	Amend(T)	2-1-2010
411-050-0444	1-1-2010	Amend(T)	2-1-2010	411-305-0115	1-1-2010	Amend(T)	2-1-2010
411-050-0455	1-1-2010	Amend(T)	2-1-2010	411-305-0140	1-1-2010	Amend(T)	2-1-2010
411-050-0460	1-1-2010	Amend(T)	2-1-2010	411-308-0010	12-28-2009	Adopt	2-1-2010
411-050-0480	1-1-2010	Amend(T)	2-1-2010	411-308-0010(T)	12-28-2009	Repeal	2-1-2010
411-050-0481	1-1-2010	Amend(T)	2-1-2010	411-308-0020	12-28-2009	Adopt	2-1-2010
411-050-0487	1-1-2010	Amend(T)	2-1-2010	411-308-0020	1-1-2010	Amend(T)	2-1-2010
411-054-0005	1-1-2010	Amend(T)	2-1-2010	411-308-0020(T)	12-28-2009	Repeal	2-1-2010
411-054-0016	1-1-2010	Amend(T)	2-1-2010	411-308-0030	12-28-2009	Adopt	2-1-2010
411-054-0025	1-1-2010	Amend(T)	2-1-2010	411-308-0030	1-1-2010	Amend(T)	2-1-2010
411-054-0025	3-11-2010	Amend(T)	4-1-2010	411-308-0030(T)	12-28-2009	Repeal	2-1-2010
411-054-0025(T)	3-11-2010	Suspend	4-1-2010	411-308-0040	12-28-2009	Adopt	2-1-2010
411-054-0065	1-1-2010	Amend(T)	2-1-2010	411-308-0040(T)	12-28-2009	Repeal	2-1-2010
411-054-0105	1-1-2010	Amend(T)	2-1-2010	411-308-0050	12-28-2009	Adopt	2-1-2010
411-054-0120	1-1-2010	Amend(T)	2-1-2010	411-308-0050(T)	12-28-2009	Repeal	2-1-2010
411-054-0133	1-1-2010	Adopt(T)	2-1-2010	411-308-0060	12-28-2009	Adopt	2-1-2010
411-070-0000	12-1-2009	Amend	1-1-2010	411-308-0060(T)	12-28-2009	Repeal	2-1-2010
411-070-0005	12-1-2009	Amend	1-1-2010	411-308-0070	12-28-2009	Adopt	2-1-2010
411-070-0005(T)	12-1-2009	Repeal	1-1-2010	411-308-0070(T)	12-28-2009	Repeal	2-1-2010
411-070-0010	12-1-2009	Amend	1-1-2010	411-308-0080	12-28-2009	Adopt	2-1-2010
411-070-0025	12-1-2009	Amend	1-1-2010	411-308-0080(T)	12-28-2009	Repeal	2-1-2010
411-070-0027	12-1-2009	Amend	1-1-2010	411-308-0090	12-28-2009	Adopt	2-1-2010
411-070-0029	12-1-2009	Amend	1-1-2010	411-308-0090	1-1-2010	Amend(T)	2-1-2010
411-070-0033	12-1-2009	Amend	1-1-2010	411-308-0090(T)	12-28-2009	Repeal	2-1-2010
411-070-0035	12-1-2009	Amend	1-1-2010	411-308-0100	12-28-2009	Adopt	2-1-2010
411-070-0040	12-1-2009	Amend	1-1-2010	411-308-0100	1-1-2010	Amend(T)	2-1-2010
411-070-0043	12-1-2009	Amend	1-1-2010	411-308-0100(T)	12-28-2009	Repeal	2-1-2010
411-070-0080	12-1-2009	Amend	1-1-2010	411-308-0110	12-28-2009	Adopt	2-1-2010
411-070-0110	12-1-2009	Amend	1-1-2010	411-308-0110	1-1-2010	Amend(T)	2-1-2010
411-070-0125	12-1-2009	Amend	1-1-2010	411-308-0110(T)	12-28-2009	Repeal	2-1-2010
411-070-0130	12-1-2009	Amend	1-1-2010	411-308-0120	12-28-2009	Adopt	2-1-2010
411-070-0300	12-1-2009	Amend	1-1-2010	411-308-0120(T)	12-28-2009	Repeal	2-1-2010
411-070-0350	12-1-2009	Amend	1-1-2010	411-308-0130	12-28-2009	Adopt	2-1-2010
411-070-0359	12-1-2009	Amend	1-1-2010	411-308-0130	1-1-2010	Amend(T)	2-1-2010
411-070-0415	12-1-2009	Amend	1-1-2010	411-308-0130(T)	12-28-2009	Repeal	2-1-2010
411-070-0417	12-1-2009	Amend	1-1-2010	411-308-0140	12-28-2009	Adopt	2-1-2010
411-070-0430	12-1-2009	Amend	1-1-2010	411-308-0140(T)	12-28-2009	Repeal	2-1-2010
411-070-0442	12-1-2009	Amend	1-1-2010	411-308-0150	12-28-2009	Adopt	2-1-2010
411-070-0442(T)	12-1-2009	Repeal	1-1-2010	411-308-0150(T)	12-28-2009	Repeal	2-1-2010
411-070-0452	12-1-2009	Amend	1-1-2010	411-320-0020	1-1-2010	Amend(T)	2-1-2010
411-070-0470	12-1-2009	Amend	1-1-2010	411-320-0030	1-1-2010	Amend(T)	2-1-2010
411-085-0005	1-1-2010	Amend(T)	2-1-2010	411-320-0140	1-1-2010	Amend(T)	2-1-2010
411-085-0020	1-1-2010	Amend	2-1-2010	411-325-0020	1-1-2010	Amend(T)	2-1-2010
411-085-0020	1-1-2010	Amend(T)	2-1-2010	411-325-0100	1-1-2010	Amend(T)	2-1-2010
411-089-0030	1-1-2010	Amend(T)	2-1-2010	411-325-0160	1-1-2010	Amend(T)	2-1-2010
411-089-0075	1-1-2010	Adopt(T)	2-1-2010	411-325-0190	1-1-2010	Amend(T)	2-1-2010
411-089-0140	1-1-2010	Amend(T)	2-1-2010	411-328-0560	1-1-2010	Amend(T)	2-1-2010
411-089-0150	1-1-2010	Suspend	2-1-2010	411-328-0610	1-1-2010	Amend(T)	2-1-2010
411-300-0110	1-1-2010	Amend(T)	2-1-2010	411-328-0670	1-1-2010	Amend(T)	2-1-2010
411-300-0155	1-1-2010	Amend(T)	2-1-2010	411-330-0010	1-1-2010	Amend(T)	2-1-2010
411-300-0170	1-1-2010	Amend(T)	2-1-2010	411-330-0020	1-1-2010	Amend(T)	2-1-2010
411-300-0200	1-1-2010	Amend(T)	2-1-2010	411-330-0060	1-1-2010	Amend(T)	2-1-2010
411-300-0220	1-1-2010	Amend(T)	2-1-2010	411-330-0070	1-1-2010	Amend(T)	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
411-330-0100	1-1-2010	Amend(T)	2-1-2010	413-020-0230	12-29-2009	Amend	2-1-2010
411-330-0120	1-1-2010	Amend(T)	2-1-2010	413-020-0233	12-29-2009	Amend	2-1-2010
411-330-0140	1-1-2010	Amend(T)	2-1-2010	413-020-0236	12-29-2009	Amend	2-1-2010
411-330-0160	1-1-2010	Amend(T)	2-1-2010	413-020-0240	12-29-2009	Amend	2-1-2010
411-335-0020	1-1-2010	Amend(T)	2-1-2010	413-020-0245	12-29-2009	Amend	2-1-2010
411-335-0030	1-1-2010	Amend(T)	2-1-2010	413-020-0255	12-29-2009	Amend	2-1-2010
411-335-0100	1-1-2010	Amend(T)	2-1-2010	413-040-0000	12-29-2009	Amend	2-1-2010
411-340-0020	1-1-2010	Amend(T)	2-1-2010	413-040-0005	12-29-2009	Amend	2-1-2010
411-340-0030	1-1-2010	Amend(T)	2-1-2010	413-040-0006	12-29-2009	Amend	2-1-2010
411-340-0040	1-1-2010	Amend(T)	2-1-2010	413-040-0008	12-29-2009	Amend	2-1-2010
411-340-0050	1-1-2010	Amend(T)	2-1-2010	413-040-0009	12-29-2009	Amend	2-1-2010
411-340-0070	1-1-2010	Amend(T)	2-1-2010	413-040-0010	12-29-2009	Amend	2-1-2010
411-340-0080	1-1-2010	Amend(T)	2-1-2010	413-040-0011	12-29-2009	Amend	2-1-2010
411-340-0130	1-1-2010	Amend(T)	2-1-2010	413-040-0013	12-29-2009	Amend	2-1-2010
411-340-0140	1-1-2010	Amend(T)	2-1-2010	413-040-0016	12-29-2009	Amend	2-1-2010
411-340-0160	1-1-2010	Amend(T)	2-1-2010	413-040-0017	12-29-2009	Amend	2-1-2010
411-345-0020	1-1-2010	Amend(T)	2-1-2010	413-040-0024	12-29-2009	Amend	2-1-2010
411-345-0080	1-1-2010	Amend(T)	2-1-2010	413-040-0032	12-29-2009	Amend	2-1-2010
411-345-0100	1-1-2010	Amend(T)	2-1-2010	413-040-0240	3-15-2010	Amend(T)	4-1-2010
411-345-0210	1-1-2010	Amend(T)	2-1-2010	413-070-0600	12-29-2009	Amend	2-1-2010
411-345-0230	1-1-2010	Amend(T)	2-1-2010	413-070-0620	12-29-2009	Amend	2-1-2010
411-345-0290	1-1-2010	Amend(T)	2-1-2010	413-070-0625	12-29-2009	Amend	2-1-2010
411-346-0110	1-1-2010	Amend(T)	2-1-2010	413-070-0630	12-29-2009	Amend	2-1-2010
411-346-0150	1-1-2010	Amend(T)	2-1-2010	413-070-0640	12-29-2009	Amend	2-1-2010
411-346-0180	1-1-2010	Amend(T)	2-1-2010	413-070-0645	12-29-2009	Amend	2-1-2010
411-346-0220	1-1-2010	Amend(T)	2-1-2010	413-070-0900	12-16-2009	Amend(T)	2-1-2010
411-350-0020	1-1-2010	Amend(T)	2-1-2010	413-070-0905	12-16-2009	Amend(T)	2-1-2010
411-350-0050	1-1-2010	Amend(T)	2-1-2010	413-070-0905	2-1-2010	Amend(T)	3-1-2010
411-350-0080	1-1-2010	Amend(T)	2-1-2010	413-070-0905(T)	2-1-2010	Suspend	3-1-2010
411-350-0110	1-1-2010	Amend(T)	2-1-2010	413-070-0909	12-16-2009	Amend(T)	2-1-2010
411-350-0120	1-1-2010	Amend(T)	2-1-2010	413-070-0915	12-16-2009	Amend(T)	2-1-2010
411-355-0010	1-1-2010	Amend(T)	2-1-2010	413-070-0917	12-16-2009	Amend(T)	2-1-2010
411-355-0040	1-1-2010	Amend(T)	2-1-2010	413-070-0919	12-16-2009	Adopt(T)	2-1-2010
411-355-0050	1-1-2010	Amend(T)	2-1-2010	413-070-0920	12-16-2009	Am. & Ren.(T)	2-1-2010
411-355-0060	1-1-2010	Amend(T)	2-1-2010	413-070-0925	12-16-2009	Amend(T)	2-1-2010
411-355-0090	1-1-2010	Amend(T)	2-1-2010	413-070-0925	2-1-2010	Amend(T)	3-1-2010
411-355-0120	1-1-2010	Amend(T)	2-1-2010	413-070-0925(T)	2-1-2010	Suspend	3-1-2010
411-360-0020	1-1-2010	Amend(T)	2-1-2010	413-070-0930	12-16-2009	Am. & Ren.(T)	2-1-2010
411-360-0040	1-1-2010	Amend(T)	2-1-2010	413-070-0935	12-16-2009	Am. & Ren.(T)	2-1-2010
411-360-0050	1-1-2010	Amend(T)	2-1-2010	413-070-0937	12-16-2009	Am. & Ren.(T)	2-1-2010
411-360-0090	1-1-2010	Amend(T)	2-1-2010	413-070-0939	2-1-2010	Amend(T)	3-1-2010
411-360-0110	1-1-2010	Amend(T)	2-1-2010	413-070-0939(T)	2-1-2010	Suspend	3-1-2010
411-360-0210	1-1-2010	Amend(T)	2-1-2010	413-070-0940	12-16-2009	Am. & Ren.(T)	2-1-2010
411-360-0270	1-1-2010	Amend(T)	2-1-2010	413-070-0945	12-16-2009	Am. & Ren.(T)	2-1-2010
413-010-0500	12-29-2009	Amend	2-1-2010	413-070-0949	2-1-2010	Amend(T)	3-1-2010
413-010-0505	12-29-2009	Adopt	2-1-2010	413-070-0949(T)	2-1-2010	Suspend	3-1-2010
413-010-0510	12-29-2009	Adopt	2-1-2010	413-070-0955	12-16-2009	Am. & Ren.(T)	2-1-2010
413-010-0515	12-29-2009	Adopt	2-1-2010	413-070-0960	12-16-2009	Am. & Ren.(T)	2-1-2010
413-010-0520	12-29-2009	Adopt	2-1-2010	413-070-0964	2-1-2010	Amend(T)	3-1-2010
413-010-0525	12-29-2009	Adopt	2-1-2010	413-070-0964(T)	2-1-2010	Suspend	3-1-2010
413-010-0530	12-29-2009	Adopt	2-1-2010	413-070-0965	12-16-2009	Am. & Ren.(T)	2-1-2010
413-010-0535	12-29-2009	Adopt	2-1-2010	413-070-0969	12-16-2009	Adopt(T)	2-1-2010
413-015-0415	1-1-2010	Amend(T)	2-1-2010	413-070-0970	12-16-2009	Amend(T)	2-1-2010
413-015-0420	2-12-2010	Amend(T)	3-1-2010	413-070-0974	2-1-2010	Amend(T)	3-1-2010
413-020-0200	12-29-2009	Amend	2-1-2010	413-070-0974(T)	2-1-2010	Suspend	3-1-2010
413-020-0210	12-29-2009	Amend	2-1-2010	413-080-0000	12-29-2009	Repeal	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
413-080-0010	12-29-2009	Repeal	2-1-2010	414-061-0020	1-1-2010	Amend(T)	2-1-2010
413-080-0020	12-29-2009	Repeal	2-1-2010	414-061-0030	1-1-2010	Amend(T)	2-1-2010
413-080-0030	12-29-2009	Repeal	2-1-2010	414-061-0040	1-1-2010	Amend(T)	2-1-2010
413-080-0040	12-29-2009	Amend	2-1-2010	414-061-0050	1-1-2010	Amend(T)	2-1-2010
413-080-0050	12-29-2009	Amend	2-1-2010	414-061-0060	1-1-2010	Amend(T)	2-1-2010
413-080-0052	12-29-2009	Amend	2-1-2010	414-061-0070	1-1-2010	Amend(T)	2-1-2010
413-080-0055	12-29-2009	Amend	2-1-2010	414-061-0080	1-1-2010	Amend(T)	2-1-2010
413-080-0059	12-29-2009	Amend	2-1-2010	414-061-0090	1-1-2010	Amend(T)	2-1-2010
413-080-0063	12-29-2009	Amend	2-1-2010	414-061-0100	1-1-2010	Amend(T)	2-1-2010
413-080-0067	12-29-2009	Amend	2-1-2010	414-061-0110	1-1-2010	Amend(T)	2-1-2010
413-090-0000	12-29-2009	Amend	2-1-2010	414-061-0120	1-1-2010	Amend(T)	2-1-2010
413-090-0005	12-29-2009	Amend	2-1-2010	414-205-0000	1-1-2010	Amend(T)	2-1-2010
413-090-0010	12-29-2009	Amend	2-1-2010	414-205-0010	1-1-2010	Amend(T)	2-1-2010
413-090-0021	12-29-2009	Adopt	2-1-2010	414-205-0020	1-1-2010	Amend(T)	2-1-2010
413-090-0030	12-29-2009	Amend	2-1-2010	414-205-0035	1-1-2010	Amend(T)	2-1-2010
413-090-0040	12-29-2009	Amend	2-1-2010	414-205-0040	1-1-2010	Amend(T)	2-1-2010
413-090-0050	12-29-2009	Amend	2-1-2010	414-205-0055	1-1-2010	Amend(T)	2-1-2010
413-090-0100	12-29-2009	Amend	2-1-2010	414-205-0065	1-1-2010	Amend(T)	2-1-2010
413-090-0110	12-29-2009	Amend	2-1-2010	414-205-0075	1-1-2010	Amend(T)	2-1-2010
413-090-0120	12-29-2009	Amend	2-1-2010	414-205-0085	1-1-2010	Amend(T)	2-1-2010
413-090-0130	12-29-2009	Amend	2-1-2010	414-205-0090	1-1-2010	Amend(T)	2-1-2010
413-090-0133	12-29-2009	Adopt	2-1-2010	414-205-0100	1-1-2010	Amend(T)	2-1-2010
413-090-0135	12-29-2009	Adopt	2-1-2010	414-205-0110	1-1-2010	Amend(T)	2-1-2010
413-090-0136	12-29-2009	Adopt	2-1-2010	414-205-0120	1-1-2010	Amend(T)	2-1-2010
413-090-0140	12-29-2009	Amend	2-1-2010	414-205-0130	1-1-2010	Amend(T)	2-1-2010
413-090-0150	12-29-2009	Amend	2-1-2010	414-205-0140	1-1-2010	Amend(T)	2-1-2010
413-090-0160	12-29-2009	Repeal	2-1-2010	414-205-0150	1-1-2010	Amend(T)	2-1-2010
413-090-0170	12-29-2009	Repeal	2-1-2010	414-205-0160	1-1-2010	Amend(T)	2-1-2010
413-090-0180	12-29-2009	Repeal	2-1-2010	414-205-0170	1-1-2010	Amend(T)	2-1-2010
413-090-0190	12-29-2009	Repeal	2-1-2010	414-300-0000	1-1-2010	Amend(T)	2-1-2010
413-090-0200	12-29-2009	Repeal	2-1-2010	414-300-0005	1-1-2010	Amend(T)	2-1-2010
413-090-0210	12-29-2009	Amend	2-1-2010	414-300-0010	1-1-2010	Amend(T)	2-1-2010
413-100-0020	12-16-2009	Amend(T)	2-1-2010	414-300-0015	1-1-2010	Amend(T)	2-1-2010
413-100-0335	12-16-2009	Adopt(T)	2-1-2010	414-300-0020	1-1-2010	Amend(T)	2-1-2010
413-100-0345	12-16-2009	Adopt(T)	2-1-2010	414-300-0030	1-1-2010	Amend(T)	2-1-2010
413-130-0000	12-29-2009	Amend	2-1-2010	414-300-0040	1-1-2010	Amend(T)	2-1-2010
413-130-0010	12-29-2009	Amend	2-1-2010	414-300-0050	1-1-2010	Amend(T)	2-1-2010
413-130-0020	12-29-2009	Amend	2-1-2010	414-300-0060	1-1-2010	Amend(T)	2-1-2010
413-130-0030	12-29-2009	Amend	2-1-2010	414-300-0070	1-1-2010	Amend(T)	2-1-2010
413-130-0040	12-29-2009	Amend	2-1-2010	414-300-0080	1-1-2010	Amend(T)	2-1-2010
413-130-0045	12-29-2009	Adopt	2-1-2010	414-300-0090	1-1-2010	Amend(T)	2-1-2010
413-130-0050	12-29-2009	Amend	2-1-2010	414-300-0100	1-1-2010	Amend(T)	2-1-2010
413-130-0060	12-29-2009	Amend	2-1-2010	414-300-0110	1-1-2010	Amend(T)	2-1-2010
413-130-0070	12-29-2009	Amend	2-1-2010	414-300-0115	1-1-2010	Amend(T)	2-1-2010
413-130-0075	12-29-2009	Amend	2-1-2010	414-300-0120	1-1-2010	Amend(T)	2-1-2010
413-130-0080	12-29-2009	Amend	2-1-2010	414-300-0130	1-1-2010	Amend(T)	2-1-2010
413-130-0090	12-29-2009	Amend	2-1-2010	414-300-0140	1-1-2010	Amend(T)	2-1-2010
413-130-0100	12-29-2009	Amend	2-1-2010	414-300-0150	1-1-2010	Amend(T)	2-1-2010
413-130-0110	12-29-2009	Amend	2-1-2010	414-300-0160	1-1-2010	Amend(T)	2-1-2010
413-130-0115	12-29-2009	Amend	2-1-2010	414-300-0170	1-1-2010	Amend(T)	2-1-2010
413-130-0120	12-29-2009	Repeal	2-1-2010	414-300-0180	1-1-2010	Amend(T)	2-1-2010
413-130-0125	12-29-2009	Amend	2-1-2010	414-300-0190	1-1-2010	Amend(T)	2-1-2010
413-130-0127	12-29-2009	Repeal	2-1-2010	414-300-0200	1-1-2010	Amend(T)	2-1-2010
413-130-0130	12-29-2009	Amend	2-1-2010	414-300-0210	1-1-2010	Amend(T)	2-1-2010
414-061-0000	1-1-2010	Amend(T)	2-1-2010	414-300-0215	1-1-2010	Amend(T)	2-1-2010
414-061-0010	1-1-2010	Amend(T)	2-1-2010	414-300-0220	1-1-2010	Amend(T)	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
414-300-0230	1-1-2010	Amend(T)	2-1-2010	415-051-0020	3-4-2010	Repeal	4-1-2010
414-300-0240	1-1-2010	Amend(T)	2-1-2010	415-051-0025	3-4-2010	Repeal	4-1-2010
414-300-0250	1-1-2010	Amend(T)	2-1-2010	415-051-0030	3-4-2010	Repeal	4-1-2010
414-300-0260	1-1-2010	Amend(T)	2-1-2010	415-051-0035	3-4-2010	Repeal	4-1-2010
414-300-0270	1-1-2010	Amend(T)	2-1-2010	415-051-0037	3-4-2010	Repeal	4-1-2010
414-300-0280	1-1-2010	Amend(T)	2-1-2010	415-051-0040	3-4-2010	Repeal	4-1-2010
414-300-0290	1-1-2010	Amend(T)	2-1-2010	415-051-0045	3-4-2010	Repeal	4-1-2010
414-300-0295	1-1-2010	Amend(T)	2-1-2010	415-051-0050	3-4-2010	Repeal	4-1-2010
414-300-0300	1-1-2010	Amend(T)	2-1-2010	415-051-0055	3-4-2010	Repeal	4-1-2010
414-300-0310	1-1-2010	Amend(T)	2-1-2010	415-051-0057	3-4-2010	Repeal	4-1-2010
414-300-0320	1-1-2010	Amend(T)	2-1-2010	415-051-0060	3-4-2010	Repeal	4-1-2010
414-300-0330	1-1-2010	Amend(T)	2-1-2010	415-051-0065	3-4-2010	Repeal	4-1-2010
414-300-0340	1-1-2010	Amend(T)	2-1-2010	415-051-0067	3-4-2010	Repeal	4-1-2010
414-300-0350	1-1-2010	Amend(T)	2-1-2010	415-051-0069	3-4-2010	Repeal	4-1-2010
414-300-0360	1-1-2010	Amend(T)	2-1-2010	415-051-0072	3-4-2010	Repeal	4-1-2010
414-300-0380	1-1-2010	Amend(T)	2-1-2010	415-051-0075	3-4-2010	Repeal	4-1-2010
414-300-0390	1-1-2010	Amend(T)	2-1-2010	415-051-0077	3-4-2010	Repeal	4-1-2010
414-300-0400	1-1-2010	Amend(T)	2-1-2010	415-051-0090	3-4-2010	Repeal	4-1-2010
414-300-0410	1-1-2010	Amend(T)	2-1-2010	415-051-0100	3-4-2010	Repeal	4-1-2010
414-300-0415	1-1-2010	Adopt(T)	2-1-2010	415-051-0105	3-4-2010	Repeal	4-1-2010
414-350-0000	1-1-2010	Amend(T)	2-1-2010	415-051-0110	3-4-2010	Repeal	4-1-2010
414-350-0010	1-1-2010	Amend(T)	2-1-2010	415-051-0130	3-4-2010	Repeal	4-1-2010
414-350-0020	1-1-2010	Amend(T)	2-1-2010	415-051-0140	3-4-2010	Repeal	4-1-2010
414-350-0030	1-1-2010	Amend(T)	2-1-2010	415-051-0155	3-4-2010	Repeal	4-1-2010
414-350-0040	1-1-2010	Amend(T)	2-1-2010	415-051-0165	3-4-2010	Repeal	4-1-2010
414-350-0050	1-1-2010	Amend(T)	2-1-2010	415-052-0100	12-3-2009	Adopt	1-1-2010
414-350-0060	1-1-2010	Amend(T)	2-1-2010	415-052-0105	12-3-2009	Adopt	1-1-2010
414-350-0070	1-1-2010	Amend(T)	2-1-2010	415-052-0110	12-3-2009	Adopt	1-1-2010
414-350-0080	1-1-2010	Amend(T)	2-1-2010	415-060-0030	1-1-2010	Amend	1-1-2010
414-350-0090	1-1-2010	Amend(T)	2-1-2010	416-470-0000	2-19-2010	Amend	3-1-2010
414-350-0100	1-1-2010	Amend(T)	2-1-2010	416-470-0010	2-19-2010	Amend	3-1-2010
414-350-0110	1-1-2010	Amend(T)	2-1-2010	416-470-0020	2-19-2010	Amend	3-1-2010
414-350-0115	1-1-2010	Amend(T)	2-1-2010	416-470-0030	2-19-2010	Amend	3-1-2010
414-350-0120	1-1-2010	Amend(T)	2-1-2010	416-470-0040	2-19-2010	Amend	3-1-2010
414-350-0130	1-1-2010	Amend(T)	2-1-2010	416-470-0050	2-19-2010	Amend	3-1-2010
414-350-0140	1-1-2010	Amend(T)	2-1-2010	416-470-0060	2-19-2010	Repeal	3-1-2010
414-350-0150	1-1-2010	Amend(T)	2-1-2010	416-470-0070	2-19-2010	Repeal	3-1-2010
414-350-0160	1-1-2010	Amend(T)	2-1-2010	416-470-0080	2-19-2010	Repeal	3-1-2010
414-350-0170	1-1-2010	Amend(T)	2-1-2010	416-470-0090	2-19-2010	Repeal	3-1-2010
414-350-0180	1-1-2010	Amend(T)	2-1-2010	416-470-0100	2-19-2010	Repeal	3-1-2010
414-350-0190	1-1-2010	Amend(T)	2-1-2010	416-490-0000	2-19-2010	Amend	3-1-2010
414-350-0200	1-1-2010	Amend(T)	2-1-2010	416-490-0010	2-19-2010	Amend	3-1-2010
414-350-0210	1-1-2010	Amend(T)	2-1-2010	416-490-0020	2-19-2010	Amend	3-1-2010
414-350-0220	1-1-2010	Amend(T)	2-1-2010	416-490-0030	2-19-2010	Amend	3-1-2010
414-350-0230	1-1-2010	Amend(T)	2-1-2010	416-490-0031	2-19-2010	Adopt	3-1-2010
414-350-0235	1-1-2010	Amend(T)	2-1-2010	416-490-0032	2-19-2010	Adopt	3-1-2010
414-350-0240	1-1-2010	Amend(T)	2-1-2010	416-490-0033	2-19-2010	Adopt	3-1-2010
414-350-0250	1-1-2010	Amend(T)	2-1-2010	416-490-0034	2-19-2010	Adopt	3-1-2010
414-350-0375	1-1-2010	Amend(T)	2-1-2010	416-490-0035	2-19-2010	Adopt	3-1-2010
414-350-0380	1-1-2010	Amend(T)	2-1-2010	416-490-0040	2-19-2010	Repeal	3-1-2010
414-350-0390	1-1-2010	Amend(T)	2-1-2010	416-490-0050	2-19-2010	Amend	3-1-2010
414-350-0400	1-1-2010	Amend(T)	2-1-2010	416-530-0090	12-16-2009	Amend	1-1-2010
414-350-0405	1-1-2010	Adopt(T)	2-1-2010	436-001-0003	1-1-2010	Amend	1-1-2010
415-051-0000	3-4-2010	Repeal	4-1-2010	436-001-0019	1-1-2010	Amend	1-1-2010
415-051-0010	3-4-2010	Repeal	4-1-2010	436-001-0265	1-1-2010	Am. & Ren.	1-1-2010
415-051-0015	3-4-2010	Repeal	4-1-2010	436-001-0265	1-1-2010	Am. & Ren.	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
436-001-0420	1-1-2010	Adopt	1-1-2010	436-105-0520	1-1-2010	Amend	1-1-2010
436-001-0430	1-1-2010	Adopt	1-1-2010	436-105-0540	1-1-2010	Amend	1-1-2010
436-001-0440	1-1-2010	Adopt	1-1-2010	436-105-0550	1-1-2010	Amend	1-1-2010
436-009-0010	1-1-2010	Amend	1-1-2010	436-110-0005	1-1-2010	Amend	1-1-2010
436-009-0070	1-1-2010	Amend	1-1-2010	436-110-0310	1-1-2010	Amend	1-1-2010
436-010-0008	1-1-2010	Amend	1-1-2010	436-110-0325	1-1-2010	Amend	1-1-2010
436-010-0240	1-1-2010	Amend	1-1-2010	436-110-0330	1-1-2010	Amend	1-1-2010
436-010-0265	1-1-2010	Amend	1-1-2010	436-110-0335	1-1-2010	Amend	1-1-2010
436-010-0280	1-1-2010	Amend	1-1-2010	436-110-0336	1-1-2010	Amend	1-1-2010
436-030-0002	1-1-2010	Amend	1-1-2010	436-110-0337	1-1-2010	Amend	1-1-2010
436-030-0003	1-1-2010	Amend	1-1-2010	436-110-0345	1-1-2010	Amend	1-1-2010
436-030-0005	1-1-2010	Amend	1-1-2010	436-110-0347	1-1-2010	Amend	1-1-2010
436-030-0007	1-1-2010	Amend	1-1-2010	436-110-0350	1-1-2010	Amend	1-1-2010
436-030-0009	1-1-2010	Repeal	1-1-2010	436-110-0900	1-1-2010	Amend	1-1-2010
436-030-0015	1-1-2010	Amend	1-1-2010	436-120-0004	1-1-2010	Amend	1-1-2010
436-030-0017	1-1-2010	Amend	1-1-2010	436-120-0005	1-1-2010	Amend	1-1-2010
436-030-0020	1-1-2010	Amend	1-1-2010	436-120-0007	1-1-2010	Amend	1-1-2010
436-030-0034	1-1-2010	Amend	1-1-2010	436-120-0008	1-1-2010	Amend	1-1-2010
436-030-0065	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0115	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0135	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0145	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0155	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0165	1-1-2010	Amend	1-1-2010	436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-030-0185	1-1-2010	Amend	1-1-2010	436-120-0340	1-1-2010	Amend	1-1-2010
436-030-0580	1-1-2010	Amend	1-1-2010	436-120-0350	1-1-2010	Am. & Ren.	1-1-2010
436-060-0003	1-1-2010	Amend	1-1-2010	436-120-0350	1-1-2010	Am. & Ren.	1-1-2010
436-060-0008	1-1-2010	Amend	1-1-2010	436-120-0360	1-1-2010	Am. & Ren.	1-1-2010
436-060-0009	1-1-2010	Amend	1-1-2010	436-120-0410	1-1-2010	Amend	1-1-2010
436-060-0010	1-1-2010	Amend	1-1-2010	436-120-0440	1-1-2010	Amend	1-1-2010
436-060-0012	1-1-2010	Adopt	1-1-2010	436-120-0500	1-1-2010	Amend	1-1-2010
436-060-0015	1-1-2010	Amend	1-1-2010	436-120-0510	1-1-2010	Amend	1-1-2010
436-060-0017	1-1-2010	Amend	1-1-2010	436-120-0720	1-1-2010	Amend	1-1-2010
436-060-0018	1-1-2010	Amend	1-1-2010	436-120-0800	1-1-2010	Amend	1-1-2010
436-060-0020	1-1-2010	Amend	1-1-2010	436-120-0810	1-1-2010	Amend	1-1-2010
436-060-0025	1-1-2010	Amend	1-1-2010	436-120-0820	1-1-2010	Amend	1-1-2010
436-060-0035	1-1-2010	Amend	1-1-2010	436-120-0830	1-1-2010	Amend	1-1-2010
436-060-0095	1-1-2010	Amend	1-1-2010	436-120-0840	1-1-2010	Amend	1-1-2010
436-060-0105	1-1-2010	Amend	1-1-2010	436-120-0900	1-1-2010	Amend	1-1-2010
436-060-0135	1-1-2010	Amend	1-1-2010	436-120-0915	1-1-2010	Amend	1-1-2010
436-060-0137	1-1-2010	Amend	1-1-2010	436-150-0005	1-1-2010	Amend	1-1-2010
436-060-0140	1-1-2010	Amend	1-1-2010	436-150-0010	1-1-2010	Amend	1-1-2010
436-060-0147	1-1-2010	Amend	1-1-2010	436-150-0030	1-1-2010	Amend	1-1-2010
436-060-0150	1-1-2010	Amend	1-1-2010	436-160-0310	1-1-2010	Amend	1-1-2010
436-060-0153	1-1-2010	Amend	1-1-2010	436-160-0340	1-1-2010	Amend	1-1-2010
436-060-0155	1-1-2010	Amend	1-1-2010	437-002-0005	2-19-2010	Amend	4-1-2010
436-060-0180	1-1-2010	Amend	1-1-2010	437-002-0005	2-25-2010	Amend	4-1-2010
436-060-0195	1-1-2010	Amend	1-1-2010	437-002-0080	2-25-2010	Amend	4-1-2010
436-060-0200	1-1-2010	Amend	1-1-2010	437-002-0100	2-19-2010	Amend	4-1-2010
436-060-0400	1-1-2010	Adopt	1-1-2010	437-002-0120	2-25-2010	Amend	4-1-2010
436-060-0500	1-1-2010	Amend	1-1-2010	437-002-0280	2-25-2010	Amend	4-1-2010
436-060-0510	1-1-2010	Amend	1-1-2010	437-002-2102	2-19-2010	Adopt	4-1-2010
436-075-0110	1-1-2010	Repeal	1-1-2010	437-004-1035	2-25-2010	Amend	4-1-2010
436-105-0003	1-1-2010	Amend	1-1-2010	437-004-1050	2-25-2010	Amend	4-1-2010
436-105-0005	1-1-2010	Amend	1-1-2010	437-004-1060	2-25-2010	Amend	4-1-2010
436-105-0500	1-1-2010	Amend	1-1-2010	437-004-2310	2-25-2010	Amend	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
437-005-0001	2-25-2010	Amend	4-1-2010	441-870-0080	1-4-2010	Amend	2-1-2010
437-005-0002	2-25-2010	Amend	4-1-2010	441-875-0010	1-4-2010	Repeal	2-1-2010
437-005-0003	2-25-2010	Amend	4-1-2010	441-875-0020	1-4-2010	Amend	2-1-2010
437-007-0305	2-25-2010	Amend	4-1-2010	441-875-0030	1-4-2010	Amend	2-1-2010
440-015-0001	2-1-2010	Repeal	3-1-2010	441-875-0040	1-4-2010	Amend	2-1-2010
440-015-0010	2-1-2010	Repeal	3-1-2010	441-880-0010	1-4-2010	Amend	2-1-2010
440-015-0020	2-1-2010	Repeal	3-1-2010	441-880-0020	1-4-2010	Am. & Ren.	2-1-2010
440-015-0030	2-1-2010	Repeal	3-1-2010	441-880-0021	1-4-2010	Adopt	2-1-2010
440-015-0040	2-1-2010	Repeal	3-1-2010	441-880-0022	1-4-2010	Adopt	2-1-2010
440-015-0050	2-1-2010	Repeal	3-1-2010	441-880-0030	1-4-2010	Amend	2-1-2010
440-015-0060	2-1-2010	Repeal	3-1-2010	441-880-0040	1-4-2010	Amend	2-1-2010
440-015-0070	2-1-2010	Repeal	3-1-2010	441-880-0050	1-4-2010	Am. & Ren.	2-1-2010
440-015-0080	2-1-2010	Repeal	3-1-2010	441-880-0200	1-4-2010	Adopt	2-1-2010
440-015-0090	2-1-2010	Repeal	3-1-2010	441-880-0205	1-4-2010	Adopt	2-1-2010
440-015-0100	2-1-2010	Adopt	3-1-2010	441-880-0210	1-4-2010	Adopt	2-1-2010
440-015-0105	2-1-2010	Adopt	3-1-2010	441-880-0300	1-4-2010	Adopt	2-1-2010
440-015-0110	2-1-2010	Adopt	3-1-2010	441-880-0310	1-4-2010	Adopt	2-1-2010
440-015-0115	2-1-2010	Adopt	3-1-2010	441-885-0010	1-4-2010	Amend	2-1-2010
441-505-3046	12-7-2009	Amend	1-1-2010	441-910-0000	1-1-2010	Amend	2-1-2010
441-505-3046(T)	12-7-2009	Repeal	1-1-2010	441-910-0005	1-1-2010	Adopt	2-1-2010
441-710-0540	12-7-2009	Amend	1-1-2010	441-910-0010	1-1-2010	Amend	2-1-2010
441-710-0540(T)	12-7-2009	Repeal	1-1-2010	441-910-0020	1-1-2010	Repeal	2-1-2010
441-730-0246	12-7-2009	Amend	1-1-2010	441-910-0030	1-1-2010	Amend	2-1-2010
441-730-0246(T)	12-7-2009	Repeal	1-1-2010	441-910-0040	1-1-2010	Repeal	2-1-2010
441-850-0005	1-4-2010	Amend	2-1-2010	441-910-0050	1-1-2010	Amend	2-1-2010
441-850-0035	1-4-2010	Amend	2-1-2010	441-910-0055	1-1-2010	Amend	2-1-2010
441-850-0042	12-7-2009	Amend	1-1-2010	441-910-0080	1-1-2010	Amend	2-1-2010
441-850-0042(T)	12-7-2009	Repeal	1-1-2010	441-910-0090	1-1-2010	Repeal	2-1-2010
441-850-0050	1-4-2010	Adopt	2-1-2010	441-910-0091	1-1-2010	Adopt	2-1-2010
441-860-0010	1-4-2010	Repeal	2-1-2010	441-910-0092	1-1-2010	Amend	2-1-2010
441-860-0020	1-1-2010	Amend	1-1-2010	441-910-0092(T)	1-1-2010	Repeal	2-1-2010
441-860-0020	1-4-2010	Amend	2-1-2010	441-910-0093	1-1-2010	Repeal	2-1-2010
441-860-0025	1-4-2010	Amend	2-1-2010	441-910-0094	1-1-2010	Adopt	2-1-2010
441-860-0030	1-1-2010	Amend	1-1-2010	441-910-0095	1-1-2010	Repeal	2-1-2010
441-860-0030	1-4-2010	Amend	2-1-2010	441-910-0099	1-1-2010	Adopt	2-1-2010
441-860-0040	1-4-2010	Amend	2-1-2010	441-910-0110	1-1-2010	Repeal	2-1-2010
441-860-0050	1-1-2010	Amend	1-1-2010	441-910-0120	1-1-2010	Repeal	2-1-2010
441-860-0050	1-4-2010	Amend	2-1-2010	441-910-0135	1-1-2010	Adopt	2-1-2010
441-860-0060	1-4-2010	Amend	2-1-2010	441-910-0145	1-1-2010	Adopt	2-1-2010
441-860-0070	1-4-2010	Amend	2-1-2010	441-910-0150	1-1-2010	Adopt	2-1-2010
441-860-0080	1-4-2010	Amend	2-1-2010	441-910-0151	1-1-2010	Adopt	2-1-2010
441-860-0101	1-1-2010	Adopt	1-1-2010	441-910-0200	1-1-2010	Adopt	2-1-2010
441-860-0130	1-4-2010	Amend	2-1-2010	441-910-9000(T)	1-6-2010	Suspend	2-1-2010
441-860-0400	1-1-2010	Adopt	1-1-2010	441-910-9001(T)	1-6-2010	Suspend	2-1-2010
441-865-0010	1-4-2010	Amend	2-1-2010	442-005-0010	1-7-2010	Amend(T)	2-1-2010
441-865-0020	1-4-2010	Amend	2-1-2010	442-005-0050	1-7-2010	Amend(T)	2-1-2010
441-865-0025	1-4-2010	Amend	2-1-2010	442-005-0060	1-7-2010	Amend(T)	2-1-2010
441-865-0030	1-4-2010	Amend	2-1-2010	442-005-0100	1-7-2010	Amend(T)	2-1-2010
441-865-0040	1-4-2010	Amend	2-1-2010	443-002-0070	2-9-2010	Amend	3-1-2010
441-865-0050	1-4-2010	Amend	2-1-2010	443-002-0090	2-9-2010	Amend	3-1-2010
441-865-0080	1-4-2010	Amend	2-1-2010	459-017-0060	12-1-2009	Amend	1-1-2010
441-865-0090	1-4-2010	Amend	2-1-2010	461-025-0310	1-1-2010	Amend	2-1-2010
441-870-0030	1-4-2010	Amend	2-1-2010	461-101-0010	1-1-2010	Amend	2-1-2010
441-870-0040	1-4-2010	Amend	2-1-2010	461-101-0010	1-1-2010	Amend(T)	2-1-2010
441-870-0050	1-4-2010	Amend	2-1-2010	461-101-0010(T)	1-1-2010	Repeal	2-1-2010
441-870-0070	1-4-2010	Amend	2-1-2010	461-105-0006	1-1-2010	Adopt	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
461-105-0006(T)	1-1-2010	Repeal	2-1-2010	461-135-1149	1-1-2010	Adopt	2-1-2010
461-110-0210	1-1-2010	Amend	2-1-2010	461-135-1149	1-1-2010	Amend(T)	2-1-2010
461-110-0210	1-1-2010	Amend(T)	2-1-2010	461-135-1149(T)	1-1-2010	Repeal	2-1-2010
461-110-0210(T)	1-1-2010	Repeal	2-1-2010	461-135-1180	1-1-2010	Repeal	2-1-2010
461-110-0370	1-1-2010	Amend	2-1-2010	461-135-1185	1-1-2010	Amend	2-1-2010
461-110-0400	1-1-2010	Amend(T)	2-1-2010	461-135-1195	11-16-2009	Amend(T)	1-1-2010
461-110-0430	1-1-2010	Amend	2-1-2010	461-135-1225	1-1-2010	Amend	2-1-2010
461-110-0530	1-1-2010	Amend(T)	2-1-2010	461-135-1230	1-1-2010	Amend	2-1-2010
461-110-0630	1-1-2010	Amend(T)	2-1-2010	461-145-0130	1-1-2010	Amend	2-1-2010
461-115-0030	1-1-2010	Amend	2-1-2010	461-145-0130	1-1-2010	Amend(T)	2-1-2010
461-115-0030	1-1-2010	Amend(T)	2-1-2010	461-145-0130(T)	1-1-2010	Repeal	2-1-2010
461-115-0030(T)	1-1-2010	Repeal	2-1-2010	461-145-0143	1-1-2010	Amend	2-1-2010
461-115-0050	1-1-2010	Amend	2-1-2010	461-145-0143	1-1-2010	Amend(T)	2-1-2010
461-115-0050	1-1-2010	Amend(T)	2-1-2010	461-145-0143(T)	1-1-2010	Repeal	2-1-2010
461-115-0050(T)	1-1-2010	Repeal	2-1-2010	461-145-0220	1-1-2010	Amend	2-1-2010
461-115-0071	1-1-2010	Amend	2-1-2010	461-145-0260	1-1-2010	Amend	2-1-2010
461-115-0090	1-1-2010	Amend	2-1-2010	461-145-0405	1-1-2010	Amend	2-1-2010
461-115-0230	1-1-2010	Amend(T)	2-1-2010	461-145-0550	11-24-2009	Amend(T)	1-1-2010
461-115-0430	1-1-2010	Amend(T)	2-1-2010	461-145-0810	1-1-2010	Amend	2-1-2010
461-115-0705	1-1-2010	Amend	2-1-2010	461-145-0930	1-1-2010	Amend	2-1-2010
461-115-0705	1-1-2010	Amend(T)	2-1-2010	461-150-0055	1-1-2010	Amend	2-1-2010
461-115-0705(T)	1-1-2010	Repeal	2-1-2010	461-150-0055(T)	1-1-2010	Repeal	2-1-2010
461-120-0010	1-1-2010	Amend(T)	2-1-2010	461-150-0090	12-1-2009	Amend(T)	1-1-2010
461-120-0125	1-1-2010	Amend	2-1-2010	461-155-0175	1-1-2010	Repeal	2-1-2010
461-120-0125	1-1-2010	Amend(T)	2-1-2010	461-155-0225	1-1-2010	Amend	2-1-2010
461-120-0125(T)	1-1-2010	Repeal	2-1-2010	461-155-0225(T)	1-1-2010	Repeal	2-1-2010
461-120-0210	1-1-2010	Amend	2-1-2010	461-155-0250	1-1-2010	Amend	2-1-2010
461-120-0210	1-1-2010	Amend(T)	2-1-2010	461-155-0270	1-1-2010	Amend(T)	2-1-2010
461-120-0210(T)	1-1-2010	Repeal	2-1-2010	461-155-0360	1-1-2010	Amend	2-1-2010
461-120-0310	1-1-2010	Amend	2-1-2010	461-155-0360(T)	1-1-2010	Repeal	2-1-2010
461-120-0310(T)	1-1-2010	Repeal	2-1-2010	461-155-0530	1-1-2010	Amend	2-1-2010
461-120-0315	1-1-2010	Amend	2-1-2010	461-155-0580	1-1-2010	Amend	2-1-2010
461-120-0315(T)	1-1-2010	Repeal	2-1-2010	461-155-0630	1-1-2010	Amend	2-1-2010
461-120-0345	1-1-2010	Amend	2-1-2010	461-155-0640	1-1-2010	Amend	2-1-2010
461-120-0345(T)	1-1-2010	Repeal	2-1-2010	461-155-0660	1-1-2010	Amend	2-1-2010
461-120-0510	1-1-2010	Amend	2-1-2010	461-155-0670	1-1-2010	Amend	2-1-2010
461-120-0510(T)	1-1-2010	Repeal	2-1-2010	461-155-0680	1-1-2010	Amend	2-1-2010
461-125-0170	1-1-2010	Amend	2-1-2010	461-155-0688	1-1-2010	Adopt	2-1-2010
461-125-0170(T)	1-1-2010	Repeal	2-1-2010	461-155-0693	1-1-2010	Adopt	2-1-2010
461-125-0310	1-1-2010	Amend	2-1-2010	461-160-0015	1-1-2010	Amend	2-1-2010
461-135-0095	1-1-2010	Amend	2-1-2010	461-160-0015	1-1-2010	Amend(T)	2-1-2010
461-135-0095(T)	1-1-2010	Repeal	2-1-2010	461-160-0015(T)	1-1-2010	Repeal	2-1-2010
461-135-0096	1-1-2010	Amend	2-1-2010	461-160-0580	1-1-2010	Amend	2-1-2010
461-135-0096(T)	1-1-2010	Repeal	2-1-2010	461-160-0610	1-1-2010	Amend	2-1-2010
461-135-0570	2-5-2010	Amend(T)	3-1-2010	461-160-0700	1-1-2010	Amend	2-1-2010
461-135-0835	1-1-2010	Amend	2-1-2010	461-160-0700(T)	1-1-2010	Repeal	2-1-2010
461-135-0990	1-1-2010	Amend	2-1-2010	461-165-0010	1-1-2010	Amend	2-1-2010
461-135-0990(T)	1-1-2010	Repeal	2-1-2010	461-165-0030	1-1-2010	Amend(T)	2-1-2010
461-135-1100	12-1-2009	Amend(T)	1-1-2010	461-165-0200	1-1-2010	Amend	2-1-2010
461-135-1100	1-1-2010	Amend	2-1-2010	461-165-0210	1-1-2010	Amend	2-1-2010
461-135-1100	1-1-2010	Amend(T)	2-1-2010	461-165-0230	1-1-2010	Amend	2-1-2010
461-135-1100(T)	12-1-2009	Suspend	1-1-2010	461-170-0010	1-1-2010	Amend(T)	2-1-2010
461-135-1100(T)	1-1-2010	Repeal	2-1-2010	461-170-0011	1-1-2010	Amend(T)	2-1-2010
461-135-1101	1-1-2010	Adopt(T)	2-1-2010	461-175-0200	2-23-2010	Amend(T)	4-1-2010
461-135-1125	1-1-2010	Amend	2-1-2010	461-175-0270	1-1-2010	Amend	2-1-2010
461-135-1125(T)	1-1-2010	Repeal	2-1-2010	461-180-0085	1-1-2010	Amend	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
461-180-0085(T)	1-1-2010	Repeal	2-1-2010	573-041-0036	1-11-2010	Repeal	2-1-2010
461-180-0090	1-1-2010	Amend	2-1-2010	573-041-0037	1-11-2010	Repeal	2-1-2010
461-180-0090	1-1-2010	Amend(T)	2-1-2010	573-041-0040	1-11-2010	Repeal	2-1-2010
461-180-0090	1-26-2010	Amend(T)	3-1-2010	573-041-0045	1-11-2010	Repeal	2-1-2010
461-180-0090(T)	1-1-2010	Repeal	2-1-2010	573-041-0050	1-11-2010	Repeal	2-1-2010
461-180-0090(T)	1-26-2010	Suspend	3-1-2010	573-041-0055	1-11-2010	Repeal	2-1-2010
461-190-0199	1-1-2010	Amend	2-1-2010	573-041-0060	1-11-2010	Repeal	2-1-2010
461-193-0031	1-1-2010	Amend	2-1-2010	573-041-0065	1-11-2010	Repeal	2-1-2010
461-193-0121	1-1-2010	Repeal	2-1-2010	573-041-0085	1-11-2010	Repeal	2-1-2010
461-193-0240	1-1-2010	Amend	2-1-2010	573-041-0090	1-11-2010	Repeal	2-1-2010
461-193-0920	1-1-2010	Repeal	2-1-2010	573-041-0095	1-11-2010	Repeal	2-1-2010
461-193-0980	1-1-2010	Repeal	2-1-2010	573-041-0096	1-11-2010	Repeal	2-1-2010
461-193-1360	1-1-2010	Repeal	2-1-2010	573-041-0100	1-11-2010	Repeal	2-1-2010
461-193-1370	1-1-2010	Repeal	2-1-2010	574-050-0005	1-27-2010	Amend	3-1-2010
461-193-1380	1-1-2010	Amend	2-1-2010	575-031-0025	11-24-2009	Amend(T)	1-1-2010
461-195-0501	1-1-2010	Amend	2-1-2010	579-020-0006	12-15-2009	Amend	1-1-2010
461-195-0511	1-1-2010	Repeal	2-1-2010	580-040-0035	1-19-2010	Amend	3-1-2010
461-195-0521	1-1-2010	Amend	2-1-2010	580-040-0040	2-11-2010	Amend	3-1-2010
461-195-0531	1-1-2010	Repeal	2-1-2010	580-040-0040(T)	2-11-2010	Repeal	3-1-2010
461-195-0541	1-1-2010	Amend	2-1-2010	581-001-0053	12-10-2009	Amend	1-1-2010
461-195-0551	1-1-2010	Amend	2-1-2010	581-011-0087	2-8-2010	Amend	3-1-2010
461-195-0561	1-1-2010	Amend	2-1-2010	581-015-2000	12-10-2009	Amend	1-1-2010
471-007-0200	1-31-2010	Adopt	3-1-2010	581-015-2090	12-10-2009	Amend	1-1-2010
471-007-0200(T)	1-31-2010	Repeal	3-1-2010	581-015-2270	12-10-2009	Amend	1-1-2010
471-007-0210	1-31-2010	Adopt	3-1-2010	581-015-2275	12-10-2009	Amend	1-1-2010
471-007-0210(T)	1-31-2010	Repeal	3-1-2010	581-015-2440	12-10-2009	Amend	1-1-2010
471-007-0220	1-31-2010	Adopt	3-1-2010	581-015-2570	12-10-2009	Amend	1-1-2010
471-007-0220(T)	1-31-2010	Repeal	3-1-2010	581-015-2571	12-10-2009	Adopt	1-1-2010
471-007-0230	1-31-2010	Adopt	3-1-2010	581-015-2572	12-10-2009	Adopt	1-1-2010
471-007-0230(T)	1-31-2010	Repeal	3-1-2010	581-015-2573	12-10-2009	Adopt	1-1-2010
471-007-0240	1-31-2010	Adopt	3-1-2010	581-015-2574	12-10-2009	Adopt	1-1-2010
471-007-0240(T)	1-31-2010	Repeal	3-1-2010	581-015-2735	12-10-2009	Amend	1-1-2010
471-007-0250	1-31-2010	Adopt	3-1-2010	581-016-0520	12-10-2009	Amend	1-1-2010
471-007-0250(T)	1-31-2010	Repeal	3-1-2010	581-016-0526	12-10-2009	Amend	1-1-2010
471-007-0260	1-31-2010	Adopt	3-1-2010	581-016-0536	12-10-2009	Amend	1-1-2010
471-007-0260(T)	1-31-2010	Repeal	3-1-2010	581-016-0537	12-10-2009	Amend	1-1-2010
471-007-0270	1-31-2010	Adopt	3-1-2010	581-016-0538	12-10-2009	Amend	1-1-2010
471-007-0270(T)	1-31-2010	Repeal	3-1-2010	581-016-0541	12-10-2009	Amend	1-1-2010
471-007-0280	1-31-2010	Adopt	3-1-2010	581-016-0560	12-10-2009	Amend	1-1-2010
471-007-0280(T)	1-31-2010	Repeal	3-1-2010	581-016-0890	12-10-2009	Repeal	1-1-2010
471-007-0285	1-31-2010	Adopt	3-1-2010	581-016-0900	12-10-2009	Repeal	1-1-2010
471-007-0285(T)	1-31-2010	Repeal	3-1-2010	581-016-0910	12-10-2009	Repeal	1-1-2010
471-007-0290	1-31-2010	Adopt	3-1-2010	581-016-0920	12-10-2009	Repeal	1-1-2010
471-007-0290(T)	1-31-2010	Repeal	3-1-2010	581-016-0930	12-10-2009	Repeal	1-1-2010
471-007-0300	1-31-2010	Adopt	3-1-2010	581-016-0940	12-10-2009	Repeal	1-1-2010
471-007-0300(T)	1-31-2010	Repeal	3-1-2010	581-016-0950	12-10-2009	Repeal	1-1-2010
471-007-0310	1-31-2010	Adopt	3-1-2010	581-016-0960	12-10-2009	Repeal	1-1-2010
471-007-0310(T)	1-31-2010	Repeal	3-1-2010	581-016-0970	12-10-2009	Repeal	1-1-2010
471-030-0225	3-3-2010	Adopt(T)	4-1-2010	581-016-0980	12-10-2009	Repeal	1-1-2010
573-041-0005	1-11-2010	Repeal	2-1-2010	581-016-0990	12-10-2009	Repeal	1-1-2010
573-041-0010	1-11-2010	Repeal	2-1-2010	581-016-1000	12-10-2009	Repeal	1-1-2010
573-041-0020	1-11-2010	Repeal	2-1-2010	581-016-1010	12-10-2009	Repeal	1-1-2010
573-041-0025	1-11-2010	Repeal	2-1-2010	581-016-1020	12-10-2009	Repeal	1-1-2010
573-041-0027	1-11-2010	Repeal	2-1-2010	581-016-1030	12-10-2009	Repeal	1-1-2010
573-041-0030	1-11-2010	Repeal	2-1-2010	581-016-1040	12-10-2009	Repeal	1-1-2010
573-041-0035	1-11-2010	Repeal	2-1-2010	581-016-1050	12-10-2009	Repeal	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
581-020-0301	12-10-2009	Amend(T)	1-1-2010	584-065-0040	12-15-2009	Repeal	1-1-2010
581-020-0333	12-10-2009	Adopt(T)	1-1-2010	584-070-0012	12-15-2009	Amend	1-1-2010
581-020-0335	12-10-2009	Adopt(T)	1-1-2010	584-070-0111	12-15-2009	Amend	1-1-2010
581-020-0337	12-10-2009	Adopt(T)	1-1-2010	584-070-0112	12-15-2009	Amend	1-1-2010
581-020-0359	12-10-2009	Amend(T)	1-1-2010	584-070-0310	12-15-2009	Amend	1-1-2010
581-020-0362	12-10-2009	Adopt(T)	1-1-2010	584-080-0022	12-15-2009	Amend	1-1-2010
581-021-0037	12-10-2009	Amend	1-1-2010	584-080-0151	12-15-2009	Amend	1-1-2010
581-021-0110	12-10-2009	Amend	1-1-2010	584-080-0152	12-15-2009	Amend	1-1-2010
581-021-0500	12-10-2009	Amend	1-1-2010	584-080-0153	12-15-2009	Amend	1-1-2010
581-021-0500	12-10-2009	Amend	1-1-2010	584-080-0161	12-15-2009	Amend	1-1-2010
581-022-0610	12-10-2009	Amend	1-1-2010	589-007-0700	12-14-2009	Adopt	1-1-2010
581-022-0615	12-10-2009	Amend	1-1-2010	603-010-0056	1-7-2010	Adopt	2-1-2010
581-022-0615(T)	12-10-2009	Repeal	1-1-2010	603-011-0610	2-26-2010	Amend	4-1-2010
581-022-1130	12-10-2009	Amend	1-1-2010	603-011-0615	2-26-2010	Amend	4-1-2010
581-022-1133	12-10-2009	Adopt	1-1-2010	603-011-0620	2-26-2010	Amend	4-1-2010
581-022-1134	12-10-2009	Amend	1-1-2010	603-011-0700	2-10-2010	Amend	3-1-2010
581-022-1135	12-10-2009	Amend	1-1-2010	603-011-0701	2-10-2010	Adopt	3-1-2010
581-022-1215	12-10-2009	Adopt	1-1-2010	603-011-0705	2-10-2010	Amend	3-1-2010
581-022-1440	12-10-2009	Amend	1-1-2010	603-011-0706	2-10-2010	Adopt	3-1-2010
581-023-0006	12-10-2009	Amend	1-1-2010	603-011-0725	2-10-2010	Amend	3-1-2010
581-023-0018	12-10-2009	Amend	1-1-2010	603-027-0410	1-1-2010	Amend	2-1-2010
581-045-0001	2-8-2010	Amend	3-1-2010	603-027-0410(T)	1-1-2010	Repeal	2-1-2010
581-045-0003	2-8-2010	Adopt	3-1-2010	603-027-0420	1-1-2010	Amend	2-1-2010
581-045-0006	2-8-2010	Amend	3-1-2010	603-027-0420(T)	1-1-2010	Repeal	2-1-2010
581-045-0062	2-8-2010	Amend	3-1-2010	603-027-0430	1-1-2010	Amend	2-1-2010
581-045-0500	2-8-2010	Amend	3-1-2010	603-027-0430(T)	1-1-2010	Repeal	2-1-2010
581-045-0522	12-10-2009	Amend	1-1-2010	603-027-0440	1-1-2010	Amend	2-1-2010
581-045-0586	12-10-2009	Amend	1-1-2010	603-027-0440(T)	1-1-2010	Repeal	2-1-2010
584-010-0020	12-15-2009	Amend	1-1-2010	603-027-0490	1-1-2010	Amend	2-1-2010
584-017-0200	12-15-2009	Amend	1-1-2010	603-027-0490(T)	1-1-2010	Repeal	2-1-2010
584-021-0165	12-15-2009	Amend	1-1-2010	603-052-0051	1-28-2010	Amend	3-1-2010
584-036-0055	12-15-2009	Amend	1-1-2010	603-052-0127	1-28-2010	Amend	3-1-2010
584-036-0081	12-15-2009	Amend	1-1-2010	603-052-0860	1-21-2010	Amend	3-1-2010
584-038-0300	12-15-2009	Amend	1-1-2010	603-052-0880	1-21-2010	Amend	3-1-2010
584-042-0002	3-5-2010	Suspend	4-1-2010	603-052-1200	2-4-2010	Amend	3-1-2010
584-042-0006	3-5-2010	Suspend	4-1-2010	603-052-1236	2-4-2010	Adopt	3-1-2010
584-042-0009	3-5-2010	Suspend	4-1-2010	603-054-0024	1-28-2010	Amend	3-1-2010
584-042-0021	3-5-2010	Adopt(T)	4-1-2010	603-057-0160	12-7-2009	Amend	1-1-2010
584-042-0031	3-5-2010	Adopt(T)	4-1-2010	603-076-0101	1-15-2010	Adopt	2-1-2010
584-042-0034	3-5-2010	Adopt(T)	4-1-2010	603-076-0106	1-15-2010	Adopt	2-1-2010
584-042-0044	3-5-2010	Adopt(T)	4-1-2010	635-001-0035	1-1-2010	Amend	2-1-2010
584-050-0006	12-15-2009	Amend	1-1-2010	635-004-0005	3-15-2010	Amend	4-1-2010
584-050-0030	12-15-2009	Amend	1-1-2010	635-004-0009	3-15-2010	Amend	4-1-2010
584-050-0035	12-15-2009	Amend	1-1-2010	635-004-0016	1-1-2010	Amend(T)	2-1-2010
584-052-0015	12-15-2009	Amend	1-1-2010	635-004-0016	3-15-2010	Amend	4-1-2010
584-060-0012	12-15-2009	Amend	1-1-2010	635-004-0019	3-3-2010	Amend(T)	4-1-2010
584-060-0013	12-15-2009	Amend	1-1-2010	635-004-0020	1-1-2010	Amend	2-1-2010
584-060-0014	1-28-2010	Amend	3-1-2010	635-004-0027	1-1-2010	Amend(T)	2-1-2010
584-060-0071	12-15-2009	Amend	1-1-2010	635-004-0033	1-1-2010	Amend	2-1-2010
584-060-0071	12-18-2009	Amend	2-1-2010	635-004-0036	1-1-2010	Amend	2-1-2010
584-060-0162	1-1-2010	Amend	1-1-2010	635-004-0066	1-1-2010	Adopt	2-1-2010
584-060-0171	12-15-2009	Amend	1-1-2010	635-004-0068	1-1-2010	Adopt	2-1-2010
584-060-0181	12-15-2009	Amend	1-1-2010	635-004-0070	1-1-2010	Amend	2-1-2010
584-060-0220	12-15-2009	Adopt	1-1-2010	635-004-0080	1-1-2010	Amend	2-1-2010
584-065-0030	12-15-2009	Repeal	1-1-2010	635-005-0005	1-1-2010	Amend	2-1-2010
584-065-0035	12-15-2009	Adopt	1-1-2010	635-006-0001	1-1-2010	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-006-0020	1-1-2010	Amend	1-1-2010	635-023-0128	1-1-2010	Amend	1-1-2010
635-006-0232	1-13-2010	Amend	2-1-2010	635-023-0130	1-1-2010	Amend	1-1-2010
635-006-0850	1-1-2010	Amend	2-1-2010	635-023-0134	1-1-2010	Amend	1-1-2010
635-006-0890	1-1-2010	Amend	2-1-2010	635-039-0080	1-1-2010	Amend	1-1-2010
635-006-0910	1-1-2010	Amend	1-1-2010	635-039-0080	3-15-2010	Amend	4-1-2010
635-006-1025	1-1-2010	Amend	1-1-2010	635-039-0085	3-15-2010	Amend	4-1-2010
635-006-1075	1-1-2010	Amend	1-1-2010	635-039-0090	1-1-2010	Amend	1-1-2010
635-006-1085	1-1-2010	Amend	1-1-2010	635-041-0065	2-3-2010	Amend(T)	3-1-2010
635-007-0605	1-1-2010	Amend	1-1-2010	635-041-0065	2-11-2010	Amend(T)	3-1-2010
635-007-0910	1-1-2010	Amend	1-1-2010	635-041-0065	2-26-2010	Amend(T)	4-1-2010
635-008-0145	1-1-2010	Amend	1-1-2010	635-041-0065	3-3-2010	Amend(T)	4-1-2010
635-011-0100	1-1-2010	Amend	1-1-2010	635-041-0065(T)	2-11-2010	Suspend	3-1-2010
635-011-0170	3-15-2010	Adopt	4-1-2010	635-041-0065(T)	2-26-2010	Suspend	4-1-2010
635-012-0020	6-30-2011	Adopt	2-1-2010	635-041-0065(T)	3-3-2010	Suspend	4-1-2010
635-012-0020	6-30-2011	Adopt	3-1-2010	635-042-0130	1-1-2010	Amend(T)	2-1-2010
635-012-0030	6-30-2011	Adopt	2-1-2010	635-042-0130	2-8-2010	Amend(T)	3-1-2010
635-012-0030	6-30-2011	Adopt	3-1-2010	635-042-0130	3-11-2010	Amend(T)	4-1-2010
635-012-0040	6-30-2011	Adopt	2-1-2010	635-042-0130(T)	2-8-2010	Suspend	3-1-2010
635-012-0050	6-30-2011	Adopt	2-1-2010	635-042-0130(T)	3-11-2010	Suspend	4-1-2010
635-012-0050	6-30-2011	Adopt	3-1-2010	635-042-0135	1-1-2010	Amend(T)	2-1-2010
635-012-0060	6-30-2011	Adopt	2-1-2010	635-042-0145	2-22-2010	Amend(T)	4-1-2010
635-012-0060	6-30-2011	Adopt	3-1-2010	635-042-0145	2-26-2010	Amend(T)	4-1-2010
635-013-0003	1-1-2010	Amend	1-1-2010	635-042-0145	3-14-2010	Amend(T)	4-1-2010
635-013-0004	1-1-2010	Amend	1-1-2010	635-042-0145(T)	2-26-2010	Suspend	4-1-2010
635-013-0009	3-15-2010	Amend(T)	4-1-2010	635-042-0145(T)	3-14-2010	Suspend	4-1-2010
635-014-0080	1-1-2010	Amend	1-1-2010	635-042-0160	2-21-2010	Amend(T)	4-1-2010
635-014-0090	1-1-2010	Amend	1-1-2010	635-042-0170	4-19-2010	Amend(T)	4-1-2010
635-016-0080	1-1-2010	Amend	1-1-2010	635-042-0180	2-22-2010	Amend(T)	4-1-2010
635-016-0090	11-19-2009	Amend(T)	1-1-2010	635-043-0105	1-12-2010	Amend	2-1-2010
635-016-0090	1-1-2010	Amend	1-1-2010	635-044-0051	1-1-2010	Adopt(T)	2-1-2010
635-016-0090(T)	11-19-2009	Suspend	1-1-2010	635-048-0080	12-15-2009	Amend	1-1-2010
635-017-0080	1-1-2010	Amend	1-1-2010	635-055-0000	12-15-2009	Amend	1-1-2010
635-017-0090	1-1-2010	Amend	1-1-2010	635-055-0035	12-15-2009	Amend	1-1-2010
635-017-0095	1-1-2010	Amend	1-1-2010	635-055-0037	12-15-2009	Amend	1-1-2010
635-018-0080	1-1-2010	Amend	1-1-2010	635-055-0070	12-15-2009	Amend	1-1-2010
635-018-0090	1-1-2010	Amend	1-1-2010	635-058-0000	1-12-2010	Adopt	2-1-2010
635-018-0090	4-1-2010	Amend(T)	3-1-2010	635-058-0010	1-12-2010	Adopt	2-1-2010
635-018-0090	4-15-2010	Amend(T)	4-1-2010	635-058-0020	1-12-2010	Adopt	2-1-2010
635-018-0090(T)	4-15-2010	Suspend	4-1-2010	635-059-0000	1-12-2010	Adopt	2-1-2010
635-019-0080	1-1-2010	Amend	1-1-2010	635-059-0010	1-12-2010	Adopt	2-1-2010
635-019-0090	1-1-2010	Amend	1-1-2010	635-059-0050	1-12-2010	Adopt	2-1-2010
635-021-0080	1-1-2010	Amend	1-1-2010	635-065-0015	3-3-2010	Amend(T)	4-1-2010
635-021-0090	1-1-2010	Amend	1-1-2010	635-065-0765	1-25-2010	Amend(T)	3-1-2010
635-023-0080	1-1-2010	Amend	1-1-2010	635-065-0765	2-26-2010	Amend(T)	4-1-2010
635-023-0090	1-1-2010	Amend	1-1-2010	635-068-0000	3-1-2010	Amend	4-1-2010
635-023-0090	1-1-2010	Amend(T)	2-1-2010	635-069-0000	2-1-2010	Amend	2-1-2010
635-023-0090	3-11-2010	Amend(T)	4-1-2010	635-070-0000	4-1-2010	Amend	4-1-2010
635-023-0090(T)	3-11-2010	Suspend	4-1-2010	635-070-0000	4-1-2010	Amend	4-1-2010
635-023-0095	1-1-2010	Amend	1-1-2010	635-071-0000	4-1-2010	Amend	4-1-2010
635-023-0095	2-21-2010	Amend(T)	4-1-2010	635-071-0000	4-1-2010	Amend	4-1-2010
635-023-0095	3-1-2010	Amend(T)	4-1-2010	635-073-0000	2-1-2010	Amend	2-1-2010
635-023-0095(T)	3-1-2010	Suspend	4-1-2010	635-073-0065	2-1-2010	Amend	2-1-2010
635-023-0125	1-1-2010	Amend	1-1-2010	635-073-0070	2-1-2010	Amend	2-1-2010
635-023-0125	3-1-2010	Amend(T)	4-1-2010	635-090-0030	1-1-2010	Amend	1-1-2010
635-023-0125	3-2-2010	Amend(T)	4-1-2010	635-090-0050	1-1-2010	Amend	1-1-2010
635-023-0125(T)	3-2-2010	Suspend	4-1-2010	635-500-0703	1-1-2010	Amend	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-500-6550	2-8-2010	Adopt	3-1-2010	731-070-0120	12-22-2009	Amend	2-1-2010
635-600-0000	1-1-2010	Amend	1-1-2010	731-070-0130	12-22-2009	Amend	2-1-2010
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
690-020-0039	1-1-2010	Am. & Ren.	1-1-2010	731-149-0010	1-1-2010	Amend(T)	2-1-2010
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
690-190-0100	11-23-2009	Adopt	1-1-2010	732-005-0027	1-29-2010	Amend	3-1-2010
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
731-070-0055	12-22-2009	Amend	2-1-2010	732-005-0081	1-29-2010	Amend	3-1-2010
731-070-0060	12-22-2009	Amend	2-1-2010	732-005-0081(T)	1-29-2010	Repeal	3-1-2010
731-070-0070	12-22-2009	Am. & Ren.	2-1-2010	732-030-0005	1-29-2010	Adopt	3-1-2010
731-070-0080	12-22-2009	Amend	2-1-2010	732-030-0005(T)	1-29-2010	Repeal	3-1-2010
731-070-0110	12-22-2009	Amend	2-1-2010	732-030-0010	1-29-2010	Adopt	3-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
732-030-0010(T)	1-29-2010	Repeal	3-1-2010	735-062-0070	1-28-2010	Amend	3-1-2010
732-030-0015	1-29-2010	Adopt	3-1-2010	735-062-0090	1-1-2010	Amend	2-1-2010
732-030-0015(T)	1-29-2010	Repeal	3-1-2010	735-062-0125	1-1-2010	Amend	2-1-2010
732-030-0020	1-29-2010	Adopt	3-1-2010	735-062-0190	1-1-2010	Amend	2-1-2010
732-030-0020(T)	1-29-2010	Repeal	3-1-2010	735-062-0290	1-28-2010	Adopt	3-1-2010
732-030-0025	1-29-2010	Adopt	3-1-2010	735-064-0100	1-1-2010	Amend	2-1-2010
732-030-0025(T)	1-29-2010	Repeal	3-1-2010	735-064-0220	1-1-2010	Amend	2-1-2010
732-030-0030	1-29-2010	Adopt	3-1-2010	735-070-0000	1-1-2010	Amend	2-1-2010
732-030-0030(T)	1-29-2010	Repeal	3-1-2010	735-070-0043	1-1-2010	Repeal	2-1-2010
732-030-0035	1-29-2010	Adopt	3-1-2010	735-070-0170	1-1-2010	Amend	2-1-2010
732-030-0035(T)	1-29-2010	Repeal	3-1-2010	735-072-0035	1-1-2010	Amend	2-1-2010
733-030-0500	3-15-2010	Adopt	4-1-2010	735-080-0020	1-1-2010	Amend	2-1-2010
733-030-0510	3-15-2010	Adopt	4-1-2010	735-080-0040	1-1-2010	Amend	2-1-2010
733-030-0520	3-15-2010	Adopt	4-1-2010	735-080-0060	1-1-2010	Amend	2-1-2010
734-020-0148	1-28-2010	Adopt(T)	3-1-2010	735-090-0120	1-1-2010	Amend	2-1-2010
734-065-0005	11-17-2009	Repeal	1-1-2010	735-090-0125	1-1-2010	Adopt	2-1-2010
734-065-0010	11-17-2009	Amend	1-1-2010	735-150-0005	2-25-2010	Amend	4-1-2010
734-065-0015	11-17-2009	Amend	1-1-2010	735-150-0005(T)	2-25-2010	Repeal	4-1-2010
734-065-0020	11-17-2009	Amend	1-1-2010	735-150-0010	1-1-2010	Amend	2-1-2010
734-065-0025	11-17-2009	Amend	1-1-2010	735-150-0020	1-1-2010	Amend	2-1-2010
734-065-0030	11-17-2009	Repeal	1-1-2010	735-150-0042	1-1-2010	Adopt	2-1-2010
734-065-0035	11-17-2009	Amend	1-1-2010	735-150-0047	1-1-2010	Adopt	2-1-2010
734-065-0040	11-17-2009	Amend	1-1-2010	735-150-0110	1-1-2010	Amend	2-1-2010
734-065-0045	11-17-2009	Amend	1-1-2010	735-158-0000	1-1-2010	Amend(T)	2-1-2010
734-065-0050	11-17-2009	Amend	1-1-2010	735-158-0005	1-1-2010	Amend(T)	2-1-2010
735-020-0080	1-1-2010	Amend	2-1-2010	735-158-0010	1-1-2010	Amend(T)	2-1-2010
735-024-0015	2-25-2010	Amend	4-1-2010	736-004-0005	12-8-2009	Amend	1-1-2010
735-024-0015(T)	2-25-2010	Repeal	4-1-2010	736-004-0010	12-8-2009	Amend	1-1-2010
735-024-0025	2-25-2010	Amend	4-1-2010	736-004-0015	12-8-2009	Amend	1-1-2010
735-024-0025(T)	2-25-2010	Repeal	4-1-2010	736-004-0020	12-8-2009	Amend	1-1-2010
735-024-0075	1-1-2010	Amend(T)	2-1-2010	736-004-0025	12-8-2009	Amend	1-1-2010
735-024-0080	1-1-2010	Suspend	2-1-2010	736-004-0030	12-8-2009	Amend	1-1-2010
735-024-0130	1-1-2010	Amend(T)	2-1-2010	736-004-0035	12-8-2009	Adopt	1-1-2010
735-032-0010	2-25-2010	Amend	4-1-2010	736-004-0060	12-8-2009	Amend	1-1-2010
735-032-0010(T)	2-25-2010	Repeal	4-1-2010	736-004-0062	12-8-2009	Amend	1-1-2010
735-040-0097	1-28-2010	Amend	3-1-2010	736-004-0065	12-8-2009	Amend	1-1-2010
735-040-0097(T)	1-28-2010	Repeal	3-1-2010	736-004-0080	12-8-2009	Repeal	1-1-2010
735-040-0098	1-28-2010	Adopt	3-1-2010	736-004-0085	12-8-2009	Amend	1-1-2010
735-040-0098(T)	1-28-2010	Repeal	3-1-2010	736-004-0090	12-8-2009	Amend	1-1-2010
735-046-0010	1-28-2010	Amend	3-1-2010	736-004-0095	12-8-2009	Amend	1-1-2010
735-046-0010(T)	1-28-2010	Repeal	3-1-2010	736-004-0110	12-8-2009	Amend	1-1-2010
735-046-0050	1-28-2010	Amend	3-1-2010	736-004-0115	12-8-2009	Amend	1-1-2010
735-046-0050(T)	1-28-2010	Repeal	3-1-2010	736-004-0120	12-8-2009	Adopt	1-1-2010
735-050-0050	1-1-2010	Amend	2-1-2010	736-004-0125	12-8-2009	Adopt	1-1-2010
735-050-0060	1-1-2010	Amend	2-1-2010	736-009-0005	12-8-2009	Repeal	1-1-2010
735-050-0062	1-1-2010	Amend	2-1-2010	736-009-0006	12-8-2009	Adopt	1-1-2010
735-050-0064	1-1-2010	Amend	2-1-2010	736-009-0010	12-8-2009	Repeal	1-1-2010
735-050-0070	1-1-2010	Amend	2-1-2010	736-009-0015	12-8-2009	Repeal	1-1-2010
735-050-0080	1-1-2010	Amend	2-1-2010	736-009-0020	12-8-2009	Amend	1-1-2010
735-050-0120	1-1-2010	Amend	2-1-2010	736-009-0021	12-8-2009	Adopt	1-1-2010
735-062-0003	1-1-2010	Repeal	2-1-2010	736-009-0022	12-8-2009	Adopt	1-1-2010
735-062-0007	1-1-2010	Amend	2-1-2010	736-009-0025	12-8-2009	Amend	1-1-2010
735-062-0010	1-1-2010	Amend	2-1-2010	736-009-0030	12-8-2009	Amend	1-1-2010
735-062-0015	1-1-2010	Amend	2-1-2010	736-010-0055	2-3-2010	Amend(T)	3-1-2010
735-062-0020	1-1-2010	Amend	2-1-2010	736-015-0020	1-5-2010	Amend	2-1-2010
735-062-0035	1-1-2010	Amend	2-1-2010	736-015-0030	1-5-2010	Amend	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
736-015-0035	1-5-2010	Amend	2-1-2010	737-010-0000	2-25-2010	Adopt	4-1-2010
736-015-0040	1-5-2010	Amend	2-1-2010	737-010-0000(T)	2-25-2010	Repeal	4-1-2010
736-029-0010	6-30-2011	Adopt	3-1-2010	737-010-0010	2-25-2010	Adopt	4-1-2010
736-029-0030	6-30-2011	Adopt	3-1-2010	737-010-0010(T)	2-25-2010	Repeal	4-1-2010
736-029-0040	6-30-2011	Adopt	3-1-2010	737-010-0020	2-25-2010	Adopt	4-1-2010
736-029-0050	6-30-2011	Adopt	3-1-2010	737-010-0020(T)	2-25-2010	Repeal	4-1-2010
736-050-0001	2-3-2010	Amend	3-1-2010	737-015-0020	2-25-2010	Amend(T)	4-1-2010
736-050-0002	2-3-2010	Repeal	3-1-2010	737-015-0030	2-25-2010	Amend(T)	4-1-2010
736-050-0005	2-3-2010	Repeal	3-1-2010	737-015-0090	2-25-2010	Amend(T)	4-1-2010
736-050-0100	2-3-2010	Amend	3-1-2010	737-015-0100	2-25-2010	Amend(T)	4-1-2010
736-050-0105	2-3-2010	Amend	3-1-2010	737-015-0110	2-25-2010	Amend(T)	4-1-2010
736-050-0110	2-3-2010	Repeal	3-1-2010	738-010-0025	1-7-2010	Amend(T)	2-1-2010
736-050-0112	2-3-2010	Adopt	3-1-2010	738-010-0035	1-7-2010	Amend(T)	2-1-2010
736-050-0112(T)	2-3-2010	Repeal	3-1-2010	738-015-0005	1-7-2010	Amend(T)	2-1-2010
736-050-0115	2-3-2010	Repeal	3-1-2010	740-055-0020	12-22-2009	Amend	2-1-2010
736-050-0120	2-3-2010	Amend	3-1-2010	740-200-0040	1-1-2010	Amend	2-1-2010
736-050-0120(T)	2-3-2010	Repeal	3-1-2010	740-200-0045	1-1-2010	Amend	2-1-2010
736-050-0125	2-3-2010	Amend	3-1-2010	800-001-0020	2-1-2010	Amend	3-1-2010
736-050-0125(T)	2-3-2010	Repeal	3-1-2010	800-010-0015	2-1-2010	Amend	3-1-2010
736-050-0130	2-3-2010	Repeal	3-1-2010	800-010-0017	2-1-2010	Amend	3-1-2010
736-050-0130(T)	2-3-2010	Repeal	3-1-2010	800-010-0025	2-1-2010	Amend	3-1-2010
736-050-0135	2-3-2010	Amend	3-1-2010	800-010-0030	2-1-2010	Amend	3-1-2010
736-050-0135(T)	2-3-2010	Repeal	3-1-2010	800-010-0040	2-1-2010	Amend	3-1-2010
736-050-0140	2-3-2010	Amend	3-1-2010	800-010-0041	2-1-2010	Amend	3-1-2010
736-050-0140(T)	2-3-2010	Repeal	3-1-2010	800-010-0050	2-1-2010	Amend	3-1-2010
736-050-0150	2-3-2010	Repeal	3-1-2010	800-015-0005	2-1-2010	Amend	3-1-2010
736-050-0150(T)	2-3-2010	Repeal	3-1-2010	800-015-0010	2-1-2010	Amend	3-1-2010
736-140-0005	12-8-2009	Adopt	1-1-2010	800-015-0020	2-1-2010	Amend	3-1-2010
736-140-0015	12-8-2009	Adopt	1-1-2010	800-020-0015	2-1-2010	Amend	3-1-2010
736-146-0010	12-4-2009	Amend	1-1-2010	800-020-0025	2-1-2010	Amend	3-1-2010
736-146-0012	12-4-2009	Amend	1-1-2010	800-020-0065	2-1-2010	Amend	3-1-2010
736-146-0015	12-4-2009	Amend	1-1-2010	800-025-0020	2-1-2010	Amend	3-1-2010
736-146-0020	12-4-2009	Amend	1-1-2010	800-025-0023	2-1-2010	Amend	3-1-2010
736-146-0025	12-4-2009	Repeal	1-1-2010	800-025-0025	2-1-2010	Amend	3-1-2010
736-146-0030	12-4-2009	Repeal	1-1-2010	800-025-0027	2-1-2010	Amend	3-1-2010
736-146-0040	12-4-2009	Repeal	1-1-2010	800-025-0029	2-1-2010	Amend	3-1-2010
736-146-0050	12-4-2009	Amend	1-1-2010	800-025-0030	2-1-2010	Amend	3-1-2010
736-146-0060	12-4-2009	Amend	1-1-2010	800-025-0040	2-1-2010	Amend	3-1-2010
736-146-0070	12-4-2009	Amend	1-1-2010	800-025-0050	2-1-2010	Amend	3-1-2010
736-146-0080	12-4-2009	Amend	1-1-2010	800-030-0035	2-1-2010	Amend	3-1-2010
736-146-0090	12-4-2009	Amend	1-1-2010	800-030-0050	2-1-2010	Amend	3-1-2010
736-146-0100	12-4-2009	Amend	1-1-2010	801-001-0035	1-1-2010	Amend	1-1-2010
736-146-0110	12-4-2009	Amend	1-1-2010	801-005-0010	1-1-2010	Amend	1-1-2010
736-146-0120	12-4-2009	Amend	1-1-2010	801-010-0010	1-1-2010	Amend	1-1-2010
736-146-0130	12-4-2009	Amend	1-1-2010	801-010-0060	1-1-2010	Amend	1-1-2010
736-146-0140	12-4-2009	Amend	1-1-2010	801-010-0075	1-1-2010	Amend	1-1-2010
736-147-0010	12-4-2009	Amend	1-1-2010	801-010-0080	1-1-2010	Amend	1-1-2010
736-147-0020	12-4-2009	Repeal	1-1-2010	801-010-0100	1-1-2010	Amend	1-1-2010
736-147-0030	12-4-2009	Amend	1-1-2010	801-010-0120	1-1-2010	Amend	1-1-2010
736-147-0040	12-4-2009	Adopt	1-1-2010	801-010-0345	1-1-2010	Amend	1-1-2010
736-147-0050	12-4-2009	Amend	1-1-2010	801-020-0690	1-1-2010	Amend	1-1-2010
736-147-0060	12-4-2009	Amend	1-1-2010	801-030-0020	1-1-2010	Amend	1-1-2010
736-147-0070	12-4-2009	Adopt	1-1-2010	801-040-0010	1-1-2010	Amend	1-1-2010
736-148-0010	12-4-2009	Amend	1-1-2010	801-050-0005	1-1-2010	Amend	1-1-2010
736-148-0020	12-4-2009	Amend	1-1-2010	801-050-0010	1-1-2010	Amend	1-1-2010
736-149-0010	12-4-2009	Amend	1-1-2010	801-050-0020	1-1-2010	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
801-050-0030	1-1-2010	Amend	1-1-2010	812-007-0025	2-1-2010	Adopt	3-1-2010
801-050-0035	1-1-2010	Amend	1-1-2010	812-007-0030	2-1-2010	Repeal	3-1-2010
801-050-0040	1-1-2010	Amend	1-1-2010	812-007-0040	2-1-2010	Repeal	3-1-2010
801-050-0065	1-1-2010	Amend	1-1-2010	812-007-0050	2-1-2010	Repeal	3-1-2010
801-050-0070	1-1-2010	Amend	1-1-2010	812-007-0060	2-1-2010	Repeal	3-1-2010
801-050-0080	1-1-2010	Amend	1-1-2010	812-007-0070	2-1-2010	Repeal	3-1-2010
804-003-0000	2-17-2010	Amend	4-1-2010	812-007-0080	2-1-2010	Repeal	3-1-2010
804-020-0003	12-11-2009	Amend	1-1-2010	812-007-0090	2-1-2010	Repeal	3-1-2010
804-022-0000	2-17-2010	Amend	4-1-2010	812-007-0100	2-1-2010	Adopt	3-1-2010
804-022-0025	12-11-2009	Adopt	1-1-2010	812-007-0110	2-1-2010	Adopt	3-1-2010
804-025-0020	2-17-2010	Amend	4-1-2010	812-007-0120	2-1-2010	Adopt	3-1-2010
804-030-0000	12-11-2009	Amend	1-1-2010	812-007-0130	2-1-2010	Adopt	3-1-2010
804-030-0003	2-17-2010	Adopt	4-1-2010	812-007-0140	2-1-2010	Adopt	3-1-2010
804-035-0010	2-17-2010	Amend	4-1-2010	812-007-0150	2-1-2010	Adopt	3-1-2010
804-035-0020	2-17-2010	Amend	4-1-2010	812-007-0160	2-1-2010	Adopt	3-1-2010
804-035-0030	2-17-2010	Amend	4-1-2010	812-007-0200	2-1-2010	Adopt	3-1-2010
804-040-0000	12-11-2009	Amend	1-1-2010	812-007-0205	2-1-2010	Adopt	3-1-2010
804-040-0000	2-17-2010	Amend	4-1-2010	812-007-0210	2-1-2010	Adopt	3-1-2010
808-002-0200	1-1-2010	Amend	2-1-2010	812-007-0220	2-1-2010	Adopt	3-1-2010
808-002-0220	1-1-2010	Amend	2-1-2010	812-007-0230	2-1-2010	Adopt	3-1-2010
808-002-0500	1-1-2010	Amend	2-1-2010	812-007-0240	2-1-2010	Adopt	3-1-2010
808-002-0620	1-1-2010	Amend	2-1-2010	812-007-0250	2-1-2010	Adopt	3-1-2010
808-002-0775	1-1-2010	Adopt	2-1-2010	812-007-0260	2-1-2010	Adopt	3-1-2010
808-002-0808	1-1-2010	Adopt	2-1-2010	812-007-0300	2-1-2010	Adopt	3-1-2010
808-002-0882	1-1-2010	Adopt	2-1-2010	812-007-0310	2-1-2010	Adopt	3-1-2010
808-002-0884	1-1-2010	Adopt	2-1-2010	812-007-0320	2-1-2010	Adopt	3-1-2010
808-002-0895	1-1-2010	Adopt	2-1-2010	812-007-0330	2-1-2010	Adopt	3-1-2010
808-003-0020	1-1-2010	Amend	2-1-2010	812-007-0350	2-1-2010	Adopt	3-1-2010
808-003-0040	1-1-2010	Amend	2-1-2010	812-007-0360	2-1-2010	Adopt	3-1-2010
808-003-0055	1-1-2010	Amend	2-1-2010	812-007-0370	2-1-2010	Adopt	3-1-2010
808-003-0060	1-1-2010	Amend	2-1-2010	812-007-0372	2-1-2010	Adopt	3-1-2010
808-003-0075	1-1-2010	Amend	2-1-2010	812-007-0374	2-1-2010	Adopt	3-1-2010
808-003-0080	1-1-2010	Amend	2-1-2010	812-008-0070	1-1-2010	Amend	1-1-2010
808-003-0085	1-1-2010	Amend	2-1-2010	812-008-0090	1-1-2010	Amend	2-1-2010
808-003-0100	1-1-2010	Amend	2-1-2010	812-008-0110	1-1-2010	Amend	1-1-2010
808-003-0105	1-1-2010	Repeal	2-1-2010	812-008-0202	1-1-2010	Amend	1-1-2010
808-003-0125	1-1-2010	Amend	2-1-2010	812-009-0340	2-3-2010	Amend(T)	3-1-2010
808-003-0210	1-1-2010	Amend	2-1-2010	812-012-0110	1-1-2010	Amend	2-1-2010
808-003-0610	12-1-2009	Amend(T)	1-1-2010	812-020-0062	1-1-2010	Amend	1-1-2010
808-005-0020	1-27-2010	Amend	3-1-2010	812-020-0070	2-1-2010	Amend	3-1-2010
808-040-0020	1-27-2010	Amend	3-1-2010	812-020-0082	2-1-2010	Repeal	3-1-2010
808-040-0060	1-27-2010	Amend	3-1-2010	812-021-0025	1-1-2010	Amend	2-1-2010
809-055-0000	12-11-2009	Amend	1-1-2010	812-030-0000	2-1-2010	Adopt	3-1-2010
811-010-0071	12-22-2009	Amend	2-1-2010	812-030-0010	2-1-2010	Adopt	3-1-2010
811-035-0005	12-22-2009	Amend	2-1-2010	812-030-0100	2-1-2010	Adopt	3-1-2010
811-035-0015	12-22-2009	Amend	2-1-2010	812-030-0110	2-1-2010	Adopt	3-1-2010
812-001-0200	1-1-2010	Amend	1-1-2010	812-030-0200	2-1-2010	Adopt	3-1-2010
812-001-0200	2-1-2010	Amend	3-1-2010	812-030-0210	2-1-2010	Adopt	3-1-2010
812-003-0120	1-1-2010	Amend	1-1-2010	812-030-0220	2-1-2010	Adopt	3-1-2010
812-003-0140	1-1-2010	Amend	1-1-2010	812-030-0230	2-1-2010	Adopt	3-1-2010
812-004-0320	1-1-2010	Amend	1-1-2010	812-030-0240	2-1-2010	Adopt	3-1-2010
812-005-0800	2-1-2010	Amend	3-1-2010	812-030-0250	2-1-2010	Adopt	3-1-2010
812-007-0000	2-1-2010	Amend	3-1-2010	812-030-0300	2-1-2010	Adopt	3-1-2010
812-007-0010	2-1-2010	Repeal	3-1-2010	813-007-0005	1-7-2010	Adopt	2-1-2010
812-007-0020	2-1-2010	Amend	3-1-2010	813-007-0010	1-7-2010	Adopt	2-1-2010
812-007-0020	3-11-2010	Amend(T)	4-1-2010	813-007-0015	1-7-2010	Adopt	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
813-007-0020	1-7-2010	Adopt	2-1-2010	813-055-0090	12-22-2009	Adopt	2-1-2010
813-007-0025	1-7-2010	Adopt	2-1-2010	813-055-0100	12-22-2009	Adopt	2-1-2010
813-007-0030	1-7-2010	Adopt	2-1-2010	813-055-0110	12-22-2009	Adopt	2-1-2010
813-007-0035	1-7-2010	Adopt	2-1-2010	813-140-0096	1-7-2010	Amend	2-1-2010
813-007-0040	1-7-2010	Adopt	2-1-2010	813-300-0010	1-7-2010	Amend	2-1-2010
813-007-0045	1-7-2010	Adopt	2-1-2010	813-300-0100	1-7-2010	Amend	2-1-2010
813-007-0050	1-7-2010	Adopt	2-1-2010	817-040-0003	12-26-2009	Amend(T)	2-1-2010
813-007-0055	1-7-2010	Adopt	2-1-2010	833-001-0000	1-5-2010	Amend	2-1-2010
813-007-0060	1-7-2010	Adopt	2-1-2010	833-001-0005	1-5-2010	Amend	2-1-2010
813-007-0065	1-7-2010	Adopt	2-1-2010	833-001-0010	1-5-2010	Amend	2-1-2010
813-007-0070	1-7-2010	Adopt	2-1-2010	833-001-0015	1-5-2010	Amend	2-1-2010
813-027-0001	2-25-2010	Adopt(T)	4-1-2010	833-001-0020	1-5-2010	Amend	2-1-2010
813-027-0010	2-25-2010	Adopt(T)	4-1-2010	833-010-0001	1-5-2010	Amend	2-1-2010
813-027-0020	2-25-2010	Adopt(T)	4-1-2010	833-020-0001	1-5-2010	Repeal	2-1-2010
813-027-0030	2-25-2010	Adopt(T)	4-1-2010	833-020-0010	1-5-2010	Repeal	2-1-2010
813-027-0040	2-25-2010	Adopt(T)	4-1-2010	833-020-0011	1-5-2010	Adopt	2-1-2010
813-027-0050	2-25-2010	Adopt(T)	4-1-2010	833-020-0015	1-5-2010	Repeal	2-1-2010
813-027-0060	2-25-2010	Adopt(T)	4-1-2010	833-020-0020	1-5-2010	Repeal	2-1-2010
813-027-0070	2-25-2010	Adopt(T)	4-1-2010	833-020-0021	1-5-2010	Adopt	2-1-2010
813-027-0080	2-25-2010	Adopt(T)	4-1-2010	833-020-0022	1-5-2010	Repeal	2-1-2010
813-027-0090	2-25-2010	Adopt(T)	4-1-2010	833-020-0030	1-5-2010	Repeal	2-1-2010
813-028-0001	2-25-2010	Adopt(T)	4-1-2010	833-020-0031	1-5-2010	Adopt	2-1-2010
813-028-0010	2-25-2010	Adopt(T)	4-1-2010	833-020-0040	1-5-2010	Repeal	2-1-2010
813-028-0020	2-25-2010	Adopt(T)	4-1-2010	833-020-0041	1-5-2010	Adopt	2-1-2010
813-028-0030	2-25-2010	Adopt(T)	4-1-2010	833-020-0050	1-5-2010	Repeal	2-1-2010
813-028-0040	2-25-2010	Adopt(T)	4-1-2010	833-020-0051	1-5-2010	Adopt	2-1-2010
813-028-0050	2-25-2010	Adopt(T)	4-1-2010	833-020-0060	1-5-2010	Repeal	2-1-2010
813-028-0060	2-25-2010	Adopt(T)	4-1-2010	833-020-0061	1-5-2010	Adopt	2-1-2010
813-028-0070	2-25-2010	Adopt(T)	4-1-2010	833-020-0071	1-5-2010	Adopt	2-1-2010
813-028-0080	2-25-2010	Adopt(T)	4-1-2010	833-020-0080	1-5-2010	Repeal	2-1-2010
813-028-0090	2-25-2010	Adopt(T)	4-1-2010	833-020-0081	1-5-2010	Adopt	2-1-2010
813-041-0000	12-15-2009	Amend(T)	1-1-2010	833-020-0090	1-5-2010	Repeal	2-1-2010
813-041-0005	12-15-2009	Amend(T)	1-1-2010	833-020-0091	1-5-2010	Adopt	2-1-2010
813-041-0010	12-15-2009	Amend(T)	1-1-2010	833-020-0100	1-5-2010	Repeal	2-1-2010
813-041-0015	12-15-2009	Amend(T)	1-1-2010	833-020-0101	1-5-2010	Adopt	2-1-2010
813-041-0020	12-15-2009	Amend(T)	1-1-2010	833-020-0111	1-5-2010	Repeal	2-1-2010
813-041-0025	12-15-2009	Amend(T)	1-1-2010	833-020-0112	1-5-2010	Adopt	2-1-2010
813-041-0027	12-15-2009	Adopt(T)	1-1-2010	833-020-0120	1-5-2010	Repeal	2-1-2010
813-041-0030	12-15-2009	Amend(T)	1-1-2010	833-020-0140	1-5-2010	Repeal	2-1-2010
813-041-0035	12-15-2009	Adopt(T)	1-1-2010	833-020-0150	1-5-2010	Repeal	2-1-2010
813-044-0000	12-22-2009	Amend	2-1-2010	833-020-0155	1-5-2010	Repeal	2-1-2010
813-044-0010	12-22-2009	Amend	2-1-2010	833-020-0160	1-5-2010	Repeal	2-1-2010
813-044-0020	12-22-2009	Amend	2-1-2010	833-020-0164	1-5-2010	Repeal	2-1-2010
813-044-0030	12-22-2009	Amend	2-1-2010	833-020-0165	1-5-2010	Repeal	2-1-2010
813-044-0040	12-22-2009	Amend	2-1-2010	833-020-0201	1-11-2010	Adopt(T)	2-1-2010
813-044-0050	12-22-2009	Amend	2-1-2010	833-025-0001	1-5-2010	Repeal	2-1-2010
813-044-0060	12-22-2009	Adopt	2-1-2010	833-025-0005	1-5-2010	Repeal	2-1-2010
813-055-0001	12-22-2009	Adopt	2-1-2010	833-025-0006	1-5-2010	Repeal	2-1-2010
813-055-0010	12-22-2009	Adopt	2-1-2010	833-025-0050	1-5-2010	Repeal	2-1-2010
813-055-0020	12-22-2009	Adopt	2-1-2010	833-025-0060	1-5-2010	Repeal	2-1-2010
813-055-0030	12-22-2009	Adopt	2-1-2010	833-030-0001	1-5-2010	Repeal	2-1-2010
813-055-0040	12-22-2009	Adopt	2-1-2010	833-030-0005	1-5-2010	Repeal	2-1-2010
813-055-0050	12-22-2009	Adopt	2-1-2010	833-030-0010	1-5-2010	Repeal	2-1-2010
813-055-0060	12-22-2009	Adopt	2-1-2010	833-030-0011	1-5-2010	Adopt	2-1-2010
813-055-0070	12-22-2009	Adopt	2-1-2010	833-030-0015	1-5-2010	Repeal	2-1-2010
813-055-0080	12-22-2009	Adopt	2-1-2010	833-030-0020	1-5-2010	Repeal	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
833-030-0021	1-5-2010	Adopt	2-1-2010	833-090-0020	1-5-2010	Adopt	2-1-2010
833-030-0031	1-5-2010	Adopt	2-1-2010	833-090-0030	1-5-2010	Adopt	2-1-2010
833-030-0041	1-5-2010	Adopt	2-1-2010	833-090-0040	1-5-2010	Adopt	2-1-2010
833-030-0051	1-5-2010	Adopt	2-1-2010	833-100-0011	1-5-2010	Adopt	2-1-2010
833-040-0001	1-5-2010	Repeal	2-1-2010	833-100-0021	1-5-2010	Adopt	2-1-2010
833-040-0010	1-5-2010	Repeal	2-1-2010	833-100-0031	1-5-2010	Adopt	2-1-2010
833-040-0011	1-5-2010	Adopt	2-1-2010	833-100-0041	1-5-2010	Adopt	2-1-2010
833-040-0020	1-5-2010	Repeal	2-1-2010	833-100-0051	1-5-2010	Adopt	2-1-2010
833-040-0021	1-5-2010	Adopt	2-1-2010	833-100-0061	1-5-2010	Adopt	2-1-2010
833-040-0031	1-5-2010	Adopt	2-1-2010	833-100-0071	1-5-2010	Adopt	2-1-2010
833-040-0041	1-5-2010	Adopt	2-1-2010	833-110-0011	1-5-2010	Adopt	2-1-2010
833-040-0051	1-5-2010	Adopt	2-1-2010	833-110-0021	1-5-2010	Adopt	2-1-2010
833-050-0001	1-5-2010	Repeal	2-1-2010	833-120-0011	1-5-2010	Adopt	2-1-2010
833-050-0010	1-5-2010	Repeal	2-1-2010	833-120-0021	1-5-2010	Adopt	2-1-2010
833-050-0011	1-5-2010	Adopt	2-1-2010	833-120-0031	1-5-2010	Adopt	2-1-2010
833-050-0020	1-5-2010	Repeal	2-1-2010	833-120-0041	1-5-2010	Adopt	2-1-2010
833-050-0021	1-5-2010	Adopt	2-1-2010	836-009-0007	2-1-2010	Amend	2-1-2010
833-050-0025	1-5-2010	Repeal	2-1-2010	836-011-0000	12-9-2009	Amend	1-1-2010
833-050-0030	1-5-2010	Repeal	2-1-2010	836-012-0300	2-5-2010	Amend	3-1-2010
833-050-0031	1-5-2010	Adopt	2-1-2010	836-012-0310	2-5-2010	Amend	3-1-2010
833-050-0040	1-5-2010	Repeal	2-1-2010	836-012-0332	2-5-2010	Adopt	3-1-2010
833-050-0041	1-5-2010	Adopt	2-1-2010	836-014-0200	1-5-2010	Amend	2-1-2010
833-050-0051	1-5-2010	Adopt	2-1-2010	836-014-0205	1-5-2010	Adopt	2-1-2010
833-050-0061	1-5-2010	Adopt	2-1-2010	836-014-0210	1-5-2010	Amend	2-1-2010
833-050-0071	1-5-2010	Adopt	2-1-2010	836-014-0220	1-5-2010	Amend	2-1-2010
833-050-0081	1-5-2010	Adopt	2-1-2010	836-014-0226	1-5-2010	Adopt	2-1-2010
833-050-0091	1-5-2010	Adopt	2-1-2010	836-014-0240	1-5-2010	Amend	2-1-2010
833-050-0111	1-5-2010	Adopt	2-1-2010	836-014-0250	1-5-2010	Amend	2-1-2010
833-050-0121	1-5-2010	Adopt	2-1-2010	836-014-0260	1-5-2010	Amend	2-1-2010
833-050-0131	1-5-2010	Adopt	2-1-2010	836-014-0263	1-5-2010	Adopt	2-1-2010
833-050-0141	1-5-2010	Adopt	2-1-2010	836-014-0265	1-5-2010	Amend	2-1-2010
833-050-0151	1-5-2010	Adopt	2-1-2010	836-014-0270	1-5-2010	Amend	2-1-2010
833-050-0161	1-5-2010	Adopt	2-1-2010	836-014-0280	1-5-2010	Amend	2-1-2010
833-060-0011	1-5-2010	Repeal	2-1-2010	836-014-0285	1-5-2010	Adopt	2-1-2010
833-060-0012	1-5-2010	Adopt	2-1-2010	836-014-0290	1-5-2010	Amend	2-1-2010
833-060-0021	1-5-2010	Repeal	2-1-2010	836-014-0300	1-5-2010	Amend	2-1-2010
833-060-0022	1-5-2010	Adopt	2-1-2010	836-014-0310	1-5-2010	Amend	2-1-2010
833-060-0031	1-5-2010	Repeal	2-1-2010	836-014-0320	1-5-2010	Amend	2-1-2010
833-060-0032	1-5-2010	Adopt	2-1-2010	836-014-0325	1-5-2010	Adopt	2-1-2010
833-060-0041	1-5-2010	Repeal	2-1-2010	836-052-1000	12-18-2009	Amend	2-1-2010
833-060-0042	1-5-2010	Adopt	2-1-2010	836-053-0000	2-16-2010	Adopt	4-1-2010
833-060-0051	1-5-2010	Repeal	2-1-2010	836-053-0465	2-16-2010	Amend	4-1-2010
833-060-0052	1-5-2010	Adopt	2-1-2010	836-053-0471	2-16-2010	Adopt	4-1-2010
833-060-0061	1-5-2010	Repeal	2-1-2010	836-053-0475	2-16-2010	Adopt	4-1-2010
833-060-0071	1-5-2010	Repeal	2-1-2010	836-053-0780	2-16-2010	Amend	4-1-2010
833-070-0011	1-5-2010	Adopt	2-1-2010	836-053-0855	12-23-2009	Amend(T)	2-1-2010
833-070-0011	1-11-2010	Amend(T)	2-1-2010	836-053-0855	1-8-2010	Amend(T)	2-1-2010
833-070-0021	1-5-2010	Adopt	2-1-2010	836-053-0855	3-10-2010	Amend(T)	4-1-2010
833-070-0031	1-5-2010	Adopt	2-1-2010	836-053-0855(T)	1-8-2010	Suspend	2-1-2010
833-080-0011	1-5-2010	Adopt	2-1-2010	836-053-0855(T)	3-10-2010	Suspend	4-1-2010
833-080-0021	1-5-2010	Adopt	2-1-2010	836-053-0860	12-23-2009	Amend(T)	2-1-2010
833-080-0031	1-5-2010	Adopt	2-1-2010	836-053-0860	1-8-2010	Amend(T)	2-1-2010
833-080-0041	1-5-2010	Adopt	2-1-2010	836-053-0860	3-10-2010	Amend(T)	4-1-2010
833-080-0051	1-5-2010	Adopt	2-1-2010	836-053-0860(T)	1-8-2010	Suspend	2-1-2010
833-080-0061	1-5-2010	Adopt	2-1-2010	836-053-0860(T)	3-10-2010	Suspend	4-1-2010
833-090-0010	1-5-2010	Adopt	2-1-2010	836-053-0865	12-23-2009	Amend(T)	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
836-053-0865	1-8-2010	Amend(T)	2-1-2010	837-085-0350	2-1-2010	Amend	3-1-2010
836-053-0865	3-10-2010	Amend(T)	4-1-2010	837-085-0380	2-1-2010	Amend	3-1-2010
836-053-0865(T)	1-8-2010	Suspend	2-1-2010	837-090-1145	11-18-2009	Amend	1-1-2010
836-053-0865(T)	3-10-2010	Suspend	4-1-2010	839-001-0495	1-1-2010	Amend	1-1-2010
836-053-0910	2-16-2010	Amend	4-1-2010	839-001-0496	1-1-2010	Amend	1-1-2010
836-071-0101	2-1-2010	Amend	2-1-2010	839-001-0515	1-1-2010	Amend	1-1-2010
836-071-0113	2-1-2010	Adopt	2-1-2010	839-001-0520	1-1-2010	Amend	1-1-2010
836-071-0127	2-1-2010	Amend	2-1-2010	839-001-0700	1-1-2010	Amend	1-1-2010
836-071-0130	2-1-2010	Amend	2-1-2010	839-001-0750	1-1-2010	Repeal	1-1-2010
836-071-0185	2-1-2010	Amend	2-1-2010	839-002-0030	2-12-2010	Amend(T)	3-1-2010
836-080-0240	1-1-2010	Amend	2-1-2010	839-002-0040	2-12-2010	Amend(T)	3-1-2010
837-040-0010	4-1-2010	Amend	1-1-2010	839-002-0045	2-12-2010	Amend(T)	3-1-2010
837-040-0010	7-1-2010	Amend(T)	3-1-2010	839-002-0050	2-12-2010	Amend(T)	3-1-2010
837-040-0020	7-1-2010	Amend(T)	3-1-2010	839-003-0005	2-24-2010	Amend	4-1-2010
837-040-0140	4-1-2010	Amend	1-1-2010	839-003-0025	2-24-2010	Amend	4-1-2010
837-040-0140	7-1-2010	Amend(T)	3-1-2010	839-003-0040	2-24-2010	Amend	4-1-2010
837-040-02020	4-1-2010	Amend	1-1-2010	839-003-0200	2-24-2010	Amend	4-1-2010
837-046-0000	11-21-2009	Adopt	1-1-2010	839-005-0000	2-24-2010	Amend	4-1-2010
837-046-0020	11-21-2009	Adopt	1-1-2010	839-005-0003	2-24-2010	Amend	4-1-2010
837-046-0040	11-21-2009	Adopt	1-1-2010	839-005-0005	2-24-2010	Amend	4-1-2010
837-046-0060	11-21-2009	Adopt	1-1-2010	839-005-0010	2-24-2010	Amend	4-1-2010
837-046-0080	11-21-2009	Adopt	1-1-2010	839-005-0016	2-24-2010	Renumber	4-1-2010
837-046-0100	11-21-2009	Adopt	1-1-2010	839-005-0021	2-24-2010	Amend	4-1-2010
837-046-0120	11-21-2009	Adopt	1-1-2010	839-005-0035	2-24-2010	Renumber	4-1-2010
837-046-0140	11-21-2009	Adopt	1-1-2010	839-005-0045	2-24-2010	Renumber	4-1-2010
837-046-0160	11-21-2009	Adopt	1-1-2010	839-005-0050	2-24-2010	Renumber	4-1-2010
837-046-0180	11-21-2009	Adopt	1-1-2010	839-005-0138	2-24-2010	Adopt	4-1-2010
837-085-0020	2-1-2010	Amend	3-1-2010	839-005-0140	2-24-2010	Adopt	4-1-2010
837-085-0030	2-1-2010	Amend	3-1-2010	839-005-0160	2-24-2010	Adopt	4-1-2010
837-085-0040	2-1-2010	Amend	3-1-2010	839-005-0170	2-24-2010	Adopt	4-1-2010
837-085-0050	2-1-2010	Amend	3-1-2010	839-005-0195	2-24-2010	Amend	4-1-2010
837-085-0060	2-1-2010	Amend	3-1-2010	839-005-0200	2-24-2010	Amend	4-1-2010
837-085-0070	2-1-2010	Amend	3-1-2010	839-005-0205	2-24-2010	Amend	4-1-2010
837-085-0080	2-1-2010	Amend	3-1-2010	839-005-0206	2-24-2010	Adopt	4-1-2010
837-085-0090	2-1-2010	Amend	3-1-2010	839-005-0215	2-24-2010	Amend	4-1-2010
837-085-0100	2-1-2010	Amend	3-1-2010	839-005-0220	2-24-2010	Amend	4-1-2010
837-085-0110	2-1-2010	Amend	3-1-2010	839-006-0200	2-24-2010	Amend	4-1-2010
837-085-0120	2-1-2010	Amend	3-1-2010	839-006-0202	2-24-2010	Adopt	4-1-2010
837-085-0140	2-1-2010	Amend	3-1-2010	839-006-0205	2-24-2010	Amend	4-1-2010
837-085-0150	2-1-2010	Amend	3-1-2010	839-006-0206	2-24-2010	Amend	4-1-2010
837-085-0170	2-1-2010	Amend	3-1-2010	839-006-0212	2-24-2010	Amend	4-1-2010
837-085-0180	2-1-2010	Amend	3-1-2010	839-006-0240	2-24-2010	Amend	4-1-2010
837-085-0190	2-1-2010	Amend	3-1-2010	839-006-0242	2-24-2010	Amend	4-1-2010
837-085-0200	2-1-2010	Amend	3-1-2010	839-006-0244	2-24-2010	Amend	4-1-2010
837-085-0210	2-1-2010	Amend	3-1-2010	839-006-0250	2-24-2010	Amend	4-1-2010
837-085-0220	2-1-2010	Amend	3-1-2010	839-006-0255	2-24-2010	Amend	4-1-2010
837-085-0230	2-1-2010	Amend	3-1-2010	839-006-0265	2-24-2010	Amend	4-1-2010
837-085-0250	2-1-2010	Amend	3-1-2010	839-006-0270	2-24-2010	Amend	4-1-2010
837-085-0260	2-1-2010	Amend	3-1-2010	839-006-0275	2-24-2010	Amend	4-1-2010
837-085-0270	2-1-2010	Amend	3-1-2010	839-006-0280	2-24-2010	Amend	4-1-2010
837-085-0280	2-1-2010	Amend	3-1-2010	839-006-0290	2-24-2010	Amend	4-1-2010
837-085-0290	2-1-2010	Amend	3-1-2010	839-006-0295	2-24-2010	Amend	4-1-2010
837-085-0300	2-1-2010	Amend	3-1-2010	839-006-0300	2-24-2010	Amend	4-1-2010
837-085-0305	2-1-2010	Amend	3-1-2010	839-006-0305	2-24-2010	Amend	4-1-2010
837-085-0310	2-1-2010	Amend	3-1-2010	839-006-0307	2-24-2010	Adopt	4-1-2010
837-085-0340	2-1-2010	Amend	3-1-2010	839-006-0330	2-24-2010	Amend	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
839-006-0332	2-24-2010	Adopt	4-1-2010	839-025-0035(T)	1-1-2010	Repeal	1-1-2010
839-006-0335	2-24-2010	Amend	4-1-2010	839-025-0085	1-1-2010	Amend	1-1-2010
839-006-0435	2-24-2010	Amend	4-1-2010	839-025-0085(T)	1-1-2010	Repeal	1-1-2010
839-006-0440	2-24-2010	Amend	4-1-2010	839-025-0200	1-1-2010	Amend	1-1-2010
839-006-0445	2-24-2010	Amend	4-1-2010	839-025-0200(T)	1-1-2010	Repeal	1-1-2010
839-006-0450	2-24-2010	Amend	4-1-2010	839-025-0210	1-1-2010	Amend	1-1-2010
839-006-0455	2-24-2010	Amend	4-1-2010	839-025-0210(T)	1-1-2010	Repeal	1-1-2010
839-006-0460	2-24-2010	Amend	4-1-2010	839-025-0530	1-1-2010	Amend	1-1-2010
839-006-0465	2-24-2010	Amend	4-1-2010	839-025-0530(T)	1-1-2010	Repeal	1-1-2010
839-006-0470	2-24-2010	Amend	4-1-2010	839-025-0700	11-23-2009	Amend	1-1-2010
839-006-0480	2-24-2010	Adopt	4-1-2010	839-025-0700	1-1-2010	Amend	2-1-2010
839-009-0210	2-24-2010	Amend	4-1-2010	839-025-0700	1-12-2010	Amend	2-1-2010
839-009-0220	2-24-2010	Amend	4-1-2010	839-025-0700	1-13-2010	Amend	2-1-2010
839-009-0240	2-24-2010	Amend	4-1-2010	839-025-0700	1-19-2010	Amend	3-1-2010
839-009-0245	2-24-2010	Amend	4-1-2010	839-025-0700	1-27-2010	Amend	3-1-2010
839-009-0250	2-24-2010	Amend	4-1-2010	839-050-0080	3-3-2010	Amend	4-1-2010
839-009-0260	2-24-2010	Amend	4-1-2010	839-050-0130	3-3-2010	Amend	4-1-2010
839-009-0265	2-24-2010	Adopt	4-1-2010	839-050-0140	3-3-2010	Amend	4-1-2010
839-009-0270	2-24-2010	Amend	4-1-2010	839-050-0150	3-3-2010	Amend	4-1-2010
839-009-0280	2-24-2010	Amend	4-1-2010	839-050-0240	3-3-2010	Amend	4-1-2010
839-009-0290	2-24-2010	Amend	4-1-2010	839-050-0370	3-3-2010	Amend	4-1-2010
839-009-0300	2-24-2010	Amend	4-1-2010	839-051-0010	3-3-2010	Amend	4-1-2010
839-009-0325	2-24-2010	Amend	4-1-2010	845-005-0413	3-1-2010	Adopt	4-1-2010
839-009-0335	2-24-2010	Amend	4-1-2010	845-005-0414	3-1-2010	Adopt	4-1-2010
839-009-0340	2-24-2010	Amend	4-1-2010	845-020-0020	3-1-2010	Amend	4-1-2010
839-009-0345	2-24-2010	Amend	4-1-2010	845-020-0025	3-1-2010	Amend	4-1-2010
839-009-0350	2-24-2010	Amend	4-1-2010	845-020-0030	3-1-2010	Amend	4-1-2010
839-009-0355	2-24-2010	Amend	4-1-2010	847-005-0005	1-26-2010	Amend	3-1-2010
839-009-0360	2-24-2010	Amend	4-1-2010	847-005-0005(T)	1-26-2010	Repeal	3-1-2010
839-009-0362	2-24-2010	Amend	4-1-2010	847-008-0023	1-26-2010	Amend	3-1-2010
839-009-0363	2-24-2010	Amend	4-1-2010	847-010-0073	1-26-2010	Amend	3-1-2010
839-009-0365	2-24-2010	Amend	4-1-2010	847-026-0000	1-26-2010	Adopt	3-1-2010
839-009-0370	2-24-2010	Adopt	4-1-2010	847-026-0000(T)	1-26-2010	Repeal	3-1-2010
839-009-0380	2-24-2010	Adopt	4-1-2010	847-026-0005	1-26-2010	Adopt	3-1-2010
839-009-0390	2-24-2010	Adopt	4-1-2010	847-026-0005(T)	1-26-2010	Repeal	3-1-2010
839-009-0400	2-24-2010	Adopt	4-1-2010	847-026-0010	1-26-2010	Adopt	3-1-2010
839-009-0410	2-24-2010	Adopt	4-1-2010	847-026-0010(T)	1-26-2010	Repeal	3-1-2010
839-009-0420	2-24-2010	Adopt	4-1-2010	847-026-0015	1-26-2010	Adopt	3-1-2010
839-009-0430	2-24-2010	Adopt	4-1-2010	847-026-0015(T)	1-26-2010	Repeal	3-1-2010
839-009-0440	2-24-2010	Adopt	4-1-2010	847-026-0020	1-26-2010	Adopt	3-1-2010
839-009-0450	2-24-2010	Adopt	4-1-2010	847-026-0020(T)	1-26-2010	Repeal	3-1-2010
839-009-0460	2-24-2010	Adopt	4-1-2010	847-035-0030	1-26-2010	Amend	3-1-2010
839-010-0100	2-24-2010	Amend	4-1-2010	847-035-0030(T)	1-26-2010	Repeal	3-1-2010
839-010-0140	2-24-2010	Amend	4-1-2010	848-001-0005	3-1-2010	Amend	4-1-2010
839-021-0070	1-1-2010	Amend	1-1-2010	848-001-0010	3-1-2010	Amend	4-1-2010
839-021-0280	1-1-2010	Amend	1-1-2010	848-005-0020	3-1-2010	Amend	4-1-2010
839-021-0290	1-1-2010	Amend	1-1-2010	848-005-0030	3-1-2010	Amend	4-1-2010
839-025-0010	1-1-2010	Amend	1-1-2010	848-010-0015	3-1-2010	Amend	4-1-2010
839-025-0013	1-1-2010	Amend	1-1-2010	848-010-0022	3-1-2010	Amend	4-1-2010
839-025-0013(T)	1-1-2010	Repeal	1-1-2010	848-010-0026	3-1-2010	Amend	4-1-2010
839-025-0015	1-1-2010	Amend	1-1-2010	848-035-0020	3-1-2010	Amend	4-1-2010
839-025-0020	1-1-2010	Amend	1-1-2010	848-040-0100	3-1-2010	Amend	4-1-2010
839-025-0020(T)	1-1-2010	Repeal	1-1-2010	848-040-0147	3-1-2010	Amend	4-1-2010
839-025-0030	1-1-2010	Amend	1-1-2010	848-045-0020	3-1-2010	Amend	4-1-2010
839-025-0030(T)	1-1-2010	Repeal	1-1-2010	848-050-0100	3-1-2010	Repeal	4-1-2010
839-025-0035	1-1-2010	Amend	1-1-2010	848-050-0110	3-1-2010	Repeal	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
848-050-0120	3-1-2010	Repeal	4-1-2010	855-062-0003(T)	12-24-2009	Repeal	2-1-2010
850-060-0220	2-16-2010	Amend	4-1-2010	855-062-0005	12-24-2009	Adopt	2-1-2010
850-060-0225	1-1-2010	Amend	1-1-2010	855-062-0005(T)	12-24-2009	Repeal	2-1-2010
850-060-0226	1-1-2010	Amend	1-1-2010	855-062-0020	12-24-2009	Adopt	2-1-2010
851-002-0010	1-1-2010	Amend	2-1-2010	855-062-0020(T)	12-24-2009	Repeal	2-1-2010
851-002-0020	1-1-2010	Amend	2-1-2010	855-062-0030	12-24-2009	Adopt	2-1-2010
851-002-0035	1-1-2010	Amend	2-1-2010	855-062-0030(T)	12-24-2009	Repeal	2-1-2010
851-002-0040	1-1-2010	Amend	2-1-2010	855-062-0040	12-24-2009	Adopt	2-1-2010
851-010-0024	1-21-2010	Adopt(T)	3-1-2010	855-062-0040(T)	12-24-2009	Repeal	2-1-2010
851-050-0000	1-1-2010	Amend	2-1-2010	855-062-0050	12-24-2009	Adopt	2-1-2010
851-050-0001	1-1-2010	Amend	2-1-2010	855-062-0050(T)	12-24-2009	Repeal	2-1-2010
851-050-0002	7-1-2010	Amend	2-1-2010	855-065-0001	12-24-2009	Amend	2-1-2010
851-050-0004	1-1-2010	Amend	2-1-2010	855-065-0005	12-24-2009	Amend	2-1-2010
851-050-0005	1-1-2010	Amend	2-1-2010	855-065-0006	12-24-2009	Amend	2-1-2010
851-050-0006	7-1-2010	Amend	2-1-2010	855-110-0003	12-24-2009	Adopt	2-1-2010
851-050-0008	1-1-2010	Adopt	2-1-2010	855-110-0003(T)	12-24-2009	Repeal	2-1-2010
851-050-0010	1-1-2010	Amend	2-1-2010	855-110-0005	12-24-2009	Amend	2-1-2010
851-050-0138	1-1-2010	Amend	2-1-2010	855-110-0007	12-24-2009	Amend	2-1-2010
851-050-0142	1-1-2010	Adopt	2-1-2010	855-110-0010	12-24-2009	Amend	2-1-2010
851-056-0000	1-1-2010	Amend	2-1-2010	855-110-0015	3-1-2010	Amend	3-1-2010
851-056-0006	1-1-2010	Amend	2-1-2010	858-010-0001	1-8-2010	Amend	2-1-2010
851-056-0010	1-1-2010	Amend	2-1-2010	858-010-0005	1-8-2010	Amend	2-1-2010
851-056-0016	1-1-2010	Amend	2-1-2010	858-010-0007	1-8-2010	Amend	2-1-2010
851-056-0020	1-1-2010	Amend	2-1-2010	858-010-0010	1-8-2010	Amend	2-1-2010
851-056-0024	1-1-2010	Amend	2-1-2010	858-010-0015	1-8-2010	Amend	2-1-2010
851-061-0090	12-17-2009	Amend	2-1-2010	858-010-0016	1-8-2010	Adopt	2-1-2010
851-063-0030	12-17-2009	Amend	2-1-2010	858-010-0017	1-8-2010	Adopt	2-1-2010
851-063-0035	12-17-2009	Amend	2-1-2010	858-010-0018	1-8-2010	Adopt	2-1-2010
851-063-0090	12-17-2009	Amend	2-1-2010	858-010-0020	1-8-2010	Amend	2-1-2010
852-005-0015	12-11-2009	Adopt	1-1-2010	858-010-0025	1-8-2010	Amend	2-1-2010
852-010-0080	12-11-2009	Amend	1-1-2010	858-010-0030	1-8-2010	Amend	2-1-2010
852-020-0035	12-11-2009	Amend	1-1-2010	858-010-0034	1-8-2010	Adopt	2-1-2010
852-020-0060	12-11-2009	Amend	1-1-2010	858-010-0036	1-8-2010	Amend	2-1-2010
852-050-0006	12-11-2009	Amend	1-1-2010	858-010-0037	1-8-2010	Adopt	2-1-2010
855-007-0010	12-24-2009	Amend	2-1-2010	858-010-0038	1-8-2010	Adopt	2-1-2010
855-007-0020	12-24-2009	Amend	2-1-2010	858-010-0039	1-8-2010	Adopt	2-1-2010
855-007-0030	12-24-2009	Amend	2-1-2010	858-010-0041	1-8-2010	Amend	2-1-2010
855-007-0040	12-24-2009	Amend	2-1-2010	858-010-0050	1-8-2010	Amend	2-1-2010
855-007-0050	12-24-2009	Amend	2-1-2010	858-010-0055	1-8-2010	Amend	2-1-2010
855-007-0060	12-24-2009	Amend	2-1-2010	858-010-0060	1-8-2010	Amend	2-1-2010
855-007-0080	12-24-2009	Amend	2-1-2010	858-010-0065	1-8-2010	Amend	2-1-2010
855-007-0090	12-24-2009	Amend	2-1-2010	858-020-0015	1-8-2010	Amend	2-1-2010
855-007-0100	12-24-2009	Amend	2-1-2010	858-020-0025	1-8-2010	Amend	2-1-2010
855-007-0110	12-24-2009	Amend	2-1-2010	858-020-0035	1-8-2010	Amend	2-1-2010
855-007-0120	12-24-2009	Amend	2-1-2010	858-020-0045	1-8-2010	Amend	2-1-2010
855-041-4000	2-8-2010	Adopt	3-1-2010	858-020-0055	1-8-2010	Amend	2-1-2010
855-041-4005	2-8-2010	Adopt	3-1-2010	858-020-0065	1-8-2010	Amend	2-1-2010
855-043-0001	2-8-2010	Am. & Ren.	3-1-2010	858-020-0085	1-8-2010	Amend	2-1-2010
855-043-0003	2-8-2010	Adopt	3-1-2010	858-030-0005	1-8-2010	Amend	2-1-2010
855-043-0110	2-8-2010	Amend	3-1-2010	858-040-0015	1-8-2010	Amend	2-1-2010
855-043-0120	2-8-2010	Am. & Ren.	3-1-2010	858-040-0020	1-8-2010	Adopt	2-1-2010
855-043-0130	2-8-2010	Amend	3-1-2010	858-040-0025	1-8-2010	Amend	2-1-2010
855-043-0210	2-8-2010	Amend	3-1-2010	858-040-0026	1-8-2010	Adopt	2-1-2010
855-043-0300	2-8-2010	Amend	3-1-2010	858-040-0035	1-8-2010	Amend	2-1-2010
855-043-0310	2-8-2010	Amend	3-1-2010	858-040-0036	1-8-2010	Amend	2-1-2010
855-062-0003	12-24-2009	Adopt	2-1-2010	858-040-0055	1-8-2010	Amend	2-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
858-040-0065	1-8-2010	Amend	2-1-2010	863-049-0055	1-1-2010	Adopt	1-1-2010
858-040-0075	1-8-2010	Repeal	2-1-2010	863-050-0035	1-1-2010	Am. & Ren.	1-1-2010
858-040-0085	1-8-2010	Repeal	2-1-2010	863-050-0150	1-1-2010	Amend	1-1-2010
858-040-0095	1-8-2010	Repeal	2-1-2010	863-050-0240	1-1-2010	Am. & Ren.	1-1-2010
858-050-0100	1-8-2010	Repeal	2-1-2010	877-010-0000	1-15-2010	Amend	2-1-2010
858-050-0105	1-8-2010	Repeal	2-1-2010	877-010-0045	1-15-2010	Amend	2-1-2010
858-050-0110	1-8-2010	Repeal	2-1-2010	877-020-0009	1-15-2010	Amend	2-1-2010
858-050-0120	1-8-2010	Repeal	2-1-2010	877-020-0030	1-15-2010	Amend	2-1-2010
858-050-0125	1-8-2010	Repeal	2-1-2010	877-020-0057	1-15-2010	Adopt	2-1-2010
858-050-0140	1-8-2010	Repeal	2-1-2010	877-025-0016	1-15-2010	Amend	2-1-2010
858-050-0145	1-8-2010	Repeal	2-1-2010	877-025-0021	1-15-2010	Amend	2-1-2010
858-050-0150	1-8-2010	Repeal	2-1-2010	877-030-0040	1-15-2010	Amend	2-1-2010
860-036-0010	11-24-2009	Amend	1-1-2010	877-040-0003	1-15-2010	Amend	2-1-2010
860-036-0030	11-24-2009	Amend	1-1-2010	877-040-0016	1-15-2010	Adopt	2-1-2010
863-014-0000	1-1-2010	Amend	1-1-2010	918-001-0210	1-1-2010	Amend	2-1-2010
863-014-0003	1-1-2010	Amend	1-1-2010	918-005-0010	1-1-2010	Amend	2-1-2010
863-014-0005	1-1-2010	Amend	1-1-2010	918-020-0090	4-1-2010	Amend	4-1-2010
863-014-0010	1-1-2010	Amend	1-1-2010	918-040-0000	1-1-2010	Amend	2-1-2010
863-014-0015	1-1-2010	Amend	1-1-2010	918-098-1012	4-1-2010	Amend	4-1-2010
863-014-0030	1-1-2010	Amend	1-1-2010	918-098-1015	4-1-2010	Amend	4-1-2010
863-014-0038	1-1-2010	Repeal	1-1-2010	918-098-1210	4-1-2010	Amend	4-1-2010
863-014-0042	1-1-2010	Amend	1-1-2010	918-098-1215	4-1-2010	Amend	4-1-2010
863-014-0055	1-1-2010	Amend	1-1-2010	918-098-1300	4-1-2010	Amend	4-1-2010
863-014-0063	1-1-2010	Amend	1-1-2010	918-098-1305	4-1-2010	Amend	4-1-2010
863-014-0065	1-1-2010	Amend	1-1-2010	918-098-1315	4-1-2010	Amend	4-1-2010
863-014-0085	1-1-2010	Amend	1-1-2010	918-098-1320	4-1-2010	Amend	4-1-2010
863-014-0090	1-1-2010	Adopt	1-1-2010	918-098-1325	4-1-2010	Amend	4-1-2010
863-014-0095	1-1-2010	Amend	1-1-2010	918-098-1330	4-1-2010	Amend	4-1-2010
863-014-0100	1-1-2010	Amend	1-1-2010	918-225-0240	1-1-2010	Amend	2-1-2010
863-014-0160	1-1-2010	Amend	1-1-2010	918-225-0600	1-1-2010	Amend	2-1-2010
863-015-0000	1-1-2010	Amend	1-1-2010	918-225-0605	1-1-2010	Repeal	2-1-2010
863-015-0003	1-1-2010	Amend	1-1-2010	918-225-0610	1-1-2010	Repeal	2-1-2010
863-015-0150	1-1-2010	Amend	1-1-2010	918-225-0620	1-1-2010	Amend	2-1-2010
863-015-0186	1-1-2010	Amend	1-1-2010	918-225-0630	1-1-2010	Amend	2-1-2010
863-015-0188	1-1-2010	Amend	1-1-2010	918-305-0030	4-1-2010	Amend	4-1-2010
863-015-0210	1-1-2010	Amend	1-1-2010	918-400-0270	1-1-2010	Amend	2-1-2010
863-015-0250	1-1-2010	Amend	1-1-2010	918-400-0280	1-1-2010	Amend	2-1-2010
863-015-0255	1-1-2010	Amend	1-1-2010	918-400-0340	1-1-2010	Amend	2-1-2010
863-015-0260	1-1-2010	Amend	1-1-2010	918-400-0380	1-1-2010	Amend	2-1-2010
863-015-0275	1-1-2010	Amend	1-1-2010	918-400-0390	1-1-2010	Amend	2-1-2010
863-024-0000	1-1-2010	Amend	1-1-2010	918-400-0395	1-1-2010	Amend	2-1-2010
863-024-0003	1-1-2010	Amend	1-1-2010	918-400-0445	1-1-2010	Amend	2-1-2010
863-024-0015	1-1-2010	Amend	1-1-2010	918-400-0525	1-1-2010	Amend	2-1-2010
863-024-0030	1-1-2010	Amend	1-1-2010	918-400-0630	1-1-2010	Amend	2-1-2010
863-024-0075	1-1-2010	Amend	1-1-2010	918-400-0660	1-1-2010	Amend	2-1-2010
863-024-0085	1-1-2010	Amend	1-1-2010	918-400-0662	1-1-2010	Adopt	2-1-2010
863-024-0100	1-1-2010	Amend	1-1-2010	918-400-0740	1-1-2010	Amend	2-1-2010
863-049-0000	1-1-2010	Adopt	1-1-2010	918-400-0800	1-1-2010	Amend	2-1-2010
863-049-0005	1-1-2010	Adopt	1-1-2010	918-500-0000	4-1-2010	Amend	4-1-2010
863-049-0010	1-1-2010	Adopt	1-1-2010	918-500-0005	4-1-2010	Amend	4-1-2010
863-049-0015	1-1-2010	Adopt	1-1-2010	918-500-0010	4-1-2010	Amend	4-1-2010
863-049-0020	1-1-2010	Adopt	1-1-2010	918-500-0020	4-1-2010	Am. & Ren.	4-1-2010
863-049-0030	1-1-2010	Adopt	1-1-2010	918-500-0021	4-1-2010	Am. & Ren.	4-1-2010
863-049-0035	1-1-2010	Adopt	1-1-2010	918-500-0035	4-1-2010	Amend	4-1-2010
863-049-0040	1-1-2010	Adopt	1-1-2010	918-500-0040	4-1-2010	Amend	4-1-2010
863-049-0045	1-1-2010	Adopt	1-1-2010	918-500-0055	4-1-2010	Amend	4-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
918-500-0100	4-1-2010	Amend	4-1-2010	918-515-0330	4-1-2010	Amend	4-1-2010
918-500-0105	4-1-2010	Amend	4-1-2010	918-515-0350	4-1-2010	Amend	4-1-2010
918-500-0110	4-1-2010	Amend	4-1-2010	918-515-0360	4-1-2010	Amend	4-1-2010
918-500-0300	4-1-2010	Amend	4-1-2010	918-515-0370	4-1-2010	Amend	4-1-2010
918-500-0310	4-1-2010	Amend	4-1-2010	918-515-0480	4-1-2010	Amend	4-1-2010
918-500-0320	4-1-2010	Amend	4-1-2010	918-515-0485	4-1-2010	Amend	4-1-2010
918-500-0330	4-1-2010	Amend	4-1-2010	918-515-0490	4-1-2010	Amend	4-1-2010
918-500-0340	4-1-2010	Amend	4-1-2010	918-520-0010	4-1-2010	Repeal	4-1-2010
918-500-0400	4-1-2010	Amend	4-1-2010	918-520-0015	4-1-2010	Repeal	4-1-2010
918-500-0410	4-1-2010	Amend	4-1-2010	918-520-0020	4-1-2010	Repeal	4-1-2010
918-500-0420	4-1-2010	Amend	4-1-2010	918-520-0030	4-1-2010	Repeal	4-1-2010
918-500-0430	4-1-2010	Amend	4-1-2010	918-520-0040	4-1-2010	Repeal	4-1-2010
918-500-0450	4-1-2010	Amend	4-1-2010	918-520-0050	4-1-2010	Repeal	4-1-2010
918-500-0470	4-1-2010	Amend	4-1-2010	918-520-0060	4-1-2010	Repeal	4-1-2010
918-500-0530	4-1-2010	Adopt	4-1-2010	918-520-0070	4-1-2010	Repeal	4-1-2010
918-500-0540	4-1-2010	Adopt	4-1-2010	918-520-0080	4-1-2010	Repeal	4-1-2010
918-500-0550	4-1-2010	Adopt	4-1-2010	918-520-0090	4-1-2010	Repeal	4-1-2010
918-500-0560	4-1-2010	Adopt	4-1-2010	918-520-0100	4-1-2010	Repeal	4-1-2010
918-500-0570	4-1-2010	Adopt	4-1-2010	918-520-0110	4-1-2010	Repeal	4-1-2010
918-500-0580	4-1-2010	Adopt	4-1-2010	918-525-0042	4-1-2010	Amend	4-1-2010
918-500-0590	4-1-2010	Adopt	4-1-2010	918-600-0010	4-1-2010	Amend	4-1-2010
918-515-0010	4-1-2010	Amend	4-1-2010	943-001-0000	1-1-2010	Adopt	2-1-2010
918-515-0020	4-1-2010	Amend	4-1-2010	943-001-0000(T)	1-1-2010	Repeal	2-1-2010
918-515-0030	4-1-2010	Amend	4-1-2010	943-001-0010	1-1-2010	Adopt	2-1-2010
918-515-0110	4-1-2010	Amend	4-1-2010	943-001-0010(T)	1-1-2010	Repeal	2-1-2010
918-515-0150	4-1-2010	Amend	4-1-2010	943-001-0015	1-1-2010	Adopt	2-1-2010
918-515-0300	4-1-2010	Amend	4-1-2010	943-001-0015(T)	1-1-2010	Repeal	2-1-2010