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Secretary of State

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.

TABLE OF CONTENTS

Page

Information and Publication Schedule 2
Table of Contents 3
Other Notices 4–7

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.

Appraiser Certification and Licensure Board, Chapter 161 8
Board of Architect Examiners, Chapter 806 8
Board of Naturopathic Examiners, Chapter 850 8
Board of Parole and Post-Prison Supervision, Chapter 255 8
Board of Pharmacy, Chapter 855 ..... 8, 9
Construction Contractors Board, Chapter 812 ..... 9, 10
Department of Administrative Services, Oregon Educators Benefit Board, Chapter 111 ..... 10, 11
Department of Consumer and Business Services, Director's Office, Chapter 440 11
Oregon Medical Insurance Pool Board, Chapter 443 11
Oregon Occupational Safety and Health Division, Chapter 437 11
Department of Energy, Energy Facility Siting Council, Chapter 345 11
Department of Environmental Quality, Chapter 340 12
Department of Fish and Wildlife, Chapter 635 12
Department of Forestry, Chapter 629 12
Department of Human Services, Addictions and Mental Health Division: Addiction Services, Chapter 415 ..... 12, 13
Mental Health Services, Chapter 309 13
Division of Medical Assistance Programs, Chapter 410 13
Public Health Division, Chapter 333 ..... 13, 14
Seniors and People with Disabilities Division, Chapter 411 14
Department of Justice, Chapter 137 14
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735 ..... 14, 15
Transportation Safety Division, Chapter 737 ..... 15, 16
Landscape Architect Board, Chapter 804 16
Office for Oregon Health Policy and Research, Chapter 409 16
Oregon Business Development Department, Chapter 123 16
Oregon Department of Education, Chapter 581 17
Oregon Government Ethics Commission, Chapter 199 17
Oregon Health Licensing Agency, Chapter 331 17
Oregon Liquor Control Commission, Chapter 845 ..... 17, 18
Oregon State Lottery, Chapter 177 18
Oregon State Treasury, Chapter 170 18
Oregon University System, Eastern Oregon University, Chapter 579 18
Western Oregon University, Chapter 574 18
Oregon Youth Authority, Chapter 416 ..... 18, 19
Parks and Recreation Department, Chapter 736 19
Physical Therapist Licensing Board, Chapter 848 19
Secretary of State, Corporation Division, Chapter 160 19
Travel Information Council, Chapter 733 19
Water Resources Department, Chapter 690 ..... 19, 20

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.

Appraiser Certification and Licensure Board, Chapter 161 ..... 21, 22
Board of Accountancy, Chapter 801 22–33
Board of Examiners for Speech-Language Pathology and Audiology, Chapter 335 33
Board of Geologist Examiners, Chapter 809 ..... 33, 34
Board of Naturopathic Examiners, Chapter 850 34–39
Board of Optometry, Chapter 852 39–41
Bureau of Labor and Industries, Chapter 839 41–49
Construction Contractors Board, Chapter 812 49–52
Department of Administrative Services, Chapter 125 ..... 52, 53
Department of Agriculture, Chapter 603 53–55
Department of Community Colleges and Workforce Development, Chapter 589 55
Department of Consumer and Business Services, Division of Finance and Corporate Securities, Chapter 441 55–57
Insurance Division, Chapter 836 ..... 57, 58
Workers' Compensation Division, Chapter 436 58–110
Department of Corrections, Chapter 291 110–115
Department of Energy, Energy Facility Siting Council, Chapter 345 115–118
Department of Fish and Wildlife, Chapter 635 119–135
Department of Human Services, Addictions and Mental Health Division: Addiction Services, Chapter 415 ..... 135, 136
Children, Adults and Families Division: Self-Sufficiency Programs, Chapter 461 136–138
Division of Medical Assistance Programs, Chapter 410 138–188
Public Health Division, Chapter 333 188–190
Seniors and People with Disabilities Division, Chapter 411 190–213
Department of Justice, Chapter 137 213–249
Department of Oregon State Police, Office of State Fire Marshal, Chapter 837 249–251
Department of Public Safety Standards and Training, Chapter 259 251–258
Department of State Lands, Chapter 141 258–275
Department of Transportation, Chapter 731 275–277
Department of Transportation, Highway Division, Chapter 734 ..... 277, 278
Land Conservation and Development Department, Chapter 660 278–284
Landscape Architect Board, Chapter 804 ..... 284, 285
Landscape Contractors Board, Chapter 808 ..... 285, 286
Oregon Business Development Department, Chapter 123 286–297
Oregon Criminal Justice Commission, Chapter 213 297–299
Oregon Department of Education, Chapter 581 299–326
Oregon Health Licensing Agency, Chapter 331 ..... 326, 327
Oregon Housing and Community Services Department, Chapter 813 327–329
Oregon Public Employees Retirement System, Chapter 459 329–331
Oregon State Treasury, Chapter 170 331
Oregon Student Assistance Commission, Chapter 575 331
Oregon University System, Eastern Oregon University, Chapter 579 332
Oregon Youth Authority, Chapter 416 ..... 332, 333
Parks and Recreation Department, Chapter 736 333–347
Public Utility Commission, Chapter 860 ..... 347, 348
Real Estate Agency, Chapter 863 348–360
Secretary of State, Elections Division, Chapter 165 360
Teacher Standards and Practices Commission, Chapter 584 361–373
Water Resources Department, Chapter 690 373–379

OAR Revision Cumulative Index 380–387

REQUEST FOR COMMENTS
PROPOSED CONDITIONAL NO FURTHER ACTION DECISION FOR CAIRO MARKET
CAIRO (ONTARIO), OREGON

COMMENTS DUE: February 1, 2010 by 5:00 p.m.
PROJECT LOCATION: 3850 Highway 201, Cairo (Ontario)
PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action (NFA) determination for Cairo Market site located at 3850 Highway 201 in Cairo, Oregon.
HIGHLIGHTS: The Leaking Underground Storage Tank Program (LUST) has reviewed site assessment and remedial activities performed at the site. The site is proposed for a risk-based closure and issuance of a Conditional No Further Action determination. All of the potential exposure concerns are addressed through elimination during development of the site-specific conceptual site model or through institutional controls in the form of an Easement and Equitable Servitude (E&ES). The institutional controls (deed restrictions) for the site will include the following restrictions: no beneficial use of groundwater without well head treatment; no residential use; and management of any excavated petroleum contamination.
HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. Summary information and a copy of *"Conditional No Further Action Decision Document"* document are available in DEQ's LUST database http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp under LUST Number 23-00-0005.

To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by February 1, 2009 and sent to Katie Robertson, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.
THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the "Conditional No Further Action" determination.

REQUEST FOR COMMENTS
PROPOSED FINAL NO FURTHER ACTION FOR TROUTDALE GRAVEL AQUIFER GROUNDWATER AT THE DOLLAR DEVELOPMENT SITE (ECSI #1747)

COMMENTS DUE: February 1, 2010
PROJECT LOCATION: The site is located at 10910 and 10940 NE Holman Avenue in 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 for a final No Further Action determination for the Dollar Development Site (ECSI File #1747).
HIGHLIGHTS: The site is located in northeast Portland within the City of Portland back up municipal supply well field. Historically the site was used for heavy construction equipment storage and maintenance, and since purchase by Dollar Development Company (Dollar) in 1989 has remained undeveloped with only occasional temporary tenant use. Environmental investigations have been ongoing at the site and general area since 1993 to identify sources of chlorinated solvent contamination to groundwater. The sources of hazardous substances that have been released to groundwater in the northern portion of the site have been extensively investigated but are unknown. Groundwater contamination present in the southern portion of the site is likely from the adjacent property and will be addressed during future remedial action for that property.

DEQ issued a No Further Action for soil and shallow groundwater in December 2007 and required continued monitoring of Troutdale Gravel Aquifer (TGA) groundwater. Dollar conducted semiannual groundwater monitoring until TCE concentrations decreased below the drinking water standard of 5 ug/l, then quarterly monitoring until TCE concentrations were stabilized for one year. Concentrations of chlorinated solvents present in the TGA beneath the site are below both drinking water standards and risk-based criteria and are therefore protective of human health and the environment. Based upon the results of the TGA groundwater monitoring, the proposed final No Further Action for TGA groundwater beneath the Dollar site is warranted.
HOW TO COMMENT: You can review the administrative record for the proposed final remedy for the Dollar Development Company site at DEQ's Northwest Region east side office located at 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon. For an appointment to review the files call (503) 667-8414, extension 55026; toll free at (800) 452-4011; or (800) 735-2900. Please send written comments to Mavis D. Kent, Project Manager, DEQ Northwest Region East Side Office, 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030 or via email at: kent.mavis.d@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on February 1, 2010. This notice will also be published in the local newspaper The Oregonian.

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 Oregon Telecommunications Relay Service at (800)735-2900.
THE NEXT STEP: DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a final No Further Action for the site.

REQUEST FOR COMMENTS
PROPOSED APPROVAL OF REMEDIAL ACTION AT GENERAL PACIFIC — TOWNSEND FARMS LOT 14

COMMENTS DUE: January 31, 2010
PROJECT LOCATION: General Pacific, Inc. 22414 NE Townsend Way, Fairview, Oregon, 97024. (Formerly known as Townsend Farms Lot 14)
PROPOSAL: Pursuant to ORS 465.320 the Department of Environmental Quality (DEQ) invites public comment on the proposed No Further Action (NFA) determination for General Pacific, Inc.
HIGHLIGHTS: General Pacific, Inc. entered into a Prospective Purchaser Agreement (PPA) with DEQ addressing Lot 14 which had been formerly used for agricultural production. This former use involved the application of certain pesticides which remained in soil on the lot. As part of the PPA, General Pacific, Inc. performed certain activities, which included sampling of residual pesticide concentrations in soil prior to construction of a commercial building, installation of landscaping and a parking surface, and appropriate management of site soil. The work specified in the PPA has been completed and DEQ has determined that concentrations of pesticides remaining in subsurface soil are below DEQ risk-based levels for worker direct contact exposure. Based on completion of agreed upon activities and proper documentation of protective conditions, DEQ proposes to issue a conditional NFA covering the subject property. The conditions to the NFA involve future soil management precautions to prevent migration of pesticide-contaminated soil from the parcel to adjacent surface water and surrounding natural habitat, where fish and wildlife exposure to the soil could pose unacceptable risk.
HOW TO COMMENT: The project file is available for public review. To schedule an appointment, contact Paul Seidel at 503-667-8414 x 55002. Written comments should be sent to the DEQ contact at the Department of Environmental Quality, Northwest Region, 1550 NW Eastman Parkway, Suite 290, Gresham, OR 97030 by

January 31, 2010. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a membership of 10 or more. Please notify DEQ if you need copies of written materials in an alternative format (e.g., Braille, large print, etc.). To make these arrangements, contact DEQ Office of Communication and Outreach at 503-229-5317. Additional information is also available at: http://www.deq.state.or.us/news/publicnotices/PN.asp

REQUEST FOR COMMENTS
PROPOSED NO FURTHER ACTION AT
BROOKWOOD ROUNDABOUT SITE

COMMENTS DUE: January 30, 2010
PROJECT LOCATION: The Brookwood Roundabout Site is located at the southeast corner of the intersection of SE Brookwood Avenue and SE Alexander Avenue in Hillsboro, Oregon, and comprises a portion of former Tax Lot 1S210CB 700. The site is identified as number #4948 in DEQ's Environmental Cleanup and Site Information (ECSI) files. The roundabout is an intersection for SE Alexander and SE Brookwood Avenues.
PROPOSAL: As required by ORS 465.320 and ORS 465.325(10)(b), the Department of Environmental Quality (DEQ) invites public comments on remedial action completed at the Brookwood Roundabout Site and DEQ's proposal to issue a no further action determination for the site.
HIGHLIGHTS: The City of Hillsboro entered into DEQ's Voluntary Cleanup Program in 2008 to address contamination at the subject site, comprised of the northwest corner of the Chou Remainder Parcel. The City of Hillsboro acquired the Site to construct a roundabout interchange roadway improvement.

Soil sampling was completed from 2007 to 2008 by NW GeoTech, and in 2008 by GeoDesign, in accordance with the DEQ's ***Guidance for Evaluating Residual Pesticides on Lands Formerly Used for Agricultural Production*** (dated January 2006). Work was performed to evaluate potential soil impact from herbicides, organochlorine pesticides, and metals associated with former agricultural activity. The sampling results were screened against DEQ's risk-based concentrations (RBCs) for protecting ecological and human health risk pathways. The pesticide dieldrin was detected in one surface soil sample at a level that exceeds DEQ's RBC, while subsurface impacts were below RBCs. Herbicides and metals were not detected at significant concentrations.

The upper 1-foot of dieldrin impacted soil was removed in 2008 from the northwest corner of former Tax Lot 1S210CB 700 over an area of approximately 0.45 acre. A total of 1,153 tons of dieldrin-impacted soil was removed and transported to the Hillsboro Subtitle D Landfill for DEQ permitted disposal. The Site soil surface was then tested for pesticides and herbicides, after the soil removal and the remaining soil was found to be below RBCs.

In 2008, after the removal and confirmatory sampling, a roundabout intersection was constructed over the excavation area, consisting of granular base rock overlain by asphalt roadway and concrete site walk materials.

DEQ has determined that no further action is required for the subject site under Oregon Environmental Cleanup Law, ORS 465.200 et seq. unless additional information becomes available in the future which warrants further investigation.
HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Northwest Region Office located at 2020 SW Fourth Avenue, Suite 400 in Portland, Oregon 97201. To schedule a file review appointment, call 503-229-6729; toll free 1-800-452-4011; or TTY at 1-800-735-2900 or 711. To access site summary information and the Closeout Memorandum in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter ECSI #4948 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #4948 in the Site ID/Info column.

The DEQ project manager is Jim Orr (503-229-5039). Please send written comments to Jim Orr at the address listed above or via email at orr.jim@deq.state.or.us by January 30, 2010.
THE NEXT STEP: DEQ will consider all comments received and the Northwest Region Administrator will make a final decision after consideration of any comments.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us

People with hearing impairments may call DEQ's TTY number, (800) 735-2900 or 711.

REQUEST FOR COMMENTS
PROPOSED APPROVAL OF CLEANUP AT
THE FORMER LANDFILL, CAMP RILEA
WARRENTON, OREGON

COMMENTS DUE: 5 pm, February 1, 2010
PROJECT LOCATION: 33168 Patriot Way, Warrenton, Oregon
PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" (NFA) determination based on results of site investigation and remedial activities performed at the former landfill located at the end of NBC Road at the Camp Rilea site in Warrenton, Oregon. DEQ has determined that low level releases of hazardous substances from the landfill do not pose risks to human health and the environment exceeding the acceptable risk level defined in ORS 465.315. DEQ is therefore proposing issuance of a partial No Further Action determination for the landfill. This decision excludes other areas of the camp not subject to the investigation.
HIGHLIGHTS: The landfill reportedly received waste from the general public and Camp Rilea personnel in the 1930s and was closed in the late 1980s but no closure documentation is available. Recent explorations in the landfill encountered wood, metal, glass, tires, clothing, fishing nets, etc. to depths of approximately six feet.

Environmental investigation at the landfill began in 1996. Contaminants found in landfill waste included the metals arsenic, lead, and mercury and volatile organic compounds (VOC), trichloroethene (TCE) and tetrachloroethylene (PCE). Similar contaminants were found in groundwater below the landfill at low concentrations. Deep groundwater below the landfill was explored and five permanent groundwater monitoring wells were installed for long term groundwater monitoring around the landfill. Deep groundwater was not found to be contaminated but shallow groundwater contained low concentrations of TCE and PCE. Long term monitoring showed that groundwater VOC concentrations were stable or decreasing. Due to the disposal of wood and organic debris in the landfill the potential for methane gas generation was investigated but methane concentrations were below DEQ action levels.

Concentrations of soil contaminants at the landfill were compared with DEQ risk-based concentrations (RBCs). Arsenic concentrations exceeded the RBC but were below the Oregon default background concentration. Concentrations of other metals and VOCs were below applicable RBCs. After the initial groundwater sample collection in 2007 concentrations of VOCs and metals below the landfill have been at or below the EPA maximum contaminant levels for drinking water. Groundwater concentrations of metals and VOCs were below applicable DEQ RBCs.

Groundwater modeling was used to show that groundwater contaminants are very unlikely to reach Neacoxie Creek, 500 feet east of the landfill at unacceptable concentrations. Although potential risks for contaminant direct contact or leaching to groundwater are considered low for the landfill, the Oregon Military Department elected to install an asphalt cap over the surface of the former landfill. The cap eliminates any potential direct contact with buried landfill debris and will limit potential leaching of contaminants from debris. DEQ concludes that environmental conditions at the site do

not pose an unacceptable risk to human health and the environment, and therefore, meet the requirements of the Oregon Environmental Cleanup Laws.
HOW TO COMMENT: DEQ's Staff Report for the Camp Rilea landfill site and other project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call Dawn Weinberger at 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. Summary information and a copy of the Staff Report are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet; go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter 1524 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1524 in the Site ID/Info column. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at williams.robert.k@deq.state.or.us. To be considered, DEQ must receive written comments by 5 pm on February 1, 2010. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.
THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the "partial No Further Action" determination. In the absence of comments, DEQ will issue the No Further Action determination for the landfill site.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-6488 or toll free in Oregon at (800) 452-4011; fax to 503-229-6945; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call the Oregon Telecommunications Relay Service 1-800-735-2900 number.

REQUEST FOR COMMENTS
PROPOSED APPROVAL OF CLEANUP AT
THE PRECISION EQUIPMENT SITE
PORTLAND, OREGON

COMMENTS DUE: 5pm, February 1, 2010
PROJECT LOCATION: 8440 and 8520 N. Kirby Avenue in Portland, Oregon
PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on a proposed cleanup remedy for a property located in North Portland. The property consists of two tax lots (Tax Lot 1102 and 1103).
HIGHLIGHTS: Precision Equipment has operated a hydraulic equipment repair and chrome-electroplating shop since 1979 on Tax Lot 1102 (known to DEQ as ECSI site #152). In 1999, Precision found that soil below the vault of the chrome-plating area and a related sump within the building had been contaminated by significant releases of hexavalent chromium to soil and subsequent lesser releases to groundwater. Releases did not extend outside the building footprint.

Tax Lot 1103 lies immediately north of Tax Lot 1102 and extends to the southern bank of the Columbia Slough, and has been combined with an adjacent property known as the Schnitzer property. The former Schnitzer property is known to DEQ as ECSI site #1050. This property includes a 15,000-square foot metal warehouse building and undeveloped land. Fill, including wood, glass, metal, brick, shredded tires, and other construction debris, was placed on the 1103 property between 1925 and 1978. The fill is contaminated with petroleum hydrocarbons, metals, PCBs, and polycyclic aromatic hydrocarbons (PAHs). Similar contaminants were also found in groundwater at lesser concentrations. PCBs, lead, and one PAH were found in soil at levels above DEQ risk-based concentrations. Some screening level values for wildlife were also exceeded.

DEQ's recommended remedial action for Tax Lot 1102 would include engineering and institutional controls requiring:

• restriction on groundwater use,
• maintenance of the existing site cap (existing pavement, building and interior structures) while current plating operations continue,
• a prohibition on residential and agricultural land use, and
• deferred removal of the soil hot spot for hexavalent chromium located beneath the plating area of the plant until such time as plating operations cease.

Remedial actions proposed for Tax Lot 1103 would include:
• abandonment of the compromised warehouse storm drain system that drains to the Columbia Slough, removal of the warehouse building and filling the building footprint up to grade with site fill soil and/or with suitable imported fill. Filling the area would eliminate the depression to which storm water funnels and increase the future development potential for the property,
• restriction on public access to the Property through the use of fencing, including inspection and maintenance of the fence until a site cap is installed,
• placement of a cap over Tax Lot 1103 either at the time of development or within 5 years of DEQ's issuance of the final remedy for the site,
• land, and groundwater use restrictions on the Property, and
• erosion-control measures for areas of exposed soil along the south bank of the Columbia Slough.

The restrictions for both Tax Lot 1102 and 1103 would be documented in a recorded Easement and Equitable Servitude (EES).
HOW TO COMMENT: DEQ's Staff Report for the Precision Equipment site and other project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call Dawn Weinberger at 503-229-6729; toll free at 1-800-452-4011. Summary information and a copy of the Staff Report are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter 152 or 1050 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link with the number labeled in the Site ID/Info column. Please send written comments to Robert Williams, Project Manager, at the address listed above or via email at williams.robert.k@deq.state.or.us. To be considered, DEQ must receive written comments by 5 pm on February 1, 2010. Upon written request by ten or more persons or by a group with a membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.
THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above, before making a final decision regarding the proposed remedial action.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-6488 or toll free in Oregon at (800) 452-4011; fax to 503-229-6945; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call the Oregon Telecommunications Relay Service 1-800-735-2900 number.

REQUEST FOR COMMENTS
PROPOSED NO FURTHER ACTION DETERMINATION
FOR NW 16TH STORAGE SITE

COMMENTS DUE: February 1, 2010, 4:30 pm
PROJECT LOCATION: 1323 NW 16th Avenue in Portland
PROPOSAL: The Department of Environmental Quality is proposing to issue a No Further Action determination following excavation and offsite disposal of contaminated soil, underground tanks and related subsurface structures from this site. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.
HIGHLIGHTS: A storage facility was constructed on this property in July and August 2009. Prior to construction, soil, groundwater and soil gas sampling were conducted between 2004 and 2009. Five

underground storage tanks and one hydraulic hoist were decommissioned by removal. Approximately 1,000 tons of petroleum-impacted soil were removed and disposed of at Hillsboro Landfill. Residual concentrations of volatile organic compounds are somewhat higher than acceptable risk levels. To address this, environmental controls were incorporated into the design and construction of the new building. An engineered vapor barrier membrane was installed over the concrete slab, covering the entire building footprint. In addition, a passive ventilation trench was installed along the west side of the building. Subsurface vapors collected in this trench are conveyed to vertical pipes leading to the roof at the north and south ends of the building. This venting system is intended to intercept vapors so they do not migrate beneath the adjacent offsite building on the property to the west.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Columbia Gorge office, 400 E. Scenic Drive, Suite 307, in The Dalles. If requested, we can arrange for review of files in our Portland office as well. Comments and questions should be directed to Bob Schwarz, project manager, by phone at 541-298-7255 ext. 230, by email at schwarz.bob@deq.state.or.us, or by mail at the address above. To access site summary information and DEQ's staff report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter ECSI# 5120 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #5120 in the Site ID/Info column. Comments must be received by 4:30 PM on the due date in order to be considered in DEQ's decision.

THE NEXT STEP: Following the public comment period, DEQ will issue the No Further Action determination unless public comments indicate the need to reconsider that decision.

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

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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Appraiser Certification and Licensure Board
Chapter 161

Rule Caption: Proposed amendments to education requirements, adoption of 2010–2011 Edition of USPAP and general housekeeping.

Date:	Time:	Location:
1-11-10	9 a.m.	3000 Market St. NW, Suite 541 Salem, OR

Hearing Officer: Craig Zell
Stat. Auth.: ORS 182.462, 183.355(1)(a), 674.305(7) & 674.310(2)
Other Auth.: Title XI of the Federal Financial Reform, Recover and Enforcement Act of 1989 (12 USC 3310 et seq.)
Stats. Implemented: ORS 674.305(7) & 674.310(2)
Proposed Amendments: 161-002-0000, 161-020-0150, 161-025-0030, 161-025-0060
Last Date for Comment: 1-11-10, Close of Hearing
Summary: The Board proposes amendments to Oregon Administrative Rules chapter 161, division 002, regarding definitions; division 20, regarding education requirements; and division 25 regarding Appraiser Assistant Scope of Practice, and Appraisal Standards and USPAP.
Rules Coordinator: Karen Turnbow
Address: Appraiser Certification and Licensure Board, 3000 Market St. NE, Suite 541, Salem, OR 97301
Telephone: (503) 485-2555

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Board of Architect Examiners
Chapter 806

Rule Caption: Current Professional Proficiency.

Date:	Time:	Location:
1-20-10	9 a.m.	205 Liberty St. NE #A OBAE Conference Rm. Salem, OR 97301

Hearing Officer: Norma Freitas
Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.080 & 671.125
Proposed Amendments: 806-010-0060, 806-010-0145
Last Date for Comment: 1-20-10, 1 p.m.
Summary: The Board requires continuing professional education (CPE) as a requirement for architect license renewal and for reinstatement back to active status. The Board allowed those licensed in other jurisdictions to be exempt from meeting Oregon's CPE requirements because all jurisdictions had very nearly the same requirements. This is no longer true, with some jurisdictions adopting very low requirements. This has created an unbalanced and unfair situation. This rule amendment modifies the definition of current professional proficiency in order to restore the balance and hold individuals to the same standards by requiring all to meet the same requirements.
Rules Coordinator: Carol Moeller
Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
Telephone: (503) 763-0662

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Board of Naturopathic Examiners
Chapter 850

Rule Caption: 2009 legislation allows naturopathic physicians to prescribe for Expedited Partner Therapy (EPT).
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.010(5)
Proposed Amendments: 850-060-0220
Last Date for Comment: 1-29-10
Summary: Will allow NDs to prescribe antibiotics to partners of patients diagnosed with a sexually transmitted disease without a patient visit by the partner of the patient for EPT.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Board of Parole and Post-Prison Supervision
Chapter 255

Rule Caption: Amending division 94 to expand the jurisdiction and to add definitions.
Stat. Auth.: ORS 144-085, SB 1145 (1995), 1999 OL Ch. 163 & 924
Stats. Implemented:
Proposed Adoptions: 255-094-0001
Proposed Amendments: 255-094-0010, 255-094-0015, 255-094-0020
Proposed Ren. & Amends: 255-094-0000 to 255-094-0005
Last Date for Comment: 2-5-10
Summary: These rules are being amended to add a "Definition" section, and to include the Local Supervisory Authority in the rules.

Adding 255-094-0001 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
Address: Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Salem, OR 97301
Telephone: (503) 945-0914

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Board of Pharmacy
Chapter 855

Rule Caption: Provide regulatory framework to permit prescribing and dispensing of drugs for Expedited Partner Therapy (EPT).

Date:	Time:	Location:
1-20-10	9 a.m.	800 NE Oregon St., Rm. 1B Portland, OR

Hearing Officer: Tony Burtt
Stat. Auth.: ORS 689.205
Other Auth.: ORS 678.390

Stats. Implemented: 2009 OL Ch. 522
Proposed Adoptions: 855-041-4000, 855-041-4005, 855-043-0002, 855-043-0003, 855-043-0005
Proposed Amendments: 855-043-0110, 855-043-0130, 855-043-0210, 855-043-0300, 855-043-0310
Proposed Ren. & Amends: 855-043-0001 to 855-043-0005, 855-043-0120 to 855-043-0002
Last Date for Comment: 1-25-10, 5 p.m.
Summary: These amendments and new rules will permit pharmacists, nurse practitioners, clinical specialists and other practitioners regulated by rules in division 41 and 43 to prescribe and dispense, within their scope of practice, specified drugs for an unnamed patient when the prescription is identified as "for EPT Therapy". The rules provide a labeling protocol when the patient's name is unknown. There are also minor rule amendments in division 43 to incorporate changes necessitated by recent legislation.

Copies of the full text of proposed rules can be obtained from the Board's website: www.pharmacy.state.or.us, or by calling the Board office: (971) 673-0001.
Rules Coordinator: Karen MacLean
Address: Board of Pharmacy, 800 NE Oregon St., #150, Portland, OR 97232
Telephone: (971) 673-0001

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Construction Contractors Board
Chapter 812

Rule Caption: Amends Continuing Education for Commercial Contractors and Information Notice to Owner About Construction Liens.

Date:	Time:	Location:
1-26-10	11 a.m.	West Salem Roth's IGA 1130 Wallace Rd., Santiam Rm. Salem, OR

Hearing Officer: Rob Hernandez
Stat. Auth.: ORS 87.093, 670.310, 701.124, 701.235, 701.325, 701.330, & 701.530
Other Auth.: 2009 OL Ch. 408 (SB 203)
Stats. Implemented: ORS 87.093, 701.124, 701.235, 701.325, 701.330 & 701.530
Proposed Amendments: 812-001-0200, 812-020-0070
Proposed Repeals: 812-020-0082
Last Date for Comment: 1-26-10, 11 a.m.
Summary: • 812-001-0200 is amended to adopt the revised Information Notice to Owner About Construction Liens form.

• 812-020-00070 is amended to clarify that the date applicable to all continuing education (CE) requirements is the date of the previous license issuance.

• 812-020-0082 is repealed, this rule is no longer necessary.
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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Rule Caption: Amendments to Division 5 — Civil Penalties and Division 7 — Lead-Based Paint Rules.

Date:	Time:	Location:
1-26-10	11 a.m.	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 & 701.992
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 & 701.992
Proposed Adoptions: 812-007-0025, 812-007-0100, 812-007-0110, 812-007-0120, 812-007-0130, 812-007-0140, 812-007-0150, 812-007-0160, 812-007-0200, 812-007-0205, 812-007-0210, 812-007-0220, 812-007-0230, 812-007-0240, 812-007-0250, 812-007-0260, 812-007-0300, 812-007-0310, 812-007-0320, 812-007-0330, 812-007-0340, 812-007-0350, 812-007-0360, 812-007-0370, 812-007-0372, 812-007-0374
Proposed Amendments: 812-005-0800, 812-007-0000, 812-007-0020
Proposed Repeals: 812-007-0010, 812-007-0030, 812-007-0040, 812-007-0050, 812-007-0060, 812-007-0070, 812-007-0080, 812-007-0090
Last Date for Comment: 1-26-10, 11 a.m.
Summary: • 812-005-0800 is amended to revise (30) to conform to Chapter 757, OR Laws 2009 (HB 2134), adds a new (31) and (32) regarding penalties for violation of the lead-based paint requirements, and renumbered.

• 812-007-0000 is amended to correspond with amendments to ORS 701.505 to 701.515 and new provisions in chapter 757 OR Laws 2009 (HB 2134).

• 812-007-0010, 812-007-0030, 812-007-0040, 812-007-0050, 812-007-0060, 812-007-0070, 812-007-0080, and 812-007-0090 are repealed.

• 812-007-0020 is amended to create new definitions to match federal regulations, specifically 40 CFR §§ 745.83, 745.85, 745.223, 745.226 and Health Division rules.

• 812-007-0025 is adopted to recognize that civil penalty monies relating to lead-based paint will be deposited in a special fund and that the special fund will be used for payment of CCB lead-based paint activities.

• 812-007-0100 is adopted to prohibit any individual offering to perform or performing lead-based paint activities without having 1) a Department certification and 2) a CCB license. This includes lead assessor, lead inspector, lead supervisor, and lead worker (also known as lead abatement worker).

• 812-007-0110 is adopted to set forth the application and eligibility requirements for lead-based paint activities license for individuals.

• 812-007-0120 is adopted to set forth the effective date of the license, the period of the license (1 year) and other administrative matters regarding the license.

• 812-007-0130 is adopted to set forth requirements for license renewal.

• 812-007-0140 is adopted to require individuals to follow work practice standards for lead-based paint activities, as set forth by the Department (Oregon Dept. of Human Services).

• 812-007-0150 is adopted to set forth the basis for denial, suspension or revocation of individual license.

• 812-007-0160 is adopted set forth the fees for lead-based paint activity license for individuals.

• 812-007-0200 is adopted to prohibit any non-exempt person acting as a lead-based paint activities contractor from offering to perform lead-based paint activities without having: 1) a Department certification, and 2) a CCB license.

• 812-007-0205 is adopted to require lead abatement contractors to have at least one owner or employee that is a licensed lead supervisor or licensed lead (abatement) worker.

• 812-007-0210 is adopted to set forth applicant and eligibility requirements for lead-based paint activity licenses for contractors.

• 812-007-0220 is adopted to set forth the effective date of the license, the period of the license (1 year) and other administrative matters regarding the license.

• 812-007-0230 is adopted to set forth requirements for license renewal for lead-based paint activities contractors.

• 812-007-0240 is adopted to require contractors to follow work practice standards for lead-based paint activities, as set forth by the Department (Oregon Dept. of Human Services)

• 812-007-0250 is adopted to set forth the basis for denial, suspension or revocation of a contractor's license.

• 812-007-0260 is adopted to set forth the license fees for lead-based paint activities contractors.

• 812-007-0300 is adopted to prohibit any non-exempt contractor from offering to perform or performing renovation work without being a certified lead-based paint renovation contractor.

• 812-007-0310 is adopted to set application and eligibility requirements for certified lead-based paint renovation contractors.

• 812-007-0320 is adopted to set forth the effective date of the license, the period of the license (1 year) and other administrative matters for certified lead-based paint renovation contractors.

• 812-007-0330 is adopted to set forth requirements for license renewal for certified lead-based paint renovation contractors.

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

• 812-007-0350 is adopted to set forth the basis for denial, suspension or revocation of a contractor's license.

• 812-007-0360 is adopted to set forth the fees for certified lead-based paint renovation contractor licenses.

• 812-007-0370 is adopted to set forth the notification requirements for certified lead-based paint renovation contractors in target housing dwelling units.

• 812-007-0372 is adopted to set forth the notification requirements for certified lead-based paint renovation contractors in target housing common areas.

• 812-007-0374 is adopted to set forth the notification requirements for certified lead-based paint renovation contractors in child-occupied facilities.

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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Rule Caption: Adopt Locksmith Certification Program Rules.

Date:	Time:	Location:
1-26-10	11 a.m.	West Salem Roth's IGA 1130 Wallace Rd., Santiam Rm. Salem, OR

Hearing Officer: Rob Hernandez
Stat. Auth.: 2009 OL Ch. 781(HB 3127)
Other Auth.: 2009 OL Ch. 781(HB 3127)
Stats. Implemented: 2009 OL Ch. 781(HB 3127)
Proposed Adoptions: Rules in 812-030, 812-030-0000, 812-030-0010, 812-030-0100, 812-030-0110, 812-030-0200, 812-030-0210, 812-030-0220, 812-030-0230, 812-030-0240, 812-030-0250
Last Date for Comment: 1-26-10, 11 a.m.
Summary: • 812-030-0000 is adopts general definitions applicable to Division 30 rules.

• 812-030-0010 is adopted to implement HB 3127, section 4, requiring certified locksmith applicants to pass a test. This rule sets forth the requirements to take the test and the fees for the test.

• 812-030-0100 is adopted to set forth the criminal offenses that may be the basis for determining that an applicant is not qualified for certification as a locksmith. The crimes listed include many of the crimes that may disqualify an applicant for a contractor's license.

• 812-030-0110 is adopted to set forth the standards that CCB will apply to determine whether an applicant who has been convicted of a crime is qualified to be a certified locksmith.

• 812-030-0200 is adopted to set forth the general requirements for a new applicant for certification as a locksmith.

• 812-030-0210 is adopted to set the effective date, number and name affixed to each certificate. Provides for applicant to withdraw an applicant for certification. Indicates how the Board will handle the issuance or denial of a certificate. Provides that a certificate is valid for two years.

• 812-030-0220 is adopted to require a renewal application and fee to renew a locksmith certificate.

• 812-030-0230 is adopted to specify the effective date for a renewal certificate. Explains that a certificate that is not timely renewed is lapsed. During the period a certificate is lapsed, the individual may not work as or hold out as a locksmith. If the period of lapse is two years or less, the individual may renew the existing certificate. If the period of lapse is more than two years, the individual must obtain a new certificate.

• 812-030-0240 is adopted to require that a certified locksmith work with an active, licensed CCB contractor at all times; effective July 1, 2010.

• 812-030-0250 is adopted to implement § 4(4)(d)(A), (C), and (D) allowing the board to charge a fee of up to $100 for the new or renewal application, up to $300 for issuance of the initial certificate and up to $300 for certificate renewal.

• 812-030-0300 is adopted to set forth standards of professional conduct. The rule follows similar standards for dishonest or fraudulent conduct and non-cooperation currently in CCB's rules. See OAR 812-003-0110 and 812-002-0260. Follows the client identification standards in the "Technical Standards Policy" of the Associated Locksmiths of America (ALOA).

• 812-030-0400 is adopted to set forth the civil penalties for violation of locksmith statutes; effective July 1, 2010.

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 Administrative Services,
Oregon Educators Benefit Board
Chapter 111

Rule Caption: Amended to clarify language relating to what provisional non-subject districts need to do to request a comparability assessment.

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

Hearing Officer: Denise Hall
Stat. Auth.: ORS 243.860–243.886
Stats. Implemented: ORS 243.886
Proposed Amendments: 111-020-0001
Last Date for Comment: 2-28-10, 5 p.m.
Summary: OAR 111-020-0001 is being amended to provide clarifying language relating to what provisional non-subject districts need to do to request a comparability assessment.
Rules Coordinator: April Kelly
Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-6588

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Rule Caption: Establishes the Oregon Educators Benefit Board rule surrounding the implementation of House Bill 2557.

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

Hearing Officer: Denise Hall
Stat. Auth.: ORS 243.864
Other Auth.: 2009 OL Ch. 351 (HB 2557)
Stats. Implemented: 2009 OL Ch. 351 (HB 2557)
Proposed Adoptions: 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
Last Date for Comment: 2-28-10, 5 p.m.
Summary: Adopt rules to implement House Bill 2557 which was enacted by the 2009 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
Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-6588

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Department of Consumer and Business Services, Director's Office
Chapter 440

Rule Caption: Adopts rules to define and address indebtedness and financial interests of employees with regulatory responsibilities.
Stat. Auth.: ORS 705.135
Stats. Implemented: ORS 244 & 705.135
Proposed Adoptions: 440-015-0100 – 440-015-0115
Proposed Amendments: 440-015-0001 – 440-015-0090
Last Date for Comment: 1-25-10, 5 p.m.
Summary: Existing ORS 705.135(3) duplicates provisions of ORS Chapter 244. We are modifying this rule to repeal duplicative and outdated provisions, and better identify circumstances under which employees of the agency may not become indebted to or hold interest in entities subject to the regulation of the department. The rule also provides a procedure for the reporting of indebtedness or interest by the employees for the purposes of preventing or resolving possible conflicts of interest.

Text of 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 email kristen.i.miller@state.or.us
Rules Coordinator: Kristen Miller
Address: Department of Consumer and Business Services, Director's Office, 350 Winter St. NE, PO Box 14480, Salem, OR 97309-0405
Telephone: (503) 947-7866

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Department of Consumer and Business Services, Oregon Medical Insurance Pool Board
Chapter 443

Rule Caption: 0090: Updating procedures and terms to reflect current processing procedures. 0070: Updating year to reference 2010 materials.
Stat. Auth.: ORS 735.610(6), 735.615 & 735.625
Other Auth.: OMIP Board
Stats. Implemented: ORS 735.610(6), 735.615 & 735.625
Proposed Amendments: 443-002-0070, 443-002-0090
Last Date for Comment: 1-23-10
Summary: 443-002-0090: Enrollee Termination: Updated title from Member to Enrollee and replaced all reference from member to enrollee. Also, amended the term will to may through subsections of this rule These amendments do not change the administration or program requirements and are only amended for housekeeping purposes only.

443-002-0070: Updates reference to benefits, benefit limitations, benefit exclusions and claims administration for the OMIP program to the plans, contract, application, enrollee handbook, and benefit and rate instructions as of January 1, 2010. These rules do not change the program requirements.

The proposed effective date for this rule is February 7, 2010.
Rules Coordinator: Linnea Saris
Address: Department of Consumer and Business Services, Oregon Medical Insurance Pool, 250 Church St. SE, Suite 200, Salem, OR 97302
Telephone: (503) 378-5672

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

Rule Caption: Propose to adopt federal amendments to consensus standards for personal protective equipment in general industry, agriculture, maritime activities, and forest activities.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Amendments: 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
Last Date for Comment: 2-1-10
Summary: 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 proposes to adopt the changes in general industry and maritime activities as published in the September 9, 2009 Federal Register. The updated references will also be made in Oregon OSHA's Division 4, Agriculture, and Division 7, Forest Activities.

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 Energy, Energy Facility Siting Council
Chapter 345

Rule Caption: Amend OAR 345-001-0220 to eliminate the Umatilla County Wind Energy Generation Area.

Date:	Time:	Location:
3-3-10	9:30 a.m.	Umatilla Co. Justice Center 4700 NW Pioneer Place Media Room Pendleton, OR
3-9-10	9:30 a.m.	Department of Energy 625 Marion St. Salem, OR

Hearing Officer: Vijay Satyal
Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.300 & 469.320
Proposed Amendments: 345-001-0220
Last Date for Comment: 3-12-10, 5 p.m.
Summary: Upon the petition of Umatilla County for Rulemaking, the Energy Facility Sitting Council (EFSC) on November 20, 2009, agreed to initiate a rulemaking proceeding in accordance with ORS 183.335. In their petition, the Umatilla County Board of Commissioners, on behalf of the citizens of Umatilla County, requested "repeal" of subsection (1) of OAR 345-001-0220.
Rules Coordinator: Kathy Stuttaford
Address: Department of Energy, Energy Facility Siting Council, 625 Marion St. NE , Salem, OR 97301
Telephone: (503) 378-4128

Department of Environmental Quality
Chapter 340

Rule Caption: Rules Establishing Trigger Levels for Pollutants on the Priority Persistent Pollutant List.

Date:	Time:	Location:
1-19-10	5:30 p.m.	DEQ Eugene Office Willamette Conference Rm. 165 E. 7th Ave. Eugene, OR
1-20-10	5:30 p.m.	Medford City Hall, Rm. 330 411 W. 8th St. Medford, OR
1-26-10	5:30 p.m.	Pendleton City Hall, Community Rm. 501 SW Emigrant Ave. Pendleton, OR
1-28-10	5:30 p.m.	DEQ HQ Office 10th Flr., EQC-A 811 SW 6th Ave. Portland, OR

Hearing Officer: DEQ Staff
Stat. Auth.: ORS 468.020 & 468B.141
Other Auth.: ORS 183.325–183.410
Stats. Implemented: ORS 468B.138–468B.144
Proposed Adoptions: 340-045-0100
Last Date for Comment: 2-1-10, 5 p.m.
Summary: The purpose of this rule is to establish appropriate concentration values (or trigger levels) for each pollutant on the final priority persistent pollutant list that does not have an adopted maximum contaminant level value. These trigger levels will be used by the Department of Environmental Quality to determine of any of the municipal wastewater treatment facilities that meet the design flow capacity criteria specified in Senate Bill 737 will be required to develop and submit toxics reduction plans as a part of their subsequent permit renewals under either the National Pollutant Discharge Elimination System (NPDES) or Water Pollution Control Facility (WCPF); whichever applies.

To request additional information regarding this rulemaking, please contact: Chris Gannon at the Department of Environmental Quality, call toll free in Oregon (800) 452-4011 or (503) 229-5622, or visit DEQ's public notices webpage: http:www.deq.state.or.us/news/publicnotices/PN.asp

To comment on this rulemaking, submit your comments to: Chris Gannon, Oregon Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390, or by fax to (503) 229-6037, to by email to: triggerlevelrule@deq.state.or.us
Rules Coordinator: Maggie Vandehey
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6878

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Adopt Rules for the Mid-Columbia Steelhead Conservation and Recovery Plan.

Date:	Time:	Location:
2-5-10	8 a.m.	Dept. of Fish & Wildlife Commission Rm. 3406 Cherry Ave. NE Salem, OR 97103

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Other Auth.: Native Fish Conservation Policy (OAR 635-007-0502 - 0509), federal Endangered Species Act.
Stats. Implemented: ORS 496.162, 506.109 & 506.129
Proposed Adoptions: Rules in 635-500
Proposed Amendments: Rules in 635-500
Proposed Repeals: Rules in 635-500
Last Date for Comment: 2-5-10
Summary: Adopt or amend rules, as necessary, relating to the Mid-Columbia Steelhead Conservation and Recovery Plan.

Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.
Rules Coordinator: Therese Kucera
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

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Department of Forestry
Chapter 629

Rule Caption: The adoption of revised Northwest and Southwest Oregon State Forests Management Plans.

Date:	Time:	Location:
1-26-10	5:30–9 p.m.	Dept. of Forestry, Tillamook Rm. 2600 State St., Bldg. C Salem, OR 97310
1-28-10	5:30–9 p.m.	Seaside City Hall 989 Broadway Seaside, OR 97138

Hearing Officer: Clark Seely
Stat. Auth.: ORS 526.016(4), 526.041 & 530.050
Other Auth.: OAR 629-035-0030
Stats. Implemented: ORS 530.050
Proposed Amendments: 629-035-0105
Last Date for Comment: 1-29-10
Summary: As amended 629-035-0105 will adopt revised Northwest and Southwest Oregon State Forests Management Plans as administrative rules, as required by OAR 629-035-0030(6)(a). Due to the voluminous nature of the forest management plans, the rule adopts these plans be reference, Copies of the revised forest management plans may be viewed on the Oregon Department of Forestry's website at: http://egov.oregon.gov/ODF/, or at the office of the State Forester, and are available upon request.

Written comments must be received by 5:00 p.m., January 29, 2010. Submission should be addressed to Jeff Foreman, Oregon Department of Forestry, 2600 State St., Salem, OR 97310, sent to jforeman@odf.state.or.us, or via FAX at 503-945-7356
Rules Coordinator: Sabrina Perez
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

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Department of Human Services,
Addictions and Mental Health Division:
Addiction Services
Chapter 415

Rule Caption: Prescribe standards for the operation of adult prison-based Alcohol and Drug Treatment Programs.

Date:	Time:	Location:
1-19-10	9 a.m.	DHS Bldg., Rm. 137A 500 Summer St. NE Salem, OR

Hearing Officer: Richard Luthe
Stat. Auth.: ORS 409.050 409.410 & 409.420
Stats. Implemented: ORS 430.240–430.640, 430.850–430.955, 813.010–813.052 & 813.200–813.270
Proposed Adoptions: 415-057-0000, 415-057-0010, 415-057-0020, 415-057-0030, 415-057-0040, 415-057-0050, 0060, 415-057-0070, 415-057-0080, 415-057-0090, 415-057-0100, 415-057-0110, 415-057-0120, 415-057-0130, 415-057-0140, 415-057-0150
Proposed Repeals: 415-051-0005, 415-051-0080
Last Date for Comment: 1-22-10, 5 p.m.
Summary: These all new rules will prescribe standards for the development and operation of adult prison-based Alcohol and other drugs (AOD) Treatment Programs for the Department of Corrections (DOC) approved by the Department of Human Services (DHS), Addictions and Mental Health Division (AMH).

Rules Coordinator: Richard Luthe
Address: 500 Summer Street NE, E86, Salem, OR 97301
Telephone: (503) 947-1186

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

Rule Caption: Amend OAR 309-040 to include the opportunity for Adult Foster Home residents to file Advance Directives.
Stat. Auth.: ORS 409.010, 409.050 & 443.735
Stats. Implemented: ORS 127.700–127.737 & 443.705–443.925
Proposed Amendments: 309-040-0410
Proposed Repeals: 309-040-0410(T)
Last Date for Comment: 1-22-10, 5 p.m.
Summary: The Addictions and Mental Health Division is amending these rules in OAR 309-040 to require Adult Foster Homes to offer information and assistance with understanding and filing Advance Directives.
Rules Coordinator: Richard Luthe
Address: Department of Human Services, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E-86, Salem, OR 97301-1118
Telephone: (503) 947-1186

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

Rule Caption: Federal change to over the counter Plan B emergency contraceptive drug reimbursement.
Stat. Auth.: ORS 409.010, 409.050, 409.110 & 414.065
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-121-0145
Last Date for Comment: 1-19-10
Summary: The Pharmaceutical Services program rules (division 121) govern the Division of Medical Assistance Programs' (DMAP) payment for services to certain clients.

DMAP is re-filing Notice of Proposed Rulemaking for 410-121-0145 to correct a technical error in the previous Notice filing. The rule was included in the summary, however the rule number was not included in the Rulemaking Action on the filing document and subsequently not in the SOS bulletin. While the rule amendment was reviewed by a rule advisory committee and DMAP stakeholders, this rulemaking action provides a transparent process for public review and comment regarding DMAP compliance with Federal changes. The rule will be filed permanently on or after February 5, 2010.

410-121-0145 Prescription Requirements: As a result of Federal changes, the age at which DMAP may reimburse a pharmacy for distributing the over-the-counter Plan B emergency contraceptive drug product will be lowered to age 17 and older from age 18 and older who are (fee-for-service) Medicaid eligible
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: Regulation of renovation, repair and painting (RRP) activities involving lead-based paint.

Date:	Time:	Location:
1-25-10	11 a.m.	800 NE Oregon St., Rm. 1A Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 431.920
Other Auth.: 40 CFR Part 745.80 Subpart E
Stats. Implemented: ORS 431.920 & 2009 OL Ch. 757
Proposed Adoptions: Rules in 333-070
Last Date for Comment: 1-27-10, 5 p.m.
Summary: The Department of Human Services, Public Health Division is proposing to permanently adopt administrative rules in chapter 333, division 70. These rules implement the provisions of HB 2134 (Oregon Laws 2009, chapter 757), which gives Oregon the statutory authority to administer and enforce new U.S. EPA rules that will be fully implemented on April 22, 2010. The EPA rules regulate renovation, repair and painting (RRP) activities involving target housing and child-occupied facilities built before 1978. The proposed rules, as written, will mirror the EPA rules that will go into effect April 22, 2010 and will be no more stringent than the EPA rules. The fees in our proposed rule will be the same as or less than those charged by EPA. The statutory change and proposed rules will meet EPA's requirements for Oregon to become authorized to administer and enforce the RRP rule in Oregon.
Rules Coordinator: Brittany Sande
Address: Department of Human Services, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Rule Caption: Edits, amendments, and adoption of rules related to Radiation Protection Services.

Date:	Time:	Location:
1-25-10	1 p.m.	800 NE Oregon St., Rm. 1B Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 431.262, 431.925–431.955, 431.990 & 453.605–453.807
Stats. Implemented: ORS 431.262, 431.655, 431.771, 431.925–431.955, 431.990 & 453.605–453.807
Proposed Adoptions: 333-116-0485, 333-118-0051, 333-118-0052, 333-118-0053, 333-118-0125, 333-118-0162, 333-124-0001, 333-124-0010
Proposed Amendments: 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
Proposed Repeals: 333-102-0020
Last Date for Comment: 1-27-10, 5 p.m.
Summary: The Department of Human Services, Public Health Division is proposing to permanently adopt, amend and repeal 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

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

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

Rule Caption: 24-Hour Residential Services for Individuals with Developmental Disabilities.

Date:	Time:	Location:
1-15-10	1:30 p.m.	Human Service Bldg. 500 Summer St. NE Rm. 137AB Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 409.050, 410.070, 443.450 & 443.455
Stats. Implemented: ORS 443.400–443.455
Proposed Adoptions: 411-325-0445
Proposed Amendments: 411-325-0020, 411-325-0150, 411-325-0380
Last Date for Comment: 1-21-10, 5 p.m.
Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to update the rules in OAR chapter 411, division 325 relating to 24-hour residential services for individuals with developmental disabilities to:

• Increase the sleeping room square footage requirement for any program newly licensed after February 1, 2010;
• Authorize, license, and prescribe regulations for host homes; and
• Provide general housekeeping to reflect current practice, improve readability, and establish consistency with other SPD rules.

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

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Rule Caption: Pre-Admission Screening and Resident Review (PASRR) and Private Admission Assessment (PAA).

Date:	Time:	Location:
1-19-10	1:30 p.m.	Human Services Bldg., Rm. 137CD 500 Summer St. NE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410-070, 410.535 & 414.06
Stats. Implemented: ORS 410-070, 410.505–410.545 & 414.065
Proposed Amendments: 411-070-0043, 411-071-0000, 411-071-0005, 411-071-0010, 411-071-0015, 411-071-0020, 411-071-0025, 411-071-0027, 411-071-0030, 411-071-0075, 411-071-0100, 411-071-0105, 411-071-0110, 411-071-0115
Proposed Repeals: 411-071-0035, 411-071-0040, 411-071-0043, 411-071-0045, 411-071-0050, 411-071-0055, 411-071-0060, 411-071-0070, 411-071-0080, 411-071-0085, 411-071-0090, 411-071-0095
Last Date for Comment: 1-21-10, 5 p.m.
Summary: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to amend OAR 411-070-0043 to change the requirement for PASRR Level I screening for individuals admitted to Medicare or Medicaid-certified nursing facilities to receive Medicare, Part A, hospital care or post hospital extended care benefit.

Additionally, SPD is proposing to update the private admission assessment (PAA) rules in OAR chapter 411, division 071 to:

• Designate Area Agency on Aging (AAA) or SPD qualified employees to provide PAAs, removing provisions for certified programs;
• Remove exemption categories. Private pay individuals admitted to a Medicaid-certified nursing facility for any service must be offered a PAA and federally required screening; and
• Require a PAA and federally required screening within four days of admission for Medicare, Part A, hospital care or post hospital extended care benefit and prior to admission for applicants to intermediate care.

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

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Department of Justice
Chapter 137

Rule Caption: This amendment is to align the rules with the statutory change from Senate Bill 839.

Date:	Time:	Location:
1-21-10	2 p.m.	4035 12th St. Cutoff Salem, OR 97302

Hearing Officer: Karen Haywood
Stat. Auth.: ORS 192.860
Stats. Implemented: ORS 192.820–192.868
Proposed Amendments: 137-079-0130, 137-079-0140
Last Date for Comment: 1-21-10, 5 p.m.
Summary: This amendment is to align the rules with the statutory change from Senate Bill 839.
Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 947-4700

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

Rule Caption: Implements section 10 of chapter 448, Oregon Laws 2009 & ORS 803.015 regarding branded vehicle titles.

Date:	Time:	Location:
1-19-10	2 p.m.	Transportation Bldg., Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly
Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 819.016, 819.030 & 2009 OL Ch. 448, Sec. 10
Stats. Implemented: ORS 803.015, 819.030 & 2009 OL Ch. 448, Sec. 10
Proposed Amendments: 735-024-0015, 735-024-0025
Last Date for Comment: 1-21-10
Summary: This rulemaking is needed to implement legislation enacted by the 2009 Legislative Assembly: Chapter 448, Oregon Laws 2009, which 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 is making amendments to OAR 735-024-0020 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.

DMV filed temporary rules because there was not sufficient time to complete the permanent rulemaking process to coincide with: Section 10, chapter 448, Oregon Laws 2009, which was declared an emergency and became effective June 23, 2009. DMV now proposes to file permanent rules to amend these rules.

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, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301
Telephone: (503) 986-3171

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Rule Caption: Implements Section 44, Chapter 865, Oregon laws 2009 & ORS 803.570, Relating to Registration Plate Fees.

Date:	Time:	Location:
1-19-10	2 p.m.	Transportation Bldg., Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly
Stat. Auth.: ORS 184.616, 184.619, 802.010 & 803.570
Stats. Implemented: ORS 803.570 & 2009 OL Ch. 865, Sec. 44
Proposed Amendments: 735-032-0010
Last Date for Comment: 1-21-10
Summary: This rulemaking is needed to implement 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 80.570, by section 44, chapter 865, Oregon Laws 2009, DMV was required to establish the fee amount it could retain to cover its cost to manufacture registration plates not to exceed $3 for single registration and $5 for a pair of plates — regardless of the actual cost to manufacture the plates. On January 1, 2004, DMV amended 735-032-0010 to establish the fee amount 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, Oregon Laws 2009, DMV must now establish the registration plate fee amounts collected upon issuance of a single registration plate and for each pair of plates by calculating:

(1) DMV's cost to manufacture a single registration plate and a pair of registration plates; 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).

Dmv filed a temporary rule to amend OAR 735-032-0010 because there was not sufficient time to complete the permanent rulemaking process to coincide with section 44, chapter 865, Oregon Laws 2009, which became effective September 28, 2009. DMV proposes to file a permanent rule to amend OAR 735-032-0010 to comply with ORS 803.570, as amended by section 44, chapter 865, Oregon Laws 2009.

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, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301
Telephone: (503) 986-3171

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Rule Caption: Amends rule language to comply with ORS 802.370.

Date:	Time:	Location:
1-19-10	2 p.m.	Transportation Bldg., Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly
Stat. Auth.: ORS 184.616, 184.619, 802.010 & 802.370
Stats. Implemented: ORS 802.370
Proposed Amendments: 735-150-0005
Last Date for Comment: 1-21-10
Summary: The amendment of OAR 735-150-0005 is needed to bring 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 amends language in section (9) of the rule to clarify that DMV will consult with ODAC before taking immediate disciplinary action against a dealer who is jeopardizing the public health and safety. The amendment will bring the rule into compliance with the requirements of ORS 802.370(2).

DMV filed a temporary amendment to OAR 735-150-0005 to bring the rule into compliance with ORS 802.370(2) as quickly as possible—the permanent rulemaking process takes several months to complete. DMV now proposes to file a permanent rule to bring the rule into compliance with the statute.

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, 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, Transportation Safety Division
Chapter 737

Rule Caption: Adopts Minimum Safety Standards for Low-Speed Vehicles and for Medium Speed Electric Vehicles.

Date:	Time:	Location:
1-19-10	2 p.m.	Transportation Bldg., Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly
Stat. Auth.: ORS 184.616, 184.619, 802.010 & 803.570
Other Auth.: Title 49 CFR Part 571
Stats. Implemented: ORS 815.010, 815.030 & 2009 OL Ch. 865, Sec. 44
Proposed Adoptions: 737-010-0000, 737-010-0010, 737-010-0020
Last Date for Comment: 1-21-10
Summary: This rulemaking is needed to implement 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 the department 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.

At this time, 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.

Transportation Safety Division, (TSD) filed temporary rules because there was not sufficient time to complete the permanent rulemaking process to coincide with Section 14, Chapter 865, Oregon Laws 2009, which became effective September 28, 2009. TSD now proposes to permanently adopt these rules.

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, Transportation Safety Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301
Telephone: (503) 986-3171

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Landscape Architect Board
Chapter 804

Rule Caption: Numerous revisions including signature, sole proprietors, business renewal, LAIT supervision, and delinquent registration.
Stat. Auth.: ORS 183, 671 & 671.415
Stats. Implemented: ORS 671.315, 671.335, 672.345, 671.365, 671.376, 671.379, 671.395 & 671.425
Proposed Adoptions: 804-030-0003
Proposed Amendments: 804-003-0000, 804-022-0000, 804-022-0020, 804-025-0020, 804-035-0010, 804-035-0020, 804-035-0030, 804-035-0035, 804-040-0000
Last Date for Comment: 2-1-10, Close of Business
Summary: OAR 804-030-0003: a new rule outlining the use of digital signatures.

OAR 804-003-0000: revise the definition of business entity and delinquent to reflect its use in the statute .

OAR 804-022-0000: clarifies how an LAIT is to validate supervised work experience by an RLA to the Board.

OAR 804-022-0020: outlines the process for reinstating when a registration has become delinquent.

OAR 804-025-0020: clarifies PDH for a registrant with 25 consecutive years experience as a Landscape Architect and provides general housekeeping by changing shall to will and expanding the numbering for a structured education activity.

OAR 804-035-0010: clarify definition of sole proprietorship.

OAR 804-035-0020: revises application information required by the Board when applying for a Certificate of Authorization.

OAR 804-035-0030: revises language about the Certificate of Authorization for businesses so that the certificate information reflects a one-year renewal period rather than the previous two-year renewal period.

OAR 804-035-0035: revises language about the Certificate of Authorization for businesses 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 from one unconnected list into categories representing: examination, registration, business, miscellaneous.
Rules Coordinator: Susanna Knight
Address: 707 13th Street SE, Suite 261, Salem, OR 97301
Telephone: (503) 589-0093

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Office for Oregon Health Policy and Research
Chapter 409

Rule Caption: All-Payer Healthcare Claims Data Reporting Program.

Date:	Time:	Location:
1-19-10	9 a.m.	1225 Ferry St. SE Mt. Neahkanie Rm. (1st Flr.) Salem, OR 97301

Hearing Officer: Zarie Haverkate
Stat. Auth.: 2009 OL Ch. 595 (HB 2009 § 1200–1206) & ORS 442.400–442.460
Stats. Implemented: 2009 OL Ch. 595 (HB 2009 § 1200–1206) & ORS 442.400 - 442.460
Proposed Adoptions: 409-025-0100, 409-025-0110, 409-025-0120, 409-025-0130, 409-025-0140, 409-025-0150, 409-025-0160, 409-025-0170.
Last Date for Comment: 1-21-10, 5 p.m.
Summary: 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 limited data sets and allows OHPR and the Department of Hunan Services to publish data and reports that serve the public's interest.
Rules Coordinator: Zarie Haverkate
Address: 1225 Ferry Street SE, 1st Floor, Salem, OR 97301
Telephone: (503) 373-1574

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Oregon Business Development Department
Chapter 123

Rule Caption: Clarifies Safe Drinking Water Revolving Loan Fund Program.
Stat. Auth.: ORS 285A.075 & 285A.213
Stats. Implemented: ORS 285A.213
Proposed Amendments: 123-049-0005, 123-049-0010, 123-049-0020, 123-049-0030, 123-049-0040, 123-049-0050, 123-049-0060
Last Date for Comment: 1-22-10
Summary: The American Recovery and reinvestment Act (ARRA) of 2009 allocates $28, 515,000 in economic recovery funds through the Safe Drinking Water Revolving Loan Fund Program (Program) to the State of Oregon. The Act stipulates specific timelines for and use of the funds requiring amendment of the Program's Program Guidelines and Applicant's Handbook.
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 provide procedures for certification for the Oregon Investment Advantage Act.
Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285C.495, 285C.500–285C.506, 316.778 & 317.391
Proposed Amendments: 123-155-0000, 123-155-0050, 123-155-0100, 123-155-0150, 123-155-0200, 123-155-0250, 123-155-0270, 123-155-0300, 123-155-0350, 123-155-0400
Last Date for Comment: 1-22-10
Summary: These rules update the procedures for certification under the Oregon Investment Advantage Act. The name of the division has been changed to Oregon Investment Advantage. The rules have been updated to comply with HB 2152 and the department's name change, language has been revised for clarity and definitions 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

Oregon Department of Education
Chapter 581

Rule Caption: Changes list of health care professionals who may train school personnel on administration of medication.

Date:	Time:	Location:
1-27-10	1 p.m.	Public Services Bldg. Rm. 251A 255 Capitol St. NE Salem, OR

Hearing Officer: Cindy Hunt
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 339.870
Proposed Amendments: 581-021-0037
Last Date for Comment: 1-27-10, 5 p.m.
Summary: The rule currently only allows school nurses, physicians and pharmacists to train school personnel on the administration of medication to students. The amendments allows all licensed nurses to provide the training.
Rules Coordinator: Diane Roth
Address: 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5791

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Oregon Government Ethics Commission
Chapter 199

Rule Caption: Housekeeping to move terminology definitions to a separate rule.

Date:	Time:	Location:
2-11-10	9 a.m.	3218 Pringle Rd SE Suite 220 Salem, OR 97302-1544

Hearing Officer: Virginia Lutz
Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.040, 244.025, 244.040, 244.060, 244.100 & 244.290
Proposed Adoptions: 199-005-0001
Proposed Amendments: 199-005-0003
Last Date for Comment: 2-10-10, 5 p.m.
Summary: Housekeeping to move terminology definitions to a separate rule. No substantive change.
Rules Coordinator: Virginia Lutz
Address: 3218 Pringle Rd SE, Suite 220, Salem, OR 97302-1544
Telephone: (503) 378-5105

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Rule Caption: Amend rules that provide registration and reporting guidelines to lobbyists and client/employers they represent.

Date:	Time:	Location:
2-11-10	9 a.m.	3218 Pringle Rd SE Suite 220 Salem, OR 97302-1544

Hearing Officer: Virginia Lutz
Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 171.725, 171.740, 171.745, 171.750, 171.752 & 171.992
Proposed Amendments: 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
Last Date for Comment: 2-11-10, 5 p.m.
Summary: Amendment of the rules to recognize legislative changes in 2007 and 2009. The rules explain lobbying registration requirements, expenditure allocations and reporting requirements, and penalty calculations. The amendments further address miscellaneous housekeeping changes.
Rules Coordinator: Virginia Lutz
Address: 3218 Pringle Rd SE, Suite 220, Salem, OR 97302-1544
Telephone: (503) 378-5105

Oregon Health Licensing Agency
Chapter 331

Rule Caption: Decrease temporary license fees for the Respiratory Therapy Licensing Board.
Stat. Auth.: ORS 676.607, 688.830 & 688.834
Stats. Implemented: ORS 676.607 & 688.834
Proposed Amendments: 331-705-0060
Last Date for Comment: 1-28-10
Summary: 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
Address: Oregon Health Licensing Agency, 700 Summer St. NE, Salem, OR 97301-1287
Telephone: (503) 373-1917

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Oregon Liquor Control Commission
Chapter 845

Rule Caption: Amendments allowing more flexibility in advertising a retail liquor store with prior Commission approval.

Date:	Time:	Location:
2-4-10	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman
Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5), & 471.750
Stats. Implemented: ORS 471.750(1) & 471.750(2)
Proposed Amendments: 845-015-0130
Last Date for Comment: 2-18-10
Summary: This rule describes the specific advertising the Commission allows a retail sales agent to use to advertise a retail liquor store. The Commission accepted a petition from Saleem Noorani (a Corvallis liquor agent) requesting amendment of this rule to provide much more flexibility in what advertising, including outside signage, a liquor store would be allowed to utilize. All liquor store advertising would require prior Commission approval. The proposed amendments would also allow a liquor store website to list the specific brands of distilled spirits they carry, as well as their price.
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: Amendments to section (2) (happy hour) related to outside advertising of alcohol for on-premises consumption.

Date:	Time:	Location:
2-9-10	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman
Stat. Auth.: ORS 471, including 471.030 & 471.730(1) & (5)
Stats. Implemented: ORS 471.730(7)
Proposed Amendments: 845-007-0020
Last Date for Comment: 2-23-10
Summary: This rule restricts the type of alcohol advertising that liquor licensees may use. Section (2) specifically regulates advertising outside a licensed premises of alcoholic beverages for on-premises consumption. Due to recent case history, staff is recommending amendment of section (2) of this rule in order to make it more enforceable and clearer to licensees. Staff recommends new language clarifying that for promotions that encourage excessive consumption, such as unlimited drinks for a fixed price and drinking contests, not only is the activity itself prohibited under our prohibited conduct rule (OAR 845-006-0345(10)), but the advertising of those practices is prohibited as well. The proposal also includes eliminating the prohibition against certain temporary price reduction terms

such as "happy hour" and instead replacing it with a prohibition against both (1) a specified time period and (2) a price or discount, together in the same advertisement. Also recommended is new language prohibiting advertising where a consumer must purchase multiple drinks to receive a reduced price, such as "two for one".
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 State Lottery
Chapter 177

Rule Caption: Changes the percentage of gross Keno sales allocated to the Keno Jackpot Bonus.

Date:	Time:	Location:
1-15-10	10–10:30 a.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott
Stat. Auth.: ORS 190 & 461
Other Auth.: OR Const. Art. XV §4(4)
Stats. Implemented: ORS 461.300 & 461.335
Proposed Amendments: 177-099-0100
Proposed Repeals: 177-099-0100(T)
Last Date for Comment: 1-15-10, 10:30 a.m.
Summary: The Oregon Lottery has initiated permanent rulemaking to repeal a temporary rule and amend this administrative rule to change the percentage of gross Keno sales allocated to the Keno Jackpot Bonus prizes.
Rules Coordinator: Mark W. Hohlt
Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

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Oregon State Treasury
Chapter 170

Rule Caption: Modify requirement to submit MDAC Form 2 from five to seven days after bond marketing date.
Stat. Auth.: ORS 287A.640
Stats. Implemented:
Proposed Amendments: 170-061-0000
Last Date for Comment: 1-25-10
Summary: Paragraph (7) of rule 170-061-0000 currently requires a public body to report bond sale results to the Municipal Debt Advisory Commission (MDAC) within five days following the bond marketing date, on MDAC Form 2. This amendment extends the reporting deadline to seven days after the bond marketing date, to conform with SEC Rule 15c2-12 (17 CFR 240) which permits a public body seven days to file its Final Official Statement. This will allow a bond-issuing municipality to submit both an MDAC Form 2 and a Final Official Statement for a bond offering at the same time to MDAC.
Rules Coordinator: Sally Wood
Address: Oregon State Treasury, 350 Winter St. NE, Suite 100, Salem, OR 97301
Telephone: (503) 378-4990

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Oregon University System,
Eastern Oregon University
Chapter 579

Rule Caption: Amend permit parking rule to include process for lost or stolen parking permits.
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Amendments: 579-070-0010
Last Date for Comment: 1-23-10
Summary: Amend permit parking rule to include process and fee for lost or stolen parking permits.
Rules Coordinator: Lara Moore
Address: Oregon University System, Eastern Oregon University, One University Blvd., La Grande, OR 97850
Telephone: (541) 962-3368

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Oregon University System,
Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees and general services fees.
Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Proposed Amendments: 574-050-0005
Last Date for Comment: 1-21-10
Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.
Rules Coordinator: Debra L. Charlton
Address: Oregon University System, Western Oregon University, 345 N. Monmouth Ave., Monmouth, OR 97361
Telephone: (503) 838-8597

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Oregon Youth Authority
Chapter 416

Rule Caption: Use of Time-out, Isolation, Special Program placement, Physical Intervention, and restraints in OYA facilities.
Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.105, 420A.108
Proposed Adoptions: 416-490-0031, 416-490-0033
Proposed Amendments: 416-490-0000, 416-490-0010, 416-490-0020, 416-490-0030, 416-490-0050
Proposed Repeals: 416-490-0040
Proposed Ren. & Amends: 416-490-0030 to 416-490-0032, 416-490-0030 to 416-490-0034, 416-490-0030 to 416-490-0035
Last Date for Comment: 1-21-10, Close of Business
Summary: This rule division provides guidance and direction in the use of time-out, isolation, special program placement, physical intervention, and restraint by OYA staff in the performance of their duties. The rules are written to minimize the risk of injury to offenders and staff, prevent serious destruction of state property, and meet the mission of OYA. When a time-out, isolation, special program placement, physical intervention, or restraint is authorized, the type, amount, and manner of use authorized are further specified in these rules and OYA policy.

The rules were updated to reflect current national standards for juvenile correctional agencies and facilities. Some of the proposed new rules result from a rule division restructure to clarify the differences in interventions authorized by the agency. The repeal of 416-490-0040 is due to the rule being an agency directive that does not rise to the level of a rule.
Rules Coordinator: Winifred Skinner
Address: 530 Center Street NE, Suite 200; Salem, OR 97301-3765
Telephone: (503) 373-7570

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Rule Caption: Offender prohibited behavior and processing behavior violations in OYA facilities.
Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.105 & 420A.108
Proposed Amendments: 416-470-0000, 416-470-0010, 416-470-0020, 416-470-0030, 416-470-0040, 416-470-0050
Proposed Repeals: 416-470-0060, 416-470-0070, 416-470-0080, 416-470-0090, 416-470-0100
Last Date for Comment: 1-21-10, Close of Business
Summary: The rules address OYA's offender behavior management system which promotes responsible offender behavior. The behavior management system provides incentives and reinforcement for responsible behavior and consistent refocus options for negative behavior. The rules reflect current national standards for juvenile

correctional facilities. Rule repeals result from presenting prohibited behaviors and authorized refocus options in matrix form rather than separating the items into various rules.
Rules Coordinator: Winifred Skinner
Address: 530 Center Street NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 373-7570

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Parks and Recreation Department
Chapter 736

Rule Caption: Rules governing Owyhee River Scenic Waterways are being amended to mirror Federal public use regulations.
Stat. Auth.: ORS 390.845(2)
Stats. Implemented: ORS 390.845(2)
Proposed Amendments: 736-040-0055
Last Date for Comment: 1-29-10, 5 p.m.
Summary: The rule governing public use of Owyhee River Scenic Waterway is being amended to mirror Federal public use regulations for uniform enforcement. The rules will include OPRD's policy for public use of the Owyhee River Scenic Waterway, provide definitions of terms, and set clear guidelines relative to: (1) boating and registration; (2) campfires, fuel, firepans, and smoking; (3) camping; and (4) litter and personal sanitation.
Rules Coordinator: Joyce Merritt
Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0756

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Physical Therapist Licensing Board
Chapter 848

Rule Caption: Several changes in Administrative Rules to reflect changes in Oregon Law by 2009 legislation.

Date:	Time:	Location:
2-5-10	8:30 a.m.	Portland State Off. Bldg. 800 NE Oregon St., Rm. 1-C Portland, OR

Hearing Officer: James D. Heider
Stat. Auth.: ORS 688.160
Other Auth.: 2009 OL: Enrolled HB 2009, Enrolled HB 2118, Enrolled HB 2059, Enrolled HB 2610 & Enrolled SB 670
Stats. Implemented: ORS 688.160(6)(c)
Proposed Amendments: 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
Proposed Repeals: 848-050-0100, 848-050-0110, 848-050-0120
Last Date for Comment: 2-5-10, 10 a.m.
Summary: The proposed rule changes will: Increase the amount of time to request contested case hearing from 21 to 30 days; allow for the 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 education; 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 requirements; clarify student PTs/PTAs from student patients in an educational setting; update grounds for discipline including 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 its entirety.
Rules Coordinator: James Heider
Address: Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232
Telephone: (971) 673-0203

Secretary of State,
Corporation Division
Chapter 160

Rule Caption: Procedural rules.
Stat. Auth.: ORS 56, 58, 60, 62, 63, 65, 68, 70, 80, 87, 128, 194, 554, 647, 648, 649 & 661
Stats. Implemented: ORS 183.335
Proposed Amendments: 160-001-0000
Last Date for Comment: 1-21-10
Summary: The amended rule removes specific names to which rules notices are mailed to, and changes it to persons who request notices in writing.
Rules Coordinator: Karen Hutchinson
Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310
Telephone: (503) 986-2364

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Rule Caption: Official notary seal requirements for vendor.
Stat. Auth.: ORS 194.031
Stats. Implemented: ORS 194.031
Proposed Amendments: 160-100-0100
Last Date for Comment: 1-21-10
Summary: This rule clarifies the requirements for the official notary seal for vendors. It specifically indicates how the date of expiration is to appear on the seal.
Rules Coordinator: Karen Hutchinson
Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310
Telephone: (503) 986-2364

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Travel Information Council
Chapter 733

Rule Caption: Adopt rules to provide the free coffee program in specified interstate rest areas.
Stat. Auth.: ORS 377.700–377.840
Stats. Implemented: ORS 183.310–183.550
Proposed Adoptions: 733-030-0500, 733-030-0510, 733-030-0520
Last Date for Comment: 1-25-10
Summary: The travel Information Council held a quarterly meeting on December 11, 2009. The Council proposed to adopt rules to permit the Free Coffee Program in these rest areas: Baldock, Interstate 5, northbound; Baldock, Interstate 5, southbound; Boardman, Interstate 84, eastbound; Manzanita, Interstate 5, southbound; Ontario, Interstate 84, westbound; Santiam, Interstate 5, northbound; Santiam, Interstate 5, southbound.
Rules Coordinator: Diane Cheyne
Address: Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302
Telephone: (503) 378-4508

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Water Resources Department
Chapter 690

Rule Caption: Rules in conjunction with the Deschutes Basin Groundwater Mitigation Rules (Division 505) and Mitigation Bank and Credit Rules (Division 521).

Date:	Time:	Location:
2-3-10	4–5 p.m.	City of Bend Deschutes Services Bldg. (Barnes/Sawyer Rm.) 1300 NW Wall St. Bend, OR

Hearing Officer: Mary Meloy
Stat. Auth.: ORS 536.025, 536.027 & 537.746
Stats. Implemented: ORS 537.746 & 390.835
Proposed Adoptions: 690-522-0010, 690-522-0010, 690-522-0030, 690-522-0040, 690-522-0050

Last Date for Comment: 2-19-10, 5 p.m.
Summary: The proposed rules were developed wit the benefit of recommendations put forward by a Work Group convened by the Oregon Water Resources Department (Department) pursuant to House Bill 3494 (2005 OL Ch. 669). They are intended to work in conjunction with the Deschutes Basin Ground Water Mitigation Rules (OAR chapter 690, division 505) and the Deschutes Basin Mitigation Bank and Mitigation Credit Rules (OAR chapter 690, division 521). By rule, appropriation of new groundwater use in the Deschutes Ground Water Study Area is limited to a cumulative total of 200 cubic feet per second. The proposed rules adjust the manner in which the Department counts appropriations under the existing limitation or "cap". The proposed rules clarify how municipal and quasi-municipal entities grow into permits issued under the Deschutes Mitigation Program using a combination of offsets of existing groundwater rights and approved mitigation. In addition, the proposed rules provide greater flexibility in re-assessing permanent mitigation that is not used by an applicant, permit, or certificate holder.
Rules Coordinator: Ruben Ochoa
Address: Water Resources Department, 725 Summer St. NE, Salem, OR 97301
Telephone: (503) 986-0874

Appraiser Certification and Licensure Board
Chapter 161

Rule Caption: Temporary rule adopting 2010–2011 Edition of Uniform Standards of Professional Appraisal Practice (USPAP).
Adm. Order No.: ACLB 5-2009(Temp)
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10 thru 6-27-10
Notice Publication Date:
Rules Amended: 161-002-0000, 161-025-0060
Subject: Amends Oregon Administrative rule 161, division 002, rule 0000 regarding definitions, and division 25, rule 0060 regarding Appraisal Standards.
Rules Coordinator: Karen Turnbow—(503) 485-2555

161-002-0000
Definitions

As used in OAR 161-01-005 to 161-50-050, the following terms (whether capitalized or not) shall have the following meanings:

(1) "**Administrator**" means the administrator of the Board appointed by the Board.

(2) "**Affiliate**" means a business organization sharing with a financial institution or insurance company some aspect of common ownership and control.

(3) "**Appraisal**" or "**Real Estate Appraisal**" means "appraisal" as defined in USPAP.

(4) "**Appraisal Foundation**" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) "**Appraisal Report**" means "report" as defined in USPAP.

(6) "**Appraiser Assistant**" or "**AA**" means a person who is not licensed or certified as an appraiser, but is registered as an appraiser assistant under ORS 674.310, and who assists with real estate appraisal activity under the direct supervision of a certified or licensed appraiser.

(7) "**Appraisal Subcommittee**" or "**ASC**" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) established pursuant to the Federal Act.

(8) "**Board**" or "**ACLB**" means the Appraiser Certification and Licensure Board established under ORS Chapter 674.

(9) "**Certificate**" means the document issued by the Board indicating that the person named thereon has satisfied the requirements for certification as a state certified residential or state certified general appraiser.

(10) "**Classroom hour**" as used in reference to qualifying and continuing education means 50 minutes out of each 60 minute segment.

(11) "**Completion**" means interpreting, analyzing and reconciling data or compiled data, including reviewing and adopting another person's interpretations and reconciliations as one's own.

(12) "**Complex one-to-four family residential property appraisal**" means an appraisal in which the property to be appraised, market conditions, or form of ownership is atypical. For example, atypical factors may include, but are not limited to:

(a) Architectural style;
(b) Age of improvements;
(c) Size of improvements;
(d) Size of lot;
(e) Neighborhood land use;
(f) Potential environmental hazard liability;
(g) Property interests;
(h) Limited readily available comparable sales data; or
(i) Other unusual factors.

(13) "**Continuing Education**" means education that is creditable toward the education requirements that must be satisfied to renew a license, certificate or appraiser assistant registration.

(14) "**Direct Supervision**" of an appraiser assistant means:

(a) Disclosing in the appraisal report that the supervising appraiser has inspected the subject property both inside and out, and has made an exterior inspection of all comparables relied upon in the appraisal or disclose that the supervising appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal; and

(b) Reviewing the appraiser assistant's appraisal report(s) to ensure research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that any analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading; and

(c) Reviewing the appraiser assistant's work product and discussing with the appraiser assistant any edits, corrections or modifications that need to be made to that work product to satisfy OAR 161-002-0000(14)(b); and

(d) Accepting sole and total responsibility for the appraisal report by signing the appraisal report and certifying that the appraisal report has been prepared in compliance with the current edition of the Uniform Standards of Professional Appraisal Practice.

(15) "**Federal Act**" means Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C 3310 et seq.).

(16) "**Federal Financial Institution Regulatory Agency**" means:

(a) The Board of Governors of the Federal Reserve System;
(b) The Federal Deposit Insurance Corporation;
(c) The Office of the Comptroller of the Currency;
(d) The Office of Thrift Supervision; or
(e) The National Credit Union Administration.

(17) "**Financial Institution**" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

(18) "**Good Standing**" means the status of a person whose license, certificate or registration is not currently suspended or been revoked.

(19) "**Issuance**" means the act of communicating the opinion of value either in writing or orally.

(20) "**License**" means the document issued by the Board indicating that the person named thereon has satisfied all requirements for licensure as a state licensed appraiser.

(21) "**Licensee**" means any person who holds an active or inactive Oregon appraiser license, certified residential appraiser certificate, or certified general appraiser certificate.

(22) "**Mortgage banker**" has the meaning defined in ORS 59.840.

(23) "**Non-residential**" appraising means to render a value on real property other than one-to-four family residential properties.

(24) "**One-to-four family residential property**" means a property that includes one to four residential units and is residential in character, i.e., zoning, land use.

(25) "**Preparation**" means compiling data, including reviewing and adopting such compiled data as one's own.

(26) "**Prerequisite education**" means the initial qualifying educational requirements to become licensed or certified with the Board.

(27) "**Professional real estate activity**" has the meaning defined in ORS 696.010.

(28) "**Qualifying Education**" means education that is creditable toward the education requirements for initial licensure or certification under one or more of the three real estate appraiser classifications.

(29) "**Real estate appraisal activity**" has the meaning defined in ORS 674.100.

(30) "**Real Estate**" or "**Real Property**" means an identified parcel or tract of land, together with any improvements, that includes easements, rights-of-way, undivided or future interests or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(31) "**State Certified General Appraiser**" or "**SCGA**" means an individual who has been certified as a state certified general appraiser by the Board.

(32) "**State Certified Residential Appraiser**" or "**SCRA**" means an individual who has been certified as a state certified residential appraiser by the Board.

(33) "**State Licensed Appraiser**" or "**SLA**" means an individual who has been licensed as a state licensed appraiser by the Board.

(34) "**Subdivision**" means either an act of subdividing land or an area or a tract of land subdivided to create four or more lots within a calendar year.

(35) "**Supervising Appraiser**" means a licensee who is directly supervising appraiser assistants pursuant to OAR 161-025-0025.

(36) "**Supervising Appraiser Endorsement**" means the document issued by the Board indicating that the licensee named thereon has satisfied all requirements of OAR 161-010-0085 to be a Supervising Appraiser.

(37) "**Transaction Value**" means:

(a) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(b) For sales, leases, purchases and investments in or exchange of real property, the market value of the real property interest involved; and

(c) For the pooling of loans or interest in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(d) For determinations of the transaction value of real property or interests in real property in circumstances other than described in the proceeding (a) to (c) of this section, the market value of the real property interest involved.

(e) In condemnation or partial taking actions, the transaction value is deemed to be the value of the larger parcel before the taking.

(38) "**Uniform Standards of Professional Appraisal Practice**" or "**USPAP**" means the standards adopted and published by the Appraisal Standards Board of the Appraisal Foundation dated April 27, 1987, as amended January 1, 2010.

(39) "**Workfile**" means "workfile" as defined in USPAP.

Stat. Auth.: ORS 674.305 & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0000; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09; Administrative correction 8-21-09; ACLB 4-2009, f. & cert. ef. 10-27-09; ACLB 5-2009(Temp), f. 12-15-09, cert. ef. 1-1-10 thru 6-27-10

161-025-0060
Appraisal Standards and USPAP

(1) All licensees must develop and communicate each appraisal assignment in compliance with these administrative rules and USPAP.

(2) A licensee employed by a group or organization that conducts itself in a manner that does not conform to USPAP Standards must take steps that are appropriate under the circumstances to ensure compliance with the Standards.

(3) All licensees must certify to what extent they personally inspected the property that is the subject of the appraisal assignment. Each report must clearly state that the subject property was: inspected both inside and out; inspected from the exterior only; or was not personally inspected by the licensee.

(4) In addition to certifying as to the extent of the subject's inspection, all licensees must also certify to what extent each of the comparable sales relied upon in the appraisal were personally inspected.

(5) All licensees must disclose in all appraisal reports whether the comparable sales analyzed in the appraisal report were or were not confirmed by a party to the transaction or an agent or representative of a party to the transaction.

(6) All licensees testifying or presenting evidence in an administrative or judicial proceeding must base their testimony or evidence only upon a written summary or self-contained appraisal report in compliance with USPAP, reflecting a report date that precedes the date of testimony, unless such testimony is being compelled by legal subpoena.

(7) The "Uniform Standards of Professional Appraisal Practice", 2010–2011 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2010, are incorporated into the Administrative Rules of the Appraiser Certification and Licensure Board as the standards of professional conduct which shall guide the behavior of licensed and certified appraisers in the State of Oregon. Copies of the Uniform Standards of Professional Appraisal Practice may be obtained from the Appraisal Foundation located at 1155 15th Street NW, Suite 1111, Washington D.C. 20005.

(8) All licensees must list their certificate or license number and expiration date in each appraisal report.

(9) All licensees must comply with USPAP in all valuation activity, unless such valuation activity qualifies as an exclusion to real estate appraisal activity under ORS 674.100(2)(h).

(10) Notwithstanding any other provision of these rules, a licensee acting in one of the following capacities is not subject to the requirements of Standard 3 of USPAP when examining an appraisal report and workfile as part of an official investigation being conducted by the Board:

(a) Board member;

(b) Employee; or

(c) Contractor or volunteer serving at the request of the Board.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 674.305(8) & 674.310
Stats. Implemented: ORS 674
Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-1994; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-89; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 3-2000(Temp), f. 11-9-00, cert. ef. 11-9-00 thru 5-8-01; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09; ACLB 5-2009(Temp), f. 12-15-09, cert. ef. 1-1-10 thru 6-27-10

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Board of Accountancy
Chapter 801

Rule Caption: Amended to update the effective date of professional standards adopted by the Board.
Adm. Order No.: BOA 1-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 801-001-0035
Subject: The rule is amended to update the effective date of professional standards to January 1, 2010.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-001-0035
Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2010.

Stat. Auth.: ORS 183.332 & 673.410
Stats. Implemented: ORS 183.337 & 673.410
Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 1-2009, f. 12-15-09 cert. ef. 1-1-2010

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Rule Caption: Clarifications to definitions.
Adm. Order No.: BOA 2-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 801-005-0010
Subject: The rule is revised to clarify some definitions.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-005-0010
Definitions

As used in OAR chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) **AICPA**: American Institute of Certified Public Accountants.

(2) **Applicant**: a person applying for a certificate, license or permit to practice public accountancy.

(3) **Attest, Attesting or Attestation**: includes the following financial statement services:

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS):

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(c) Any engagement to be performed in accordance with the statements on Standards for Attest Engagements (SSAE);

(d) An engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board in the United States (PCAOB)

(e) The statements on standards specified in subsections (a) through (c) of this definition are those developed by the AICPA.

(4) **Business organization**: any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(5) **CPA** or **Certified Public Accountant**: a person who has a certificate of certified public accountant issued under ORS 673.040.

(6) **CPA Exam**: the Uniform Certified Public Accountant Examination.

(7) **CPE**: continuing professional education.

(8) **Candidate**: a person applying for the CPA Exam.

(9) **Certificate**: a certificate of certified public accountant issued under ORS 673.040.

(10) **Client**: a person or entity who agrees with a licensee to receive any professional service from the licensee.

(11) **Commission**: as used in ORS Chapter 673 and OAR chapter 801, commission means a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(12) **Compilation**: a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(13) **Contingent fee**: as used in ORS Chapter 673 and OAR chapter 801, contingent fee means a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(14) **Enterprise**: any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(15) **Fees**: includes commissions, contingent fees and referral fees.

(16) **Financial statements**: the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(17) **Firm**: a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(18) **First time candidate**: a candidate for the CPA exam who is sitting for the exam for the first time in any state.

(19) **Generally Accepted Accounting Principles**: accounting principles or standards generally accepted in the United States, including but not limited to Statements of Financial Accounting Standards and interpretations thereof, as published by the Financial Accounting Standards Board, and Statements of Governmental Accounting Standards and interpretations thereof, as published by the Government Accounting Standards Board.

(20) **Generally Accepted Auditing Standards**: the Generally Accepted Auditing Standards adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in Statements on Auditing Standards issued by the AICPA, and for federal audits, the Single Audit Act and related U.S. Office of Management and Budget Circulars published by the Government Accountability Office.

(21) **Holding out as a CPA or PA**: to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA", or any number or other title, sign, card, device or use of any internet domain or e-mail name, tending to indicate that the person holds a certificate or license and permit in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(22) **Inactive status**: permit status that may be granted to a licensee who is not holding out as a CPA or PA and otherwise not engaged in the practice of public accountancy, if the license is not suspended, on probation or revoked.

(23) **In good standing**: the status of a holder of a permit, license or registration issued by any jurisdiction, that is not inactive, suspended, revoked, on probation or lapsed.

(24) **Jurisdiction**: the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(25) **License**:

(a) A certificate, permit or registration, or a license issued under ORS 673.100, or other authority enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(26) **Licensee**: the holder of a license as defined in these rules.

(27) **Material participation**: participation that is regular, continuous and substantial.

(28) **Manager**: a manager of a limited liability company.

(29) **Member**: a member of a limited liability company.

(30) **NASBA**: National Association of State Boards of Accountancy.

(31) **Non-licensee owner**: a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(32) **PA** or **Public Accountant**: a person who is the holder of a license issued under ORS 673.100.

(33) **Peer Review**: a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a permit under ORS 673.150 or of a registered business organization that performs attestation or compilation services. The peer review shall be conducted by a CPA who holds an active license issued by any state or a public accountant licensed under ORS 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing. The peer reviewer must also be independent of the permit holder or registered business organization being reviewed.

(34) **Permit**: a permit to practice public accountancy issued under ORS 673.150.

(35) **Practice of public accountancy**: performance of or any offer to perform one or more services for a client or potential client, including the performance of such services while in the employ of another person by a licensee while holding out as a CPA or PA, of the professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated, such as Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, and Statements on Standards for Attestation Engagements.

(36) **Principal Place of Business**: the physical location, as identified by a licensee, where the licensee conducts substantial administrative or management activities. For purposes of "substantial equivalency" the physical location may not be in the State of Oregon.

(37) **Professional**: arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(38) **Professional services**: any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(39) **Referral fee**: as used in ORS Chapter 673 and OAR chapter 801, referral fee includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(40) **Registration**: the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(41) **Returning candidate**: a person who has received grades for any section of the Uniform CPA exam in any state and who applies to sit for any part of the CPA exam in Oregon.

(42) **Single Audit Act**: the Single Audit Act with the Single Audit Act Amendments of 1996, as published by the United States Government Accountability Office, Office of Management and Budget.

(43) **Standards for Accounting and Review Services**: the *Statements on Standards for Accounting and Review Services* published by the AICPA.

(44) **Standards for board approved peer review programs**: the *Standards for Performing and Reporting on Peer Reviews* published by the AICPA.

(45) **Statements on Standards for Attestation Engagements**: the statements by that name issued by the AICPA.

(46) **State**: any state, territory or insular possession of the United States, and the District of Columbia.

(47) **Substantial equivalency**: An individual whose principal place of business is not in this state, who has an active license in good standing as a

certified public accountant issued by another jurisdiction and who meets the standards of substantial equivalency as defined in ORS 673.010(21).

(48) **Uniform Accountancy Act (UAA)**: A model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession, provisions of which may or may not be adopted by state boards of accountancy.

(49) **Valid**: Describes a certified public accountant certificate or permit, a public accountant license or permit, municipal roster authority, firm registration or chartered accountant certificate that is in active status and in good standing with the appropriate licensing authority. A license or certificate in active status is one that is not revoked, suspended, subject to probation, lapsed or inactive.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 670.310
Stats. Implemented: ORS 670.310
Hist.: 1AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 6-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 5-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2009, f. 12-15-09 cert. ef. 1-1-10

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Rule Caption: Make revisions due to substantial equivalency, delete transitional language for exam.
Adm. Order No.: BOA 3-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 801-010-0010, 801-010-0060, 801-010-0075, 801-010-0080, 801-010-0100, 801-010-0120, 801-010-0345
Subject: Amendments include the dissolution of substantial equivalency application requirements which was replaced by mobility language due to the passage of SB 867. The fees have also been increased for permit holders and application for firm registration. Deletion of transitional credit I language as it pertains to the written CPA exam. Clarification of public accountant licensees applying for a CPA certificate, Firm requirements amended to include mobility provisions.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-010-0010
Fees, Civil Penalties and Cost Recovery

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

(1) Application fees. All application fees are non- refundable.
(a) CPA Examination:
(A) Initial Examination — $100
(B) Re-Examination — $ 50
(b) CPA Certificate or PA License — $150
(2) Initial permit and registration fees:
(a) Initial CPA or PA Permit — $160
(b) Municipal Auditor — $100
(c) Firm Registration — $100
(3) Biennial renewal application fees:
(a) Active CPA and PA Permits — $160
(b) Inactive CPA and PA — $ 50
(c) Municipal Auditor — $100
(d) Firm Registration — $175
(4) Late renewal penalty fees:
(a) Active CPA and PA Permits — $ 50
(b) Inactive CPA and PA — $ 35
(c) Firm Registration — $ 35
(5) Miscellaneous fees:

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of $2.50 for five pages or less, and 25 cents per page thereafter. If certified copies of records are requested, there will be a $2.50 fee for each document certified in addition to the copy cost.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows:

(A) Staff time, $23 per hour, in quarter hour increments at $5.75 per quarter hour.

(6) Civil Penalties assessed for Specific Violations
(a) Failure to provide change of address in 30 days — $100
(b) Failure to renew firm registration by January 31 — $500
(c) Failure to respond to Notice of Complaint in 21 days — $1000
(d) Failure to respond to Notice of CPE audit and all follow-up in 21 days — $250
(e) Failure to respond to Notice of Peer Review Audit in 21 days — $1000
(f) Failure to respond in 21 days to any Board Communication that is not described above — $100
(7) Cost Recovery

(a) The Board may recover costs associated with a contested case hearing in which the Board has prevailed. The following costs may be included in cost recovery:
(A) Attorney General Fees
(B) Administrative Hearing Costs
(C) Contract Investigator Fees
(D) Expert Witness Fees
(E) Costs of Appeal
(8) Form of Payment:

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Visa and Mastercard payments may be submitted in person, by mail or by fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160, 197.720 & 673.153
Stats. Implemented: ORS 673, 297 & 192.440
Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09 cert. ef. 1-1-10

801-010-0060
Credit for Uniform CPA Examination Sections

(1) Exam section requirements.

(a) A candidate may sit for any of the four sections of the computer-based CPA exam individually and in any order. A candidate who fails to pass any section of the exam may retake that section; however, a candidate may not retake a failed section more than once in any testing window.

(b) Candidates who were eligible under the provisions of ORS 673.050(2) (1999 Edition) and who sat and received grades for two sections of the CPA exam before January 1, 2002 are required to take and pass the following two sections of the CPA exam: Regulation and Audit & Attestation.

(c) After January 1, 2002, candidates who are eligible under ORS 673.050(2) (2001 Edition) to take the CPA exam as a public accountant candidate are required to take and pass the following three sections of the CPA exam: Financial Accounting and Reporting, Regulation, and Business Environment & Concepts.

(2) **Credit for CPA exam sections**.

(a) The passing grade for all sections of the exam is 75

(b) **Credit for Computer Based CPA Exam**. Upon implementation of the computer based CPA exam, a candidate may take the required exam sections individually and in any order. Credit for any exam section(s) passed shall be valid for eighteen (18) months from the actual date the candidate took that section(s), without having to attain a minimum score on any failed section(s) and without regard to whether the candidate has taken other exam sections provided that:

(A) Candidates must pass all four sections of the CPA exam within a rolling eighteen (18) month period, which begins on the date of the first section(s) passed;

(B) Upon passing any CPA exam section, the passing date of that section shall be the date the candidate took the section; and

(C) Candidates who do not pass all sections of the CPA exam within the rolling eighteen (18) month period shall lose credit for any section(s) passed outside the eighteen (18) month period and that section(s) must be retaken.

(c) The Board may extend the period for conditional credit for an exam section upon demonstration by the candidate that the credit was lost because of circumstances beyond the candidate's control.

(d) The time limitations for a candidate to complete all sections of the CPA exam may be extended by the Board because of illness, accident or other exigent circumstance, and shall be extended during the time a candidate is in active military service.

(3) **Transfer of CPA exam scores from other jurisdictions**. The Board may allow the transfer of CPA exam scores and grant credit to a candidate who has successfully completed any section(s) of the CPA exam in another jurisdiction if the Board determines that:

(a) The examination for which credit is requested is the Uniform Certified Public Accountant Examination;

(b) The candidate received a grade of 75 or higher in the section(s) passed; and

(c) The candidate who first sat for the CPA exam in another jurisdiction after January 1, 2000 was qualified under the educational requirement of ORS 673.050(1) at the time the candidate first took the CPA exam in the jurisdiction from which grades are requested to be transferred.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.050, 673.060 & 673.075

Hist.: 1AB 12, f. 3-30-65; 1AB 14, f. 8-15-68; 1AB 16, f. 1-30-70, ef. 2-25-70; 1AB 19, f. 10-22-71, ef. 11-15-71; 1AB 21, f. 3-2-72, ef. 3-15-72; 1AB 30, f. 9-18-73, ef. 10-1-73; 1AB 35, f. 10-29-74, ef. 11-25-74; 1AB 36, f. 1-28-75, ef. 2-25-75; 1AB 40, f. & ef. 5-5-76; 1AB 41, f. & ef. 12-2-76; 1AB 43, f. & ef. 3-31-77; 1AB 2-1978, f. & ef. 3-21-78; 1AB 11-1978, f. & ef. 12-1-78; 1AB 3-1979, f. & ef. 12-21-79; 1AB 2-1980, f. & ef. 4-8-80; 1AB 3-1980, f. 10-23-80, ef. 12-1-80; 1AB 5-1981, f. & ef. 7-27-81; 1AB 6-1981, f. & ef. 7-27-81; 1AB 3-1982, f. & ef. 4-20-82; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 3-2009, f. 12-15-09 cert. ef. 1-1-10

801-010-0075

Public Accountants Applying for Certificate of Public Accountancy

A public accountant licensed in Oregon who is applying for a certificate of public accountancy shall:

(1) Hold an active public accountant license issued under ORS 673.100 that is not revoked, suspended, on probation or lapsed;

(2) Present satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(a) A baccalaureate or higher degree from an accredited college or university as described in ORS 673.050(1)(a)

(b) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting; and

(c) A minimum of 24 semester hours or 36 quarter hours in accounting and or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(3) Successfully complete all sections of the CPA exam. Credit may be received for sections of the CPA exam previously completed if the requirements of OAR 801-010-0060 are satisfied; and

(4) Satisfy the experience requirements under ORS 673.040 and OAR 801-010-0065.

(5) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application

(6) Licensee must surrender the Public Accountant license issued before the CPA Certificate will be issued.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.040

Hist.: BOA 4-1998, f. & cert. ef. 6-16-98; BOA 2-1999, f. & cert. ef. 2-22-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2009, f. 12-15-09 cert. ef. 1-1-10

801-010-0080

Holders of Certificates in Other States, US Territories or Foreign Countries

(1) Substantial equivalency. An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency as defined in ORS 673.010(21), may practice public accountancy in this state.

(2) **Applications by reciprocity**. Individuals who wish to establish a principal place of business in this state are required to obtain a CPA certificate and permit under this section prior to practicing as a CPA in this state.

(a) Applications based on an active CPA license that is in good standing and was issued by another jurisdiction prior to January 1, 2000 are eligible under this subsection if the issuing jurisdiction required successful completion of the CPA exam, a Baccalaureate degree and two years public accountancy experience or the equivalent for certification at the time the applicant's license was issued;

(b) Applications based on an active CPA license issued by another jurisdiction that is in good standing are eligible under this subsection if the applicant meets the following qualifications:

(A) Successful completion of the CPA exam,

(B) 150 semester hours, including a Baccalaureate degree, or the equivalent thereof, and 24 semester (36 quarter) hours in accounting and 24 semester (36 quarter) hours in accounting and/or related subjects which are defined as business, economics, finance and written/oral communication, and

(C) At least one year public accounting experience or the equivalent.

(c) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (2)(a) or (b) of this rule, are eligible under this subsection if the applicant demonstrates to the satisfaction of the Board that during four of the ten years immediately preceding the application under ORS 673.040, the applicant:

(A) Held an active CPA license issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application; and

(C) Successfully completed the CPA exam.

(3) **Reciprocity application requirements**. Applicants under section (2) of this rule shall:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct of practice; and

(D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.

(4) **Verification of National Qualification Appraisal Service comparable licensing standards**. The Board shall review the licensing requirements of other jurisdictions on an annual basis to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, 673.410 & 673.153

Stats. Implemented: ORS 673.040 & 673.153

Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09 cert. ef. 1-1-10

801-010-0100

Public Accountant Licenses

(1) **Application requirements**. Applicants for the license of public accountant shall meet the following requirements:

(a) Complete and pass the required sections of the CPA exam as described in ORS 673.100 and OAR 801-010-0060;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.100 as follows:

(A) Obtain one year of experience, which means at least 12 months of full-time employment or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(d) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application for license.

(2) **Experience requirements**.

(a) Applicants shall meet the experience requirements described in OAR 801-010-0065(2)

(b) The experience required under ORS 673.100 shall be as follows:

(A) For applicants who qualified for the CPA exam before January 1, 2002, the experience requirement shall consist solely of experience within activities generally performed by certified public accountants and public accountants, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestation, management advisory services, tax advisory services, tax return preparation or personal financial planning and reporting on an entity's internal controls.

(B) For applicants who qualified for the CPA exam after January 1, 2002, the experience requirement shall consist solely of experience within activities generally performed by certified public accountants and public accountants, including (but not limited to) financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestation, management advisory services, tax advisory services, tax return preparation or personal financial planning and reporting on an entity's internal controls.

(3) **Experience portfolio**. The applicant's experience portfolio shall meet the requirements stated in OAR 801-010-0065.

(4) **Public Accountant practice restrictions**. Licensed public accountants who qualified for the CPA exam after January 1, 2002 shall not perform audits.

Stat. Auth.: ORS 670.310, 673.410 & 673.100
Stats. Implemented: ORS 673.100, 673.150 & 673.103
Hist.: 1AB 9, f. 6-24-60; 1AB 41, f. & ef. 12-2-76; 1AB 4-1982, f. & ef. 5-21-82; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09 cert. ef. 1-1-10

801-010-0120
Inactive Status

(1) **Application**.

(a) An application for inactive status shall be made on a form provided by the Board and shall be accompanied by a fee prescribed by OAR 801-010-0010.

(b) The licensee applying for inactive status shall certify to the Board that:

(A) The licensee holds a permit issued under ORS 673.150 which is not lapsed, revoked or suspended; and

(B) The licensee will not perform any public accountancy services during the period in which the licensee is granted inactive status

(2) **CPE and Peer Review Requirements**. A licensee who is granted inactive status shall not be required to complete continuing education under ORS 673.165 and shall not be subject to Peer Review requirements under ORS 673.455 during the period in which inactive status is approved.

(3) **Inactive Licensees Use of CPA or PA designation**. A licensee who is granted inactive status shall not display the Certified Public Accountant certificate or Public Accountant license and shall not use the CPA or PA designation.

(a) **Licensees** who are granted inactive status will not receive a permit card from the Board office upon renewal.

(b) Must include the words "inactive" or "retired" either before or after the CPA or PA designation, and

(c) Does not otherwise violate the provisions of OAR 801-030-0005(5).

(4) Except as provided in this rule, a licensee who is granted inactive status shall not hold out as a CPA or PA and the licensee shall be subject to disciplinary action under ORS Chapter 673 for violations of this provision.

Stat. Auth.: ORS 670.310 & 673.220
Stats. Implemented: ORS 673.220
Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 5-1989, f. & cert. ef. 8-2-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2009, f. 12-15-09 cert. ef. 1-1-10

801-010-0345
Registration of Business Organizations

(1) **Requirement to register as a firm**. A business organization organized for the practice of public accountancy shall register with the Board as a firm if the business organization:

(a) Is located in Oregon and

(A) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;

(B) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy; or

(C) Performs attestation or compilation services, as defined by these rules.

(b) Is not located in Oregon and

(A) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;

(B) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy and performs any of the following services:

(i) An audit or other engagement for which performance standards are included in Statements on Auditing Standard (SAS)

(ii) Examination of prospective financial information for which performance standards are included in the Statement on Standards for Attestation Engegements (SSAE)

(iii) Engagements for which performance standards are included in the auditing standards of the Public Company Accounting Oversight Board (PCAOB)

(C) Has a person, who meets the substantial equivalency requirements of ORS 673.153, that is responsible for supervising attestation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the business organization.

(2) **Registration of sole proprietors**. A business organization organized as a sole proprietorship, a professional corporation or a limited liability company, and comprised of a single permit holder under ORS 673.150, is required to register as a firm if the business organization engages in any of the following activities in this state:

(a) Holds out to clients or to the public that it is composed of more than one licensee, or

(b) Performs attestation or compilation services.

(3) **Application requirements**.

(a) **Firms located in Oregon**: Application by a business organization to be registered as a firm to practice as Certified Public Accountant(s) or Public Accountant(s) shall be made to the Board in writing on a form provided by the Board and shall be accompanied by the appropriate fee, stated in OAR 801-010-0010. The application and each renewal application shall provide the following information in writing:

(A) Name of the firm;

(B) Identification by name and by certificate or license number of each CPA and PA in this state who is associated with or employed by the business organization;

(C) The physical address of every office and branch office in this state;

(D) Notice of every denial, revocation, lapse or suspension of authority to perform public accountancy services that is or has been issued by any jurisdiction against any licensee associated with the business organization;

(E) Notice of the filing of any lawsuit relating to the professional services of the business organization, if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation; and

(F) Notice of any criminal action filed against the business organization or against any owner or manager and notice of any conviction against any owner or manager of the business organization. Notice of a conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court even though that conviction may not be final and sentence may not be actually imposed until appeals are exhausted. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event.

(G) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state.

(b) **Firms not located in Oregon**:

(A) Name of the firm

(B) Identification by name and by active certificate or license number, indicating the state in which the certificate or license is issued of each CPA

who is associated with or employed by the business organization and is authorized to practice in Oregon under substantial equivalency pursuant to ORS 673.153 who will practice public accounting in Oregon.

(C) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state.

(c) Any out of state firm that is required to register in Oregon and subsequently opens an office in Oregon shall notify the Board of the existence of the new office within 30 days of opening the office.

(C) Provide a letter of completion of the most recent peer review of the applicant or the applicant's firm if the applicant intends to perform attest or compilation services in this state.

(4) Application requirements for firms with non-CPA and non-PA ownership. In addition to the information required under section (3) of this rule for firm registrations, business organizations with non-CPA or non-PA owners that are required to register as a firm shall provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization has applied, or is currently authorized to practice public accountancy;

(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The identities of all owners or managers of the business organization who work regularly in this state;

(d) The physical address of every office maintained in this state;

(e) The identity of every person with management responsibility for each office in this state;

(f) Notice of every denial, revocation, lapse, or suspension of authority to perform accounting services or other services issued against any owner or manager of the business organization in any jurisdiction;

(5) **Issuance of firm registration**. The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting the renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal. Business organizations that fail to renew a registration by the close of the renewal period are required to pay the renewal fee plus a late fee;

(b) Notify the Board in writing of any change in the firm name within 30 days of such change;

(c) In addition to the notice that is required upon application and for each renewal of the firm registration under section (3) of this rule, business organizations are required to provide written notice to the Board within 45 days of the filing of any lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation;

(d) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm.

(6) **Form of practice**. A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a) Non-CPA or non-PA ownership. A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(A) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant previously licensed in any state whose license to practice public accountancy has been revoked by any state, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(b) Branch offices.

(A) Every branch office located in this state shall be managed by a licensee holding a permit issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(b)

(c) Internet Practice. Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for an individual who will respond within seven business days to inquiries regarding individual licensee information. Information required to be posted by this rule must be clearly visible and prominently displayed.

Stat. Auth.: ORS 670.310, 673.410 & 673.160
Stats. Implemented: ; ORS 673.160
Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09 cert. ef. 1-1-10

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Rule Caption: Revisions to address mobility legislation in terms of municipal auditors.
Adm. Order No.: BOA 4-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 801-020-0690
Subject: revisions to address mobility legislation, allowing individuals entering the state under mobility the opportunity to apply for municipal license.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-020-0690
Qualifications for Admission to Municipal Roster

(1) **Eligibility**. The following licensees are eligible to apply for admission to the municipal roster:

(a) Individuals holding an active CPA permit issued under ORS 673.150,

(b) Individuals holding an active PA license issued under ORS 673.100 prior to January 1, 2002,

(c) Individuals holding an active PA license issued under ORS 673.100 who were licensed after January 1, 2002 and who passed the audit section of the CPA Exam as a requirement of licensing, and

(d) Individuals with an active CPA license issued by another jurisdiction that is recognized by the Board and who have authority to practice public accountancy in Oregon under ORS 673.153.

(2) **Application Requirements**. Qualified applicants for admission to the municipal roster must meet the following requirements:

(a) The applicant must be a licensee in good standing with the Board of Accountancy;

(b) Every application shall be on a form provided by the Board and shall be accompanied by a fee prescribed by OAR 801-010-0010; and

(c) The application, signed by the applicant, shall constitute an agreement between the applicant and the Board that the applicant will comply with the provisions of the Municipal Audit Law, ORS 297.405 through 297.555, and OAR chapter 801 division 020.

(3) **Grounds for Denial**. In addition to the specific grounds stated in ORS 673.170(2), the Board may deny admission or reinstatement to the municipal roster if:

(a) The applicant has not complied with the requirements of OAR 801-020-0620;

(b) The applicant has committed any act or engaged in conduct that reflects adversely on the licensee's fitness to practice public accountancy; or

(c) The applicant has committed any act or engaged in conduct that would cause a reasonable person to have substantial doubts about the applicant's honesty, fairness and respect for the rights of others or for any law.

(A) Any act or conduct that resulted in a criminal conviction, other than a crime described in ORS 673.170(2)(h) or (i), will not be used to deny admission to the municipal roster unless such act or conduct is rationally connected to the applicant's fitness to practice public accountancy.

(4) **Initial CPE Requirements**. The applicant shall demonstrate to the satisfaction of the Board that, within the two year period immediately preceding the date of application to the municipal roster, the applicant completed 40 CPE hours of Level 1 (basic) or Level 2 (intermediate) education in the following subjects, including at least 4 hours in each subject:

(a) Audits of state and local governmental units;

(b) Governmental accounting and financial reporting standards;

(c) Generally Accepted Governmental Auditing Standards;

(d) Single Audit Act and related circulars and supplements published by the United States Government Accountability Office, Office of Management and Budget;

(e) Oregon Local Budget Law; and

(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(5) **CPE Credit**. The 40 hours of education required for admission to the municipal roster may be included in the 80 hours of CPE required for renewal of the CPA/PA permit.

(6) **Approval**. When an application to the municipal roster is approved, the Board shall:

(a) Notify the applicant in writing that the application is approved;

(b) Enter the applicant's name on the municipal roster; and

(c) Notify the Secretary of State that the applicant is authorized to conduct municipal audits.

Stat. Auth.: ORS 297.670, 297.680 & 297.740
Stats. Implemented: ORS 297.680
Hist.: AB 8, f. 8-17-54; 1AB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 6-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 4-2009, f. 12-15-09 cert. ef. 1-1-10

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Rule Caption: Address mobility legislation changes to firms.
Adm. Order No.: BOA 5-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 801-030-0020
Subject: The revisions include necessary changes to the plural form name rules to include individuals who fall under the mobility regulations.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-030-0020
Other Responsibilities and Practices

(1) **Professional misconduct**.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) **Verification of experience for CPA or PA applicants**. Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(a) Make any false or misleading statement as to material matters in any certificate of experience, or

(b) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) **Acting through others**. A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) **Public communications and advertising**. A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:

(a) Includes a misrepresentation of fact;

(b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;

(c) Is intended or likely to create false or unjustified expectations of favorable results;

(d) Falsely states or implies educational or professional attainments or licensing recognition;

(e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or

(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.

(5) **Professional designations**. A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee unless the representation is true at the time it is made or published.

(6) **Firm names**.

(a) False and misleading firm names.

(A) A public accounting firm shall not offer or provide public accounting services using a firm name that is misleading as to the legal entity or organization of the firm, as to the owners or employees of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, the number of licensees associated with or working for the firm or the identity of individual members of the firm. Except as provided in paragraphs (D) and (E) of this subsection, a firm name shall not include information about or indicate an association with, individuals who are not members of the firm.

(C) A firm name shall include words or abbreviations required by the laws under which the business organization is organized to identify the form of business organization or legal entity being used by the firm.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor, so long as the past partner, shareholder, owner or member:

(i) Is not actively engaged in the practice of public accountancy as a sole proprietor in the same market area, and

(ii) Approves in writing of the continued use of such name. Approval given by a licensee for the continued use of licensee's name may be withdrawn by the licensee, in writing and shall allow a reasonable period of time for the firm to withdraw such name.

(E) A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements stated in this rule.

(b) Singular firm names. The use by a certified public accountant or public accountant in individual practice of the individual's full legal name in the singular form, followed by the title "Certified Public Accountant," "Public Accountant", "CPA" or "PA" is not misleading.

(c) Plural firm names.

(A) The use by a firm of a plural title or designation, including words like "company", "and company", "associates" and "accountants", is not misleading if, in addition to the names of persons included in the firm name, the firm employs at least one staff person, who works a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, or who is authorized under 673.153 and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

(d) Assumed business names.

(A) A firm name that does not include the designations "PC", "LLC", "LP", or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) Notice to Board. A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

(7) **Board communications and investigations**.

(a) Communications from the Board to licensees shall be sent by first class mail or certified mail and addressed to the licensee at the last official address or the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(8) **Business transactions with clients**.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented in writing to the transaction after receiving full written disclosure of the differing interests from the licensee. Both written disclosure and client's written consent shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) **Notification of change of address, employer or assumed business name**. Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) **Child support defaults**. In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(11) **State tax defaults**. In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(12) **Continuing violation**. A continuing violation is a violation of any provision of ORS 673.010–673.457 or OAR chapter 801 that remains in place ("continues") without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. The Board shall provide written notice of the alleged continuing violation to the individual or firm. The duration of the violation prior to the date of notice from the Board shall be deemed a single violation, and each day of continuance after the date of notice from the Board is a separate violation and may be subject to a civil penalty.

(13) **Non-Disclosure Agreement**. "Non-disclosure agreement" means any written or oral agreement that inhibits any party to the agreement from reporting an alleged violation of ORS Chapter 673 or OAR chapter 801 to the Board, or that inhibits any party from cooperating with an investigation by the Board, an agency of any state, or an agency of the Federal government.

(a) Licensees shall not enter into, nor benefit directly or indirectly from, any non-disclosure agreement.

(b) Any licensee who is a party to a non-disclosure agreement and who receives written notice from the Board, an agency of any state, or an agency of the Federal government requesting information that is subject to the provisions of such non-disclosure agreement, shall provide a written release for information requested within 30 days of the date of notice.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 3-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 5-2009, f. 12-15-09 cert. ef. 1-1-10

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Rule Caption: Address mobility legislation changes to firms.
Adm. Order No.: BOA 6-2009
Filed with Sec. of State: 12-15-2009
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Notice Publication Date: 11-1-2009

Rules Amended: 801-040-0010
Subject: Revised to adhere to mobility legislation, SB 867. remove references to substantial equivalency.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-040-0010
Basic Requirements

(1) **Biennial CPE requirement**. Each biennial renewal period, certified public accountants and public accountants shall report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement shall be completed as follows:

(a) At least 24 of the required 80 CPE hours shall be completed in each year of the renewal period. Hours carried forward from the previous reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 CPE hours in technical subjects may be carried forward from one reporting period to the next and may be used in partial fulfillment of the 80 hour requirement.

(2) **Ethics CPE requirement**. CPE hours in professional conduct and ethics are included in the 80 hour requirement for each renewal period.

(a) All active licensees who are applying for the first renewal permit in Oregon are required to complete and report at least four hours of CPE in a professional conduct and ethics program that meets the requirements of section three (3) of this rule.

(b) Licensees who are not renewing for the first time and whose principal place of business is located in another jurisdiction may meet the ethics requirement of this rule by demonstrating compliance with the other jurisdiction's professional conduct and ethics CPE requirement. The number of CPE Ethics hours that meets the Ethics requirement of such other jurisdiction will be accepted in Oregon, so long as the other jurisdiction requires the licensee to complete an ethics program as a condition of renewal.

(c) An active licensee who is not renewing for the first time and whose principal place of business is in another jurisdiction that does not have a professional conduct and ethics CPE requirement must complete the ethics requirement described in subsection (2)(d) of this rule.

(d) All other active licensees are required to complete and report four hours of CPE in professional conduct and ethics with each biennial renewal application, which may be satisfied by any ethics program that meets the general CPE requirements described in OAR 801-040-0030.

(3) **CPE ethics programs**. CPE programs in professional conduct and ethics required by subsection (2)(a) of this rule are eligible for CPE credit if the program is offered by a sponsor registered with the Board and includes information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require an understanding of statutes, rules and case law relevant to all licensees.

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR Chapter 801, Division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410
Stats. Implemented: ORS 673.165
Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 4-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 6-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: 2009 AICPA Standards for Performing and reporting on Peer Review.
Adm. Order No.: BOA 7-2009
Filed with Sec. of State: 12-15-2009
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Rules Amended: 801-050-0005, 801-050-0010, 801-050-0020, 801-050-0030, 801-050-0035, 801-050-0040, 801-050-0065, 801-050-0070, 801-050-0080
Subject: The rules are revised to adhere to the 2009 AICPA Standards for Performing and reporting on Peer Review.
Rules Coordinator: Kimberly Bennett—(503) 378-2268

801-050-0005
Purpose

(1) The purpose of peer review is to monitor firm compliance with applicable accounting and auditing standards promulgated by generally recognized standard setting bodies.

(2) The Peer Review requirement established by the Board shall emphasize education and appropriate remedial procedures. In the event a firm does not comply with professional standards, or the firm's work is so inadequate as to warrant disciplinary action, the Board shall take appropriate action to protect the public interest.

(3) The Board shall appoint a Peer Review Oversight Committee (PROC), and such other committees as the Board, in its discretion deems necessary, to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the minimum standards for performing and reporting on peer reviews described in these rules.

(4) This chapter shall not require any firm or licensee to become a member of any organization sponsoring a peer review program.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0010
Definitions

As used in OAR 801-050 the following terms have the following meanings:

(1) **Acceptance of Engagement**: The date the engagement letter is signed by the client.

(2) **Peer Review Board**: The Peer Review Board is responsible for maintaining, promoting and governing the activities of the American Institute of Certified Public Accountants Peer Review Program, including the issuance of Peer Review Standards, and peer review guidance

(3) **Board**: Oregon Board of Accountancy.

(4) **Client records**: Supporting documents relating to financial statements that are the subject of peer review and that may contain confidential financial or personal information about a client of the firm.

(5) **Firm**: A registered public accounting firm or a CPA or PA doing business as a sole proprietor, if such firm or sole proprietor performs attest or compilation services in Oregon or for Oregon clients and is subject to the peer review requirement.

(6) **Minimum standards for performing and reporting on peer reviews**: Standards described in OAR 801-050-0080 that are required for approved peer review programs.

(7) **PCAOB**: Public Company Accounting Oversight Board that conducts firm inspections of public accounting firms that perform audits for publicly-held companies.

(8) **Peer Review**: A study, appraisal or review conducted in accordance with Peer Review Standards of one or more aspects of the public accountancy work of a firm or a permit holder under ORS 673.150 who performs attest or compilation services.

(a) Systems Review: Required of firms that perform engagements under the auditing and examination attest professional standards. It is a professional service intended to provide the reviewer with a reasonable basis for expressing an opinion on whether, during the year under review:

(i) The reviewed firm's system of quality control for its accounting and auditing practice has been designed in accordance with quality control standards established by the American Institute of Certified Public Accountants.

(ii) The reviewed firm's quality control policies and procedures were being complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(b) Engagement Review: Required of firms that only perform engagements under the compilation, review, non-examination attestation and agreed upon procedures professional standards. It is a professional service intended to evaluate whether engagements submitted for review are performed and reported in conformity with applicable professional standards in all material aspects.

(9) **Peer Review Standards**: Standards issued by the Peer Review Board and used by peer review program sponsors for performing and

reporting on peer reviews of public accounting firms that provide attest and compilation services.

(10) **Peer Reviewer**: A qualified public accountant as defined in this rule, or a certified public accountant licensed in any state, who is trained and qualified to perform peer review for an approved peer review program and who is independent of the firm under review.

(11) **Qualified Public Accountant**: A public accountant licensed under ORS 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing.

(12) **Report Acceptance Body (RAB)**: An independent report acceptance body associated with an approved peer review program. The purpose of the RAB is to consider and accept the results of each peer review and to require corrective actions of firms who receive a pass with deficiencies or a fail report as identified in the peer review process.

(13) **Sponsor**: An organization that administers a Board-approved peer review program.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 7-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998 f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0020
Peer Review Enrollment and Participation in Peer Review Program

(1) Enrollment Requirement. Every firm that performs attest as defined by OAR 801-005-0010(3) or compilation as defined by 801-005-0010(12) services in Oregon or for Oregon clients, is required to participate in an approved peer review program as a condition of registration under ORS 673.160 and for each renewal thereof.

(2) Public accounting services subject to peer review. Attest and compilation services as defined in OAR 801-005-0010(3) and (12) that require participation in a peer review program.

(a) Firms that prepare financial statements which do not require reports under Statements on Standards for Accounting and Review Services and that perform no other attest or compilation services, are not required to participate in a peer review program; however, such engagements conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(b) Individual licensees may participate in a peer review program through their firms. If the licensee has an individual practice apart from the firm in which the licensee performs attest or compilation services, the individual practice is also subject to the requirement to participate in a peer review program.

(c) Each firm that is required to participate in a peer review program under this rule shall enroll in an approved program before issuing a report on attest and compilation services as defined by OAR 801-005-0010(3) and (12) and notify the Board of such enrollment. The schedule for the firm's peer review shall be established according to the program standards.

(d) Firms that do not have a physical location in this state, but nevertheless perform attest or compilation services in this state, are required to participate in a peer review program that is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080, and may be required to demonstrate that the out-of-state office(s) through which the services are being provided follows the same quality control policies and procedures established by the firm that has been subjected to peer review in the other state.

(3) Exemption from Enrollment Requirement. Firms that do not perform attest or compilation services as defined in OAR 801-005-0010(3) and (12) are not required to participate in a peer review program, and shall notify the Board of such exemption on the initial firm registration application and on each firm renewal application.

(4) Peer Review Participation. Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is rejected or terminated by a sponsor for any reason shall have 21 days to provide written notice to the Board of such termination or rejection, and to receive authorization from the Board to enroll in the program of another sponsor.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the sponsor shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another sponsor may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080.

(e) With respect to firms that perform attest or compilation services in more than one state, the Board may accept a peer review based solely on work conducted outside this state if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews described in OAR 801-050-0080.

(f) On request of the firm, the Board may specify that a peer review program that is administered by another state board of accountancy satisfies the requirements of OAR 801-050 if the Board determines that the program substantially meets or exceeds the minimum standards described in this rule.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998 f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0030
Peer Review Oversight Program

(1) The Board shall:

(a) Establish standards for approved peer review programs;

(b) Review sponsor applications for peer review programs for approval;

(c) Consider reports from the Peer Review Oversight Committee;

(d) Take appropriate actions to carry out the functions of the peer review oversight program and achieve the purpose of the peer review requirement; and

(e) Authorize, conduct or contract for a peer review program as the Board, in its discretion, deems to be appropriate.

(2) **Peer Review Oversight Committee**:

(a) The committee shall be composed of at least three members;

(b) No committee member may be a current member of the Board or the RAB;

(c) At least two members shall have an active license to practice public accountancy in this state and shall have current experience in accounting and auditing; quality control practices, and obtain 16-hours of continuing education (CPE) relating to conducting peer review inspections.

(d) One member may be a non-licensee with suitable experience in preparing or using financial statements;

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0035
Peer Review Oversight Committee Responsibilities

(1) **Approval of sponsor applications**. The Peer Review Oversight Committee shall review applications received from sponsors of peer review programs and recommend approval or disapproval of such applications.

(2) On behalf of the Board, the Peer Review Oversight Committee shall review approved programs at least biennially to assure that approved programs continue to meet the requirements of these rules and provide systems to provide reasonable assurance that the program meets the following criteria:

(a) Provides reasonable assurance that the elements of quality control described in OAR 801-050-0080 are met by the firm under review;

(b) Peer Reviewers assigned are appropriately trained and qualified to perform the review for a specific firm;

(c) Peer Reviewers use appropriate materials in conducting the peer review;

(d) The sponsor consults with the reviewers on problems arising during the peer review and that specified occurrences requiring consultation are outlined;

(e) The sponsor reviews the results of the peer review; and

(f) The sponsor has provided for an independent report acceptance body (RAB) that meets the standards for peer review and that performs the following duties:

(A) Provides technical review of peer reviews performed under the program for acceptance by the RAB; and

(B) Requires corrective actions of firms with pass with deficiencies or fail reports as identified in the peer review process.

(3) **Oversight and verification**. The Peer Review Oversight Committee shall conduct oversight of approved peer review programs to

provide reasonable assurance that such programs are in compliance with the minimum standards for performing and reporting on peer reviews. The committee shall report to the Board any modifications to approved peer review programs and shall make recommendations regarding the continued approval of peer review programs.

(a) Oversight procedures to be performed by the Peer Review Oversight Committee may consist of but are not limited to the following activities:

(A) Visit the sponsor of the approved peer review program;

(B) Review the sponsor's procedures for administering the program;

(C) Meet with the sponsor's RAB during consideration of peer review documents;

(D) Review the sponsor's compliance with their programs and oversight quality control compliance.

(b) The Peer Review Oversight Committee shall verify that firms are in compliance with peer review requirements as follows:

(A) Verification may include review of the peer review report, the firm's response to the matters discussed in the peer review report, and the acceptance letter outlining any additional corrective or monitoring procedures

(B) The documents under review may be redacted to preserve client confidentiality. Review by the Peer Review Oversight Committee may be expanded if significant deficiencies, problems or inconsistencies are encountered during the random audit.

(4) **Peer Review Reports**. The Peer Review Oversight Committee (PROC) shall:

(a) Assess peer review reports and related documents submitted by firms pursuant to the requirements of OAR 801-050-0040, as directed by the Board

(b) Consult with the Board regarding the appropriate action for firms that have unresolved matters relating to the peer review process or that have not complied with, or acted in disregard of the peer review requirements. The Peer Review Oversight Committee will consult with the Board when the PROC believes there are issues with a peer review report that may warrant further action.

(c) The specific rating of a peer review report, individually, is not a sufficient basis to warrant disciplinary action.

(d) In conducting an assessment pursuant to ORS 673.455 and 673.457, the Committee and the Board shall have complete access to reports submitted by firms pursuant to the requirement of this rule and OAR 801-050-0040.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0040
Reporting Requirements

(1) **Reporting Enrollment in Peer Review Program**. Every firm is required to provide the following information in writing with every application for registration and renewal of registration:

(a) Certify whether the firm is or is not required to participate in a peer review program;

(b) If the firm is subject to the peer review requirement, provide the name of the sponsor of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review. If there is a change in the peer review program utilized as compared to the sponsor of the prior peer review program, provide the name of the sponsor of the approved peer review program in which the firm is currently enrolled, and the period covered by the firm's most recent peer review.

(c) A firm that has previously reported to the Board that it is not subject to the peer review requirement, and that subsequently engages in the performance of attestation or compilation services as defined by OAR 801-005-0010(3) and (12), shall provide written notice of such change in status to the Board before issuing a report.

(2) **Notice to Board**. Firms are required to submit a copy of the most recent Systems Review Acceptance letter(s) or Engagement Review Acceptance letter(s) from the Peer Review Program Sponsor to the Board office within 45 days of receipt or with submission of firm renewal application, whichever occurs first. Completion letters must also be submitted to the Board office within 45 days or receipt.

(3) **Documents required**. A firm that has opted out of participating in the AICPA Facilitated State Board Access (FSBA) program, shall provide to the Board copies of the following documents related to the review report:

(a) Peer review report issued;

(b) Letter, if any, from the RAB prescribing corrective actions;

(c) Firm's response letter, if any;

(d) A letter from the firm to the Board describing corrective actions taken by the firm that relate to requirements of the RAB; and

(e) Other information the firm deems important for the Board's understanding of the information submitted.

(f) Other information the Board deems important for the understanding of the information submitted.

(4) **Certification**. Firms shall certify on the initial firm registration application and on each renewal application the result of the firm's most recent Peer Review.

(5) **Verification**. The Board may verify the certifications of peer review reports that firms provide on initial registration and renewal applications.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0065
Document Retention

(1) Documents created by the sponsor of an approved peer review program and Peer Reviewer shall be retained by the sponsor for a period of time corresponding to the designated retention period of the sponsor. In no event shall the retention period be less than one hundred twenty (120) days from the date of acceptance of the review by the sponsor.

(2) Firms shall retain all documents relating to peer review reports described in OAR 801-050-0040, including working papers of the underlying engagement subject to Peer review that was reviewed, for five years from the date of acceptance of the peer review by the sponsor.

Stat. Auth.: ORS 673.455 & 673.457
Stats. Implemented: ORS 673.457
Hist.: BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0070
Application for Administration of Peer Review Program

(1) Application. Applications for administration of a peer review program shall be submitted to the Board in writing and shall be accompanied by materials describing the operation of the proposed peer review program. Materials submitted by the sponsor must be sufficient to demonstrate that the proposed peer review program meets the minimum standards for performing and reporting on peer reviews.

(2) Sponsors that are over sighted by and report to the AICPA Peer Review Board are not required to submit an application for approval to the Board.

Stat. Auth.: OL 2001, Ch. 638, Sec. 12 & ORS 673.455
Stats. Implemented: ORS 673.455
Hist.: AB 2-1994, f. & cert. ef. 4-28-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

801-050-0080
Minimum Standards for Peer Review Programs

(1) **Peer review programs** must inform the firm of the results and include procedures as appropriate to the type of review being conducted, that assure a firm that the firm's system of quality control is appropriately designed to provide reasonable assurance that:

(a) The firm and its personnel comply with professional standards and applicable regulatory and legal requirements;

(b) The firm or the firm's engagement partners issue reports that are appropriate in the circumstances;

(c) The firm has adopted policies designed to achieve the objectives of its system of quality control;

(d) The firm has established procedures necessary to implement and monitor compliance with policies;

(2) **System Peer Review**. The peer review program must also provide, as appropriate to the type of review being conducted, the firm under review with reasonable assurance that the firm's system of quality control includes well designed and effectively applied policies and procedures addressing each of the following elements:

(a) Leadership responsibilities for quality within the firm;

(b) Relevant ethical and independence requirements;

(c) Acceptance and continuance of client relationships and specific engagements;

(d) Human resources that provide the firm with personnel who have capabilities, competence and professional ethics;

(e) Engagement performance requirements.

(f) Monitor compliance with the firm's quality control requirements

(3) **Engagement Peer Review** programs must include procedures that inform the firm of the results of engagement reviews of the following conditions:

(a) Engagement reviews that identify significant and material noncompliance with professional standards and regulatory and legal requirements.

(b) Engagement reviews where nothing came to the reviewer's attention that caused the reviewer to believe that the engagements submitted for review were not performed and reported on in conformity with applicable professional standards in all material respects.

(4) **Firm inspection standards** required by the PCAOB shall be deemed to meet the minimum standards for public company audit firms; provided, however, that such firms, which also perform attest services for non-public companies shall be required to meet the peer review requirements of OAR 801-050.

Stat. Auth.: ORS 673.455 & OL 2001, Ch. 638, Sec. 12
Stats. Implemented: ORS 673.455
Hist.: AB 2-1996, f. & cert. ef. 9-25-96; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 6-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 8-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 11-2005, f. 11-22-05, cert. ef. 12-15-05; BOA 7-2009, f. 12-15-09 cert. ef. 1-1-10

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Board of Examiners for Speech-Language Pathology and Audiology
Chapter 335

Rule Caption: Conforms dual licensee professional development requirements to rules for other licensees; Corrects typographical error.
Adm. Order No.: SPA 2-2009
Filed with Sec. of State: 11-16-2009
Certified to be Effective: 11-16-09
Notice Publication Date: 10-1-2009
Rules Amended: 335-070-0065, 335-095-0060
Subject: 335-070-065(1): Changed actual number of professional development hours to a percentage of the requirements to align with other professional development rules.

335-095-060(1)(b): Changed typographical error of "dysphasia" to "dysphagia."
Rules Coordinator: Sandy Leybold—(971) 673-0220

335-070-0065
Dual Licensees

(1) Effective January 31, 2004, each applicant for renewal of a dual license shall complete 100% of the required clock hours of documented and approved professional development in audiology and 100% of the required clock hours of documented and approved professional development in speech-language pathology to be reported at renewal. A maximum of 50% of the required hours for either speech-language pathology or audiology (or any combination of the two) may be applied to both license categories if the topic is applicable to both types of licenses. A class in CPR may be counted only once.

(2) Approved professional development hours completed in excess of the requirement shall not be carried over to the subsequent renewal period.

Stat. Auth.: ORS 681.420(5) & 681.460
Stats. Implemented: ORS 681.250(1) & 681.320(1)(a)
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 2-2009, f. & cert. ef. 11-16-09

335-095-0060
Scope of Duties for the Speech-Language Pathology Assistant

(1) A speech-language pathology assistant may conduct the following tasks under supervision of the licensed Speech-Language Pathologist:

(a) Conduct speech and language screenings without interpretation, utilizing screening protocols specified by the supervising speech-language pathologist.

(b) Provide direct treatment assistance, excluding dysphagia (as opposed to feeding for nutritional purposes), to patients/clients identified by the supervising SLP by following written treatment plans or protocols developed by the supervising SLP.

(c) Document patient/client progress, without interpretation of findings, toward meeting established objectives as stated in the treatment plan, and report this information to the supervising speech-language pathologist.

(d) Assist the speech-language pathologist in collecting and tallying of data for assessment purposes, without interpretation.

(e) Act as second-language interpreters during assessments.

(f) Assist the speech-language pathologist with informal documentation during an intervention session (collecting and tallying data as directed by the speech-language pathologist), prepare materials, and assist with other clerical duties as specified by the supervising speech-language pathologist.

(g) Schedule activities and prepare charts, records, graphs, or other displays of data.

(h) Perform checks and maintenance of equipment.

(i) Participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

(j) Initial each clinical entry and sign each page of records.

(2) The speech-language pathology assistant may not perform the following tasks:

(a) May not conduct swallowing screening, assessment, and intervention protocols, including modified barium swallow studies.

(b) May not administer standardized or non-standardized diagnostic tests, formal or informal evaluations, or interpret test results.

(c) May not participate in parent conferences, case conferences, Individualized Education Plan (IEP) meetings, Individualized Family Services Plan (IFSP) meetings or any interdisciplinary team without the presence of the supervising speech-language pathologist.

(d) May not write, develop, or modify a patient/client's treatment plan in any way.

(e) May not provide intervention for patients/clients without following the treatment plan prepared by the supervising speech-language pathologist.

(f) May not sign any formal documents (e.g. treatment plans, reimbursement forms, individualized education plans (IEPs), individualized family services plans (IFSPs), determination of eligibility statements or reports.)

(g) May not select patients/clients for services.

(h) May not discharge patients/clients from services.

(i) May not disclose clinical or confidential information either orally or in writing to anyone not designated by the speech-language pathologist.

(j) May not make referral for additional service.

(k) May not communicate with the patient/client, family, or others regarding any aspect of the patient/client status or service without the specific consent of the supervising speech-language pathologist.

(l) May not represent him/herself as a speech-language pathologist.

(m) May not write a formal screening, diagnostic, or discharge report.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.370 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09; SPA 2-2009, f. & cert. ef. 11-16-09

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Board of Geologist Examiners
Chapter 809

Rule Caption: Clarification of how complaints are currently processed by the Board.
Adm. Order No.: BGE 2-2009
Filed with Sec. of State: 12-11-2009
Certified to be Effective: 12-11-09
Notice Publication Date: 11-1-2009
Rules Amended: 809-055-0000
Subject: The information in this rule has been revised to reflect the current process used in reviewing and evaluating complaints that are presented to the Board. The Compliance Committee is chaired by the Public Member and may invite Technical Reviewers to assist in the evaluation of a complaint.
Rules Coordinator: Susanna Knight—(503) 566-2837

809-055-0000
Complaint Process

(1) "Complaint" is an issue brought to the attention of the Board that may or may not result in formal charges as provided in ORS 672.665.

(2) "Respondent" refers to a person or firm against whom a complaint has been made to the Board.

(3) The primary objective of the Board is to safeguard the health, welfare, and property of the people of Oregon. The Board processes complaints as follows:

(a) The Board maintains a Compliance Committee, at a minimum consisting of the Board's Public Member as Chair and the Board's Administrator. All complaints received by the Board will be referred to this Compliance Committee.

(b) Complaints must be in writing, sworn to, and signed prior to submission to the Board.

(c) Receipt of all complaints will be acknowledged by the Board staff.

(d) The complainant will not be considered a party to the case.

(e) The Compliance Committee will present the investigation results during a Board meeting.

(4) Complaints will be processed as follows:

(a) A preliminary review of the complaint will be made by the Compliance Committee.

(A) The Committee may consult with a member of the Board.

(B) The Committee may seek the services of one or more technical reviewers to assist in evaluating the complaint.

(b) If the Committee concludes that the complaint may have validity, it will notify the respondent of the allegations by mail and request written comments.

(A) Written comments and information must be provided to the Compliance Committee within 21 days after the notification is mailed by certified or registered mail, unless an extension is authorized.

(B) After the 21 days, the Compliance Committee will evaluate the complaint using available evidence including any documentation or comments received from the respondent, Board investigators, technical reviewers, Board staff, and the Board's counsel.

(c) The Compliance Committee will make a recommendation during a Board meeting.

(5) The Board will make the final decisions on all cases.

Stat. Auth.: ORS 670.310(1), 672.615(8) & 672.665
Stats. Implemented:
Hist.: GE 2-1992, f. 9-30-92, cert. ef. 10-1-92; BGE 1-2000, f. & cert. ef. 8-3-00; BGE 2-2000, f. & cert. ef. 11-17-00; BGE 1-2002, f. & cert. ef. 2-6-02, Renumbered from 809-050-0040; BGE 2-2009, f. & cert. ef. 12-11-09

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Board of Naturopathic Examiners
Chapter 850

Rule Caption: Updates the formulary compendium and classification as authorized with the passage of SB 327.
Adm. Order No.: BNE 7-2009
Filed with Sec. of State: 12-14-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 12-1-2009
Rules Amended: 850-060-0225, 850-060-0226
Subject: Updates the Formulary Compendium and Classifications used by Naturopathic physicians and pharmacists.

Updates the Formulary Classifications to the increased prescribing authority per SB 327.
Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0225
Naturopathic Formulary Compendium

The Formulary Council has approved the following substances; in addition to the pharmacologic-therapeutic classifications based on the 2009 American Hospital Formulary Service (AHFS) listed in 850-060-0226. This listing does not supersede the education and training requirement established in 850-060-0212 for administration of IV agents. The Formulary Council may consider new agents, substances and pharmacologic-therapeutic classifications for addition to this list.

(1) Abacavir;
(2) Acarbose;
(3) Acetic Acid;
(4) Acetylcysteine;
(5) Acitretin;
(6) Acyclovir;
(7) Adapalene;
(8) Adenosine Monophosphate;
(9) Albuterol Sulfate;
(10) Alendronate;
(11) Allopurinol;
(12) Alprostadil;
(13) Amantadine;
(14) Amino Acids;
(15) Amino Aspirins;
(16) Aminoglycosides;
(17) Aminolevulinic Acid;
(18) Aminophylline;
(19) Aminosalicylic Acid;
(20) Ammonium Chloride;
(21) Ammonium lactate lotion 12%;
(22) Amoxicillin;
(23) Amoxicillin & Clavulanate;
(24) Amphotericin B;
(25) Ampicillin;
(26) Ampicillin & Sulbactam;
(27) Anastrozole;
(28) Anthralin;
(29) Atorvastatin;
(30) Atropine;
(31) Atropine Sulfate;
(32) Auranofin;
(33) Azelaic Acid;
(34) Azithromycin;
(35) Bacampicillin;
(36) Bacitracin;
(37) Baclofen;
(38) Becaplermin;
(39) Belladonna;
(40) Benazepril;
(41) Benzodiazepines;
(42) Benzoic Acid;
(43) Benzonatate;
(44) Betaine;
(45) Betamethasone;
(46) Bethanechol Chloride;
(47) Bichloracetic Acid*;
(48) Bimatoprost Solution 0.03%;
(49) Biologicals;
(50) Bisphosphonates;
(51) Bromocriptine;
(52) Budesonide;
(53) Buprenorphine;
(54) Butorphanol;
(55) Cabergoline;
(56) Calcipotriene;
(57) Calcitonin;
(58) Calcitriol;
(59) Carbamide Peroxide;
(60) Carbidopa;
(61) Carbol-Fuchsin;
(62) Captopril;
(63) Cefaclor;
(64) Cefdinir;
(65) Cefibuten;
(66) Cefadroxil;
(67) Cefditoren;
(68) Cefixime;
(69) Cefonicid Sodium;
(70) Cefpodoxime Proxetil;
(71) Cefprozil;
(72) Ceftibuten;
(73) Cefuroxime;
(74) Celecoxib;
(75) Cellulose Sodium Phosphate;
(76) Cenestin;
(77) Cephalexin;
(78) Cephradine;
(79) Chirocaine*;
(80) Chloramphenicol;
(81) Chloroquine;
(82) Citrate Salts;
(83) Clarithromycin;
(84) Clindamycin;
(85) Clioquinol;
(86) Clostridium botulinum toxin (ab);
(87) Cloxacillin;
(88) Codeine;
(89) Colchicine;
(90) Colistimethate;
(91) Collagenase;
(92) Condylox;
(93) Cortisone;
(94) Coumadin;
(95) Cromolyn Sodium;

(96) Cyanocobalamin;
(97) Cycloserine;
(98) Cytisine
(99) Danazol;
(100) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
(101) Demeclocycline Hydrochloride;
(102) Desmopressin;
(103) Desoxyribonuclease;
(104) Dexamethasone;
(105) Dextran;
(106) Dextromethorphan;
(107) Dextrose;
(108) Dextrothyroxine;
(109) Diclofenac;
(110) Dicloxacillin;
(111) Dihydroergotamine Migranal;
(112) Didanosine;
(113) Dimethyl Sulfone (DMSO);
(114) Digitalis;
(115) Digitoxin;
(116) Digoxin;
(117) Dinoprostone;
(118) Diphenhydramine
(119) Diphylline;
(120) Dirithromycin;
(121) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
(122) DMSA;
(123) Doxercalciferol;
(124) Doxycycline;
(125) Dronabinol;
(126) Dyclonine;
(127) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
(128) Electrolyte Solutions;
(129) Emtricitabine;
(130) Enalapril;
(131) Ephedrine;
(132) Epinephrine*;
(133) Epinephrine (auto-inject);
(134) Ergoloid Mesylates;
(135) Ergonovine Maleate;
(136) Ergotamine;
(137) Erythromycins;
(138) Erythropoietin;
(139) Estradiol;
(140) Estriol;
(141) Estrogen-Progestin Combinations;
(142) Estrogens, Conjugated;
(143) Estrogen, Esterified;
(144) Estrone;
(145) Estropipate;
(146) Eszopiclone;
(147) Ethyl Chloride;
(148) Etidronate;
(149) Etodolac;
(150) Exenatide;
(151) Ezetimibe;
(152) Famciclovir;
(153) Fentanyl;
(154) Fibrinolysin;
(155) Flavoxate;
(156) Fluconazole;
(157) Fludrocortisone Acetate;
(158) Flunisolide;
(159) Fluorides;
(160) Fluoroquinolones;
(161) Fluoroquinolines;
(162) Fluorouracil;
(163) Fluticasone propionate;
(164) Fluvastatin;
(165) Fosinopril;
(166) Gaba Analogs;
(167) Gabapentin;
(168) Galantamine H. Br.;
(169) Gamma-Hydroxy Butyrate;
(170) Ganciclovir;
(171) Gentamicin;
(172) Gentian Violet;
(173) Glycerin/Glycerol;
(174) Griseofulvin;
(175) Guaifenesin;
(176) Heparin - subcutaneous, sublingual and heparin locks;
(177) Hexachlorophene;
(178) Homatropine Hydrobromide*;
(179) Human Growth Hormone;
(180) Hyaluronic Acid;
(181) Hyaluronidase;
(182) Hydrocodone;
(183) Hydrocortisone;
(184) Hydrogen Peroxide;
(185) Hydromorphone;
(186) Hydroquinone;
(187) Hydroxychloroquine;
(188) Hydroxypolyethoxydodecane*;
(189) Hyoscyamine;
(190) Iloprost Inhalation Solution;
(191) Imiquimod Cream (5%);
(192) Immune Globulins*;
(193) Indomethacin;
(194) Insulin;
(195) Interferon Alpha b w/Ribaviron;
(196) Iodine;
(197) Iodoquinol;
(198) Iron Preparations;
(199) Isosorbide Dinitrate;
(200) Isotretinoin;
(201) Itraconazole;
(202) Kanamycin Sulfate;
(203) Ketoconazole;
(204) Ketorolac;
(205) Lactulose;
(206) Lamivudine;
(207) Letrozole;
(208) Leucovorin Calcium;
(209) Levalbuteral;
(210) Levocarnitine;
(211) Levodopa;
(212) Levonorgestrel;
(213) Levorphanol;
(214) Levothyroxine;
(215) Lincomycin;
(216) Lindane;
(217) Liothyronine;
(218) Liotrix;
(219) Lisinopril;
(220) Lisuride;
(221) Lithium;
(222) Lovastatin;
(223) Mebendazole;
(224) Meclizine;
(225) Medroxyprogesterone;
(226) Medrysone;
(227) Mefloquine;
(228) Megestrol Acetate;
(229) Meloxicam;
(230) Memantine;
(231) Mercury, Ammoniated;
(232) Mesalamine;
(233) Metformin;
(234) Methadone;
(235) Methimazole;
(236) Methoxsalen;
(237) Methscopolamine;
(238) Methylergonovine;
(239) Methylprednisolone;
(240) Methylsulfonylmethane (MSM);
(241) Methyltestosterone;
(242) Methysergide;

(243) Metronidazole;
(244) Miglitol;
(245) Minerals (Oral & Injectable);
(246) Minocycline;
(247) Misoprostol;
(248) Moexipril;
(249) Monobenzone;
(250) Morphine;
(251) Mupirocin;
(252) Nafarelin acetate;
(253) Naloxone;
(254) Naltrexone;
(255) Natamycin;
(256) Nateglinide;
(257) Nicotine;
(258) Nitroglycerin;
(259) Novobiocin;
(260) Nystatin;
(261) Olsalazine;
(262) Omeprazole;
(263) Opium;
(264) Over the Counter (OTC)
(265) Oxacillin;
(266) Oxamniquine;
(267) Oxaprozin;
(268) Oxtriphylline;
(269) Oxycodone;
(270) Oxygen;
(271) Oxymorphone;
(272) Oxytetracycline;
(273) Oxytocin*;
(274) Pancrelipase;
(275) Papain;
(276) Papavarine;
(277) Paramethasone;
(278) Paregoric;
(279) Penciclovir;
(280) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(281) Penicillin;
(282) Pentosan;
(283) Pentoxifylline;
(284) Pergolide;
(285) Perindopril;
(286) Permethrin;
(287) Peroxicam;
(288) Phenazopyridine;
(289) Phenylalkylamine;
(290) Phenylephrine*;
(291) Physostigmine;
(292) Pilocarpine;
(293) Pimecrolimus Cream 1%;
(294) Piperazine Citrate;
(295) Podophyllum Resin;
(296) Polymyxin B Sulfate;
(297) Polysaccharide-Iron Complex;
(298) Potassium Iodide;
(299) Potassium Supplements;
(300) Pramoxine;
(301) Pravastatin;
(302) Praziquantel;
(303) Prednisolone;
(304) Prednisone;
(305) Pregabalin;
(306) Progesterone;
(307) Progestins;
(308) Propionic Acids;
(309) Propylthiouracil;
(310) Prostaglandins;
(311) Proton Pump inhibitor;
(312) Pseudoephedrine;
(313) Pyrazinamide;
(314) Pyrethrins;
(315) Quinapril;
(316) Quinidine;
(317) Quinilones;
(318) Quinine Sulfate;
(319) Quinines;
(320) Quinolines;
(321) Ramopril;
(322) Rauwolfia Alkaloids;
(323) Rho(D) Immune globulins*;
(324) Rifabutin;
(325) Rifampin;
(326) Rimantidine;
(327) Risendronate;
(328) Ranolazine;
(329) Salicylamide;
(330) Salicylate Salts;
(331) Salicylic Acid;
(332) Salsalate;
(333) Scopolamine;
(334) Selegiline;
(335) Selenium Sulfide;
(336) Sildenafil Citrate;
(337) Silver Nitrate;
(338) Simvastatin;
(339) Sitagliptin;
(340) Sodium Polystyrene Sulfonate;
(341) Sodium Tetradecyl Sulfate
(342) Sodium Thiosulfate;
(343) Spironolactone;
(344) Stavudine;
(345) Spectinomycin;
(346) Sucralfate;
(347) Sulfasalazine;
(348) Sulfonamide/Trimethoprim/Sulfones;
(349) Sulindac;
(350) Tacrolimus;
(351) Tazarotene topical gel;
(352) Telithromycin;
(353) Tenofovir;
(354) Testosterone;
(355) Tetracycline;
(356) Theophylline;
(357) Thiabendazole;
(358) Thyroid;
(359) Thyroxine;
(360) Tiagabine;
(361) Tibolone;
(362) Tiludronate;
(363) Tinidazole;
(364) Tobramycin;
(365) Tolmetin;
(366) Topical steroids;
(367) Tramadol;
(368) Trandolapril;
(369) Trazodone;
(370) Tretinoin;
(371) Triamcinolone;
(372) Triamterene;
(373) Trichloracetic Acid*;
(374) Trimetazidine;
(375) Trioxsalen;
(376) Triptans;
(377) Troleandomycin;
(378) Undecylenic Acid;
(379) Urea;
(380) Urised;
(381) Ursodiol;
(382) Valacyclovir;
(383) Valproic Acid;
(384) Vancomycin;
(385) Varenicline;
(386) Verapamil;
(387) Verdenafil HCL;
(388) Vidarabine;
(389) Vitamins (Oral & Injectable);
(390) Yohimbine;
(391) Zalcitabine;

(392) Zidovudine;
(393) Zolpidem;
(394) Local Anesthetics:
(a) Benzocaine*;
(b) Bupivacaine*;
(c) Chloroprocaine*;
(d) Dyclonine*;
(e) Etidocaine*;
(f) Lidocaine*;
(g) Lidocaine (non-injectable dosage form);
(h) Mepivocaine*;
(i) Prilocaine*;
(j) Procaine*;
(k) Tetracaine*.
(395) Vaccines:
(a) BCG*;
(b) Cholera*;
(c) Diptheria*;
(d) DPT*;
(e) Haemophilus b Conjugate*;
(f) Hepatitis A Virus*;
(g) Hepatitis B*;
(h) Influenza Virus*;
(i) Japanese Encephalitis Virus*;
(j) Measles Virus*;
(k) Mumps Virus*;
(l) Pertussis*;
(m) Plague*;
(n) Pneumococcal*;
(o) Poliovirus Inactivated*;
(p) Poliovirus-Live Oral*;
(q) Rabies*;
(r) Rubella*;
(s) Smallpox*;
(t) Tetanus IG*;
(u) Tetanus Toxoid*;
(v) Typhoid*;
(w) Varicella*;
(x) Yellow Fever*;
(396) SkinTests:
(a) Diptheria*;
(b) Mumps*;
(c) Tuberculin*.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 681.145
Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05; Renumbered from 850-010-0225, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09; BNE 7-2009, f. 12-14-09, cert. ef. 1-1-10

850-060-0226
Formulary Compendium Classifications

The Formulary Council has approved the following pharmacologic-therapeutic classifications based on the 2009 American Hospital Formulary Service (AHFS), in addition to drugs previously approved by the Formulary Council and listed in 850-060-0225. This listing does not supersede the education and training requirement established in 850-060-0212 for administration of IV agents. The Formulary Council may consider new agents, substances and pharmacologic-therapeutic classifications for addition to this list.

(1) Antihistamine Drugs:
(a) First Generation Antihistamine Drugs:
(A) Ethanolamine Derivatives;
(B) Ethylenediamine Derivatives;
(C) Phenothiazine Derivatives;
(D) Piperazine Derivatives;
(E) Propylamine Derivatives;
(F) Miscellaneous Derivatives;
(b) Second Generation Antihistamines;
(2) Anti-Infective Agents:
(a) Antihelmintics;
(b) Antibacterials.
(A) Aminoglycosides;
(B) Cephalosporins;
(i) First Generation Cephalosporins;
(ii) Second Generation Cephalosporins;
(iii) Third Generation Cephalosporins;
(iv) Fourth Generation Cephalosporins;
(C) Miscellaneous β-Lactams;
(i) Carbacephems;
(ii) Carbapenems;
(iii) Cephamycins;
(iv) Monobactams;
(D) Chloramphenicol;
(E) Macrolides;
(i) Erythromycins;
(ii) Ketolides;
(iii) Other Macrolides;
(F) Penicillins;
(i) Natural Penicillins;
(ii) Aminopenicillins;
(iii) Penicillinase-resistant Penicillins;
(iv) Extended-spectrum Penicillins;
(G) Quinolones;
(H) Sulfonamides;
(I) Tetracyclines;
(i) Glycylcyclines;
(J) Antibacterials, Miscellaneous;
(i) Aminocyclitols;
(ii) Bacitracins;
(iii) Cyclic Lipopeptides;
(iv) Glycopeptides;
(v) Lincomycins;
(vi) Oxazolidinones;
(vii) Polymyxins;
(viii) Rifamycins;
(ix) Streptogramins;
(c) Antifungals;
(A) Allylamines;
(B) Azoles;
(C) Echinocandins;
(D) Polyenes;
(E) Pyrimidines;
(F) Antifungals, Miscellaneous;
(d) Antimycobacterials;
(A) Antituberculosis Agents;
(B) Antimycobacterials, Miscellaneous;
(e) Antivirals;
(A) Adamantanes;
(B) Antiretrovirals;
(i) HIV Fusion Inhibitors;
(ii) HIV Protease Inhibitors;
(iii) Integrase Inhibitors;
(iv) Nonnucleoside Reverse Transcriptase Inhibitors;
(v) Nucleoside and Nucleotide Reverse Transcriptase Inhibitors.
(C) Interferons;
(D) Monoclonal Antibodies;
(E) Neuraminidase Inhibitors;
(F) Nucleosides and Nucleotides;
(G) Antivirals, Miscellaneous;
(f) Antiprotozoals;
(A) Amebicides;
(B) Antimalarials;
(C) Antiprotozoals, Miscellaneous;
(3) Antineoplastic Agents (oral and topical only)
(a) 5FU;
(b) Anastrozole;
(c) Letrozole;
(d) Megestrol;
(e) Mercaptopunne;
(f) Methotrexate;
(g) Tamoxifen;
(h) Tretinoin;
(4) Autonomic Drugs;
(a) Parasympathomimetic (Cholinergic) Agents;
(b) Anticholinergic Agents;

(A) Antimuscarinics/Antispasmodics;
(c) Sympathomimetic (Adrenergic) Agents;
(A) α-Adrenergic Agonists;
(B) β- Adrenergic Agonists;
(i) Non-selective β- Adrenergic Agonists;
(ii) Selective β1- Adrenergic Agonists;
(iii) Selective β2- Adrenergic Agonists;
(C) α-And β-Adrenergic Agonists;
(d) Sympatholytic (Adrenergic Blocking) Agents;
(e) Skeletal Muscle Relaxants;
(A) Centrally Acting Skeletal Muscle Relaxants;
(B) Direct-acting Skeletal Muscle Relaxants;
(C) GABA-derivative Skeletal Muscle Relaxants;
(D) Neuromuscular Blocking Agents;
(E) Skeletal Muscle Relaxants, Miscellaneous;
(f) Autonomic Drugs, Miscellaneous;
(5) Blood Derivatives
(6) Blood Formation, Coagulation, and Thrombosis
(a) Antianemia Drugs;
(A) Iron Preparations;
(b) Antithrombotic Agents;
(A) Anticoagulants;
(i) Coumarin Derivatives;
(ii) Direct Thrombin Inhibitors;
(iii) Heparins;
(iv) Anticoagulants, Miscellaneous;
(c) Platelet-reducing Agents;
(d) Platelet-aggregation Inhibitors;
(e) Thrombolytic Agents;
(f) Hematopoietic Agents;
(g) Hemorrheologic Agents;
(h) Antihemorrhagic Agents;
(A) Antiheparin Agents;
(B) Hemostatics;
(7) Cardiovascular Drugs;
(a) Cardiac Drugs;
(A) Antiarrhythmic Agents;
(i) Class Ia Antiarrhythmics;
(ii) Class Ib Antiarrhythmics;
(iii) Class Ic Antiarrhythmics;
(iv) Class III Antiarrhythmics;
(v) Class IV Antiarrhythmics;
(B) Cardiotonic Agents;
(C) Cardiac Drugs, Miscellaneous;
(b) Antilipemic Agents;
(A) Bile Acid Sequestrants;
(B) Cholesterol Absorption Inhibitors;
(C) Fibric Acid Derivatives;
(D) HMG-CoA Reductase Inhibitors;
(E) Antilipemic Agents, Miscellaneous;
(c) Hypotensive Agents;
(A) Calcium-Channel Blocking Agents;
(B) Central a-Agonists;
(C) Direct Vasodilators;
(D) Peripheral Adrenergic Inhibitors;
(d) Vasodilating Agents;
(A) Nitrates and Nitrites;
(B) Phosphodiesterase Inhibitors;
(C) Vasodilating Agents, Miscellaneous;
(e) Sclerosing Agents;
(f) α-Adrenergic Blocking Agents;
(g) β-Adrenergic Blocking Agents;
(h) Calcium-Channel Blocking Agents;
(A) Dihydropyridines;
(B) Calcium-Channel Blocking Agents, Miscellaneous;
(i) Renin-Angiotensin-Aldosterone System Inhibitors;
(A) Angiotensin-Converting Enzyme Inhibitors;
(B) Angiotensin II Receptor Antagonists;
(C) Mineralocorticoid (Aldosterone) Receptor Antagonists;
(D) Renin Inhibitors;
(8) Central Nervous System Agents
(a) Analgesics and Antipyretics;
(A) Nonsteroidal Anti-inflammatory Agents;
(i) Cyclooxygenase-2 (COX-2) Inhibitors;
(ii) Salicylates;
(iii) Other Nonsteroidal Anti-inflammatory Agents;
(B) Opiate Agonists;
(C) Opiate Partial Agonists;
(D) Analgesics and Antipyretics, Miscellaneous;
(b) Opiate Antagonists;
(c) Anticonvulsants, does not include Barbiturates;
(A) Benzodiazepines;
(B) Hydantoins;
(C) Succinimides;
(D) Anticonvulsants, Miscellaneous;
(d) Psychotherapeutic Agents;
(A) Antidepressants;
(i) Monoamine Oxidase Inhibitors;
(ii) Selective Serotonin- and Norepinephrine-reuptake Inhibitors;
(iii) Selective Serotonin- Reuptake Inhibitors;
(iv) Serotonin Modulators;
(v) Tricyclics and Other Norepinephrine-reuptake Inhibitors;
(vi) Antidepressants, Miscellaneous;
(e) Anorexigenic Agents and Respiratory and Cerebral Stimulants;
(A)Amphetamines;
(B) Anorexigenic Agents and Respiratory and Cerebral Stimulants, Miscellaneous;
(f) Anxiolytics, Sedatives, and Hypnotics, does not include Barbiturates;
(A) Benzodiazepines;
(B) Anxiolytics, Seditives, and Hypnotics; Miscellaneous;
(g) Antimanic Agents;
(h) Antimigraine Agents;
(A) Selective Serotonin Agonists;
(i) Antiparkinsonian Agents;
(A) Adamantanes;
(B) Anticholinergic Agents;
(C) Catechol-O-Methyltransferase (COMT) Inhibitors;
(D) Dopamine Precursors;
(E) Dopamine Receptor Agonists;
(i) Ergot-derivative Dopamine Receptor Agonists;
(ii) Non-ergot-derivative Dopamine Receptor Agonists;
(F) Monoamine Oxidase B Inhibitors;
(j) Central Nervous System Agents, Miscellaneous;
(9) Contraceptives (foams, devices);
(10) Diagnostic Agents;
(11) Disinfectants (for Agents used on objects other than skin);
(12) Electrolytic, Caloric, and Water Balance;
(a) Acidifying Agents;
(b) Alkalinizing Agents;
(c) Ammonia Detoxicants;
(d) Replacements Preparations;
(e) Ion-Removing Agents;
(A) Calcium-removing Agents;
(B) Potassium-removing Agents;
(C) Phosphate-removing Agents;
(D) Other Ion-removing Agents;
(f) Caloric Agents;
(g) Diuretics;
(A) Loop Diuretics;
(B) Osmotic Diuretics;
(C) Potassium-sparing Diuretics;
(D) Thiazide Diuretics;
(E) Thiazide-like Diuretics;
(F) Diuretics, Miscellaneous;
(h) Irrigation Solutions;
(i) Uricosuric Agents;
(13) Enzymes;
(14) Respiratory Tract Agents;
(a) Antihistamines;
(b) Antitussives;
(c) Anti-inflammatory Agents;
(A) Leukotriene Modifiers;
(B) Mast-cell Stabilizers;
(d) Expectorants;
(e) Pulmonary Surfactants;
(f) Respiratory Agents, Miscellaneous;
(15) Eye, Ear, Nose, and Throat (EENT) Preparations;
(a) Antiallergic Agents;
(b) Anti-infectives;

(A) Antibacterials;
(B) Antifungals;
(C) Antivirals;
(D) Anti-infectives, Miscellaneous;
(c) Anti-inflammatory Agents;
(A) Corticosteroids;
(B) Nonsteroidal Anti-inflammatory Agents;
(C) Anti-inflammatory Agents, Miscellaneous;
(d) Local Anesthetics;
(e) Mydriatics;
(f) Mouthwashes and Gargles;
(g) Vasoconstrictors;
(h) Antiglaucoma Agents;
(A) α-Adrenergic Agonists;
(B) β-Adrenergic Agents;
(C) Carbonic Anhydrase Inhibitors;
(D) Miotics;
(E) Prostaglandin Analogs;
(i) EENT Drugs, Miscellaneous;
(16) Gastrointestinal Drugs;
(a) Antacids and Adsorbents;
(b) Antidiarrhea Agents;
(c) Antiflatulents;
(d) Cathartics and Laxatives;
(e) Cholelitholytic Agents;
(f) Emetics;
(g) Antiemetics;
(A) Antihistamines;
(B) 5-HT3 Receptor Antagonists;
(C) Antiemetics, Miscellaneous;
(h) Antiulcer Agents and Acid Suppressants;
(A) Histamine H2-Antogonists;
(B) Prostaglandins;
(C) Protectants;
(D) Proton-pump Inhibitors:
(i) Prokinetic Agents;
(j) Anti-inflammatory Agents;
(k) GI Drugs, Miscellaneous.
(17) Gold Compounds.
(18) Heavy Metal Antagonists (NOTE: IVadministration requires education and training compliance with 850-060-0212).
(19) Hormones and Synthetic Substitutes:
(a) Adrenals;
(b) Androgens;
(c) Contraceptives;
(d) Estrogens and Antiestrogens.
(A) Estrogens;
(B) Estrogen Agonists-Antiagonists;
(e) Gonadotropins;
(f) Antidiabetic Agents;
(A) α-Glucosidase Inhibitors:
(B) Amylinomimetics;
(C) Biguanides;
(D) Dipeptidyl Peptidase (DDP-4) Inhibitors;
(E) Incretin Mimetics;
(F) Insulins;
(G) Meglitinides;
(H) Sulfonylureas;
(I) Thiazolidinediones;
(g) Antihypoglycemic Agents;
(A) Glycogenolytic Agents:
(h) Parathyroid;
(i) Pituitary;
(j) Somatotropin Agonists and Antagonists;
(A) Somatotropin Agonists;
(B) Somatotropin Antagonists;
(k) Progestins;
(l) Thyroid and Antithyroid Agents;
(A) Thyroid Agents;
(B) Antithyroid Agents.
(20) Local Anesthetics.
(21) Oxytocics.
(22) Serums, Toxoids, and Vaccines:
(a) Serums;
(b) Toxoids;
(c) Vaccines.
(23) Skin and Mucous Membrane Agents:
(a) Anti-infectives:
(A) Antibacterials;
(B) Antivirals;
(C) Antifungals:
(i) Allylamines;
(ii) Azoles;
(iii) Benzylamines;
(iv) Hydroxypyridones;
(v) Polyenes;
(vi) Thiocarbamates;
(vii) Antifungals, Miscellaneous.
(D) Scabicides and Pediculicides.
(E) Local Anti-infectives, Miscellaneous:
(b) Anti-inflammatory Agents;
(c) Antipruritics and Local Anesthetics;
(d) Astringents;
(e) Cell Stimulants and Proliferants;
(f) Detergents;
(g) Emollients, Demulcents, and Protectants;
(h) Keratolytic Agents;
(i) Keratoplastic Agents;
(j) Depigmenting and Pigmenting Agents.
(A) Depigmenting Agents;
(B) Pigmenting Agents.
(k) Sunscreen Agents;
(l) Skin and Mucous Membrane Agents, Miscellaneous.
(24) Smooth Muscle Relaxants:
(a) Gastrointestinal Smooth Muscle Relaxants;
(b) Genitourinary Smooth Muscle Relaxants;
(c) Respiratory Smooth Muscle Relaxants;
(25) Vitamins.
(26) Miscellaneous Therapeutic Agents:
(a) Alcohol Deterrents;
(b) 5-α Reductase Inhibitors;
(c) Antidotes;
(d) Antigout Agents;
(e) Biologic Response Modifiers;
(f) Bone Resorption Inhibitors;
(g) Cariostatic Agents;
(h) Complement Inhibitors;
(i) Disease-Modifying Antirheumatic Agents;
(j) Gonadotropin-releasing Hormone Antagonists;
(k) Immunosuppressive Agents;
(l) Protective Agents;
(m) Other Miscellaneous Therapeutic Agents.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.145
Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09; BNE 7-2009, f. 12-14-09, cert. ef. 1-1-10

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Board of Optometry
Chapter 852

Rule Caption: Establishes: Board Member Compensation; Definitions of Dispensing and Delegation; and Fees for Electronic Prescription Monitoring Program.
Adm. Order No.: OPT 2-2009
Filed with Sec. of State: 12-11-2009
Certified to be Effective: 12-11-09
Notice Publication Date: 10-1-2009
Rules Adopted: 852-005-0015
Rules Amended: 852-010-0080, 852-020-0035, 852-020-0060, 852-050-0006

Subject: 852-005-0015: Establishes Board member Compensation.

852-010-0080: Establishes fees for Electronic Prescription Monitoring Program.

852-020-0035: Defines Dispensing. Further defines delegation of optometric care.

852-050-0006: Establishes collection of fees for Electronic Prescription Monitoring Program.

Rules Coordinator: David W. Plunkett—(503) 399-0662, ext. 23

852-005-0015
Board Member Compensation

(1) Board members of the Oregon Board of Optometry, who are authorized by law to receive compensation for time spent in performance of their official duties, shall receive a payment of $100 for each 8-hour day during which the member is actually engaged in the performance of official duties. If the hours engaged in official duties is less or more than 8 hours, payment will be made at an hourly rate of $12.50 per hour or fraction thereof. This compensation amount shall be in addition to any eligible reimbursement of travel expenses.

(2) Board members and employees of the Board are authorized to receive actual and necessary travel or other expenses actually incurred in the performance of their official duties as determined by the Board. Mileage reimbursement will be provided at the rate established by the Internal Revenue Service for privately owned vehicles.

(3) No Board member shall be required to accept compensation or reimbursement of travel expenses while performing their official duties as a Board member.

Stat. Auth.: ORS 292 & 182
Stats. Implemented: ORS 182.466(3) & 2009 OL Ch. 535 (HB 2058)
Hist.: OPT 2-2009, f. & cert. ef. 12-11-09

852-010-0080
Schedule of Fees

(1) The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

(a) Annual Renewal — Active License — $243
(b) Annual Renewal — Inactive License — $98
(c) Continuing Education Renewal Fee — $20
(d) Disciplinary Renewal Fee — $35
(e) Additional Office License — $45
(f) Multiple Office License — $90
(g) Application for Examination and Licensure — $200
(h) Application for Endorsement Examination and Licensure — $300
(i) Application for TPA Certification — $75
(j) Law and Administrative Rule Examination — $75
(k) Reactivation of License — $100
(l) Reinstatement of License — 100
(m) Wall Display Certificate — $30
(n) License Verification — $20
(o) Law and Administrative Rules Booklet — $25
(p) List of Licensees — $25–$50
(q) Late Renewal application, payment, continuing optometric education — $50–$200
(r) Failure to notify the Board of practice locations — $50–$200
(s) Electronic Prescription Monitoring Program — $25

(2) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, etc. has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.270 & 182.466
Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09

852-020-0035
Prescribing

(1) A Doctor of Optometry shall only use, prescribe, dispense or administer controlled substances in Schedules III–V to a person whom he/she has a bona fide physician/patient relationship.

(a) A Doctor of Optometry shall not use, prescribe, dispense or administer Schedule III–V controlled substances to himself/herself.

(b) A Doctor of Optometry shall not use, prescribe, dispense or administer Schedule III–V controlled substances to an immediate family member except in emergency situations.

(i) Immediate family member means spouse, children, siblings, parents or other individual for whom a Doctor of Optometry's personal or emotional involvement may render him/her unable to exercise detached professional judgement in reaching diagnostic and/or therapeutic decisions.

(2) It shall be considered unprofessional conduct for a Doctor of Optometry to use, prescribe, dispense or administer controlled substances in Schedules III–V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(3) All drugs dispensed by an optometric physician shall be labeled with the following information:

(a) Name, address and telephone number of the optometric physician;
(b) Date;
(c) Name of patient for which the drug is dispensed;
(d) Name of the drug, strength, the quantity dispensed. When a generic name is used, the label shall also contain the name of the manufacturer or distributor;
(e) Direction for use;
(f) Required precautionary information regarding controlled substances;
(g) Such other and further accessory cautionary information as required for patient safety; and
(h) An expiration date after which the patient should not use the drug. Expiration dates on drugs dispensed must be the same as that on the original container unless, in the optometric physician's professional judgement, a shorter expiration date is warranted. Any drug bearing an expiration date shall not be dispensed beyond the said expiration date of the drug.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k), 182.466 & 689.225
Hist.: OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2009, f. & cert. ef. 12-11-09

852-020-0060
Optometric Physician Responsibility, Supervision, and Delegation

(1) The optometric physician carries the sole responsibility for the patient's care.

(2) Direct supervision as used in 683.030 means a person employed by the optometric physician whose activities are being directly or indirectly supervised and there is an appropriate intervention protocol in place.

(3) An optometric physician may not delegate ophthalmoscopy, gonioscopy, final central nervous system assessment, final biomicroscopy, final refraction, final determination of any prescription or treatment plans.

(4) Tonometry may be delegated to well-trained and directly supervised ancillary personnel. An Oregon licensed optometric physician must personally perform tonometry on glaucoma patients.

(5) Therapeutic procedures involving pharmaceutical agents may not be delegated other than to instill medication or provide educational information as instructed by the optometric physician.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.010(2), 683.030(3) & 182.466
Hist.: OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 2-2009, f. & cert. ef. 12-11-09

852-050-0006
Annual Renewal of Active License

(1) Active licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(b) License renewals will cover 12-month license periods based upon birth dates.

(2) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;
(b) Check or money order for the correct license renewal fees;
(c) Documentation of completion of the required continuing optometric education.
(d) Documentation of current CPR certification, as required in OAR 852-80-040.

(4) The Board will, as a courtesy, send license year renewal forms to the licensees last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a delinquent fee. If a licensee is more than 30 days delin-

quent the license is automatically suspended upon 30 day notice given to the licensee.

(6) If a person is more than 60 days in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry shall be $243, plus an additional $20 assessed for continuing education offerings and a $35.00 disciplinary fee. In addition to the optometry renewal fees, the Board is required by SB 355 (2009 Regular Session) to collect an annual $25 fee from each optometry license renewal for the Electronic Prescription Monitoring Program in the Department of Human Services. The fees collected for the Electronic Prescription Monitoring Program will be remitted to the Department of Human Services as required by law.

(8) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of $50 for the first failure; $100 for the second failure; $200 for each subsequent failure. This late payment fee must be received before the license will be issued.

(9) Any licensee whose CPR certification lapsed at any time during the license renewal period shall be subject to a fee of $50 for the first failure; $100 for the second failure; $200 for each subsequent failure. This fee must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270, 182.466 & 2009 SB 355
Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 2-2009, f. & cert. ef. 12-11-09

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Amends prevailing rates of wage for the period beginning July 1, 2009.
Adm. Order No.: BLI 25-2009
Filed with Sec. of State: 11-23-2009
Certified to be Effective: 11-23-09
Notice Publication Date:
Rules Amended: 839-025-0700
Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2009.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0700
Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2009, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2009, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 26, 2009).

(b) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 3, 2009).

(c) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 10, 2009).

(d) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 17, 2009).

(e) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 24, 2009).

(f) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective August 14, 2009).

(g) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective September 11, 2009).

(h) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective September 18, 2009).

(i) Amendment to Oregon Determination 2009-02 (effective October 1, 2009).

(j) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 1, 2009).

(k) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 2, 2009).

(l) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective November 6, 2009).

(m) Amendments/Corrections to July 1, 2009 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective November 20, 2009).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2009, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060
Stats. Implemented: ORS.279C.815
Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99: BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. & ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f.

& cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09, BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09

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Rule Caption: Amends wage claim enforcement, Wage Security Fund, and insurance notification rules.
Adm. Order No.: BLI 26-2009
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 839-001-0495, 839-001-0496, 839-001-0515, 839-001-0520, 839-001-0700
Rules Repealed: 839-001-0750
Subject: These rule amendments implement House Bill (HB) 2595 enacted in 2009, which prohibits home health agencies and hospice programs from paying nurses providing home health or hospice services on a per-visit basis. HB 2595 provides civil penalty authority to the Commissioner of the Bureau of Labor and Industries for violations of its provisions. The rule amendments conform existing rules relating to the assessment of civil penalties to this legislation. In addition, the rule amendments clarify conditions to be met in qualifying for payments from the Wage Security Fund and delete obsolete references in the agency's insurance cancellation notification rules.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-001-0495
Violations Separate and Distinct

Each violation of ORS 652.110, 652.140, 652.145, 652.260, 652.610(4), 652.750 or any rule adopted pursuant thereto is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 651.060(4), 652.165, 652.900
Stats. Implemented; ORS 652.010–652.900
Hist.: BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 26-2009, f. 12-1-09, cert. ef. 1-1-10

839-001-0496
Civil Penalties

(1) When assessing a civil penalty for violations of ORS 652.110, 652.140, 652.145, 652.260, 652.610(4), 652.750 or any rule adopted pursuant thereto, the commissioner may consider the following mitigating and aggravating circumstances in determining the amount of the civil penalty to be assessed and cite those the commissioner finds to be appropriate:

(a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) The magnitude and seriousness of the violation;

(d) Whether the employer knew or should have known of the violation.

(2) The commissioner may consider what amount of civil penalty is likely to deter an employer from committing violations in the future.

(3) Notwithstanding any other section of this rule, the commissioner shall consider all aggravating circumstances presented by any employee or any other person for the purpose of increasing the amount of the civil penalty to be assessed.

(4) It shall be the responsibility of the employer to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be assessed.

(5) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be assessed.

Stat. Auth.: ORS 651.060(4), 652.165, 652.900
Stats. Implemented; ORS 652.010–652.900
Hist.: BLI 37-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 26-2009, f. 12-1-09, cert. ef. 1-1-10

839-001-0515
Matters to Be Considered in Making Determinations

(1) In determining that an employer has ceased doing business the Commissioner may consider:

(a) Whether the business premises are no longer occupied by the employer;

(b) Whether business operations are being conducted;

(c) Whether customers of the employer are being served;

(d) Whether the employer is employing employees;

(e) Any other information indicating whether the business has ceased its operations.

(2) In determining that an employer is without sufficient assets to fully and promptly pay the wage claim at the cessation of business, the Commissioner may consider:

(a) Whether the debts of the employer exceed the total amount of assets;

(b) Whether the liquid assets of the employer are not sufficient to pay the wages due;

(c) Whether the accounts receivable of the employer are not sufficient to pay the wages due;

(d) Whether the claims of a secured creditor on the assets of the employer would exceed the amount due in wages;

(e) Whether the employer has filed for protection under the Bankruptcy Code (The filing of bankruptcy in and of itself does not determine the insufficiency of assets.);

(f) Whether the assets of the employer are in the process of being involuntarily liquidated;

(g) Any other information indicating that the assets of the employer are insufficient to promptly pay the wage claim at the cessation of business.

(3) In determining that a wage claim cannot otherwise be fully and promptly paid the Commissioner may consider:

(a) Whether the employee has a right of claim against a bond or deposit held by the employer, which may be used for the purpose of paying wage claims;

(b) Whether the business is in receivership and the type of receivership;

(c) Whether there is a successor to the employer's business;

(d) Any other information indicating that the wage claim cannot otherwise be fully and promptly paid.

(4) In determining that the wage claim is valid the Commissioner may consider:

(a) Whether there is judgment of the court;

(b) Whether there is a final administrative order issued pursuant to statute or rule;

(c) Whether the employer acknowledges the amount of wages owed;

(d) The results of the Division's investigation of the wage claim;

(e) Any other information indicating that the wage claim is valid.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409, OL 1985, Sec. 7(4) (Amended 6/94)
Stats. Implemented: ORS 409, OL 1985, Sec. & (Amended 6/94)
Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BLI 26-2009, f. 12-1-09, cert. ef. 1-1-10

839-001-0520
Amount of Claim to Be Paid

(1) Except as provided in sections (2) and (3) of this rule, after a wage claim is determined to be eligible for payment from the Fund, the amount to be paid shall be:

(a) The unpaid amount of wages earned within 60 days before the date of the cessation of business; or

(b) If the claimant filed a wage claim before the cessation of business, the unpaid amount of wages earned within 60 days before the last day the claimant was employed.

(2) The commissioner shall pay the amount of wages earned as provided in section (1) only to the extent of $4,000.

(3) When the amount of a valid wage claim determined to be eligible for payment is greater than the amount available in the Fund for paying such claims, payments on wage claims shall be prorated in accordance with OAR 839-001-0530.

Stat. Auth.: ORS 651.060(4) & 652
Stats. Implemented: ORS 652.414
Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BLI 13-1999, f. 9-28-99, cert. ef. 10-23-99; BLI 26-2009, f. 12-1-09, cert. ef. 1-1-10

839-001-0700
Definitions

As used in ORS 652.710 and in OAR 839-001-0700 to 839-001-0800, unless the context requires otherwise:

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

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

(3) "Contract" includes a group health insurance policy.

(4) "Contractor" includes any person who enters into an agreement with an employer to provide health care services to employees. "Contractor" also includes any person who enters into an agreement with an employer to provide insurance coverage pursuant to the terms of a group health insurance policy.

(5) "Employ" includes to suffer or permit to work.

(6) "Employee" means any individual employed by an employer.

(7) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(8) "Group health insurance policy" as used in ORS 652.710(3) has the same meaning as that defined in ORS 743.522.

(9) "Health care services" includes services that provide medical and surgical attention, hospital care, x-rays, ambulance, nursing or other related service or care for sickness or injury. Health care services also include services that are provided under the terms of a group health insurance policy.

(10) "Home address" means the last known mailing address as recorded in the employer's records.

(11) "Insurer" as used in ORS 652.710(3) has the same meaning as that defined in ORS 731.106 and includes a contractor as defined in section (4) of this rule.

(12) "Promptly be paid" or "Promptly pay" means that trust funds are paid no later than the date agreed to by the employer and the contractor.

(13) "Termination" or "Terminated", as used in ORS 652.710(3), means the cessation of coverage on the last day of the period through which coverage is paid up; provided, however, that a group health insurance policy that provides for a grace period for paying premium on the policy terminates on the final day of the grace period. Termination of coverage under a group health insurance policy also includes the amendment or reissuance of a policy to delete one or more classes of certificate holders from coverage.

(14) "Trust funds" means all moneys collected by an employer from employees of the employer or moneys retained from the employee's wages for the purposes of providing or furnishing to the employee's health care services pursuant to a contract.

(15) "Violation" means a transgression of any statute or rule or any part thereof and includes both acts and omissions.

(16) "Working day" means any day the business of the employer is open for business to its customers or day the employees of the employer are actually working on the employer's business.

Stat. Auth.: ORS 652.710(7) & 652.710(11)
Stats. Implemented: ORS 652.710
Hist.: BL 10-1992, f. & cert. ef. 7-1-92; BLI 26-2009, f. 12-1-09, cert. ef. 1-1-10

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Rule Caption: Amends Child Labor rules to conform to legislation enacted and corrects erroneous language in rule.
Adm. Order No.: BLI 27-2009
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 839-021-0070, 839-021-0280, 839-021-0290
Subject: These rule amendments implement House Bill (HB) 2826 enacted in 2009, which removes the requirement that employers obtain a special permit before employing a minor under 16 years of age until 7 p.m. (9 p.m. between June 1 and Labor Day). These rules also conform current language in the rules to the provisions of HB 2826, which shifts authority for the issuance of agricultural overtime permits from the Wage and Hour Commission to the Commissioner of the Bureau of Labor and Industries. Finally, OAR 839-021-0280 has been amended to clarify that minors may not be employed to operate or assist in the operation of power-driven farm machinery unless the employer has obtained an employment certificate as required and the minor has received required training in the operation of such machinery.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-021-0070
Hours of Employment for Minors Under 16 Years of Age

(1) Except as otherwise provided in this rule, employment of minors under 16 years of age must be confined to the following periods:

(a) Outside school hours;

(b) Not more than 40 hours in any one week when school is not in session;

(c) Not more than 18 hours in any one week when school is in session;

(d) Not more than eight hours in any one day when school is not in session;

(e) Not more than three hours in any one day when school is in session;

(f) Between 7 a.m. and 7 p.m., except that during the summer (June 1 through Labor Day), the minor may work until 9:00 p.m.

(2) In the case of enrollees in work training programs conducted under Part B of Title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of subsection (1)(a) of this rule if the employer has on file with the records kept pursuant to OAR 839-021-0170 an unrevoked written statement of the Regional Manpower Administrator of the U.S. Department of Labor or representative setting out the periods which the minor will work and certifying that the minor's employment confined to such periods will not interfere with the minor's health and well-being, countersigned by the principal of the school which the minor is attending with the principal's certificate that such employment will not interfere with the minor's schooling.

(3) In the case of students enrolled in a career exploration or other work experience program, there is an exception to subsection (1)(a) of this rule when:

(a) The minor is employed as a student learner pursuant to ORS 653.070; or

(b) The minor is enrolled in a school-supervised and school-administered work experience and career exploration program meeting the educational standards established and approved by the Oregon Department of Education.

(4) This rule does not apply when Title 29, CFR, Part 570, Subpart C, Section 570.35a would otherwise apply.

(5) Employment of minors enrolled in a program pursuant to sections (2), (3), and (4) of this rule must be confined to not more than 23 hours in any one week when school is in session and not more than three hours in any day when school is in session, any portion of which may be during school hours. Insofar as these provisions are inconsistent with the provisions of section (1) of this rule, this section will be controlling.

(6) The employment of a minor enrolled in a program pursuant to sections (2), (3), and (4) of this rule must not have the effect of displacing a worker employed in the establishment of the employer.

(7) The Wage and Hour Commission may waive the provisions of section (1)(f) of this rule and OAR 839-021-0246(4)(d) and authorize minors under 16 years of age employed by their parent(s) or person(s) standing in the place of their parent(s) to work as late as 9:00 p.m. when the commission determines that such hours of work will not be detrimental to the health, safety or education of the children so employed and the minor is supervised by the minor's parent(s) or person(s) standing in the place of their parent(s) during the extended hours employed. No minor may be employed to work in violation of the provisions of (1)(a), (b), (c), (d), and (e) of this rule or, in the case of minors under 14 years of age, in violation of OAR 839-021-0246(4)(a), (b), and (c).

(8) Pursuant to section (7) of this rule, a parent/employer desiring to employ a minor under 16 years of age later than the times permitted in section (1)(f) of this rule or OAR 839-021-0246(4)(d) may apply in writing to the Wage and Hour Commission, c/o the Administrator of the Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon St., Suite 1045, Portland, OR, 97232. The commission will investigate the employment and the facts and circumstances set out in the application. If the commission determines that the employment is suitable and will not adversely affect the well-being of the minor(s), the commission will issue a special permit to the parent/employer, setting out the terms and conditions of the permit.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 653.305 & 653.525
Stats. Implemented: ORS 653.315
Hist.: BL 11-1990, f. 8-16-90, cert. ef. 9-1-90; BL 15-1992, f. 12-14-92, cert. ef. 12-15-92; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 13-2000, f. 5-31-00, cert. ef. 6-1-00; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 27-2009, f. 12-1-09, cert. ef. 1-1-10

839-021-0280
Operation or Assisting in the Operation of Power-Driven Farm Machinery

(1) As used in this rule, "assist(ing) in the operation of power-driven farm machinery," includes starting, stopping, adjusting, feeding or any

other activity involving physical contact associated with the operation of the machinery.

(2) Minors may not be employed to operate or assist in the operation of power-driven farm machinery unless:

(a) An Employment Certificate has been issued pursuant to OAR 839-021-0220; and

(b) The minor(s) has obtained a "Certificate of Training" on tractor operation or tractor and machinery operation issued by a 4-H Extension Service Program, or an approved secondary vocational agriculture program.

(A) The employer must obtain proof that the minor has a "Certificate of Training" on the operation of tractors or tractors and machinery operation; and

(B) The employer must retain a copy of such proof for two years from the date the minor was employed.

(3) In the event that neither a 4-H Extension Service nor vocational agricultural safety training program for the "Certificate of Training," as required in section (2)(b) of this rule, is available within 35 miles of a minor's residence, a 16 or 17 year-old minor may be employed to operate or assist in the operation of power-driven farm machinery otherwise prohibited if all of the following conditions are met:

(a) The minor is 16 or 17 years of age and the employer has verified the minor's age;

(b) The employer has completed an Employment Certificate application, pursuant to OAR 839-021-0220; and

(c) The minor, the minor's parent or guardian, and the employer of the minor sign a statement on a form prescribed by the commission certifying to all of the following:

(A) The training is not available within 35 miles of the minor's residence;

(B) The employer has provided to the minor not less than eight hours of instruction, four hours of which must be "hands-on" training under the supervision of an adult experienced in the safe and proper operation of the specific equipment the minor is to use before the minor begins work including, but not limited to, training related to the normal working hazards in agriculture, the equipment's instrument panel, equipment controls, daily maintenance and safety checks, starting and stopping the equipment, control of the equipment on different terrain, and the safe operation of hitches, power take-off and hydraulic controls, where applicable; and

(C) The employer agrees to supervise the minor continuously and closely while the minor operates the power-driven farm machinery, or, where such supervision is not feasible, agrees to check on the safety of the minor at intervals of no more than two hours during the operation of the equipment by the minor.

(4) The requirements for obtaining an Employment Certificate and a Certificate of Training do not apply to a minor employed by their parent(s) or person standing in the place of their parent as provided by OAR 839-021-0297.

Stat. Auth.: ORS 653.305 & 653.525
Stats. Implemented: ORS 653.307 & 653.365
Hist.: BL 5-1987, f. & ef. 2-20-87; BL 6-1988, f. 4-12-88, cert. ef. 1-1-89; BL 4-1990, f. & cert. ef. 3-12-90; BL 11-1991, f. & cert. ef. 10-31-91; BL 4-1995, f. & cert. ef. 11-3-95; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 27-2009, f. 12-1-09, cert. ef. 1-1-10

839-021-0290
Hours of Work of Minors Under 16 Years of Age in Agriculture

(1) Minors under 16 years of age may not be employed to work in agriculture while the school they attend is in session. As used in this rule, school is in session during the hours set by the school district in which the minor resides while employed in agriculture in accordance with the official school calendar of the district. A school week is any week in which school is in session for at least three days.

(2) The hours of work by minors in agriculture under 16 years of age may not exceed:

(a) Three hours a day on school days;

(b) Ten hours a day on non-school days;

(c) 25 hours a week during school weeks;

(d) From the last day of the most recently completed school year of the school district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture:

(A) Ten hours per day; and

(B) 60 hours per week.

(e) Six days in any week at any time.

(3) Notwithstanding section (2) of this rule, when a minor under 16 years of age is employed in agriculture to operate or assist in the operation of power-driven farm machinery or when such minor is employed to ride in or on power-driven farm machinery as provided in OAR 839-021-0276 to 839-021-0285, the maximum number of hours the minor may work may not exceed:

(a) Three hours a day on school days;

(b) Eight hours a day on non-school days;

(c) Eighteen hours a week during school weeks;

(d) From the last day of the most recently completed school year of the school district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture:

(A) Ten hours per day, 60 hours a week during the harvest season;

(B) Ten hours per day, 44 hours per week outside the harvest season;

(C) A greater number of weekly hours may be permitted when worked outside the harvest season pursuant to a Special Emergency Overtime Permit issued by the commission. However, even though a permit may be issued, the maximum number of hours worked in a week may not exceed 60.

(e) Six days in any week at any time.

(4) Notwithstanding sections (2) and (3) of this rule, the Commissioner may issue special permits to employers for the employment of minors under 16 years of age in agriculture for more than the maximum number of hours provided in this rule when the commissioner determines that such hours of work will not be detrimental to the health and safety of the children so employed.

(a) An employer desiring to employ a minor in agriculture for more than the maximum number of hours provided in this rule may apply in writing to the Administrator of the Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon St., Suite 1045, Portland, OR, 97232.

(b) The administrator will investigate the employment and the facts and circumstances set out in the application. If the administrator determines that the character of the employment is suitable and that the employment will not adversely affect the physical and moral well-being of the minor(s), the administrator will issue a Special Emergency Overtime Permit to the employer, setting out the terms and conditions of the permit and the period of time for which it will be effective.

(5) Nothing in this rule should be construed to regulate the daily starting and quitting times on minors under 16 who are employed in agriculture.

Stat. Auth.: ORS 653.525
Stats. Implemented: ORS 653.315
Hist.: BL 11-1991, f. & cert. ef. 10-31-91; BL 2-1997(Temp), f. & cert. ef. 7-21-97; BL 10-1997, f. & cert. ef. 11-26-97; BLI 9-2002, f. 3-28-02, cert. ef. 4-1-02; BLI 27-2009, f. 12-1-09, cert. ef. 1-1-10

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Rule Caption: Amends Prevailing Wage Rate rules to conform to legislation enacted in 2009.
Adm. Order No.: BLI 28-2009
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 839-025-0010, 839-025-0013, 839-025-0015, 839-025-0020, 839-025-0030, 839-025-0035, 839-025-0085, 839-025-0200, 839-025-0210, 839-025-0530
Rules Repealed: 839-025-0013(T), 839-025-0020(T), 839-025-0030(T), 839-025-0035(T), 839-025-0085(T), 839-025-0200(T), 839-025-0210(T), 839-025-0530(T)
Subject: These rule amendments replace temporary rules effective August 5, 2009 and implement legislation enacted in 2009 that is already in effect, specifically, SB 51, which permanently adjusts the PWR fee payable by a public agency to 0.1 percent of the contract price, with a minimum fee of $250 and maximum fee of $7,500; SB 53, which requires the PWR fee payable by a public agency to be paid at the same time as when the agency provides the Notice of Contract to BOLI, deletes an obsolete requirement that contract specifications contain a provision that a fee is required to be paid by the contractor, requires PWR wages to be paid on the contractors regularly established and maintained paydays, and provides civil penalties for violations; and SB 55, which makes intentional falsification of certified payrolls a violation for which a contractor may be placed on the list of contractors ineligible to receive a public works contract. The rule amendments also implement the provisions of SB 54 relating to required information on Payroll and Certified Statement forms

and HB 2907, which prohibits contracting agencies from entering into agreements with other state agencies or political subdivisions of other states agreeing that contractors may pay less than the prevailing wage rates required under Oregon law. In addition, the amendments clarify existing requirements regarding when public works bonds are required and relating to information required to be included in public works specifications, and delete obsolete language requiring contractors to maintain record relating to fee payments. Finally, OAR 839-025-0210(4) is amended to include form number references for the convenience of contracting agencies in calculating the amount of the PWR fee to be paid.

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

839-025-0010
Payroll and Certified Statement

(1) The form required by ORS 279C.845 is the Payroll and Certified Statement form, **WH-38**. This form must accurately and completely set out the contractor's or subcontractor's payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked and the gross wages the worker earned each week during which the contractor or subcontractor employs a worker upon a public works project.

(2) The contractor or subcontractor may submit the weekly payroll on the **WH-38** form or may use a similar form providing such form contains all the elements of the **WH-38** form. When submitting the weekly payroll on a form other than **WH-38**, the contractor or subcontractor must attach the certified statement contained on the WH-38 form to the payroll forms submitted.

(3) Each Payroll and Certified Statement form must be submitted by the contractor or subcontractor to the public agency by the fifth business day of each month following a month in which workers were employed upon a public works project.

(4) The Payroll and Certified Statement forms received by the public agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request. Pursuant to ORS 279C.845(2), information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 through 279C.870.

(5) If the contractor fails to submit its payroll and certified statement forms to the public agency as required by subsection (3) of this rule, the public agency must retain 25 percent of any amount earned by the contractor until the contractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the contractor at the time each payroll and certified statement are due. For example, if the contractor fails to submit its payroll and certified statement by the fifth of the month and the contractor earned $100,000 in the period since its last payroll and certified statement were submitted to the public agency, the public agency must retain 25 percent of $100,000 ($25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the contractor.

(c) Once the required payroll and certified statement have been submitted to the public agency, the public agency must pay the amount retained to the contractor within 14 days.

(6) If a first-tier subcontractor fails to submit a payroll and certified statement form to the public agency as required by subsection (3) of this rule, the contractor must retain 25 percent of any amount earned by the first-tier subcontractor until the first-tier subcontractor has submitted the required payroll and certified statements to the public agency.

(a) The amount to be retained shall be calculated at 25 percent of the unpaid amount earned by the first-tier subcontractor at the time each payroll and certified statement are due. For example, if the first-tier subcontractor fails to submit the payroll and certified statement by the fifth of the month and the first-tier subcontractor earned $100,000 in the period since the last payroll and certified statement were submitted to the public agency, the contractor must retain 25 percent of $100,000 ($25,000), until such time as the required payroll and certified statement are submitted.

(b) When calculating the amount to be retained, amounts previously retained shall not be included as amounts earned by the first-tier subcontractor.

(c) The contractor must verify that the first-tier subcontractor has filed the required payroll and certified statement(s) with the public agency before the contractor may pay the first-tier subcontractor any amount retained under this section.

(d) Once the first-tier subcontractor has filed the required payroll and certified statement with the public agency, the contractor must pay the amount retained to the first-tier subcontractor within 14 days.

(7) Notwithstanding ORS 279C.555 or 279C.570(7), amounts retained pursuant to the provisions of this rule shall be in addition to any other amounts retained.

(8)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(B), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies providing funds for the project.

(b) When more than one public agency provides funds for a project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

(9)(a) If a project is a public works of the type described in ORS 279C.800(6)(a)(C), and no public agency awards a contract to a contractor for the project, the contractors and any subcontractors employing workers upon the public works project shall submit weekly payrolls as required by ORS 279C.845 and this rule to the public agency or agencies that will occupy or use the completed project.

(b) When more than one public agency will occupy or use the completed project, the public agencies may designate one agency to receive the contractor's and any subcontractors' payrolls.

[ED. NOTE: Forms and Publications referenced are available from the agency.]
Stat. Auth.: ORS 279 & 651.060
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 13-1992, f. & cert. ef. 12-14-9; BL 3-1996, f. & cert. ef. -1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0010, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0013
Notice of Public Works Form

(1) The notification form required by ORS 279C.835 is the Notice of Public Works form, **WH-81**.

(2) Except as provided in sections (4) and (5) of this rule, the public agency must file the Notice of Public Works form, WH-81, with the Prevailing Wage Rate Unit within 30 days after the date a public works contract is awarded.

(3) The Notice of Public Works form, **WH-81**, must be accompanied by:

(a) payment of the fee required pursuant to ORS 279C.825; and

(b) a copy of the disclosure of first-tier subcontractors submitted to the public agency by the contractor if required pursuant to ORS 279C.370 and if a public agency awards a contract to a contractor for a public works project.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency providing public funds for the project at the time the public agency commits to the provision of funds for the project.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency when the agency enters into an agreement to occupy or use the completed project.

(6) Public agencies are not required to file a Notice of Public Works form when the contract awarded is not regulated under the provisions of ORS 279C.800 to 279C.870.

[ED. NOTE: Forms and Publications referenced are available from the agency.]
Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0013, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0015
Public Works Bonds

(1) Pursuant to ORS 279C.836, except as provided, before starting work on a contract or subcontract for a public works project of $100,000 or more, a contractor or subcontractor must file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of $30,000. For purposes of this section, "project of $100,000 or more" includes, but is not limited to, the

combined value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project, but does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay.

(2) The Commissioner of the Bureau of Labor and Industries adopts the language in the Statutory Public Works Bond set forth in Appendix 5.

(3) The name of the entity as it appears on the public works bond must be the same as the entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners or venturers (except limited partners);

(c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and in the name of the limited liability partnership;

(d) If the entity is a limited partnership, the bond must be issued in the name of all general partners and in the name of the limited partnership and any other business name(s) used. Limited partners do not need to be listed on the bond;

(e) If the entity is a corporation or trust, the bond must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company.

(4) If at any time an entity changes or amends its entity name, the Construction Contractors Board must be notified within 30 days of the date of the change.

(5) If an entity is a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity, and changes the entity to one of the other entity types, the new entity must supply a new bond.

(6) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

(7) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a bonded entity will be processed regardless of business names used by such entity.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800 - 279C.870

Hist.: BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 5-2008, f. & cert. ef. 3-10-08; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0020

Public Works Contracts and Contract Specifications; Required Conditions

(1) For purposes of this rule:

(a) "Construction Manager/General Contractor contract" (or "CM/GC contract") means a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, constructability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the pre-construction tasks are complete or substantially complete. "CM/GC" refers to the general contractor/construction manager under this form of contract. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team.

(b) "Construction specifications" include the detailed description of physical characteristics of the improvement, design details, technical descriptions of the method and manner of doing the work, quantities or qualities of any materials required to be furnished, descriptions of dimensions, required units of measurement, composition or manufacturer, and descriptions of any quality, performance, or acceptance requirements.

(2) Every public works contract must contain the following:

(a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week if four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540;

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520); and

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530).

(3) Every public works contract and subcontract must contain a provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher.

(4)(a) The specifications for every public works contract must contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.). Except as provided in sections (6) and (7) of this rule, the existing rate of wage is the rate in effect at the time the initial specifications were first advertised for bid solicitations.

(b) If a public agency is required under subsection (a) of this section or section (6) of this rule to include the state and federal prevailing rates of wage in the specifications for a contract for public works, the public agency also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(b).

(5)(a) The provisions described in sections (3) and (4), and sections (6) and (7) if applicable, must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is $50,000 or more (Reference: ORS 279C.830).

(b) A statement incorporating the applicable prevailing wage rate publication and any amendments thereto or Davis-Bacon wage rate determination into the specifications by reference will satisfy these requirements. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(c) When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(6) When a public agency is a party to a CM/GC contract, the CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the CM/GC contract. For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price. For purposes of this rule, the CM/GC contract enters the construction phase when the agency

first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project.

(7) A public works project described in ORS 279C.800(6)(a)(B) or (C) that is not a CM/GC contract subject to section (6) of this rule is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

(8) If a project is a public works of the type described in ORS 279C.800(6)(a)(B) or (C), a public agency will be deemed to have complied with the provisions of ORS 279C.830 if the public agency requires compliance with the provisions of section (5) of this rule in any agreement entered into by the public agency committing to provide funds for the project or to occupy or use the completed project.

(9) Public agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

Stat. Auth.: ORS 279C & 651.060
Stats. Implemented: ORS 279C.800–279C.870
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0020, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 2-2007, f. & cert. ef. 1-23-07; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0030
Records Availability

(1) Every contractor and subcontractor performing work on a public works contract shall make available to representatives of the Wage and Hour Division records necessary to determine if the prevailing wage rate has been or is being paid to workers upon such public work. Such records shall be made available to representatives of the Wage and Hour Division for inspection and transcription during normal business hours.

(2) The contractor or subcontractor shall make the records referred to in section (1) of this rule available within 24 hours of a request from a representative of the Wage and Hour Division or at such later date as may be specified by the division.

(3) When a prevailing wage rate claim or complaint has been filed with the Wage and Hour Division or when the division has otherwise received evidence indicating that a violation has occurred and upon a written request by a representative of the Division a public works contractor or subcontractor shall send a certified copy of such contractor's or subcontractor's payroll records to the Division within ten days of receiving such request. The Division's written request for such certified copies will indicate that a prevailing wage rate claim has been filed or that the division has received evidence indicating that a violation has occurred.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.348 - 279.380
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0030, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0035
Payment of Prevailing Rate of Wage

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed. Additionally, all wages due and owing to the workers shall be paid on the regular payday established and maintained under ORS 652.120.

(2) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as determined under ORS 279C.815.

(3) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(4) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.

(5) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the applicable prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.

(6) Except as provided in ORS 279C.838, persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the applicable prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-025-0004(25) or when the work is performed in fabrication plants, batch plants, borrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(7) Except as provided in ORS 279C.838, persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the applicable prevailing wage rate for work performed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-025-0004(25).

(8) Persons employed on a public works project for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage.

(9) Every apprentice, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at an apprentice wage rate, who is not an apprentice as defined in these rules, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(10) Every trainee, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker listed on a payroll at a trainee wage rate, who is not a trainee as defined in these rules, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Stat. Auth.: ORS 279 & 651
Stats. Implemented: ORS 279.350
Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0035, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0085
Contract Ineligibility

(1) Under the following circumstances, the commissioner, in accordance with the Administrative Procedures Act, may determine that, for a period not to exceed three years, a contractor, subcontractor or any firm, limited liability company, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for a public works:

(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on a public works project as required by ORS 279C.840;

(b) The subcontractor has failed to pay the prevailing rate of wage to workers employed on a public works project as required by ORS 279C.840 and the contractor has paid the workers on the subcontractor's behalf;

(c) The contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required by ORS 279C.840(4) and these rules; or

(d) The contractor or subcontractor has intentionally falsified information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.

(2) When the contractor or subcontractor is a corporation, the provisions of this rule will apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing wage rates, the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf or the intentional falsification of information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.

(3) As used in section (2) of this rule, any corporate officer or corporate agent responsible for the failure to pay or post the prevailing wage rates, the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf or for the intentional falsification of information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845, includes, but is not limited to, the following individuals when the individuals knew or should have known the amount of the applicable prevailing wages or that such wages must be posted:

(a) The corporate president;

(b) The corporate vice president;

(c) The corporate secretary;

(d) The corporate treasurer;

(e) Any other person acting as an agent of a corporate officer or the corporation.

(4) The Wage and Hour Division will maintain a written list of the names of those contractors, subcontractors and other persons who are ineligible to receive public works contracts and subcontracts. The list will contain the name of contractors, subcontractors and other persons, and the name of any firms, corporations, partnerships or associations in which the contractor, subcontractor or other persons have a financial interest. Except as provided in OAR 839-025-0095, such names will remain on the list for a period not to exceed three (3) years from the date such names were first published on the list.

(5) Before placing a name on the ineligible list referred to in section (4) of this rule, the commissioner will serve a notice of intended action upon the contractor or subcontractor in the same manner as service of summons or by certified mail, return receipt requested. The notice will include:

(a) A reference to ORS 279C.840;

(b) A short and concise statement of the matters which constitute intentional failure or refusal to pay or post the prevailing rate of wage or intentional falsification of information in the certified statements;

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) A statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing as provided in section (5)(c) of this rule;

(e) A statement that failure to make written request to the commissioner for a contested case hearing within the time specified will constitute a waiver of the right thereto; and

(f) A statement that if a hearing is requested, the contractor or subcontractor will be given information on procedures and rights as required by ORS 183.413(2).

(6) Upon the failure of the contractor or subcontractor to request a contested case hearing within the time specified, the commissioner or the commissioner's designee will enter an order supporting the bureau's action.

(7) If a contractor or subcontractor makes a timely request for a contested case hearing a hearing will be held in accordance with the Attorney General's Model Rules of Procedure under the Administrative Procedure Act by the commissioner or the commissioner's designee.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0085, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0200

Fees to Be Paid by Public Agency

(1) A public agency must pay a fee to the Prevailing Wage Rate Unit for every contract awarded to a contractor for a public work which is regulated under the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870).

(2) The amount of the fee is one tenth of one percent (.001) of the contract price. However, the fee must be no less than $250 nor more than $7,500 regardless of the contract price.

(3) The public agency must pay the fee at the time the public agency notifies the commissioner under ORS 279C.835 a contract subject to the provisions of Prevailing Wage Rate law has been awarded.

(4) In order to assist public agencies in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form, WH-39, is available, on request, from the Prevailing Wage Rate Unit.

(5) As used in this rule, "contract price" means the dollar amount of the contract on the date it was awarded to the contractor and the dollar amount of any subsequent change orders or other adjustments.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0200, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0210

Adjustment of Fees

(1) Within 30 days of the final progress payment to the contractor by the public agency after completion of the contract, the public agency must determine the final contract price. The public agency must consider all change orders or other adjustments to the contract price in making the determination.

(2) The public agency must calculate the fee in accordance with OAR 839-025-0200(2) and must credit the amount paid pursuant to 839-025-0200(3). The difference, if any, must be determined as follows:

(a) In the case of a reduction of more than $100 in the amount of the fee, the public agency may submit a request to the bureau for a refund of the difference and the bureau will pay a refund to the public agency;

(b) In the case of an increase of more than $100 in the amount of the fee, the public agency must pay the difference to the bureau.

(3) Requests for refunds and additional payments must be submitted with sufficient documentation to show how the amount to be refunded or to be paid was calculated. All such requests or payments must be made to the Prevailing Wage Rate Unit within 30 days after the date the final progress payment was made to the contractor by the public agency after completion of the contract.

(4) In order to assist public agencies in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form, WH-40, is available, on request, from the Prevailing Wage Rate Unit.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0210, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

839-025-0530

Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279C.800 to 279C.870) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.

(2) Civil penalties may be assessed against any contractor, subcontractor or public agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.

(3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:

(a) Failure to pay the applicable prevailing rate of wage in violation of ORS 279C.840;

(b) Failure to pay all wages due and owing to the contractor's or subcontractor's workers on the regular payday established and maintained under ORS 652.120 in violation of ORS 279C.840(1).

(c) Failure to post the applicable prevailing wage rates in violation of ORS 279C.840(4);

(d) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279C.840(5);

(e) Failure to include a provision in a subcontract that workers shall be paid not less than the specified minimum hourly rate of wage in violation of ORS 279C.830(1)(c);

(f) Failure to include in a subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3);

(g) Failure to file with the Construction Contractors Board a public works bond, as required under ORS 279C.836, before starting work on a contract or subcontract for a public works project subject to the provisions of 279C.800 to 279C.870;

(h) Failure to verify that a subcontractor has filed a public works bond as required or has elected not to file a public works bond under ORS

279C.836 prior to permitting a subcontractor to start work on a public works project;

(i) Failure to file certified statements in violation of ORS 279C.845;

(j) Filing inaccurate or incomplete certified statements in violation of ORS 279C.845;

(k) Failure to retain 25 percent of the amount the first-tier subcontractor earned when the first-tier subcontractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;

(l) Paying the prevailing rate of wage in violation of ORS 279C.840(6);

(m) Reducing an employee's pay in violation of ORS 279C.840(7);

(n) Taking action to circumvent the payment of the prevailing wage, other than subsections (j) and (l) of this section, in violation of ORS 279C.840(7);

(o) Failure to submit reports and returns in violation of ORS 279C.815(3);

(p) Failure to certify the accuracy of reports and returns in violation of ORS 279C.815(3);

(q) Failure to timely pay the fee required by ORS 279C.825 on public works contracts first advertised or solicited prior to January 1, 2008;

(r) Receiving a public works contract or subcontract while on the list of ineligibles in violation of ORS 279C.860;

(s) Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860.

(4) The commissioner may assess a civil penalty against a public agency for any of the following violations:

(a) Failure to include a contract provision stating that workers must be paid the applicable prevailing rate of wage in violation of ORS 279C.830(1)(c);

(b) Failure to include in the contract specifications a provision stating the applicable existing prevailing wage rate in violation of ORS 279C.830(1);

(c) Failure to include in the specifications for a contract for a public works stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3);

(d) Failure to include in a contract for a public works a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3)(a);

(e) Failure to include in a contract for a public works a provision requiring the contractor to include in every subcontract a provision requiring the contractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt, in violation of ORS 279C.830(3)(b);

(f) Failure to notify the commissioner when a contract is awarded in violation of ORS 279C.835;

(g) Dividing a public works project in violation of Or Laws 2007, ch. 764, sec. 44;

(h) Failure to include a copy of the disclosure of first-tier subcontractors with the Notice of Award in violation of ORS 279C.835;

(i) Failure to retain 25 percent of the amount the contractor earned when the contractor fails to submit payroll and certified statement forms to the public agency in violation of ORS 279C.845;

(j) Failure to timely pay the fee required in violation of ORS 279C.825;

(k) Awarding a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279C.860;

(l) Entering into an agreement with another state or a political subdivision or agency of another state agreeing that a contractor or subcontractor may pay less than the prevailing rate of wage determined in accordance with ORS 279C.815 under the terms of a contract for public works to which the contracting agency is a party or of which the contracting agency is a beneficiary in violation of Enrolled House Bill 2907 (2009).

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.370

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0530, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10

Construction Contractors Board
Chapter 812

Rule Caption: Changes notices, contracts, inspection reports for home inspectors; waiver for armed forces; housekeeping; and exemption promotion gifts.
Adm. Order No.: CCB 7-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 10-1-2009
Rules Amended: 812-001-0200, 812-003-0120, 812-003-0140, 812-004-0320, 812-008-0070, 812-008-0110, 812-008-0202, 812-020-0062
Subject: 812-001-0200 is amended to correct grammar and adopts the form "Home Inspection Consumer Notice."

812-003-0120 is amended to reorganize and clarify existing language and to exempt promotional gifts from the requirement that such items contain the CCB license number.

812-003-0140 is amended to revise the wording for consistency.

812-004-0320 is amended to remove the third-party beneficiary provision that a buyer who makes a home purchase conditioned upon an inspection report purchased by the homeowner will no longer be able to file a complaint for damages.

812-008-0070 is amended to waive the continuing education requirements if within the two-year period preceding renewal a home inspector serves active duty in the United States armed forces, including mobilization or deployment.

812-008-0110 is amended to add language to comply with the requirements of ORS 408.450 that excuses certified home inspectors on active duty service in the United States armed forces, including mobilization or deployment.

812-008-0202 is amended to require on the first page of the contract and inspection report a disclaimer notifying any person other than the home inspector's client that they should not reply upon the report and to revise the reference to the notice requirement to the new CCB notice "Home Inspection Consumer Notice."

812-020-0062 is amended, see ORS 701.124(7)(b), which authorizes CCB to exempt commercial contractors by rule. Exempts continuing education requirements if, within the to-year period preceding renewal, a commercially endorsed contractor serves on active duty in the United States armed forces, including mobilization or deployment.
Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0200
Consumer Notices Adoption

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled "Information Notice to Owner About Construction Liens," as revised December 20, 2007. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under ORS 701.330(1), the board adopts the form "Consumer Protection Notice" as revised February 20, 2009.

(3) In order to comply with the requirement to adopt an "Information Notice to Property Owners About Construction Responsibilities" form under ORS 701.325(3), the board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised September 23, 2008.

(4) In order to comply with the requirement to adopt a notice of procedure form under ORS 701.330(2), the board adopts the form "Notice of Procedure" dated December 4, 2007.

(5) The board adopts the form "Notice of Compliance with Homebuyer Protection Act" (HPA) as revised December 16, 2003.

(6) The board adopts the form "Model Features for Accessible Homes" dated December 4, 2007.

(7) The board adopts the form "Home Inspection Consumer Notice" dated October 27, 2009.

Stat. Auth.: ORS 87.093, 670.310, 701.235, 701.325, 701.330 & 701.530

Stats. Implemented: ORS 87.093, 701.235, 701.325, 701.330 & 701.530

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-

1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; Renumbered from 812-001-0020, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 1-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08; CCB 7-2008, f. 4-28-08, cert. ef. 5-1-08; CCB 16-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 2-2009(Temp), f. & cert. ef. 2-23-09 thru 8-22-09; CCB 3-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

812-003-0120
License Required to Advertise

(1) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, or insured unless that person holds a current, valid license.

(2) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS chapter 701 prepared by a contractor or at the contractor's request or direction, shall show the contractor's license number.

(b) All written bids, written inspection reports and building contracts subject to ORS chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) All advertisements by audio-only media, such as radio commercials, must contain an audible statement of the contractor's license number.

(e) All advertisements by video media or video and audio combined media, such as television commercials, must show visually the contractor's license number.

(f) All advertising by internet media, including but not limited to, website advertising must show visually the contractor's license number.

(g) All business cards, business letterhead, business signs at construction sites and all other written or visual advertising shall show the contractor's license number.

(h) This section does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

(i) This section does not apply to promotional gifts, including, but not limited to, pencils, pens, cups and items of clothing.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.010 & 701.026
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 3-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

812-003-0140
License Application Fees

(1) The application fee for all new, renewal, or reissued licenses is $260.

(2) Except as provided in section (3) of this rule, application fees will not be refunded or transferred.

(3) If a licensee submits an application to renew a license and the agency cannot renew the license because the applicant has formed a new business entity, the agency may refund the renewal application fee, less a $40 processing fee.

(4)(a) Any licensee in the United States armed forces need not pay a license renewal fee if such fee would be due during the licensee's active duty service.

(b) A licensee in the United States armed forces shall pay the next license renewal fee that will become due after the licensee is discharged from active duty service.

(c) The agency may request that the licensee provide documentation of active duty status and of discharge.

(d) Section (4) of this rule applies to licensees that are sole proprietors or partners in a general partnership.

Stat. Auth.: ORS 670.310, 701.238 & 701.235
Stats. Implemented: ORS 701.056, 701.063, 701.238
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 4-2005, f. 8-24-05, cert. ef. 10-1-05; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 3-2008(Temp), f. & cert. ef. 1-10-08 thru 7-7-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09; CCB 6-2009, f. & cert. ef. 9-1-09, CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

812-004-0320
Jurisdictional Requirements

(1) A complaint must be of a type described under ORS 701.140.

(2) A complaint must be filed with the agency within the time allowed under ORS 701.143.

(3) A complaint will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section must be determined as follows:

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. Damages will be awarded only for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which the respondent was licensed.

(4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.026 in order to perform the work; and

(B) The complainant files a complaint arising out of a contract to construct the work at issue and the complaint is for unpaid labor or materials furnished under the contract.

(b) As used in section (4) of this rule, "properly licensed" means the complainant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the complaint;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to the complainant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on the complainant's license.

(5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;

(c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or

(d) A real estate purchase conditioned upon repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be dismissed under this section (7) if the previously filed complaint was:

(a) Withdrawn before the on-site meeting;

(b) Closed without a determination on the merits before the on-site meeting;

(c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110.

(d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(e) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

(9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabri-

cated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least $150 in amount, not including the processing fee required by 812-004-0110.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

812-008-0070
Requirements for Renewal of Certification

(1) An Oregon certified home inspector shall submit the following to the agency for renewal of certification:

(a) A properly completed renewal application on an agency form; and

(b) The renewal fee as required under OAR 812-008-0110; and

(c) Copies of completion certificates listing no less than 30 continuing education units (CEUs) completed by the Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought.

(2) If, during the two years immediately preceding the expiration date of the certification, an Oregon certified home inspector served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period.

Stat. Auth.: ORS 670.310, 701.235 & 701.350
Stats. Implemented: ORS 701.350 & 701.355
Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

812-008-0110
Prescribed Fees

The following prescribed fees are established:

(1) Application to become certified, $50.

(2) Test, first attempt, $50.

(3) Test, each sitting to retake one or more sections, $25.

(4) Initial two-year Certification, $150.

(5) Certification renewal (two years), $150.

(6) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of $20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) Except as set forth in subsection (6)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of $40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of $25 in addition to the required payment of the fees or penalty.

(7)(a) Any certified home inspector in the United States armed forces need not pay a renewal fee if such fee would be due during the certified home inspector's active duty service.

(b) A certified home inspector in the United States armed forces shall pay the next license renewal fee that will become due after the certified home inspector is discharged from active duty service.

(c) The agency may request that the certified home inspector provide documentation of active duty status and of discharge.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350
Stats. Implemented: ORS 293.445, 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 4-1999, f. & cert. ef. 6-29-99; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 1-2003(Temp), f. & cert. ef. 1-14-03 thru 7-13-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

812-008-0202
Contracts and Reports

(1) Home inspections undertaken according to Division 8 shall be based solely on the property conditions, as observed at the time of the home inspection.

(2) Oregon certified home inspectors shall:

(a) Provide a written inspection contract, signed by both the Oregon certified home inspector and client, prior to completing a home inspection that shall:

(A) State that the home inspection is in accordance with standards and practices set forth in Division 8 of OAR chapter 812;

(B) Describe the services provided and their cost;

(C) State where the planned inspection differs from the standard home inspection categories as set forth in OAR 812-008-0205 through 812-008-0214; and

(D) Conspicuously state whether the home inspection includes a wood destroying organism inspection and if such inspection is available for a fee.

(E) For the purpose of this rule, a home inspection shall be deemed completed when the initial written inspection report is delivered.

(b) Observe readily visible and accessible installed systems and components listed as part of a home inspection as defined by these rules unless excluded pursuant to these rules in OAR 812-008-0200 through 812-008-0214; and

(c) Submit a written report to the client that shall:

(A) Describe those systems and components as set forth in OAR 812-008-0205 through 812-008-0214;

(B) Record in the report each item listed in OAR 812-008-0205 through 812-008-0214 and indicate whether or not the property inspected was satisfactory with regard to each item of inspection; it will not be sufficient to satisfy subsection (2)(c) of this rule that the certified home inspector prepare a report listing only deficiencies;

(C) State whether any inspected systems or components do not function as intended, allowing for normal wear and tear; and how, if at all, the habitability of the dwelling is affected;

(D) State the inspector's recommendation to monitor, evaluate, repair, replace or other appropriate action;

(E) State the Construction Contractors Board license number of the business and the name, certification number and signature of the person undertaking the inspection; and

(F) Include on the first page of the contract and on the first page of the report, in bold-faced, capitalized type and in at least 12 point font, the following statement:

"THIS REPORT IS INTENDED ONLY FOR THE USE OF THE PERSON PURCHASING THE HOME INSPECTION SERVICES. NO OTHER PERSON, INCLUDING A PURCHASER OF THE INSPECTED PROPERTY WHO DID NOT PURCHASE THE HOME INSPECTION SERVICES, MAY RELY UPON ANY REPRESENTATION MADE IN THE REPORT."

(d) Submit to each customer at the time the contract is signed a copy of "Home Inspection Consumer Notice."

(3) Division 8 does not limit Oregon certified home inspectors from reporting observations and conditions or rendering opinions of items in addition to those required in Division 8.

(4) All written reports, bids, contracts, and an individual's business cards shall include the Oregon certified home inspector's certification number.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355
Stats. Implemented: ORS 701.350 & 701.355
Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; Renumbered from 812-008-0080, CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; CCB 3-2006, f. & cert. ef. 3-2-06; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

812-020-0062
Exemptions — Continuing Education for Commercial Contractors

(1) Commercial contractors subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693 do not need to satisfy the continuing education requirements. These contractors include, but are not limited to:

(a) Electrical contractors subject to regulation under ORS 479.510 to 479.945.

(b) Plumbing contractors subject to regulation under ORS chapter 693; or

(c) Boiler contractor subject to regulation under ORS 480.510 to 480.670.

(d) Elevator contractors subject to regulation under ORS 479.510 to 479.945.

(e) Renewable energy contractors subject to regulation under ORS 479.510 to 479.945.

(f) Pump installation contractors subject to regulation under ORS 479.510 to 479.945.

(g) Limited sign contractors subject to regulation under ORS 479.510 to 479.945.

(2) Commercial contractors endorsed only as commercial developers do not need to satisfy the continuing education requirements.

(3) If, during the two years immediately preceding the expiration date of the license, a commercial contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the commercial contractor is a:

(a) Sole proprietor;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.124 & 701.235
Stats. Implemented: 701.124
Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10

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Department of Administrative Services
Chapter 125

Rule Caption: Disposition and Acquisition of Real Property Interests.
Adm. Order No.: DAS 10-2009
Filed with Sec. of State: 11-19-2009
Certified to be Effective: 11-19-09
Notice Publication Date: 9-1-2009
Rules Amended: 125-045-0210, 125-045-0215, 125-045-0225
Subject: This amendment changes:

OAR 125-045-0210(1)(b) by capitalizing the word "Any" at the beginning of the sentence and correcting the section numbering starting at (4) through (8) to eliminate a duplication of section (3).

OAR 125-045-0215(2) by allowing a letter of opinion from a licensed real estate professional for "dispositions" as well as acquisitions when determining a fair market value for properties less than $100,000 in estimated fair market value.

OAR 125-045-0215(3) by reducing the threshold for Administrator approval of the form of Appraisal from $500,000 to $100,000 of estimated fair market value.

OAR 125-045-0215(3)(a) by capitalizing the word "Shall" at the beginning of the sentence.

OAR 125-045-0225(10)(f) by correcting the word "elect" to "elects".

OAR 125-045-0225(15)(b) by removing the word "That" at the beginning of the sentence and capitalizing the word "such".
Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-045-0210
Alternative Rules for Acquisitions and Terminal Dispositions by State Agencies

(1) These rules apply to all Agencies seeking the Acquisition or Terminal Disposition of a Real Property Interest, with the exception of:

(a) The Department of Veterans' Affairs in any transaction for the acquisition or sale, or both, by the Director of Veterans' Affairs of a home or farm under ORS 88.720, 273.388, 406.050, 407.135, 407.145, 407.375 and 407.377; and

(b) Any other Agency subject to constitutional or statutory authority that supersede all or some of these rules.

(2) Any Agency subject to a Governing Body may adopt rules for the Acquisition and Terminal Disposition of Real Property Interests. Rules adopted by an Agency will not supersede these rules, however, unless the Agency's rules have been certified by the Division pursuant to this rule.

(3) If an Agency believes that it is exempt from all or a part of these rules due to superseding constitutional or statutory authority, the Agency shall, at least 30 days prior to the Acquisition or Terminal Disposition, provide notice to the Division. The notice shall include the following information:

(a) The specific requirements of these rules from which the Agency claims to be exempt;

(b) The constitutional or statutory authority that the Agency believes supersedes these rule(s); and

(c) Identification of the Agency's rules and the date they were filed with the Secretary of State.

(4) The Division shall determine whether the Agency's rules are consistent with ORS 270.005 to 270.140. If the Agency's rules are determined to be consistent, the Division shall certify the Agency's rules and shall notify the Agency that it may use Agency rules in lieu of these rules.

(5) Upon obtaining certification by the Division and after obtaining approval by the Agency's Governing Body, the Agency may acquire and dispose of Real Property Interests in accordance with its certified rules.

(6) The Division will maintain a master file of all Agencies whose rules are certified exempt from all or a part of these rules. This master file will include the Agency's request for exempt certification, identification of the filed rules that the Agency will be using and a copy of the Division's written determination.

(7) Once certified exempt, an Agency may not use amended rules filed for the Acquisition and Terminal Disposition of Real Property Interests in lieu of these rules until the Agency's restructured rules have again been certified exempt by the Division.

(8) Notwithstanding OAR 125-045-0210, the Division may, upon 30 days prior notice to the Agency, withdraw its certification of an Agency's rules as a result of a reexamination Department rules, policies and certifications or an Agency's compliance with its certified rules. In such event, the Agency shall thereafter comply with 125-045-0210 through 125-045-0245 until new or revised rules have been certified by the Division.

Stat. Auth.: ORS 270.100(1)(d)
Stats. Implemented: ORS 270.015, 270.100, 270.105 & 270.110
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 10-2009, f. & cert. ef. 11-19-09

125-045-0215
Appraisal and Determination of Value of Real Property Interests

(1) Prior to Acquisition from or Terminal Disposition to a party other than an Agency of a Real Property Interest, the Acquiring or Disposing Agency shall obtain an Appraisal of the Real Property Interest.

(2) For dispositions and acquisitions with an estimated fair market value of less than $100,000, a letter of opinion from a licensed real estate professional constitutes an Appraisal.

(3) If the estimated fair market value of the Real Property Interest is $100,000 or greater, the Administrator:

(a) Shall either select or approve the selection of an appraiser by the Disposing Agency;

(b) Must approve of the form and substance of the written Appraisal and the final determination of Appraised Fair Market Value by the appraiser; and

(c) May require that more than one Appraisal be obtained to establish the Appraised Fair Market Value.

(4) Upon written request by an Agency, the Administrator may preapprove the Agency's appraisal process provided the process is consistent with this rule.

(5) Upon written request by an Agency, the Administrator may preapprove the Agency's use of a directed appraisal for a particular use.

(6) Except for transfers from one Agency to another, an Agency shall not sell or dispose of any State Real Property Interest for less than its Appraised Fair Market Value without complying with OAR 125-045-0245.

(7) Prior to Terminal Disposition of a State Real Property Interest to other than an Agency, and regardless of the Appraised Fair Market Value of the State Real Property Interest, the Disposing Agency shall consider all the values of the State Real Property Interest to the people of the State, including values for fish and wildlife habitat and public access to other real property. If the Appraised Fair Market Price of the State Real Property Interest is greater than $100,000, the public will be invited to comment on the value of the State Real Property Interest. The Agency will solicit public comment in the manner defined in OAR 125-045-0235 or in a method the Division approves.

Stat. Auth.: ORS 270.015(2) & 270.100(1)(d)
Stats. Implemented: ORS 270.100 & 270.105
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 10-2009, f. & cert. ef. 11-19-09

125-045-0225
Terminal Disposition of State Real Property Interests (Notices to Department, State Agencies and Political Subdivisions — Clearing House Process)

(1) Prior to the Terminal Disposition by an Agency of a State Real Property Interest, the Agency shall first declare in writing to the Division its intent to dispose of the Interest. The written declaration must include the following:

(a) A detailed description of the State Real Property Interest to be transferred, including its approximate size in square feet or acreage and its legal description;

(b) A map showing the location of the State Real Property Interest;

(c) An explanation of the reason for disposal;

(d) A completed notice using a form provided by the Division; and

(e) Any other information the Division may request.

(2) To ensure that the Terminal Disposition best serves the interests of the State and the Disposing Agency, the Disposing Agency is encouraged to create a disposition strategy for the property. The Disposing Agency's disposition strategy should consider:

(a) The highest and best use of the Real Property Interest, consistent with the local planning goals;

(b) How the Real Property Interest might be marketed most effectively, given the nature of the Interest and likely potential purchasers; and

(c) How the economic return to the State might be maximized.

(3) After receipt of a declaration to dispose of a State Real Property Interest, and before a Disposing Agency may unconditionally offer to dispose of the State Real Property Interest, the Division shall provide notice of the intended Terminal Disposition to all Agencies authorized by law to acquire Real Property Interests. Written notice to agencies must include the following:

(a) A request that any Agency with an interest in acquiring the State Real Property Interest notify the Division in writing of its interest;

(b) The information required to be provided under OAR 125-045-0225(1);

(c) The deadline for the Agency to provide written notice to the Division of its interest in acquiring the State Real Property Interest, which may not be less than 30 days from the date the Division issues the notice, unless the Administrator determines that a shorter period is in the State's interest; and

(d) Any other information the Division or the Disposing Agency elects to include in the notice.

(4) Notification by the Clearing House Process, will be given to agencies by at least one of the following methods:

(a) Mailed notice;

(b) Electronic mail notice;

(c) Posting notice of the intended Terminal Disposition on the Division's website; or

(d) Newspaper publication meeting the requirements defined in OAR 125-045-0235(3).

(5) The Division may dispense with notice to Agencies if the Administrator adopts written findings that in the reasoned judgment of the Division it is unlikely that transfer of the State Real Property Interest to another Agency could satisfy the Disposing Agency's needs and that as a result, notice would be a futile act.

(6) If one or more Agencies responds timely to the written notice described in this rule, the responding Agency or Agencies shall negotiate with the Disposing Agency to determine if a sale, assignment, lease or other transfer can be completed. The Disposing Agency may not reject another Agency's bona fide offer to acquire the State Real Property Interest without Division approval.

(7) If two or more Agencies make bona fide offers to acquire the State Real Property Interest, the Disposing Agency shall determine, in its reasonable discretion, which, if any, offer is most advantageous to the State and the Disposing Agency. Prior to making this determination, the Division may solicit the advice of the PLAC. A Disposing Agency need not use a competitive bidding process in connection with the Terminal Disposition of a State Real Property Interest to another Agency.

(8) Before a Disposing Agency may dispose of a State Real Property Interest to other than another Agency, the Division shall provide notice of the intended Terminal Disposition to Political Subdivisions. Written notice will be given to each city, county, and school district within whose boundaries the State Real Property Interest is located. Notification by the Clearing House Process, will be given to all other Political Subdivisions by at least one of the following methods:

(a) Mailed notice;

(b) Electronic mail notice;

(c) Posting notice of the intended Terminal Disposition on the Division's website; or

(d) Newspaper publication meeting the requirements defined in OAR 125-045-0235(3).

(9) The Division may provide notice to Political Subdivisions at the same time as it provides notice to Agencies. The Division may dispense with notice to Political Subdivisions if the Administrator adopts written findings that in its reasoned judgment it is unlikely that transfer of the State Real Property Interest to a Political Subdivisions could satisfy the Disposing Agency's needs and that as a result, notice would be a futile act.

(10) All notices to Political Subdivisions must include the following:

(a) A request that any Political Subdivision with an interest in acquiring the State Real Property Interest notify the Division in writing of its interest;

(b) The information required to be provided under OAR 125-045-0225(1);

(c) The deadline for the Political Subdivision to provide written notice to the Division of its interest in acquiring the State Real Property Interest, which may not be less than 30 days from the date of the Division's notice unless the Administrator determines that a shorter period is in the State's interest;

(d) A reservation of the right of the Disposing Agency to reject any offers;

(e) Notice that a Political Subdivision's right to acquire the State Real Property Interest is subject and subordinate to the right of Agencies to acquire the State Real Property Interest (required only if notice to Political Subdivisions is made concurrently with notice to Agencies); and

(f) Any other information the Division or the Disposing Agency elects to include in the notice.

(11) If no Agency indicates an interest in acquiring the State Real Property Interest, or if a sale or other transfer to another Agency cannot be finalized, any Political Subdivision that has made a timely response to the notice may negotiate with the Disposing Agency to determine if a sale or other transfer can be completed.

(12) The Disposing Agency shall consider any bona fide offer submitted by a Political Subdivision but shall not be obliged to sell or otherwise transfer the State Real Property Interest to the Political Subdivision.

(13) No Terminal Disposition of a State Real Property Interest to a Political Subdivision for less than the Appraised Fair Market Value may occur without the written approval of the Administrator or Director in accordance with OAR 125-045-0245.

(14) If two or more Political Subdivisions make bona fide offers to acquire the State Real Property Interest, the Disposing Agency shall determine, in its reasonable discretion, which, if any, offer is acceptable to the State.

(15) The Disposing Agency may place any conditions on the transfer of a State Real Property Interest to a Political Subdivision it deems advisable, including but not limited to requirements that:

(a) Any State Real Property Interest sold or transferred to a Political Subdivision be subject to a deed restriction that the property be used solely for a public purpose or benefit; and

(b) Such State Real Property Interest not be resold to a private purchaser without the consent of the State.

(16) The Disposing Agency need not use a competitive bidding process in connection with the Terminal Disposition of a State Real Property Interest to a Political Subdivision.

Stat. Auth.: ORS 270.015(2), 270.100(1)
Stat. Implemented: ORS 270.100, 270.120
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 8-2009, f. & cert. ef. 7-21-09; DAS 10-2009, f. & cert. ef. 11-19-09

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Department of Agriculture
Chapter 603

Rule Caption: Amends errors and omissions.
Adm. Order No.: DOA 15-2009
Filed with Sec. of State: 12-7-2009
Certified to be Effective: 12-7-09
Notice Publication Date: 12-1-2009
Rules Amended: 603-057-0160
Subject: OAR 603-057-0160:

Add intended crop or site to information required in the application for a Site Specific Experimental Use Permit.

Amend a section reference to be correct and applicable.

Clarify the intent for all users of experimental pesticides to be subject to recordkeeping requirements.

Make consistent the language regarding the destruction/isolation of food or feed items subject to experimental pesticide use.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-057-0160

Pesticide Use for Experimental or Research Purposes

(1) Use of any substance or combination of substances as a pesticide with the intent of gathering data needed to satisfy pesticide registration requirements of the United States Environmental Protection Agency (EPA) or of the department shall be considered pesticide use for experimental or research purposes.

(a) An experimental use permit that is issued by the department constitutes the approval required by ORS 634.022(2).

(b) The permit requirement in this section is in addition to pesticide licensing requirements.

(2) The requirement to obtain an experimental use permit is not applicable to:

(a) Experiments or research conducted by federal or state agencies; or

(b) Experiments or research conducted entirely in one or more greenhouses; or

(c) Experiments or research that only:

(A) Use pesticides that are registered by EPA and the department; and

(B) Use pesticides in the manner consistent with the product label.

(3) To obtain an experimental use permit, a person must submit a complete application to the department and be in compliance with subsection (14) of this section. The pesticide use described in the application may not begin until the department issues the experimental use permit.

(a) The applicant must use a form approved by the department; and

(b) The application must be submitted to the department at least 30 days prior to intended use.

(4) There are two types of experimental use permits: site-specific and collective.

(5) A site-specific experimental use permit authorizes pesticide use for experimental or research purposes that are at sites specified in the permit and are not covered by a collective experimental use permit.

(a) Approvable sites include, but are not limited to, aquatic, residential, recreational and structural sites, areas with public access, commodity storage facilities, and areas exceeding a total of one acre.

(b) Each application for a site-specific experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit;

(B) Identification of each pesticide to be used, including;

(i) The name of the pesticide active ingredient;

(ii) The name of the pesticide product, if any; and

(iii) The EPA registration number of the pesticide product, if any.

(C) The name, address, and telephone numbers of the person responsible for carrying out the provisions of the experimental use permit at each specific site, and the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(D) The purpose of the experiment or research, including a list of the intended target pest(s), if any;

(E) The approximate date(s) of pesticide use;

(F) The intended crop or site of pesticide use;

(G) Specific description and location of each site where pesticide use may occur, including the size (for example, acres, or square feet) of each site;

(H) Disposition of any food or feed item from the crop or site on which the pesticide will be used;

(I) Application rate(s) of the pesticide, and number of applications;

(J) Method of application;

(K) Timing and duration of the proposed experiment or research;

(L) Total amount of pesticide to be used, diluent, and dilution rate;

(M) Copy of any experimental use permit issued by EPA, if applicable;

(N) A copy of the labeling that will accompany the pesticide in the field; and

(O) Any other information pertinent to the experiment or research specifically requested by the department.

(6) A site-specific experimental use permit may be issued for up to twelve months from the date of approval by the department.

(7) A collective experimental use permit authorizes pesticide use for experiments or research without identifying any specific site. Approvable sites include agricultural and forestry sites.

(a) The applicant may use one or more sites in any location in Oregon provided that the total size of all of the sites used for a particular pesticide does not exceed one acre.

(b) Each application for a collective experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit, the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(B) A signed statement that all pesticide use will comply with all of the provisions of the collective experimental use permit and of this section; and

(C) Any other information pertinent to the application specifically requested by the department.

(8) A collective experimental use permit will be issued for as long as one calendar year, ending December 31st.

(9) Any person conducting pesticide use for experimental or research purposes must be appropriately licensed by the department and include the category Demonstration and Research, as specified in OAR 603-057-0110(3), on that license. This licensing requirement applies to all persons making pesticide applications for experimental or research purposes and is not limited to persons conducting pesticide research authorized by an experimental use permit.

(10) Any crop or site on which a pesticide is used for experimental or research purposes shall be under the control of the person authorized to conduct that pesticide use. Said control may include:

(a) Ownership, rental or lease of the land on which the crop or site is located by the person;

(b) Ownership, rental or lease of the land on which the crop or site is located by the immediate employer of the person;

(c) Documented permission for the pesticide use from the owner, renter or leaseholder of the land on which the crop or site is located;

(d) Documented permission for the pesticide use from the public entity in possession or control of the land on which the crop or site is located.

(11) Any person using pesticides for experimental or research purposes shall prepare, maintain, and provide records in the same manner as in ORS 634.146.

(12) As provided by ORS 634.322(6), the department may deny an application for an experimental use permit or, amend, suspend or revoke any experimental use permit issued by the department.

(13) The department may establish conditions in an experimental use permit approval that the department determines necessary to be consistent with ORS Chapter 634 and this section.

(14) The holder of an experimental use permit shall provide the department a summary report of the experiments and research conducted under the permit no later than 30 days after the expiration date of the permit.

(a) Each summary report must include, at a minimum, the identification number of the experimental use permit, the records required by subsection (11) of this section, any adverse environmental, human, or animal health effects resulting from the pesticides used, and, if any pesticide use occurred on a food or feed item, documentation of food or feed item destruction, crop/site isolation, or other measures taken to prevent the food or feed item from being used or consumed.

(b) If the required summary report is not provided to the department, the department will not issue any future experimental use permit to the applicant.

(15) If information is provided in an experimental use permit application, summary report, or other form that is identified by the applicant as confidential, the department will hold the information confidential to the extent allowed under ORS Chapter 192.

(16) Any food or feed item to which a pesticide used for experimental or research purposes has been applied must be rendered unusable for food or feed unless a tolerance greater than the residues resulting from the use has been established or, if allowed by law, conditions implemented to prevent any use of the treated crop/site for food or feed for a period no less than 365 days. Such food or feed item may include, but is not limited to crop, forage (including grazing rangeland or pasture), green chop, hay, seed screenings, silage, and straw. The department requires documentation of food or feed item destruction or crop/site isolation as a condition of the experimental use permit.

(17) The department may monitor any pesticide used for experimental or research purposes. Monitoring may include, but is not limited to:

(a) Observing, inspecting, and documenting mixing, loading, transportation, and application activities;

(b) Inspecting and documenting application equipment;

(c) Collecting and analyzing samples;

(d) Interviewing any person that may have knowledge regarding the pesticide use; and

(e) Reviewing any records.

(18) The permit holder or the person that conducted the pesticide use must immediately report to the department any adverse environmental, human, or animal health effects resulting from pesticides used for experimental or research purposes.

(19) In addition to any other liability or penalty provided by law, any failure by any person to comply with the provisions of this section, as determined by the department, may be used as a basis for one or more of the following actions, if applicable:

(a) To revoke, suspend or refuse to issue an experimental use permit, in accordance with ORS 634.022 or 634.322(6);

(b) To revoke, suspend or refuse to issue any license of a permit holder or of a person that conducted a pesticide use for experimental or research purposes, in accordance with ORS 634.322(4);

(c) To impose a civil penalty, in accordance with ORS 634.900.

Stat. Auth.: ORS 634
Stats. Implemented: ORS 634
Hist: DOA 8-2009, f. & cert. ef. 7-15-09; DOA 15-2009, f. & cert. ef. 12-7-09

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Department of Community Colleges and Workforce Development
Chapter 589

Rule Caption: Career Readiness Certification Program.
Adm. Order No.: DCCWD 6-2009
Filed with Sec. of State: 12-14-2009
Certified to be Effective: 12-14-09
Notice Publication Date: 11-1-2009
Rules Adopted: 589-007-0700
Subject: HB 2398, which was passed during the 2009 legislative session, calls for the Department of Community Colleges and Workforce Development (CCWD) to implement the statewide program for the Career Readiness Certification (CRC) Program.

The purpose of the Career Readiness Certification program is to prepare Oregonians for the workplace and for college as a part of implementing an integrated workforce delivery system that focuses on developing skills and talents of Oregonians.

The CRC in Oregon will provide documented, transportable, skills-based certificates to Oregon citizens that assist them in obtaining employment. Employers will recognize the CRC as a meaningful credential and will have confidence that certificate holders have the skills necessary to be successful in the workplace.
Rules Coordinator: Linda Hutchins—(503) 947-2456

589-007-0700
Career Readiness Certificate Program

(1) The purpose of the Career Readiness Certification (CRC) program is to prepare Oregonians for the workplace and for college as a part of implementing an integrated workforce delivery system that focuses on developing the skills and talents of Oregonians.

(2) The CRC in Oregon will provide documented, transportable, skills-based certificates to Oregon citizens that assist them in obtaining employment. Employers will recognize the CRC as a meaningful credential and will have confidence that certificate holders have the skills necessary to be successful in the workplace.

(3) The Department of Community Colleges and Workforce Development (CCWD) implements the statewide program for the Career Readiness Certificate called for in Section 2, HB 2398, 2009 session.

(4) CCWD shall execute and oversee statewide implementation of the Career Readiness Certificate. Implementation and administration of the CRC must involve, at a minimum, developing and establishing policies and procedures for:

(a) Initial skills review assessments to identify participant's skill levels;

(b) Targeted instruction and remedial skill-building for participants;

(c) Foundational skills assessments for participants;

(d) Training of staff to administer assessments based on established guidelines;

(e) Delivery site criteria and validation of these criteria;

(f) Quality Assurance processes;

(g) Development of systems to collect, track, and maintain data;

(h) Printing and distribution of certificates;

(i) Participant's Eligibility criteria:

(A) Must be a resident of Oregon, Washington, or Idaho;

(B) Must be a United States citizen;

(C) Must comply with CRC assessment-taking procedures and requirements as outlined in American College Testing (ACT) test coordinator manual and directions for administration.

(5) Services provided by the CRC program shall include, but are not limited to:

(a) An assessment process that includes an initial skills review and a foundational skills assessment of examinees in reading for information, applied mathematics, and locating information at a minimum;

(b) Targeted and accelerated instruction and remedial skills training to increase foundational skills for participants as determined by the assessment process;

(c) Issuance of a Career Readiness Certificate to any eligible individual who earns a minimum score of a 3 on each of the CRC assessments for reading for information, applied mathematics, and locating information:

(A) Certificates issued to examinees on successful completion of the assessments must describe the skills demonstrated by the examinee as evidence of the individual's readiness for employment;

(B) Each of the CRC assessments shall be scored on a scale of three to seven. The level of credential examinees receive is based on the following:

(i) A bronze-level certificate requires a minimum score of three or above on each of the assessments.

(ii) A silver-level certificate requires a minimum score of four or above on each of the assessments.

(iii)A gold-level certificate requires a minimum score of five or above on each of the assessments.

(iv) A platinum-level certificate requires a minimum score of six or above on each of the assessments.

(6) The results of the CRC assessments must be used, at a minimum, to determine career readiness as determined by general skills requirements and job profiles; and to determine additional instructional needs for the participant in reading, locating information, and applied mathematics, or other, additional assessments needed or required.

(7) CCWD shall provide participants with the opportunity to agree to opt out of the CRC database by informing the Agency in writing, by mail, and with examinee's signature that he or she wants to opt out of the database.

(8) CCWD shall conduct periodic studies of the assessments used in Oregon to document Essential Skill for high school graduation to compare their effectiveness in preparing graduates for successful transition to post-secondary education and the workplace.

Stat. Auth.: ORS 183, 660.318 & 660.330 - 660.339
Stats. Implemented:
Hist.: DCCWD 2-2009(Temp), f. & cert. ef. 7-15-09 thru 1-8-10; DCCWD 6-2009, f. & cert. ef. 12-14-09

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

Rule Caption: Permanently adopts additional information for loan modifications on foreclosure notice form.
Adm. Order No.: FCS 11-2009
Filed with Sec. of State: 12-2-2009
Certified to be Effective: 12-7-09
Notice Publication Date: 11-1-2009
Rules Amended: 441-505-3046, 441-710-0540, 441-730-0246, 441-850-0042
Rules Repealed: 441-505-3046(T), 441-710-0540(T), 441-730-0246(T), 441-850-0042(T)
Subject: The legislature recently adopted Senate Bill 628 to address residential foreclosures and loan modification. Part of the bill amended the foreclosure notice form created by the 2008 Legislature in House Bill 3630. The amended form describes how to request a loan modification and provides information on resources available to the borrower. The Department of Consumer and Business Services is authorized to adopt rules prescribing the changes to this form. These rules add the loan modification provisions and directs users of the foreclosure notice to fill in specific information on the loan modification section of the foreclosure notice. The department adopted temporary rules in August 2009 to ensure that the information

amended for the amended form was is place before the bill became effective. These rules simply re-adopt the temporary rules on a permanent basis.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-505-3046
Contents of Foreclosure Notices
The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:
(1) The statewide telephone contact number for handling consumer queries as 800-SAFENET (800-723-3638)
(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;
(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;
(4) The website address of the Oregon State Bar as http://www.osbar.org;
(5) The website address for the organization providing more information and a directory of legal aid programs as http://www.oregonlawhelp.org;
(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and
(7) Information on federal loan modification programs as http://www.makinghomeaffordable.gov/.
Stat. Auth.: 2008 OL, Ch. 19 § 20
Stats. Implemented: 2008 OL Ch. 19 § 20, 2009 OL ch. 864, § 1 (Enrolled Senate Bill 628)
Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09

441-710-0540
Contents of Foreclosure Notices
The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch. 864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:
(1) The statewide telephone contact number for handling consumer queries as **800-SAFENET (800-723-3638)**
(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;
(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;
(4) The website address of the Oregon State Bar as http://www.osbar.org;
(5) The website address for the organization providing more information and a directory of legal aid programs as http://www.oregonlawhelp.org
(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and
(7) Information on federal loan modification programs as **http://www.makinghomeaffordable.gov/**.
Stat. Auth.: 2008 OL Ch. 19 § 20
Stat. Implemented: 2008 OL Ch. 19 § 20, 2009 OL ch. 864, § 1 (Enrolled Senate Bill 628)
Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09

441-730-0246
Contents of Foreclosure Notices
The sender of a notice form required by **2008 Or Laws, ch. 19, § 20** and as amended by **2009 Or Laws ch. 864, § 1** (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:
(1) The statewide telephone contact number for handling consumer queries as **800-SAFENET (800-723-3638)**
(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;
(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;
(4) The website address of the Oregon State Bar as http://www.osbar.org;
(5) The website address for the organization providing more information and a directory of legal aid programs as http://www.oregonlawhelp.org
(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and
(7) Information on federal loan modification programs as **http://www.makinghomeaffordable.gov/**.
Stat. Auth.: 2008 OL Ch. 19 § 20
Stat. Implemented: 2008 OL Ch. 19 § 20, 2009 OL ch. 864, § 1 (Enrolled Senate Bill 628)
Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09

441-850-0042
Contents of Foreclosure Notices
The sender of a notice form required by 2008 Or Laws, ch. 19, § 20 and as amended by 2009 Or Laws ch.864, § 1 (Enrolled Senate Bill 628) must enter in the form and format adopted by this rule:
(1) The statewide telephone contact number for handling consumer queries as **800-SAFENET (800-723-3638)**
(2) The telephone number of the Oregon State Bar's Lawyer Referral Service as 503-684-3763;
(3) The Oregon State Bar's Lawyer Referral Service toll-free number as 800-452-7636;
(4) The website address of the Oregon State Bar as http://www.osbar.org;
(5) The website address for the organization providing more information and a directory of legal aid programs as http://www.oregonlawhelp.org
(6) The toll-free consumer mortgage foreclosure information number as 800-SAFENET (800-723-3638); and
(7) Information on federal loan modification programs as **http://www.makinghomeaffordable.gov/**.
Stat. Auth.: 2008 OL Ch. 19 § 20
Stat. Implemented: 2008 OL Ch. 19 § 20, 2009 OL ch. 864, § 1 (Enrolled Senate Bill 628)
Hist.: FCS 9-2008, f. 10-15-08, cert. ef. 10-16-08; FCS 6-2009(Temp), f. 8-21-09 thru 2-17-10; FCS 11-2009, f. 12-2-09, cert. ef. 12-7-09

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Rule Caption: Adopts fees for mortgage banker, mortgage broker and mortgage loan originator licenses.
Adm. Order No.: FCS 12-2009
Filed with Sec. of State: 12-2-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Adopted: 441-860-0101, 441-860-0400
Rules Amended: 441-860-0020, 441-860-0030, 441-860-0050
Subject: ORS 59.850 requires the Director of the Department of Consumer and Business Services to set by rule fees for licensing mortgage banker and a mortgage brokers. The statute requires the director to set the fees in an amount that both reflects the costs of administering the Oregon Mortgage Lending Law. ORS 59.840 to 59.980 and establishes a reasonable emergency fund. The department's policy seeks to maintain a fund balance equivalent to two and four quarters of coverage. These permanent rules raise fees for initially issuing and renewing mortgage banker or mortgage broker licenses to administer the program and to maintain a one to two quarter reserve. Additionally, these permanent rules establish the fee for issuing and renewing the license of a mortgage loan originator.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-860-0020
Application Procedure
Each person desiring to obtain a mortgage banker or mortgage broker license shall apply to the Director by submitting the following:
(1) A completed application on a form approved by the Director;
(2) A surety bond or letter of credit pursuant to ORS 59.850(4) and OAR 441-860-0090;
(3) Financial statements prepared in accordance with generally accepted accounting principles, consisting of a balance sheet and a statement of income or operations which is dated not more than six months prior to submission of the application:
(a) The financial statements may be prepared by the licensee, except that if the Director finds it in the public interest, the Director may require that a licensee submit financial statements prepared by an independent accountant;
(b) If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of application shall also be submitted.
(4) Written Authorization to examine the applicant's Clients' Trust Account pursuant to ORS 59.935(3) or, in the case of a neutral escrow depository, a copy of the escrow agreement pursuant to OAR 441-875-0040(4);
(5) A copy of the written Notice to Financial Institution of Establishment of Clients' Trust Accounts pursuant to ORS 59.940. In the event the applicant does not receive client funds except at the time of closing, an Affidavit and Undertaking in the form and on terms approved by the Director;

(6) The name of the registered agent of the mortgage banker or mortgage broker as filed with the Corporations Division of the Secretary of State for the State of Oregon;

(7)(a) Each of the following persons shall submit the information required under the provisions of subsections (b) and (c) of this section:

(A) Any director, officer, and shareholder with ownership of greater than or equal to 10 percent of outstanding shares of a corporate applicant;

(B) Owner, if the applicant is an unincorporated sole proprietorship; and

(C) Each managing partner of a limited or general partnership.

(b) A biographical statement including name, address, social security number, date of birth, and a description of any material litigation for the preceding ten years. If more than one name or social security number has been used by any of the persons submitting the biographical statement, all names and social security numbers must be submitted; and

(c) An employment history for the ten years prior to the date of the application which shall include the name of each employer, job position and title, date each employment began and date each employment ended;

(d) Each branch supervisor shall submit an employment history for the ten years prior to the date of the application, or the date of employment as a supervisor. The employment history shall include the name of each employer, job position and title, date each employment began and date each employment ended.

(8) The information required pursuant to OAR 441-880-0030 for loan originators;

(9) The information required pursuant to OAR 441-860-0030 for each branch office;

(10) Payment of fees for application or renewal, as applicable, under OAR 441-860-0101.

(11) If an applicant for a license submits an application which is incomplete in any respect, the Director will contact the applicant to request the missing information. The applicant will have 30 days to respond to the request for information from the Director. If the applicant fails to respond, the application will be withdrawn.

Stat. Auth.: ORS 59.850, 59.855 & 59.900
Stats. Implemented: ORS 59.845 & 59.969
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10

441-860-0030
Branch Office Licensing

In the event a mortgage banker or mortgage broker wishes to operate a branch office as defined in OAR 441-860-0010, the licensee must submit the licensing fee specified in OAR 441-860-0101 and provide the following information on the original license application form or upon an amendment to the original application at least 30 days before the branch commences operation:

(1) The address of the location of each branch office, and the mailing address if different, and the branch office telephone number email address and facsimile number.

(2) The information required pursuant to OAR 441-860-0020(7) regarding the branch supervisor who will supervise the activities of the employees of the branch to insure compliance with all applicable rules and regulations.

(3) Upon satisfaction of the requirements listed above in (1) and (2), a separate branch office license will be issued by the Director for posting in the branch office location.

Stat. Auth.: ORS 59.850(1) & 59.900
Stats. Implemented: ORS 59.845
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10

441-860-0050
Renewal of Mortgage Banker and Mortgage Broker License

Licensees shall renew for a 24-month period from the date of original licensing or last renewal. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, an application for renewal of the license shall be submitted to the Director and shall include the following:

(1) A completed license renewal form approved by the Director.

(2) Financial statements on a compiled basis, consisting of a balance sheet and a statement of income or operations, prepared in accordance with generally accepted accounting principles, which is dated not more than six months prior to submission of the application. If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of the application must also be submitted.

(3) Current information on officers, directors, or persons who own ten percent or more of the outstanding shares of a corporate applicant, or every owner if the applicant is unincorporated.

(4) The information required pursuant to OAR 441-880-0030 for loan originators.

(5) If a licensee submits an application which is incomplete in any respect, the Director will contact the licensee to request the required information. The licensee shall have ten days to respond to the request for additional information. If the licensee fails to respond to the request, the renewal application will not be processed, and the license shall be canceled on the expiration date.

(6) If a licensee's license is canceled under section (6) of this rule, and the licensee remedies the incomplete application before the scheduled license expiration date, the license will be renewed for a two-year period.

Stat. Auth.: ORS 59.850(7), 59.855(2) & 59.900
Stats. Implemented: ORS 59.855 & 59.969
Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-04, 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10

441-860-0101
Fees Payable to the Director

In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a mortgage banker or a mortgage broker shall pay to the director the following fees at the time of application:

(1) A nonrefundable application fee for a mortgage banker or mortgage broker license of $1,100 plus a $500 nonrefundable application fee for each branch the mortgage banker or mortgage broker establishes in Oregon.

(2) A nonrefundable renewal application fee for a mortgage banker or mortgage broker license of $550 plus a $250 nonrefundable application fee for each branch the mortgage banker or mortgage broker maintains in Oregon.

Stat. Auth.: ORS 59.900
Stats. Implemented: ORS 59.850
Hist.: FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10

441-880-0400
Fees Payable to the Director

In addition to any fees required to participate in the National Mortgage Licensing System and Registry, a person applying for or renewing a mortgage loan originator license shall pay to the director a nonrefundable fee of $100 for the issuance or renewal of a mortgage loan originator license.

Stat. Auth.: 2009 OL ch. 863, § 13a
Stats. Implemented: ORS 59.900, 2009 OL ch. 863, § 3
Hist.: FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2009.
Adm. Order No.: ID 11-2009
Filed with Sec. of State: 12-9-2009
Certified to be Effective: 12-9-09
Notice Publication Date: 10-1-2009
Rules Amended: 836-011-0000
Subject: This rulemaking prescribes, for reporting year 2009, the required forms for the annual and supplemental financial statements required of insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.
Rules Coordinator: Sue Munson—(503) 947-7272

836-011-0000
Annual Statement Blank and Instructions

(1) For the purpose of complying with ORS 731.574, every authorized insurer, including every health care service contractor, shall file its financial statement required by ORS 731.574 for the 2009 reporting year on the annual statement blank approved for the 2009 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(2) Every authorized insurer, including every health care service contractor, shall complete its annual statement blank under section (1) of this rule for the 2009 reporting year, according to the applicable instructions published for that year by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(3) Every authorized insurer, including every health care service contractor, shall file each annual statement supplement for the 2009 reporting year, as required by the applicable instructions published for that year by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(4) This rule is adopted under the authority of ORS 731.244, 731.574 and 733.210 for the purpose of implementing ORS 731.574 and 733.210.

Stat. Auth.: ORS 731.244, 731.574 & 733.210

Stats. Implemented: ORS 731.574 & 733.210

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 10-1994, f. & cert. ef. 12-14-94; ID 7-1995, f. & cert. ef. 11-15-95; Renumbered from 836-013-0000; ID 4-1996, f. 2-28-96, cert. ef. 3-1-96; ID 16 -1996, f. & cert. ef. 12-16-96; ID 11-1997, f. & cert. ef. 10-9-97; ID 16-1998, f. & cert. ef. 11-10-98; ID 5-1999, f. & cert. ef. 11-18-99; ID 1-2001, f. & cert. ef. 2-7-01; ID 4-2002, f. & cert. ef. 1-30-02; ID 6-2003, f. & cert. ef. 12-3-03; ID 1-2006, f. & cert. ef. 1-23-06; ID 9-2007, f. & cert. ef. 11-8-07; ID 1-2009, f. & cert. ef. 1-29-09; ID 11-2009, f. & cert. ef. 12-9-09

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

Rule Caption: Workers' compensation claims administration, medical services and billing, reemployment assistance, and attorney fees.

Adm. Order No.: WCD 3-2009

Filed with Sec. of State: 12-1-2009

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Rules Adopted: 436-001-0420, 436-001-0430, 436-001-0440, 436-060-0012, 436-060-0400

Rules Amended: 436-001-0003, 436-001-0019, 436-009-0010, 436-009-0070, 436-010-0008, 436-010-0240, 436-010-0265, 436-010-0280, 436-030-0002, 436-030-0003, 436-030-0005, 436-030-0007, 436-030-0015, 436-030-0017, 436-030-0020, 436-030-0034, 436-030-0065, 436-030-0115, 436-030-0135, 436-030-0145, 436-030-0155, 436-030-0165, 436-030-0185, 436-030-0580, 436-060-0003, 436-060-0008, 436-060-0009, 436-060-0010, 436-060-0015, 436-060-0017, 436-060-0018, 436-060-0020, 436-060-0025, 436-060-0035, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0137, 436-060-0140, 436-060-0147, 436-060-0150, 436-060-0153, 436-060-0155, 436-060-0180, 436-060-0195, 436-060-0200, 436-060-0500, 436-060-0510, 436-105-0003, 436-105-0005, 436-105-0500, 436-105-0520, 436-105-0540, 436-105-0550, 436-110-0005, 436-110-0310, 436-110-0325, 436-110-0330, 436-110-0335, 436-110-0336, 436-110-0337, 436-110-0345, 436-110-0347, 436-110-0350, 436-110-0900, 436-120-0004, 436-120-0005, 436-120-0007, 436-120-0008, 436-120-0340, 436-120-0410, 436-120-0440, 436-120-0500, 436-120-0510, 436-120-0720, 436-120-0800, 436-120-0810, 436-120-0820, 436-120-0830, 436-120-0840, 436-120-0900, 436-120-0915, 436-150-0005, 436-150-0010, 436-150-0030, 436-160-0310, 436-160-0340

Rules Repealed: 436-030-0009, 436-075-0110

Rules Ren. & Amend: 436-001-0265 to 436-001-0400, 436-001-0265 to 436-001-0410, 436-120-0320 to 436-120-0115, 436-120-0320 to 436-120-0125, 436-120-0320 to 436-120-0135, 436-120-0320 to 436-120-0145, 436-120-0350 to 436-120-0145, 436-120-0320 to 436-120-0155, 436-120-0350 to 436-120-0165, 436-120-0360 to 436-120-0175, 436-120-0320 to 436-120-0185

Subject: OAR chapter 436, division 001, "Procedural Rules, Rulemaking, Hearings, and Attorney Fees"

These rules: Are updated and reorganized to improve clarity; implement House Bill 3345 by raising the maximum attorney fee payable under ORS 656.385 from $2,000 to $3,000, and making corresponding changes to the attorney fee matrix; consolidate rules related to attorney fees from OAR 436-010, 060, and 120.

OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules"

These rules: Clarify the types of identification numbers providers must include on their medical bills; allow a medical service provider to submit bills for independent medical examinations in the form or format agreed to by the insurer and the medical service provider.

OAR chapter 436, division 010, "Medical Services"

These rules: Implement HB 2045 by including chiropractors among those health care providers who may make findings of impairment (when serving as the worker's attending physician); implement HB 2197, which allows a medical service provider who is not qualified to be an attending physician to provide compensable medical service to an injured worker for a period of 30 days or for 12 visits from the date of the first visit on the initial claim (rather than the date of injury), whichever first occurs, without the authorization of an attending physician; defer to OAR 436-001 for awarding attorney fees under ORS 656.385; require use of a release form (in addition to Form 801 or 827) for release of HIV-related information; clarify requirements for collection of the workers' Social Security number on Form 827; allow and describe use of Form 827 to make claims for new or omitted medical conditions; require the health care provider to give the worker a copy of Form 3283 when giving the worker a copy of Form 827. (The agency prints nearly all 827s used by workers and providers, and will print Form 3283 as an attachment to Form 827.)

OAR chapter 436, division 030, "Claim Closure and Reconsideration"

These rules: Require that a Notice of Closure include information about a worker's right to be represented by an attorney and to request a vocational eligibility evaluation; clarify procedures for administrative claim closure; provide that requests for reconsideration of claim closures may be made by telephone; explain that the 14-day time frames for parties to submit certain records relevant to the reconsideration process begin with the director's notice of the start date of the reconsideration; require that evidence stored by the parties on audio media may be submitted to the director (for the purpose of reconsideration) only in transcribed form.

OAR chapter 436, division 060, "Claims Administration"

These rules: Specify when and how to issue claim-related notices after a worker is deceased, regardless of the cause of death; clarify requirements for the worker's employer to give the worker a copy of Form 3283, "A guide for workers recently hurt on the job," when the worker files a claim; lengthen the time period that an ongoing request by the claimant's attorney for future claim-related documents remains in effect; specify that time limits for sending most information to the director begin with the mailing date of the agency's letter or order; implement HB 2707 by prescribing notice requirements when the insurer learns that the worker was employed in more than one job at the time of injury; exclude secondary employment by Oregon subject volunteers from the calculation of supplemental disability; require notice to the worker, as part of the notice of claim acceptance, about criteria for reimbursement of claim-related expenses; describe timeliness criteria, notice requirements, and consent requirements related to the electronic payment of benefits to workers and beneficiaries; implement HB 3345 by setting conditions for the payment of penalty assessments to workers and fees to attorneys related to late payment of disputed claim settlement amounts.

OAR 436-075, "Retroactive Program," and OAR 436-150, "Workers' Benefit Fund Claims Program"

These rules: Eliminate references to "guaranty contract," because Senate Bill 559 (2007 Session) replaced the guaranty contract with policy-based proof of coverage and reporting.

OAR 436-105, "Employer-at-Injury Program (EAIP)"

These rules: Define "consumables," as purchases required to support the functioning of tools or equipment utilized during transitional work, and allow purchase of consumables under the EAIP; clarify

that a worksite modification must be related to limitations that resulted in the worker's EAIP eligibility or prevent the worsening of an accepted condition; clarify minimum reimbursement thresholds and when administrative costs are reimbursable.

OAR 436-110, "Preferred Worker Program"

These rules: Clarify the definition of "date of hire"; revise definitions of "premium" and "reimbursable wages" to be consistent with the definitions in OAR 436-105; implement HB 2197 by clarifying procedures for use of premium exemption under ORS 656.622; provide a more specific time limit for requesting claims cost reimbursement; create a new employment purchase type – placement assistance provided by a certified vocational counselor or any public or private agency that provides placement services, reimbursable if the assistance results in employment that the preferred worker retains for at least 90 days; provide that placement assistance may not be combined with vocational assistance under OAR 436-120.

OAR 436-120, "Vocational Assistance to Injured Workers"

These rules: Are reorganized to improve clarity; define several terms used in division 120 – "delivered," "director," "filed," "likely eligible," and "mailed"; defer to OAR 436-001 for awarding attorney fees under ORS 656.385; provide that modified or new employment that results from an employer-at-injury-activated use of the PWP is considered "suitable" 12 months after the department determines a worksite modification is complete; implement HB 2705 by eliminating the requirement to complete a vocational eligibility evaluation if the worker is released to regular work with the employer at injury or aggravation; specify that the insurer is not required to do an eligibility evaluation if the worker is deceased or has a permanent total disability award; implement HB 2195 by allowing an insurer, without approval by the director, to extend time loss up to 21 months; allow further training to a worker who has completed one training plan if there is a reasonable cause to do so; publish vocational fee schedule maximums as percentages of Oregon's state average weekly wage rather than fixed dollar amounts; to implement HB 2195, provide for "registration" rather than "authorization" of vocational assistance providers; require certified counselors who are subject to continuing education requirements under these rules to take at least eight hours (currently 7 1/2 hours) of training in ethical practices and at least six hours of training on the vocational assistance and reemployment assistance rules during the five years before certification renewal.

OAR 436-160, "Electronic Data Interchange"

These rules: Specify whether certain proof-of-coverage data elements should be mandatory or optional.

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

Rules are available on the internet: http://www.wcd.oregon.gov/policy/rules/rules.html

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-001-0003
Applicability and Purpose of these Rules

(1) OAR 436-001-0005 through 436-001-0009 establish supplemental procedures for rulemaking under ORS chapter 183 and apply to all division rulemaking on or after Jan. 1, 2010.

(2) OAR 436-001-0019 through 436-001-0300 establish supplemental procedures for hearings on matters within the director's jurisdiction, which are matters other than those concerning a claim as defined in ORS 656.704.

(a) In general, the rules of the Workers' Compensation Board in OAR chapter 438 apply to the conduct of hearings, unless these rules provide otherwise.

(b) These rules do not apply to hearings requested under ORS 656.740.

(c) These rules apply to hearings held on or after Jan. 1, 2010.

(3) OAR 436-001-0400 through 436-001-0440 apply to attorney fees awarded by the director under ORS 656.262 and 656.386, and to attorney fees awarded by the director or administrative law judge under ORS 656.385(1).

(a) These rules apply to attorney fees assessed by an order that is issued on or after Jan. 1, 2010.

(b) For attorney fees that are ordered to be paid in reconsideration proceedings under ORS 656.268(6), OAR 436-030-0175 applies.

(4) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704, 183
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-001-0019
Requests for Hearing

(1) A request for hearing on a matter within the director's jurisdiction must be filed with the administrator no later than the filing deadline. Filing deadlines will not be extended except as provided in section (7) of this rule.

(2) A request for hearing must be in writing. A party may use the division's Form 2839. A request for hearing must include the following information, as applicable:

(a) The name, address, and phone number of the party making the request;

(b) Whether the party making the request is the worker, insurer, medical provider, employer, any other party, or an attorney on behalf of a party;

(c) The number of the administrative order being appealed;

(d) The worker's name, address, and phone number;

(e) The name, address, and phone number of the worker's attorney, if any;

(f) The date of injury;

(g) The insurer's or self-insured employer's claim number;

(h) The division's (WCD) file number; and

(i) The reason for requesting a hearing.

(3) Requests for hearing may be filed in any of the following ways:

(a) By mail.

(b) By hand-delivery.

(c) By fax, if the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(d) By e-mail to wcd.hearings@state.or.us. If the request for hearing is an attachment to the e-mail, it must be in a format that Microsoft Word 2007® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(e) By using the on-line form available on the division's Web site at wcd.oregon.gov.

(4) The requesting party must send a copy of the request to all known parties and their legal representatives, if any.

(5) Timeliness of requests for hearing will be determined under OAR 436-001-0027.

(6) The director will refer timely requests for hearing to the board for a hearing before an administrative law judge. The director may withdraw a matter that has been referred if the request for hearing is premature, if the issues in dispute become moot, or if the director otherwise determines that the matter is not appropriate for hearing at that time.

(7) The director will deny requests for hearing that are filed after the filing deadline. The party may request a limited hearing on the denial of the request for hearing within 30 days after the mailing date of the denial. The request must be filed with the administrator. At the limited hearing, the administrative law judge may only consider whether:

(a) The denied request for hearing was filed timely; or

(b) If good cause existed that prevented the party from timely requesting a hearing on the merits. For the purpose of this rule, "good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.

Stat. Auth.: ORS 656.726(4) & 84.013
Stats. Implemented: ORS 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0155, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-001-0400
General Provisions and Requirements for Attorney Fees Awarded by the Director

(1) In order to be awarded an attorney fee, the attorney must file with the director a signed attorney retainer agreement.

(2) In cases in which time devoted is a factor in determining the amount of the fee, the attorney should submit a statement of the number of hours spent on the case. If the attorney has submitted a statement of hours and then spends more time on the case, the attorney may submit an updated statement, which the director will consider if an order has not already been issued. If the attorney does not submit a statement of hours, the director will presume the attorney spent one to two hours on the case.

(3) In cases in which a reasonable fee is to be assessed, the director may consider the following factors:

(a) The time devoted to the case.

(b) The complexity of the issues involved.

(c) The value of the interest involved.

(d) The skill of the attorney and the quality of representation.

(e) The nature of the proceedings.

(f) The benefit secured for the worker.

(g) The risk in a particular case that an attorney's efforts may go uncompensated.

(h) The assertion of frivolous issues or defenses.

Stat. Auth.: ORS 656.385(1), 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388, 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; Renumbered from 436-001-0265, WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-001-0410
Attorney Fees Awarded Under ORS 656.385(1)

(1) In cases in which the director or administrative law judge awards a fee under ORS 656.385(1):

(a) The fee must fall within the ranges of the matrix in subsection (1)(d), unless extraordinary circumstances are shown or the parties otherwise agree.

(b) Extraordinary circumstances are not established merely by exceeding eight hours or a benefit of $6,000.

(c) The matrix in subsection (1)(d) shows the maximum fee and fee ranges as percentages of the average weekly wage defined in ORS 656.211. Before July 1 of each year the director, by bulletin, will publish the matrix showing the maximum fee and fee ranges as dollar amounts, after adjusting the fees by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole dollar. [Matrix not included. See ED. NOTE.]

(2) For purposes of applying the matrix in medical disputes under ORS 656.245, 656.247, 656.260, and 656.327, the following may be considered in determining the value of the results achieved or the benefit to the worker:

(a) The fee allowed by the medical fee schedule in OAR 436-009 for the medical service at issue.

(b) The overall cost of the medical service at issue.

(3) For purposes of applying the matrix in vocational disputes under ORS 656.340, the value of vocational assistance or a training plan, unless determined to be otherwise, falls within the highest range of the matrix for "benefit achieved." In addition, the following may be considered in determining the value of the results achieved or the benefit to the worker:

(a) The actual or projected cost of the service at issue.

(b) The maximum spending limit in the fee schedule for vocational assistance costs in OAR 436-120-0720 for the service at issue.

[ED. NOTE: Matrix referenced are available from the agency.]
Stat. Auth.: ORS 656.385(1), 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388, 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; Renumbered from 436-001-0265, WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-001-0420
Attorney Fees Awarded Under ORS 656.262(11)

In cases in which the director awards a fee under ORS 656.262(11):

(1) OAR 438-015-0110 applies.

(2) The director may use the matrix in OAR 436-001-0410 as a guide in determining the amount of the fee.

(3) The director will publish by bulletin, before July 1 of each year, the percentage increase, if any, in the maximum attorney fee.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.262
Hist.: WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-001-0430
Attorney Fees Awarded Under ORS 656.262(12)

The matrix for determining the amount of the attorney fee assessed under ORS 656.262(12) (2009 Oregon Laws, chapter 526, section 1) is in OAR 436-060, Appendix "D" (436-060-0400).

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.262
Hist.: WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-001-0440
Time Within Which Attorney Fees Must Be Paid

Attorney fees assessed under OAR 436-001-0400 to 436-001-0440 must be paid within 30 days of the date the order awarding the fees becomes final.

Stat. Auth.: ORS 656.385(1), 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388, 656.704
Hist.: WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-009-0010
General Requirements for Medical Billings

(1) Only treatment that falls within the scope and field of the medical provider's license to practice will be paid under a worker's compensation claim.

(2) Billings must include the worker's full name and date of injury, the employer's name and, if available, the insurer's claim number and the provider's NPI. If the provider does not have an NPI, then the provider must provide its license number and the billing provider's FEIN. For provider types not licensed by the state, "99999" must be used in place of the state license number. All medical providers must submit bills to the insurer or, if provided by their contract for medical services, to the managed care organization. Medical providers must submit bills on a completed current UB-04 (CMS 1450) or CMS 1500 form, except for:

(a) Dental billings, which must be submitted on American Dental Association dental claim forms;

(b) Pharmacy billings, which must be submitted on the most current National Council for Prescription Drug Programs (NCPDP) form; and

(c) EDI transmissions of medical bills under OAR 436-009-0030(3)(c).

(d) Computer-generated reproductions of forms referenced in subsections (2)(a) and (b) may also be used.

(3)(a) All original medical provider billings must be accompanied by legible chart notes documenting services that have been billed and identifying the person performing the service and license number of the person providing the service. Medical providers are not required to provide their license number if they are already providing a national identification number.

(b) When processing billings via EDI, the insurer may waive the requirement that billings be accompanied by chart notes. The insurer remains responsible for payment of only compensable medical services. The medical provider may submit their chart notes separately or at regular intervals as agreed with the insurer.

(4) When billing for medical services, a medical service provider must use codes listed in CPT® 2009 or Oregon Specific Codes (OSC) that accurately describe the service. If there is no specific CPT® code or OSC, a medical service provider must use the appropriate HCPCS code, if available, to identify the medical supply or service. Pharmacy billings must use the National Drug Code (NDC) to identify the drug or biological billed.

(a) If there is no specific code for the medical service, the medical service provider must use the appropriate unlisted code from HCPCS or the unlisted code at the end of each medical service section of CPT® 2009 and provide a description of the service provided.

(b) Any service not identifiable with a code number must be adequately described by report.

(5) Medical providers must submit billings for medical services in accordance with this section.

(a) Bills must be submitted within:

(A) 60 days of the date of service;

(B) 60 days after the medical provider has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or

(C) 60 days after any litigation affecting the compensability of the service is final, if the provider receives written notice of the final litigation from the insurer.

(b) A medical provider must establish good cause when submitting a bill later than outlined in subsection (a) of this section. Good cause may include, but is not limited to, such issues as extenuating circumstances or circumstances considered outside the control of the provider.

(c) When a provider submits a bill within 12 months of the date of service, the insurer may not reduce payment due to late billing. When a provider submits a bill over twelve months after the date of service, the bill is not payable, except when a provision of subsection (a) of this section is the reason the billing was submitted after twelve months.

(6) When rebilling, medical providers must indicate that the charges have been previously billed.

(7) The medical provider must bill their usual fee charged to the general public. The submission of the bill by the medical provider shall serve as a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The department shall have the right to require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee charged to the general public. For purposes of this rule, "general public" means any person who receives medical services, except those persons who receive medical services subject to specific billing arrangements allowed under the law which require providers to bill other than their usual fee.

(8) Medical providers must not submit false or fraudulent billings, including billing for services not provided. As used in this section, "false or fraudulent" means an intentional deception or misrepresentation with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. A request for pre-payment for a deposition is not considered false or fraudulent.

(9) When a worker with two or more separate compensable claims receives treatment for more than one injury or illness, costs must be divided among the injuries or illnesses, irrespective of whether there is more than one insurer.

(10) Workers may make a written request to a medical provider to receive copies of medical billings. Upon receipt of a request, the provider may furnish the worker a copy during the next billing cycle, but no later than 30 days following receipt of the request. Thereafter, worker copies must be furnished during the regular billing cycle.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.245, 656.252, 656.254
Stats. Implemented: ORS 656.245, 656.252, 656.254
Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-009-0070
Oregon Specific Code, Other Services

(1) Except for records required in OAR 436-009-0010(3), copies of requested medical records shall be paid under OSC-R0001.

(2) A brief narrative by the attending physician or authorized nurse practitioner, including a summary of treatment to date and current status, and, if requested, brief answers to one to five specific questions related to the attending physician's or authorized nurse practitioner's current or proposed treatment, shall be paid under OSC-N0001.

(3) A complex narrative by the attending physician or authorized nurse practitioner, may include past history, history of present illness, attending physician's or authorized nurse practitioner's treatment to date, current status, impairment, prognosis, and medically stationary information, shall be paid under OSC-N0002.

(4) Fees for a PCE and a WCE shall be based upon the type of evaluation requested. The description of each level of evaluation and the maximum allowable payment shall be as follows:

(a) FIRST LEVEL PCE: This is a limited evaluation primarily to measure musculoskeletal components of a specific body part. These components include such tests as active range of motion, motor power using the 5/5 scale, and sensation. This level requires not less than 45 minutes of actual patient contact. A first level PCE shall be paid under OSC-99196, which includes the evaluation and report. Additional 15-minute increments may be added if multiple body parts are reviewed and time exceeds 45 minutes. Each additional 15 minutes shall be paid under OSC-99193, which includes the evaluation and report.

(b) SECOND LEVEL PCE: This is a PCE to measure general residual functional capacity to perform work or provide other general evaluation information, including musculoskeletal evaluation. It may be used to establish Residual Functional Capacities for claim closure. This level requires not less than two hours of actual patient contact. The second level PCE shall be paid under OSC-99197, which includes the evaluation and report. Additional 15 minute increments may be added to measure additional body parts, to establish endurance and to project tolerances. Each additional 15 minutes shall be paid under OSC-99193, which includes the evaluation and report.

(c) WCE: This is a residual functional capacity evaluation, which requires not less than 4 hours of actual patient contact. The evaluation may include a musculoskeletal evaluation for a single body part. A WCE shall be paid under OSC-99198, which includes the evaluation and report. Additional 15 minute increments (per additional body part) may be added to determine endurance (e.g. cardiovascular) or to project tolerances (e.g., repetitive motion). Each additional 15 minutes shall be paid under OSC-99193, which includes the evaluation and report. Special emphasis should be given to:

(A) The ability to perform essential physical functions of the job based on a specific job analysis as related to the accepted condition;

(B) The ability to sustain activity over time; and

(C) The reliability of the evaluation findings.

(5) When an attorney requires a consultation with a medical provider, the medical provider shall bill under OSC-D0001.

(6) When an insurer requires a consultation with a medical provider, the medical provider shall bill under OSC-D0030.

(7) The fee for a deposition shall be billed under OSC-D0002. This code should include time for preparation, travel, and deposition. Upon request of one of the parties, the director may limit payment of the provider's hourly rate to a fee charged by similar providers.

(8) When an insurer obtains an Independent Medical Examination (IME):

(a) The medical service provider doing the IME shall bill under OSC-D0003. This code shall be used for a report, file review, or examination;

(b) If the insurer asks the medical service provider to review the IME report and respond, the medical service provider shall bill for the time spent reviewing and responding using OSC-D0019. Billing should include documentation of time spent.

(c) Notwithstanding 436-009-0010(2), a medical service provider doing an IME may submit a bill in the form or format agreed to by the insurer and the medical service provider.

(9) The fee for interpretive services shall be billed under OSC-D0004.

(10) Fees for all arbiters and panel of arbiters used for director reviews pursuant to OAR 436-030-0165 shall be established by the director. This fee determination will be based on the complexity of the examination, the report requirements, and the extent of the record review. The level of each category is determined by the director based on the individual complexities of each case as compared to the universe of claims in the medical arbiter process. When the examination is scheduled, the director shall notify the medical arbiter and the parties of the authorized fee for that medical arbiter review based on a combination of separate components.

(a) Level 1 OSC-AR001 Exam
Level 2 OSC-AR002 Exam
Level 3 OSC-AR003 Exam
Limited OSC-AR004 Exam
As determined by the director, a level 1 exam generally involves a basic medical exam with no complicating factors. A level 2 exam generally involves a moderately complex exam and may have complicating factors. A level 3 exam generally involves a very complex exam and may have several complicating factors. A limited exam generally involves a newly accepted condition, or some other partial exam.

(b) Level 1 OSC-AR011 Report
Level 2 OSC-AR012 Report
Level 3 OSC-AR013 Report
As determined by the director, a level 1 report generally includes standard questions. A level 2 report generally includes questions regarding complicating factors. A level 3 report generally includes questions regarding multiple complicating factors.

(c) Level 1 OSC-AR021 File Review
Level 2 OSC-AR022 File Review
Level 3 OSC-AR023 File Review
Level 4 OSC-AR024 File Review
Level 5 OSC-AR025 File Review
As determined by the director, a level 1 file review generally includes review of a limited record. A level 2 file review generally includes review of an average record. A level 3 file review generally includes review of a large record or disability evaluation without an exam. A level 4 file review generally includes an extensive record. A level 5 file review generally includes an extensive record with unique factors.

(d) The director will notify the medical arbiter and the insurer of the approved code for each component to establish the total fee for the medical arbiter review. If a worker fails to appear for a medical arbiter examination without giving each medical arbiter at least 48 hours notice, each medical arbiter shall be paid at 50 percent of the examination or testing fee. A med-

ical arbiter must also be paid for any file review completed prior to cancellation.

(e) If the director determines that a supplemental medical arbiter report is necessary to clarify information or address additional issues, an additional report fee may be established. The fee is based on the complexity of the supplemental report as determined by the director. The additional fees are established as follows:

Limited OSC-AR031
Complex OSC-AR032

(f) Prior to completion of the reconsideration process, the medical arbiter may request the director to redetermine the authorized fee by providing the director with rationale explaining why the physician believes the fee should be different than authorized.

(g) The director may authorize testing which shall be paid according to OAR 436-009.

(h) Should an advance of costs be necessary for the worker to attend a medical arbiter exam, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(11) A single physician selected under ORS 656.327 or 656.260, to review treatment, perform reasonable and appropriate tests, or examine the worker, and submit a report to the director shall be paid at an hourly rate up to a maximum of 4 hours for record review and examination.

(a) The physician will be paid for preparation and submission of the report. Billings for services by a single physician shall be billed under OSC-P0001 for the examination and under OSC-P0003 for the report.

(b) Physicians selected under OAR 436-010-0008, to serve on a panel of physicians shall each receive payment based on an hourly rate up to a maximum of 4 hours for record review and panel examination. Each physician shall bill for the record review and panel examination under OSC-P0002. The panel member who prepares and submits the panel report shall receive an additional payment under OSC-P0003.

(c) The director may, in a complex case requiring extensive review by a physician, pre-authorize an additional fee. Complex case review shall be billed under OSC-P0004.

(d) An insurer may not discount or reduce fees related to examinations or reviews performed by medical providers under OAR 436-010-0330.

(e) If a worker fails to appear for a director required examination without providing the physician with at least 48 hours notice, each physician shall bill under OSC-P0005. The insurer must pay the physician for the appointment time and any time spent reviewing the record completed prior to the examination time. The billing must document the physician's time spent reviewing the record.

(f) Should an advance of costs be necessary for the worker to attend an exam under ORS 656.327 or 656.260, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely, as required in this subsection.

(12) The fee for a Worker Requested Medical Examination shall be billed under OSC-W0001. This code shall be used for a report, file review, or examination.

(13) The table below lists the Oregon Specific Codes for Other Services. [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-010-0008
Administrative Review

(1) Administrative review before the director:

(a) Except as otherwise provided in ORS 656.704, the director has exclusive jurisdiction to resolve all matters concerning medical services disputes arising under ORS 656.245, 656.247, 656.260, 656.325 and 656.327.

(b) A party need not be represented to participate in the administrative review before the director.

(c) Any party may request that the director provide voluntary mediation or alternative dispute resolution after a request for administrative review or hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement must be in writing and be approved by the director. Any mediated agreement may include an agreement on attorney fees, if any, to be paid to the claimant's attorney. If the dispute does not resolve through mediation or alternative dispute resolution, a director's order will be issued.

(2) Administrative review and hearing processes for change of attending physician or authorized nurse practitioner issues are in OAR 436-010-0220; additional independent medical examination (IMEs) matters are in OAR 436-010-0265; and fees and non-payment of compensable medical billings are described in OAR 436-009-0008.

(3) Except for disputes regarding interim medical benefits, when there is a formal denial of the compensability of the underlying claim, or a denial of the causal relationship between the medical service or treatment and the accepted condition or the underlying condition, the parties may apply to the Hearings Division of the Workers' Compensation Board to resolve the compensability issue.

(4) All issues pertaining to disagreement about medical services within a Managed Care Organization (MCO), including disputes under ORS 656.245(4)(a) about whether a change of provider will be medically detrimental to the injured worker, are subject to the provisions of ORS 656.260. A party dissatisfied with an action or decision of the MCO must first apply for and complete the internal dispute resolution process within the MCO before requesting an administrative review of the matter by the director.

(5) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all disputes subject to dispute resolution within a Managed Care Organization, upon completion of the MCO process, the aggrieved party must request administrative review by the director within 60 days of the date the MCO issues its final decision. If a party has been denied access to an MCO internal dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving the particular type of dispute, the insurer must advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due. For disputes regarding interim medical benefits on denied claims, the date the insurer should have known of the dispute is no later than one year from the claim denial, or 45 days after the bill is perfected, which ever occurs last. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR 438 chapter, division 005.

(c) Disputes regarding elective surgery must be processed in accordance with OAR 436-010-0250.

(d) The director may, on the director's own motion, initiate a medical services or medical treatment review at any time.

(e) Medical provider bills for treatment or services which are subject to director's review will not be deemed payable pending the outcome of the review.

(6) Parties must submit requests for administrative review to the director in the form and format provided in Bulletins 293. When an insurer or the worker's representative submits a request without the required information, the director may dismiss the request or hold initiation of the administrative review until the information is submitted. Unrepresented workers may seek help from the director to meet the filing requirements. The requesting party must notify at the same time all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number;

(b) Specify what issues are in dispute and specify with particularity the relief sought;

(c) Provide the specific dates of the unpaid disputed treatment or services.

(7) In addition to medical evidence relating to the medical dispute, all parties may submit other relevant information, including but not limited to, written factual information, sworn affidavits, and legal argument for incorporation into the record. Such information may also include timely written responses and other evidence to rebut the documentation and arguments of an opposing party. The director may take or obtain additional evidence consistent with statute.

(8) When a request for administrative review is filed under ORS 656.247, 656.260, or 656.327, the insurer must provide a record packet, without cost, to the director and all other parties or their representatives as follows:

(a) Except for disputes regarding interim medical benefits, the packet must include certification that there is no issue of compensability of the underlying claim or condition. If there is a denial which has been reversed by the Hearings Division, the Board, or the Court of Appeals, a statement from the insurer regarding its intention, if known, to accept or appeal the decision.

(b) The packet must include a complete, indexed copy of the worker's medical record and other documents that are arguably related to the medical dispute, arranged in chronological order, with oldest documents on top, and numbered in Arabic numerals in the lower right corner of each page. The number must be preceded by the designation "Ex." and pagination of the multiple page documents must be designated by a hyphen followed by the page number. For example, page two of document ten must be designated "Ex. 10-2." The index must include the document numbers, description of each document, author, number of pages, and date of the document. The packet must include the following notice in bold type:

As required by OAR 436-010-0008, we hereby notify you that the director is being asked to review the medical care of this worker. The director may issue an order that could affect reimbursement for the disputed medical service(s).

(c) If the insurer requests review, the packet must accompany the request, with copies sent simultaneously to the other parties.

(d) If the requesting party is other than the insurer, or if the director has initiated the review, the director will request the record from the insurer. The insurer must provide the record within 14 days of the director's request in the form and format described in this rule.

(e) If the insurer fails to submit the record in the time and format specified in this rule, the director may penalize or sanction the insurer under OAR 436-010-0340.

(9) If the director determines a review by a physician is indicated to resolve the dispute, the director, in accordance with OAR 436-010-0330, may appoint an appropriate medical service provider or panel of providers to review the medical records and, if necessary, examine the worker and perform any necessary and reasonable medical tests, other than invasive tests. Notwithstanding ORS 656.325(1), if the worker is required by the director to submit to a medical examination as a step in the administrative review process, the worker may refuse an invasive test without sanction.

(a) A single physician selected to conduct a review must be a practitioner of the same healing art and specialty, if practicable, of the medical service provider whose treatment or service is being reviewed.

(b) When a panel of physicians is selected, at least one panel member must be a practitioner of the healing art and specialty, if practicable, of the medical service provider whose treatment or service is being reviewed.

(c) When such an examination of the worker is required, the director will notify the appropriate parties of the date, time, and location of the examination. The physician or panel must not be contacted directly by any party except as it relates to the examination date, time, location, and attendance. If the parties wish to have special questions addressed by the physician or panel, these questions must be submitted to the director for screening as to the appropriateness of the questions. Matters not related to the issues before the director are inappropriate for medical review and will not be submitted to the reviewing physician(s). The examination may include, but is not limited to:

(A) A review of all medical records and diagnostic tests submitted,

(B) An examination of the worker, and

(C) Any necessary and reasonable medical tests.

(10) The director will review the relevant information submitted by all parties and the observations and opinions of the reviewing physician(s).

(a) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) A party fails to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the dispute.

(b) If the dispute is not resolved by agreement and if the director determines that no bona fide dispute exists in a claim not enrolled in an MCO, the director will issue an order under ORS 656.327(1). If any party disagrees with an order of the director that no bona fide medical dispute exists, the party may appeal the order to the Board within 30 days of the mailing date of the order. Upon review, the order of the director may be modified only if it is not supported by substantial evidence in the record developed by the director.

(c) If the director issues an administrative order resolving a bona fide dispute:

(A) For disputes arising under ORS 656.245, 656.260, or 656.327, a party may file a request for hearing within 30 days of the mailing date of the order.

(B) For disputes arising under ORS 656.247, a party may file a request for hearing within 60 days of the mailing date of the order.

(C) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed before the administrative order becomes final.

(D) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this subsection and may respond to such evidence submitted by others.

(E) Any party requesting reconsideration or responding to a reconsideration request must simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(11) If the director issues an order declaring an already rendered medical treatment or medical service inappropriate, or otherwise in violation of the statute or medical rules, the worker is not obligated to pay for such.

(12) Attorney fees in administrative review will be awarded as provided in ORS 656.385(1) and OAR 436-001-0400 through 436-001-0440.

(13) Any party who disagrees with an action or administrative order under these rules may request a hearing by filing a request for hearing as provided in OAR 436-001- 0019 within 30 days of the mailing date of an order under ORS 656.245, 656.260, or 656.327, or within 60 days of the mailing date of an order under ORS 656.247. OAR 436-001 applies to the hearing.

(a) In the review of orders issued under ORS 656.327(2), ORS 656.260(14) and (16), and ORS 656.247, no new medical evidence or issues will be admitted at hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.

(b) For claims not enrolled in an MCO, disputes about whether a medical service after a worker is medically stationary is compensable within the meaning of ORS 656.245(1)(c) and whether a medical treatment is unscientific, unproven, outmoded, or experimental under ORS 656.245(3), are subject to administrative review by the director. If appealed, review at hearing is subject to the "no new medical evidence or issues rule" in subsection (13)(a) of this rule. However, if the disputed medical service or medical treatment is determined compensable under ORS 656.245(1)(c) or 656.245(3) all disputes and assertions about whether the compensable medical services are excessive, inappropriate, ineffectual, or in violation of the director's rules regarding the performance of medical services are subject to the substantial evidence rule at hearing.

(14) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254 or 656.745 may request a hearing by the Hearings Division of the board as follows:

(a) A written request for a hearing must be mailed to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The request must be mailed to the division within 60 days after the mailing date of the order or notice of assessment.

(c) The division will forward the request and other pertinent information to the board.

(15) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (14) of this rule, under these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (13) of this rule.

[ED. NOTE: Matrices referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331, 656.704

Hist.: WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-010-0240

Reporting Requirements for Medical Providers

(1) The act of the worker in applying for workers' compensation benefits constitutes authorization for any medical provider and other custodians of claims records to release relevant medical records under ORS 656.252 and diagnostic records required under ORS 656.325. Medical information relevant to a claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part. The authorization is valid for the duration of the work related injury or illness and is not subject to revocation by the worker or the worker's representative. However, separate authorization is required for release of information regarding:

(a) Federally funded drug and alcohol abuse treatment programs governed by Federal Regulation 42, CFR 2, which may only be obtained in compliance with this federal regulation, or

(b) HIV-related information protected by ORS 433.045(3).

(2) Any physician, hospital, clinic, or other medical service provider, must provide all relevant information to the director, the insurer or their representative upon presentation of a signed Form 801, 827, or 2476 (Release of Information). "Signature on file," printed on the worker's signature line of any authorized Release of Information prescribed by the director, is a valid medical release, provided the insurer maintains the signed original in accordance with OAR 436-010-0270. However, nothing in this rule prevents a medical provider from requiring a signed authorized Release of Information.

(3) When the worker has initiated a claim or wishes to initiate a claim, the worker and the first medical service provider on the initial claim must complete the "Worker's and Health Care Provider's Report for Workers' Compensation Claims" (Form 827). Information that must be provided on the form includes, but is not limited to the worker's name, address, and Social Security number if available. For an initial claim, the medical service provider must send Form 827 to the proper insurer no later than 72 hours after the worker's first visit (Saturdays, Sundays, and holidays will not be counted in the 72-hour period). Diagnoses stated on Form 827 and all subsequent reports must conform to terminology found in the International Classification of Disease-9-Clinical Manifestations (ICD-9-CM) or taught in accredited institutions of the licentiate's profession.

(4) All medical service providers must notify the worker at the time of the first visit of the manner in which they can provide compensable medical services and authorize time loss. Providers must also notify workers that they may be personally liable for noncompensable medical services. Such notification should be made in writing or documented in the worker's medical record.

(5) All medical service providers must give a copy of "A Guide for Workers Recently Hurt on the Job" (Form 3283) to the worker when they give the worker a copy of Form 827.

(6) Attending physicians or authorized nurse practitioners must, upon request from the insurer, submit verification of the worker's medical limitations related to the worker's ability to work, resulting from an occupational injury or disease. If the insurer requires the attending physician or authorized nurse practitioner to complete a release to return to work form, the insurer must use Form 3245.

(7) Medical providers must maintain records necessary to document the extent of medical services provided to injured workers.

(8) Progress reports are essential. When time loss is authorized by the attending physician or authorized nurse practitioner, the insurer may require progress reports every 15 days through the use of the physician's report, Form 827. Chart notes may be sufficient to satisfy this requirement. If more information is required, the insurer may request a brief or complete narrative report. Fees for such narrative reports must be in accordance with OAR 436-009-0015(11), 436-009-0070(2) or (3), whichever applies.

(9) Reports may be handwritten and must include all relevant or requested information.

(10) All records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(11) The medical provider must respond within 14 days to the request for relevant medical records as specified in section (1) of this rule, progress reports, narrative reports, original diagnostic studies, including, but not limited to, actual films, and any or all necessary records needed to review the efficacy of medical treatment or medical services, frequency, and necessity of care. The medical provider must be reimbursed for copying documents in accordance with OAR 436-009-0070(1). If the medical provider fails to provide such information within fourteen (14) days of receiving a request sent by certified mail, penalties under OAR 436-010-0340 or 436-015-0120 may be imposed.

(12) The attending physician or authorized nurse practitioner must inform the insurer and the worker of the anticipated date of release to work, the anticipated date the worker will become medically stationary, the next appointment date, and the worker's medical limitations. To the extent any medical provider can determine these matters they must be included in each progress report. The insurer must not consider the anticipated date of becoming medically stationary as a release to return to work.

(13) The attending physician or authorized nurse practitioner must notify the worker, insurer, and all other health care providers involved in the worker's treatment when the worker is determined medically stationary. The medically stationary date must be the date of the exam, and not a projected date. The notice must provide:

(a) The medically stationary date; and

(b) Whether the worker is released to any kind of work.

(14) The attending physician or authorized nurse practitioner must advise the worker, and within five days provide the insurer with written notice, of the date the injured worker is released to return to regular or modified work. The physician or nurse must not notify the insurer or employer of the worker's release to return to regular or modified work without first advising the worker.

(15) When an injured worker files a claim for aggravation, the claim must be filed on Form 827 and must be signed by the worker or the worker's representative and the attending physician. The attending physician, on the worker's behalf, must submit the aggravation form to the insurer within five days of the examination where aggravation is identified. When an insurer or self-insured employer receives a completed aggravation form, it must process the claim. Within 14 days of the examination the attending physician must also send a written report to the insurer that includes objective findings that document:

(a) Whether the worker is unable to work as a result of the compensable worsening; and

(b) Whether the worker has suffered a worsened condition attributable to the compensable injury under the criteria contained in ORS 656.273.

(16) A worker may use the Form 827 to request the insurer to formally accept a new or omitted medical condition in writing. If the worker uses the form to request acceptance of a new or omitted medical condition during a medical visit, the health care provider may write the claimed condition or the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) diagnosis code for the worker in the space provided on the form. If the injured worker signs the form and gives it to the provider, the provider must send the form to the insurer within five days of the day the worker signs the form.

(17) The attending physician, authorized nurse practitioner, or the MCO may request consultation regarding conditions related to an accepted claim. The attending physician, authorized nurse practitioner, or the MCO must promptly notify the insurer of the request for consultation. This requirement does not apply to diagnostic studies performed by radiologists and pathologists. The attending physician, authorized nurse practitioner, or

MCO must provide the consultant with all relevant clinical information. The consultant must submit a copy of the consultation report to the attending physician, authorized nurse practitioner, the MCO, and the insurer within 10 days of the date of the examination or chart review. No additional fee beyond the consultation fee is allowed for this report. MCO requested consultations that are initiated by the insurer, which include examination of the worker, must be considered independent medical examinations subject to the provisions of OAR 436-010-0265.

(18) A medical service provider must not unreasonably interfere with the right of the insurer, under OAR 436-010-0265(1), to obtain a medical examination of the worker by a physician of the insurer's choice.

(19) Any time an injured worker changes his or her attending physician or authorized nurse practitioner.

(a) The new provider is responsible for:

(A) Submitting Form 827 to the insurer not later than five days after the change or the date of first treatment; and

(B) Requesting all available medical information, including information concerning previous temporary disability periods, from the previous attending physician, authorized nurse practitioner, or from the insurer.

(b) The requirements of paragraphs (A) and (B) also apply anytime a worker is referred to a new physician qualified to be an attending physician or to a new authorized nurse practitioner primarily responsible for the worker's care.

(c) Anyone failing to forward requested information within 14 days to the new physician or nurse will be subject to penalties under OAR 436-010-0340.

(20) Injured workers, or their representatives, are entitled to copies of all protected health information in the medical records. These records should ordinarily be available from the insurers, but may also be obtained from medical providers under the following conditions:

(a) A medical provider may charge the worker for copies in accordance with OAR 436-009-0070(1), but a patient may not be denied summaries or copies of his/her medical records because of inability to pay.

(b) For the purpose of this rule, "protected health information in the medical record" means any oral or written information in any form or medium that is created or received and relates to:

(A) The past, present, or future physical or mental health of the patient;

(B) The provision of health care to the patient; and

(C) The past, present, or future payment for the provision of health care to the patient.

(c) A worker or the worker's representative may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Upon request, the entire health information record in the possession of the medical provider will be provided to the worker or the worker's representative. This includes records from other health care providers, except that the following may be withheld:

(A) Information that was obtained from someone other than a health care provider when the health care provider promised confidentiality, and release of the information would likely reveal the source of the information;

(B) Psychotherapy notes;

(C) Information compiled for use in a civil, criminal, or administrative action or proceeding; and

(D) Other reasons specified by federal regulation.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252, 656.254 & 656.273

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0101, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0030; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-010-0265

Independent Medical Examinations (IME)

(1) The insurer may obtain three medical examinations of the worker by medical service providers of its choice for each opening of the claim. These examinations may be obtained prior to or after claim closure. Effective July 1, 2006, the insurer must choose a provider to perform the independent medical examination from the director's list described in section (13) of this rule. A claim for aggravation, Board's Own Motion, or reopening of a claim where the worker becomes enrolled or actively engaged in training according to rules adopted under ORS 656.340 and 656.726 permits a new series of three medical examinations. For purposes of this rule, "independent medical examination" (IME) means any medical examination including a physical capacity or work capacity evaluation or consultation that includes an examination, except as provided in section (5) of this rule, that is requested by the insurer and completed by any medical service provider, other than the worker's attending physician or authorized nurse practitioner. The examination may be conducted by one or more providers with different specialty qualifications, generally done at one location and completed within a 72-hour period. If the providers are not at one location, the examination is to be completed within a 72-hour period and at locations reasonably convenient to the worker.

(2) When the insurer has obtained the three medical examinations allowed under this rule and wishes to require the worker to attend an additional examination, the insurer must first notify and request authorization from the director. Insurers that fail to first notify and request authorization from the director, may be assessed a civil penalty. The process for requesting such authorization will be as follows:

(a) The insurer must submit a request for such authorization to the director in a form and format as prescribed by the director in Bulletin 252 including, but not limited to, the reasons for an additional IME, the conditions to be evaluated, dates, times, places, and purposes of previous examinations, copies of previous IME notification letters to the worker, and any other information requested by the director. A copy of the request must be provided to the worker and the worker's attorney; and

(b) The director will review the request and determine if additional information is necessary prior to issuing an order approving or disapproving the request. Upon receipt of a written request for additional information from the director, the parties have 14 days to respond. If the parties do not provide the requested information, the director will issue an order approving or disapproving the request based on available information.

(3) In determining whether to approve or deny the request for an additional IME, the director may give consideration, but is not limited, to the following:

(a) Whether an IME involving the same discipline(s) or review of the same condition has been completed within the past six months.

(b) Whether there has been a significant change in the worker's condition.

(c) Whether there is a new condition or compensable aspect introduced to the claim.

(d) Whether there is a conflict of medical opinion about a worker's medical treatment or medical services, impairment, stationary status, or other issue critical to claim processing/benefits.

(e) Whether the IME is requested to establish a preponderance for medically stationary status.

(f) Whether the IME is medically harmful to the worker.

(g) Whether the IME requested is for a condition for which the worker has sought treatment or services, or the condition has been included in the compensable claim.

(4) Any party aggrieved by the director's order approving or disapproving a request for an additional IME may request a hearing by the Hearings Division of the board under ORS 656.283 and OAR chapter 438.

(5) For purposes of determining the number of IMEs, any examinations scheduled but not completed are not counted as a statutory IME. The following examinations are not considered IMEs and do not require approval as outlined in section (2) of this rule:

(a) An examination conducted by or at the request or direction of the worker's attending physician or authorized nurse practitioner;

(b) An examination obtained at the request of the director;

(c) An elective surgery consultation obtained in accordance with OAR 436-010-0250(3);

(d) An examination of a permanently totally disabled worker required under ORS 656.206(5);

(e) A closing examination by a consulting physician that has been arranged by the insurer, the worker's attending physician or authorized nurse practitioner in accordance with OAR 436-010-0280;

(f) A consultation requested by the Managed Care Organization (MCO) for the purpose of clarifying or refining a plan for continuing medical services as provided under its contract.

(6) Examinations must be at times and intervals reasonably convenient to the worker and must not delay or interrupt proper treatment of the worker.

(7) When the insurer requires a worker to attend an IME, the insurer must comply with the notification and reimbursement requirements found in OAR 436-009-0025 and 436-060-0095.

(8) A medical provider who unreasonably fails to timely provide diagnostic records required for an IME in accordance with OAR 436-010-0230(9) and 436-010-0240 (11) may be assessed a penalty under ORS 656.325.

(9) When a worker objects to the location of an IME, the worker may request review by the director within six business days of the mailing date of the appointment notice.

(a) The request may be made in-person, by telephone, facsimile, or mail.

(b) The director may facilitate an agreement between the parties regarding location.

(c) If necessary, the director will conduct an expedited review and issue an order regarding the reasonableness of the location.

(d) The director will determine if there is substantial evidence to support a finding that the travel is medically contraindicated, or unreasonable based on a showing of good cause.

(A) For the purposes of this rule, "medically contraindicated" means that the travel required to attend the IME exceeds the travel or other limitations imposed by the attending physician, authorized nurse practitioner or other persuasive medical evidence, and alternative methods of travel will not overcome the limitations.

(B) For the purposes of this rule, "good cause" means the travel would impose a hardship for the worker that outweighs the right of the insurer or self-insured employer to select an IME location of its choice.

(10) If a worker fails to attend an IME without notifying the insurer or self-insured employer before the date of the examination or without sufficient reason for not attending, the director may impose a monetary penalty against the worker for such failure under OAR 436-010-0340.

(11) When scheduling an IME, the insurer must ensure the medical service provider has:

(a) An Invasive Medical Procedure Authorization (Form 440-3227), if applicable; and

(b) A Worker IME Survey (Form 440-0858), with instructions to give the form(s) to the worker at the time of the IME.

(12) If a medical service provider intends to perform an invasive procedure as part of an IME, the provider must explain the risks involved in the procedure to the worker and the worker's right to refuse the procedure. The worker then must check the applicable box on Form 440-3227 either agreeing to the procedure or declining the procedure, and sign the form. For the purposes of this rule, an invasive procedure is a procedure in which the body is entered by a needle, tube, scope, or scalpel.

(13) Any medical service provider wishing to perform an IME or a Worker Requested Medical Exam (WRME) under ORS 656.325(1)(e) and OAR 436-060-0147 for a workers' compensation claim must meet the director's criteria and be included on the list of authorized providers maintained by the Director of the Department of Consumer and Business Services under ORS 656.328.

(a) To be on the director's list to perform IMEs or WRMEs, a medical service provider must:

(A) Hold a current license and be in good standing with the professional regulatory board that issued the license, for example the Oregon Medical Board.

(B) Complete a director-approved three-hour initial training course regarding IMEs. The training curriculum must include, at a minimum, all topics listed in Appendix B.

(i) Any party may request the director to place a provider on the director's list with less than the three-hour training. At the director's discretion, providers may be placed on the director's list to perform IMEs with less than the three-hour required training when extraordinary circumstances exist in a given case or if the worker and the insurer agree that a certain provider may perform the examination. Providers placed on the director's list in this circumstance are limited to being on the director's list only for the time required for the examination at issue.

(ii) When determining if extraordinary circumstances exist in a given case, the director may consider, but is not limited to, such factors as: medical specialty needed; number of IMEs the provider has performed in a calendar year; where the worker lives; and factors that would make the three-hour training unreasonable in a given case.

(C) Submit the Application for Independent Medical Exam Medical Service Provider Authorization (Form 440-3930) to the director. On the application, the provider must supply his or her license number, the name of the training vendor, and the date the provider completed a director-approved initial training course regarding IMEs. By signing and submitting the application form, the provider agrees to abide by:

(i) The standards of professional conduct for performing IMEs adopted by the provider's regulatory board, or the independent medical examination standards published in Appendix C, which apply if the provider's regulatory board does not adopt standards of conduct for IMEs. Providers on the director's list of authorized IME providers as of June 7, 2007, remain authorized to perform IMEs and do not need to reapply; and

(ii) All relevant workers' compensation laws and rules.

(b) Any party may make a written request to the director to add a provider to the director's list according to subsection (a).

(c) A provider may be sanctioned or excluded from the director's list of providers authorized to perform IMEs after a finding by the director that the provider:

(A) Violated the standards of either the professional conduct for performing IMEs adopted by the provider's regulatory board or the independent medical examination standards published in Appendix C, whichever applies;

(B) Failed to comply with the requirements of this rule, as determined by the director;

(C) Has a current restriction on their license or is under a current disciplinary action from their professional regulatory board;

(D) Has entered into a voluntary agreement with his or her regulatory board which the director determines is detrimental to performing IMEs;

(E) Violated workers' compensation laws or rules; or

(F) Has failed to attend training required by the director.

(d) Within 60 days of the director's decision to exclude a provider from the director's list, the provider may appeal the decision under ORS 656.704(2) and OAR 436-001-0019.

(14) The medical service provider conducting the examination will determine the conditions under which the examination will be conducted. Subject to the provider's approval, the worker may use a video camera or tape recorder to record the examination.

(15) If there is a finding by the director, an administrative law judge, the Workers' Compensation Board, or the court, that the IME was performed by a provider who was not on the director's list of authorized IME providers at the time of the examination, the insurer shall not use the IME report nor shall the report be used in any subsequent proceeding.

(16) Except as provided in subsection (a) of this section, a worker may elect to have an observer present during the IME.

(a) An observer is not allowed in a psychological examination unless the examining provider approves the presence of the observer.

(b) The worker must submit a signed observer form (440-3923A) to the examining provider acknowledging that the worker understands the worker may be asked sensitive questions during the examination in the presence of the observer. If the worker does not sign form 440-3923A, the provider may exclude the observer.

(c) An observer cannot participate in or obstruct the examination.

(d) The worker's attorney or any representative of the worker's attorney shall not be an observer. Only a person who does not receive compensation in any way for attending the examination can be an injured worker's observer.

(e) The IME provider must verify that the injured worker and any observer have been notified of the requirement in sub-section (b).

(17) Upon completion of the examination, the examining medical service provider must:

(a) Give the worker a copy of the IME Survey (Form 440-0858) on the day of the examination; and

(b) Send the insurer a copy of the report and, if applicable, the observer form (440-3923A) or the invasive procedure form (440-3227), or both.

(c) Sign a statement at the end of the report verifying who performed the examination and dictated the report, the accuracy of the content of the report, and acknowledging that any false statements may result in sanction by the director.

(18) The insurer must forward a copy of the signed report to the attending physician or authorized nurse practitioner within 72 hours of its receipt of the report.

(19) A complaint about an IME may be sent to the director for investigation. The director will determine the appropriate action to take in a given case, which may include consultation with or referral to the appropriate regulatory board.

(20) Training must be approved by the director before it is given. Any party may submit medical service provider IME training curriculum to the director for approval. The curriculum must include training outline, goals, objectives, specify the method of training and the number of training hours, and must include all topics addressed in Appendix B.

(21) Within 21 days of the IME training, the training supplier must send the director the date of the training and a list of all medical providers who completed the training, including names, license numbers, and addresses.

(22) Insurer claims examiners must be trained and certified in accordance with OAR 436-055 regarding appropriate interactions with IME medical service providers.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264

Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 4-2007(Temp), f. & cert. ef. 6-7-07 thru 12-3-07; WCD 9-2007, f. 11-1-07, cert. ef. 12-4-07; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-010-0280
Determination of Impairment

(1) On disabling claims, when the worker becomes medically stationary, the attending physician must complete a closing exam or refer the worker to a consulting physician for all or part of the closing exam. For workers under the care of an authorized nurse practitioner or a type B attending physician other than a chiropractor, the provider must refer the worker to a type A attending physician to do a closing exam if there is a likelihood the worker has permanent impairment. The closing exam must be completed under OAR 436-030 and OAR 436-035.

(2) The attending physician or authorized nurse practitioner has 14 days from the medically stationary date to send the closing report to the insurer. Within eight days of the medically stationary date, the attending physician may arrange a closing exam with a consulting physician. This exam does not count as an IME or a change of attending physician.

(3) When an attending physician requests a consulting physician to do the closing exam, the consulting physician has seven days from the date of the exam to send the report for the concurrence or objections of the attending physician. The attending physician must also state, in writing, whether they agree or disagree with all or part of the findings of the exam. Within seven days of receiving the report, the attending physician must make any comments in writing and send the report to the insurer. (See "Matrix for Health Care Provider types" Appendix A)

(4) The attending physician must specify the worker's residual functional capacity or refer the worker for completion of a second level physical capacities exam or work capacities exam (as described in OAR 436-009-0070(4)) pursuant to the following:

(a) A physical capacities exam when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A work capacities exam when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(5) If the insurer issues a major contributing cause denial on the accepted claim and the worker is not medically stationary, the attending physician must do a closing exam. An authorized nurse practitioner or a type B attending physician other than a chiropractor must refer the worker to a type A attending physician for a closing exam. (See "Matrix for Health Care Provider types" Appendix A)

(6) The closing report must address the accepted conditions and must include:

(a) Objective findings of permanent impairment; and

(b) A statement of the validity of the impairment findings.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4) & 656.245(2)(b)(B)

Stats. Implemented: ORS 656.245 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0002
Purpose of Rules

The purpose of these rules is to provide standards, conditions, procedures, and reporting requirements for:

(1) Requests for closure by the worker;

(2) Claim closure under ORS 656.268(1);

(3) Determining medically stationary status;

(4) Determining temporary disability benefits;

(5) Awards of permanent partial disability;

(6) Determining permanent total disability awards;

(7) Review for reduction of permanent total disability awards;

(8) Review of prior permanent partial disability awards consistent with OAR 436-030-0003; and

(9) Reconsideration of notices of closure.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, 656.268, 656.273, 656.325

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0002, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0003
Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration received by the department on or after the effective date of these rules.

(2) All orders issued by the division to carry out the statute and these rules are considered an order of the director.

(3) These rules take the place of the rules adopted on January 2, 2008, by Workers' Compensation Division Administrative Order 07-059, and carry out ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.278, and 656.325.

(a) For claims in which the worker became medically stationary prior to July 2, 1990, OAR 436-030-0020, 436-030-0030, and 436-030-0050 as adopted by WCD Administrative Order 13-1987 effective January 1, 1988 will apply.

(b) OAR 436-030-0055(3)(b), (3)(d) and (4)(a) apply to all claims with dates of injury on or after January 1, 2002.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, 656.268, 656.273, 656.277, 656.325, 656.726

Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0003, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1991(Temp), f. 8-20-91, cert. ef. 9-1-91; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 12-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 6-29-01; Administrative correction 11-20-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 4-2002, f. 4-5-02, cert ef. 4-8-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0005
Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Authorized Nurse Practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010.

(2) "Day" means calendar day unless otherwise specified (e.g., "working day").

(3) "Director" means the director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(4) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(5) "Instant Fatality" means a compensable claim for death benefits where the worker dies within 24 hours of the injury.

(6) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, a self-insured employer, or a self-insured employer group.

(7) "Mailed or Mailing Date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or "fax") will be

considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(8) "Notice of Closure" means a notice to the worker issued by the insurer to

(a) Close an accepted disabling claim, including fatal claims;

(b) Correct, rescind, or rescind and reissue a Notice of Closure previously issued; or

(c) Reduce permanent total disability to permanent partial disability.

(9) "Reconsideration" means review by the director of an insurer's Notice of Closure.

(10) "Statutory closure date" means the date the claim satisfies the criteria for closure under ORS 656.268(1)(b) and (c).

(11) "Statutory appeal period" means the time frame for appealing a Notice of Closure or Order on Reconsideration.

(12) "Work disability," for purposes of determining permanent disability, means the separate factoring of impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

(13) "Worksheet" means a summary of facts used to derive the awards stated in the Notice of Closure.

Stat. Auth.: ORS 656.268, 656.726
Stats. Implemented: ORS 656.005, 656.268, 656.726
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), 12-30-81, ef. 1-1-82; Renumbered from 436-065-0004, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0007
Administrative Review

(1) Notices of Closure issued by insurers are appealed to the director and processed in accordance with the reconsideration procedures described in OAR 436-030-0115 through OAR 436-030-0185, except Notices of Closure under section (3)(b) of this rule, when:

(a) The worker was determined medically stationary after July 1, 1990; or

(b) The claim qualifies for closure under ORS 656.268(1)(b) or (c).

(2) The director may abate, withdraw, or amend the Order on Reconsideration during the 30-day appeal period for the Order on Reconsideration.

(3) The following matters are brought before the Hearings Division of the Workers' Compensation Board:

(a) Orders on Reconsideration issued under these rules.

(b) Notices of Closure that rescind permanent total disability under ORS 656.206.

(c) Any other action taken under these rules where a worker's right to compensation or the amount thereof is directly an issue under ORS chapter 656.

(4) Contested Case Hearings of Sanctions and Civil Penalties: Under ORS 656.740, any party aggrieved by a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division as follows:

(a) The party must send the request for hearing in writing to the director within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The Workers' Compensation Division will forward the request and other pertinent information to the Hearings Division.

(c) An Administrative Law Judge from the Hearings Division, acting on behalf of the director, will conduct the hearing in accordance with ORS 656.740 and ORS Chapter 183.

(5) Director's Administrative Review of other actions: Except as covered under sections (1) through (4) of this rule, any party seeking an action or decision by the director or aggrieved by an action taken by any other party under these rules, may request administrative review by the director as follows:

(a) The party must send the request in writing to the director within 90 days of the disputed action and must specify the grounds upon which the action is disputed.

(b) The director may require and allow such evidence as is deemed appropriate to complete the review.

(c) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.268, 656.726
Stats. Implemented: ORS 656.268, 656.726, 656.740
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0015
Insurer Responsibility

(1) When an insurer issues a Notice of Closure (Form 440-1644, 1644c, 1644r), the insurer is responsible for:

(a) Providing the director, the parties, and the worker's attorney if the worker is represented, a copy of the Notice of Closure, a copy of the worksheet (Form 440-2807) upon which the Notice is based, a completed "Insurer Notice of Closure Summary" (Form 440-1503) and an Updated Notice of Acceptance at Closure that specifies which conditions are compensable, as prescribed in OAR 436-030-0020;

(b) Maintaining a copy of the worksheet and records upon which the Notice of Closure is based in its claim file for audit purposes under OAR 436-050; and

(c) Issuing the Updated Notice of Acceptance at Closure on the same date as the Notice of Closure.

(A) The Updated Notice of Acceptance at Closure must contain the following title, information, and language:

(i) Title: "Updated Notice of Acceptance at Closure";

(ii) Information: A list of all compensable conditions that have been accepted, even if a condition was denied, ordered accepted by litigation, and is under appeal. Any conditions under appeal and those which were the basis for this claim opening must be specifically identified;

(iii) Language, in bold print:

"Notice to Worker: This notice restates and includes all prior acceptances. The conditions that were the basis of this claim opening were the only conditions considered at the time of claim closure. The insurer or self-insured employer is not required to pay any disability compensation for any condition specifically identified as under appeal, unless and until the condition is found to be compensable after all litigation is complete. Appeal of any denied conditions or objections to this notice will not delay claim closure. Any condition found compensable after the Notice of Closure is issued will require the insurer to reopen the claim for processing of that condition. If you believe a condition has been incorrectly omitted from this notice, or this notice is otherwise deficient, you must communicate the specific objection to the insurer in writing.";

(B) In the case of an instant fatality, the Updated Notice of Acceptance may be combined with the Notice of Closure if the following is included:

(i) Title: "Updated Notice of Acceptance and Closure";

(ii) Information: Names of all known beneficiaries, the beneficiaries' right to and the extent of fatal benefits due under ORS 656.204 and the medically stationary date.

(iii) Language, in bold print:

"Notice to Worker's Beneficiary or Estate: This notice restates any prior acceptances. The insurer is required to determine the appropriate benefits to be paid to any beneficiaries and begin those payments within 30 days of the mailing date of this notice.

If you disagree with the notice of acceptance, you may appeal the decision to the Workers' Compensation Board, (insert current address for Workers' Compensation Board) within 30 days of the mailing date.

If you disagree with the claim closure, you may appeal the decision to the Workers' Compensation Division, Appellate Review Unit, (insert current address for Workers' Compensation Division) within 60 days of the mailing date of this notice.

If you have questions about this notice, you may contact the Ombudsman for Injured Workers, the Workers' Compensation Division, or consult with an attorney."

(C) If the "Initial Notice of Acceptance" is issued at the same time as the "Updated Notice of Acceptance at Closure," both titles must appear near the top of the document.

(D) When an omission or error requires a corrected Updated Notice of Acceptance at Closure, the word "CORRECTED" must appear in capital letters adjacent to the word "Updated".

(2) The insurer or self-insured employer is not required to pay any disability compensation for any condition under appeal and specifically identified as such, unless and until the condition is found to be compensable after all litigation is complete.

(3) Copies of Notices of Refusal to Close must be mailed to the director and the parties, and to the worker's attorney, if the worker is represented.

(4) In claims with a date of injury on or after January 1, 2005, where the worker has not returned to regular work and ORS 656.726(4)(f) does not apply, or in claims with a date of injury on or after January 1, 2006,

when the worker has not been released to regular work and ORS 656.726(4)(f) does not apply, the insurer must consider:

(a) The worker's age at the time the notice is issued;

(b) Adaptability to return to employment;

(c) The worker's level of education; and

(d) The worker's work history, including an accurate description of the physical requirements of the worker's job held at the time of injury, for the period from five years before the date of injury to the mailing date of the notice of closure with dates or period of time spent at each position, tasks performed or level of specific vocational preparation (SVP), and physical requirements. If the insurer cannot obtain five years of work history despite all reasonable efforts, the insurer must document its efforts and provide as much work history as it can obtain.

(5) In claims where the date of injury is before January 1, 2005, the worker has not returned or been released to regular work, ORS 656.726(4)(f) does not apply, and the claim involves injury to, or disease of, unscheduled body parts, areas, or systems, the insurer must consider:

(a) The worker's age at time the notice is issued;

(b) Adaptability to return to employment:

(c) The worker's level of education; and

(d) The worker's work history, including an accurate description of the physical requirements of the worker's job held at the time of injury, for the period from five years before the date of injury to the mailing date of the notice of closure with dates or period of time spent at each position, tasks performed or level of specific vocational preparation (SVP), and physical requirements.

(6) The insurer must consider any other records or information pertinent to claim determination prior to issuing a notice of closure.

(7) The insurer must notify the worker and the worker's attorney, if the worker is represented, in writing, when the insurer receives information that the worker's claim qualifies for closure under these rules.

(a) The insurer must send the written notice within three working days from the date the insurer receives the information, unless the claim has already been closed.

(b) The notice must advise the worker of his or her impending claim closure and that any time loss disability payments will end soon.

(8) The insurer must, within 14 days of closing the claim, provide the worker's attorney the same documents relied upon for claim closure.

(9) The insurer must not issue a Notice of Closure on an accepted nondisabling claim. Notices of Closure issued by the insurer in violation of this rule are void and without legal effect. Medically stationary status in nondisabling claims may be documented by the attending physician's statement of medically stationary status.

(10) When a condition is accepted after a closure and the claim has been reopened under ORS 656.262, the insurer must issue a Notice of Closure, considering only the newly accepted condition.

(11) Denials issued under ORS 656.262(7)(b), must clearly identify the phrase "major contributing cause" in the text of the denial.

(12) When a claim is closed where a designation of paying agent order (ORS 656.307) has been issued and the responsibility issue is not final by operation of law, the insurer processing the claim at the time of closure must send copies of the closure notice to the worker, the worker's attorney if the worker is represented, the director, and all parties involved in the responsibility issue.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.268, 656.331, 656.726

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0017

Requests for Claim Closure by the Worker

(1) A worker may request closure from the insurer. The insurer must issue a Notice of Closure or Notice of Refusal to Close within 10 days of receipt of a written request.

(2) If an insurer issues a notice of refusal to close the claim, the notice must be identified in capital letters as a "NOTICE OF REFUSAL TO CLOSE" and must include the following information and appeal language:

(a) Name of the worker;

(b) Date of injury;

(c) Insurer's claim number;

(d) Mailing date of the notice;

(e) The accepted and denied conditions;

(f) Rationale for the insurer's decision; and

(g) The following language, in bold print:

"If you disagree with this Notice of Refusal to Close your claim, you must file a letter of disagreement with the Workers' Compensation Board within sixty (60) days from the date of this notice. Your letter must state that you want a hearing, note your address, and include the date of your accident if known. You must mail your letter of disagreement to the Workers' Compensation Board, [INSURER: Insert current address of Workers' Compensation Board here]. If your claim qualifies and you request it, you may receive an expedited hearing (within 30 days). Your request cannot, by law, affect your employment. If you do not file your letter of disagreement within sixty (60) days from the date of this notice, your hearing will be denied as the appeal time has passed. You may be represented by an attorney if you choose."

(3) If the worker disagrees with the Notice of Refusal to Close, the worker may request a hearing from the Workers' Compensation Board.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.268, 656.319, 656.726, 656.745

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0020

Requirements for Claim Closure

(1) Provided the worker is not enrolled and actively engaged in training, the insurer must issue a Notice of Closure on an accepted disabling claim within 14 days when:

(a) Medical information establishes there is sufficient information to determine the extent of permanent disability under ORS 656.245(2)(b)(C), and indicates the worker's compensable condition is medically stationary;

(b) The accepted injury/condition is no longer the major contributing cause of the worker's combined or consequential condition(s), a major contributing cause denial has been issued, and there is sufficient information to determine the extent of permanent disability;

(c) The worker fails to seek medical treatment for 30 days for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules; or

(d) The worker fails to attend a mandatory closing examination for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules.

(e) A worker receiving permanent total disability benefits has materially improved and is capable of regularly performing work at a gainful and suitable occupation.

(2) For purposes of determining the extent of disability, "sufficient information" requires the following:

(a) An authorized nurse practitioner's, podiatrist's, chiropractor's, naturopathic physician's, physician assistant's or attending physician's written statement that clearly indicates there is no permanent impairment, residuals, or limitations attributable to the accepted condition(s), and there is no reasonable expectation, based on evidence in the record, of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s). If the physician, nurse practitioner, podiatrist, chiropractor, naturopathic physician, or physician assistant indicates there is no impairment, but the record reveals otherwise, a closing examination and reports specified under (b) of this section are required; or

(b) A closing medical examination and report when there is a reasonable expectation of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s) based on evidence in the record or the physician's opinion. The closing medical examination report must describe in detail all measurements and findings regarding any permanent impairment, residuals, or limitations attributable to the accepted condition(s) under OAR 436-010-0280 and OAR 436-035; and, if there is not clear and convincing evidence that the worker has been released to regular work (for dates of injury on or after January 1, 2006) or returned to regular work at the job held at the time of injury and ORS 656.726(4)(f) does not apply, all of the following:

(A) An accurate description of the physical requirements of the worker's job

held at the time of injury, which has been provided by certified mail to the worker and the worker's legal representative, if any, either before closing the claim or at the time the claim is closed;

(B) The worker's wage established consistent with OAR 436-060;

(C) The worker's date of birth;

(D) Except as provided in OAR 436-030-0015(4)(d), the worker's work history for the period beginning five years before the date of injury to the mailing date of the Notice of Closure, including tasks performed or level of SVP, and physical demands; and

(E) The worker's level of formal education.

(3) When determining disability and issuing the Notice of Closure, the insurer must apply all statutes and rules consistent with their provisions,

particularly as they relate to major contributing cause denials, worker's failure to seek treatment, worker's failure to attend a mandatory examination, medically stationary status, temporary disability, permanent partial and total disability, review of permanent partial and total disability.

(4) When issuing a Notice of Closure, the insurer must prepare and attach a summary worksheet, "Notice of Closure Worksheet", Form 440-2807 (Form 2807), as described by bulletin of the director.

(5) The "Notice of Closure", Form 440-1644 (Form 1644), is effective the date it is mailed to the worker and to the worker's attorney if the worker is represented, regardless of the date on the Notice itself.

(6) The notice must be in the form and format prescribed by the director in these rules and include only the following:

(a) The worker's name, address, and claim identification information;

(b) The appropriate dollar value of any individual scheduled or unscheduled permanent disability based on the value per degree for injuries occurring before January 1, 2005 or, for injuries occurring on or after January 1, 2005, the appropriate dollar value of any "whole person" permanent disability, including impairment and work disability as determined appropriate under OAR 436-035;

(c) The body part(s) awarded disability, coded to the table of body part codes as prescribed by the director;

(d) The percentage of loss of the specific body part(s), including either the number of degrees that loss represents as appropriate for injuries occurring before January 1, 2005, or the percentage of the whole person the worker's loss represents as appropriate for injuries occurring on or after January 1, 2005;

(e) If there is no permanent disability award for this Notice of Closure, a statement to that effect;

(f) The duration of temporary total and temporary partial disability compensation;

(g) The date the Notice of Closure was mailed;

(h) The medically stationary date or the date the claim statutorily qualifies for closure under OAR 436-030-0035 or 436-030-0034;

(i) The date the worker's aggravation rights end;

(j) The worker's appeal rights;

(k) A statement that the worker has the right to consult with the Ombudsman for Injured Workers;

(l) For claims with dates of injury before January 1, 2005, the rate in dollars per degree at which permanent disability, if any, will be paid based on date of injury as identified in Bulletin 111;

(m) For claims with dates of injury on or after January 1, 2005, the state's average weekly wage applicable to the worker's date of injury;

(n) The worker's return to work status;

(o) A general statement that the insurer has the authority to recover an overpayment;

(p) A statement that the worker has the right to be represented by an attorney; and

(q) A statement that the worker has the right to request a vocational eligibility evaluation under ORS 656.340.

(7) The Notice of Closure (Form 440-1644) must be accompanied by the following:

(a) The brochure "Understanding Claim Closure and Your Rights";

(b) A copy of summary worksheet Form 2807 containing information and findings which result in the data appearing on the Notice of Closure;

(c) An accurate description of the physical requirements of the worker's job held at the time of injury unless it is not required under section (2)(a) of this rule or it was previously provided under section (2)(b)(A) of this rule;

(d) The Updated Notice of Acceptance at Closure which clearly identifies all accepted conditions in the claim and specifies those which have been denied and are on appeal or which were the basis for this opening of the claim; and

(e) A cover letter that:

(A) Specifically explains why the claim has been closed (e.g., expiration of a period of suspension without the worker resolving the problems identified, an attending physician stating the worker is medically stationary, worker failure to treat without attending physician authorization or establishing good cause for not treating, etc.);

(B) Lists and describes enclosed documents; and

(C) Notifies the worker about the end of temporary disability benefits, if any, and the anticipated start of permanent disability benefits, if any.

(8) A copy of the Notice of Closure must be mailed to each of the following persons at the same time, with each copy clearly identifying the intended recipient:

(a) The worker;

(b) The employer;

(c) The director; and

(d) The worker's attorney, if the worker is represented.

(9) The worker's copy of the Notice of Closure must be mailed by both regular mail and certified mail return receipt requested.

(10) An insurer may use electronically produced Notice of Closure forms if consistent with the form and format prescribed by the director.

(11) Insurers may allow adjustments of benefits awarded to the worker under the documentation requirements of OAR 436-060-0170 for the following purposes:

(a) To recover payments for permanent disability which were made prematurely;

(b) To recover overpayments for temporary disability; and

(c) To recover overpayments for other than temporary disability such as prepaid travel expenses where travel was not completed, prescription reimbursements, or other benefits payable under ORS 656.001 to 656.794.

(12) The insurer may allow overpayments made on a claim with the same insurer to be deducted from compensation to which the worker is entitled but has not yet been paid.

(13) If after claim closure, the worker becomes enrolled and actively engaged in an approved training program under OAR 436-120, a new Notice of Closure must be issued consistent with the following:

(a) In claims with dates of injury on or after January 1, 2005, the insurer must redetermine work disability when:

(A) The worker has ended training; and either

(B) The worker's condition is medically stationary; or

(C) The claim otherwise qualifies for closure in accordance with these rules.

(b) For claims with dates of injury before January 1, 2005, permanent disability must be redetermined by the insurer when:

(A) The worker has ended training; and either

(B) The worker's condition is medically stationary; or

(C) The claim otherwise qualifies for closure in accordance with these rules, except

(D) When the worker became medically stationary after June 7, 1995 for a scheduled disability. Then the scheduled disability must remain unchanged from the last award of compensation in that claim unless the condition did not remain medically stationary through training.

(c) For claims with dates of injury before January 1, 2005, if the worker has remained medically stationary throughout training and the closing examination is six months old or older, a current medical examination is required for redetermination unless the worker's attending physician provides a written statement that there has been no change in the worker's accepted condition since the previous closing examination.

(14) When, after a claim is closed, the insurer changes or is ordered to change the worker's weekly wage upon which calculation of the work disability portion of a permanent disability award may be based, the insurer must notify the parties and the division of the change and the effect of the change on any permanent disability award. For purposes of this rule, the insurer must complete Form 440-1502 consistent with the instructions of the director and distribute it within 14 days of the change.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.268, 656.726, 656.745

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0006, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1991, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0034

Administrative Claim Closure

(1) The insurer must close a claim when the worker is not medically stationary and the worker fails to seek treatment for more than 30 days without the instruction or approval of the attending physician or authorized nurse practitioner and for reasons within the worker's control. In order to close a claim under this section, the insurer must:

(a) Wait for the 30-day lack of treatment period to expire or any additional time period recommended by the attending physician or authorized nurse practitioner before sending the worker written notification by certified mail informing them of the following:

(A) The worker's responsibility to seek medical treatment in a timely manner;

(B) The consequences for failing to seek treatment in a timely manner which include, but are not limited to, claim closure and possible loss or reduction of a disability award; and

(C) The claim will be closed unless the worker establishes within 14 days that:

(i) Treatment has resumed by attending an existing appointment or scheduling a new appointment; or

(ii) The reasons for not treating were outside the worker's control.

(b) Wait the 14 day period given in the notification letter to allow the worker to provide evidence that the lack of treatment was either authorized by the attending physician or authorized nurse practitioner or beyond the worker's control.

(c) Determine whether claim closure is appropriate based on the information received.

(d) Rate all permanent disability apparent in the record (e.g., irreversible findings) at the time of claim closure.

(e) Use 30 days from the last treatment provided or any additional time period authorized by the attending physician or authorized nurse practitioner as the date the claim qualifies for closure on the Notice of Closure.

(2) The insurer must close a claim when a worker who is not medically stationary has not sought treatment for more than 30 days with a health care provider authorized under ORS 656.005 and 656.245 (e.g., a worker enrolled in a managed care organization (MCO) who treats with a physician outside the MCO is not treating with an authorized health care provider). To close a claim under this section, the insurer must follow the requirements in section (1) of this rule and inform the worker that the reason for the impending closure is because the worker failed to treat with an authorized health care provider.

(3) A claim must be closed when the worker fails to attend a mandatory closing examination for reasons within the worker's control. To close a claim under this section, the insurer must:

(a) Inform the worker in writing sent by certified mail, at least 10 days prior to the mandatory closing examination of:

(A) The date, time, and place of the examination;

(B) The worker's responsibility to attend the examination;

(C) The consequences for failing to attend, which include, but are not limited to, claim closure and the possible loss or reduction of a disability award; and

(D) The worker's responsibility to provide information to the insurer regarding why the examination was not attended, if the reason was beyond the worker's control.

(b) Wait 7 days from the date of the missed exam to allow the worker to demonstrate good cause for failing to attend before closing the claim.

(c) Use the date of the failed mandatory closing examination as the date the claim qualifies for closure on the Notice of Closure.

(4) The insurer may close the claim under section (1) of this rule, regardless of the worker's medically stationary status, when a closing exam has been scheduled between a worker and attending physician directly and the worker fails to attend the examination.

(5) A claim may be closed when the worker is not medically stationary and a major contributing cause denial has been issued on an accepted combined condition.

(a) The major contributing cause denial must inform the worker that claim closure may result from the issuance of the denial and provide all other information required by these rules.

(b) When a major contributing cause denial has been issued following the acceptance of a combined condition, the date the claim qualifies for closure is the date the insurer receives sufficient information to determine the extent of any permanent disability under OAR 436-035-0007(5) or (6) and 436-030-0020(2) or the date of the denial, whichever is later.

(6) When two or more of the above events occur concurrently, the earliest date the claim qualifies for closure is used to close the claim.

(7) The attending physician or authorized nurse practitioner must be copied on all notification and denial letters applicable to this rule.

(8) When the director has issued a suspension order under OAR 436-060-0095 or 436-060-0105, the date the claim qualifies for closure is the date of the suspension order.

Stat. Auth.: ORS 656.262, 656.268, 656.726

Stats. Implemented: ORS 656.268, 656.726

Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0065

Review of Permanent Total Disability Awards

(1) The insurer must reexamine each permanent total disability claim at least once every two years or when requested to do so by the director to determine if the worker has materially improved, either medically or vocationally, and is capable of regularly performing work at a suitable and gainful occupation. The insurer must notify the worker and the worker's attorney if the worker is represented whenever the insurer intends to reexamine the worker's permanent total disability status. Workers who fail to cooperate with the reexamination may have benefits suspended under OAR 436-060-0095.

(2) A worker receiving permanent total disability benefits must submit to a vocational evaluation, if requested by the director, insurer, or self-insured employer under ORS 656.206(8).

(3) Any decision by the insurer to reduce permanent total disability must be communicated in writing to the worker, and to the worker's attorney if the worker is represented, and accompanied by documentation supporting the insurer's decision. That documentation must include: medical reports, including sufficient information necessary to determine the extent of permanent partial disability, vocational and investigation reports (including visual records, if available) which demonstrate the worker's ability to regularly perform a suitable and gainful occupation, and all other applicable evidence.

(4) An award of permanent total disability for scheduled injuries before July 1, 1975, must be considered for reduction only when the insurer has evidence that the medical condition has improved.

(5) Except for section (4) of this rule, an award of permanent total disability may be reduced only when the insurer has a preponderance of evidence that the worker has materially improved, either medically or vocationally, and is regularly performing work at a suitable and gainful occupation or is currently capable of doing so. Preexisting disability must be included in redetermination of the worker's permanent total disability status.

(6) When the insurer reduces a permanent total disability claim, the insurer must, based upon sufficient information to determine the extent of permanent partial disability, issue a Notice of Closure which reduces the permanent total disability and awards permanent partial disability, if any.

(7) Notices of Closure reducing permanent total disability are appealable to the Hearings Division.

(8) A worker who incurs a compensable injury while receiving permanent total disability benefits is entitled to additional benefits for the new condition, but benefits are limited to medical and impairment benefits under ORS 656.206(9).

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.206, 656.214, 656.268, 656.283, 656.319, 656.325, 656.331, 656.726

Hist.: WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0115

Reconsideration of Notices of Closure

(1) A worker or insurer may request reconsideration of a Notice of Closure by mailing, phoning, or delivering the request to the director within the statutory appeal period as defined in OAR 436-030-0005 and 436-030-0145(1). The reconsideration proceeding begins as described in OAR 436-030-0145(2).

(2) For the purpose of these rules, "reconsideration proceeding" means the procedure established to reconsider a Notice of Closure and does not include personal appearances by any of the parties to the claim or their representatives, unless requested by the director. All information to correct or clarify the record and any medical evidence regarding the worker's condition as of the time of claim closure that should have been but was not submitted by the attending physician or authorized nurse practitioner at the time of claim closure and all supporting documentation must be presented during the reconsideration proceeding. When the reconsideration proceeding is postponed because the worker's condition is not medically stationary under OAR 436-030-0165(10), medical evidence submitted may address the worker's condition after claim closure as long as the evidence satisfies the conditions of OAR 436-030-0145(3).

(3) All parties have an opportunity to submit documents to the record regarding the worker's status at the time of claim closure. Other factual information and written argument may be submitted for incorporation into the record under ORS 656.268(6) within the time frames outlined in OAR 436-030-0145. Such information may include, but is not limited to,

responses to the documentation and written arguments, written statements, and sworn affidavits from the parties.

(4) The worker may submit a deposition to the reconsideration record subject to ORS 656.268(6) and the following:

(a) The deposition must be limited to the testimony and cross-examination of a worker about the worker's condition at the time of claim closure.

(b) The deposition must be arranged by the worker and held during the reconsideration proceeding time frame unless a good cause reason is established. If a good cause reason is established, the time frame for holding the deposition may be extended but must not extend beyond 30 days from the date of the Order on Reconsideration. The deposition must be held at a time and place that permits the insurer or self-insured employer the opportunity to cross-examine the worker.

(c) The insurer or self-insured employer must, within 30 days of receiving a bill for the deposition, pay the fee of the court reporter and the costs for the original transcript and its copies. An original transcript of the deposition must be sent to the department and each party must be sent a copy of the transcript.

(d) If the transcript is not completed and presented to the department prior to the deadline for issuing an Order on Reconsideration, the Order on Reconsideration may not be postponed to receive a deposition under this rule and the order will be issued based on the evidence in the record. However, the transcript may be received as evidence at a hearing for an appeal of the Order on Reconsideration.

(5) Only one reconsideration proceeding may be completed on each Notice of Closure and the director will review those issues raised by the parties and the requirements under ORS 656.268(1). Once the reconsideration proceeding is initiated, issues must be raised and further evidence submitted within the time frames allowed for processing the reconsideration request. When the director requires additional information to complete the record, the reconsideration proceeding may be postponed under ORS 656.268(6).

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0135
Reconsideration Procedure

(1) Within 14 days from the date of the director's notice of the start of the reconsideration proceeding, the insurer must provide the director and the worker or the worker's attorney, in chronological order by document date, all documents pertaining to the claim which include, but are not limited to the complete medical record and all official action and notices on the claim.

(2) The request for reconsideration and all other information submitted to the director by any party during the reconsideration process must be copied to all interested parties. Failure to comply with this requirement may result in the information not being included as part of the record on reconsideration.

(3) The director will issue an order rescinding a Notice of Closure when the director finds, upon reconsideration:

(a) The claim was closed prematurely because the worker's accepted condition(s) was not medically stationary and the claim did not qualify for closure under ORS 656.268(1)(a); or

(b) The claim was not closed according to the requirements of these rules and ORS 656.268(1)(b) or (c).

(4) When a worker has requested and cashed a lump sum payment, under ORS 656.230, of an award granted by a Notice of Closure, the director will not consider the adequacy of that award in a reconsideration proceeding.

(5) When a new condition is accepted after a prior claim closure, and the newly accepted condition is subsequently closed, the director and the parties may mutually agree to consolidate requests for review of the closures into one reconsideration proceeding, provided the director has jurisdiction and neither of the closures have become final by operation of law.

(6) The reconsideration order may affirm, reduce, or increase the compensation awarded by the Notice of Closure.

(7) After the reconsideration order has been issued and before the end of the 30-day appeal period for the order on reconsideration, if a party discovers that additional documents were not provided by the opposing party in accordance with this rule, the Order on Reconsideration may be abated and withdrawn to give the party an opportunity to respond to the new information.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0145
Reconsideration Time Frames and Postponements

(1) Statutory time frames for appealing a Notice of Closure are:

(a) For claims with a medically stationary date prior to June 7, 1995, the appeal period is 180 days from the claim closure. The time required to complete the reconsideration proceeding pursuant to this rule must not be included in the 180 days from the mailing date of the Notice of Closure to request a hearing.

(A) The 180-day time limit will be tolled upon receipt of the request for reconsideration from the mailing date of the request for reconsideration until the reconsideration request is either dismissed or an Order on Reconsideration is issued.

(B) The 180-day time limit will not be tolled when a request for reconsideration is withdrawn under OAR 436-030-0185.

(b) For claims with a medically stationary date, or date the claim statutorily qualifies for closure, on or after June 7, 1995, a request for reconsideration must be mailed within 60 days of the mailing date of the Notice of Closure. A request for hearing must be made within 30 days of the mailing date of the Order on Reconsideration.

(c) For claims closed on or after January 1, 2004, the insurer's request for reconsideration is limited to the findings used to rate impairment and must be mailed within seven days of the mailing date of the Notice of Closure.

(2) The reconsideration proceeding begins upon:

(a) The director's receipt of the worker's request for reconsideration, if the insurer has not previously requested reconsideration consistent with subsection (1)(c) of this rule; or

(b) The 61st day after the closure of the claim, if the insurer has requested reconsideration consistent with subsection (1)(c) of this rule; unless the director receives, within the appeal time frames in section (1) of this rule, a request for reconsideration or a statement by the worker instructing the director to start the reconsideration proceeding.

(3) Fourteen days from the date of the director's notice of the start of the reconsideration proceeding, the reconsideration request and all other appropriate information submitted by the parties will become part of the record used in the reconsideration proceeding.

(a) Evidence received or issues raised subsequent to the 14 day deadline will be considered in the reconsideration proceeding to the extent practicable.

(b) Upon review of the record the director may request, in accordance with ORS 656.268(6), any additional information deemed necessary for the reconsideration and set appropriate time frames for response.

(c) Except as provided in section (5) and (6) of this rule, the director will either mail an Order on Reconsideration within 18 working days from the date the reconsideration proceeding begins or notify the parties that the reconsideration proceeding is postponed for not more than 60 additional days in accordance with the provisions of ORS 656.268(6).

(4) Medical arbiter panel requests must be received by the department within 14 days from the date of the director's notice of the start of the reconsideration proceeding.

(5) When the director provides notice the worker failed to attend the medical arbiter examination without good cause or failed to cooperate with the arbiter examination and suspends benefits under ORS 656.268(7), the reconsideration proceeding will be postponed for up to 60 additional days from the date the director determines and provides notice, to allow completion of the arbiter process.

(6) The reconsideration proceeding may be stayed for one of the following reasons:

(a) The parties consent to deferring the reconsideration proceeding, under ORS 656.268(7)(i)(B), when the medical arbiter examination is not medically appropriate because the worker's medical condition is not stationary; or

(b) When a Claim Disposition Agreement (CDA) is filed, the reconsideration proceeding is stayed until the CDA is either approved or set aside.

(7) If the director fails to mail an Order on Reconsideration or a Notice of Postponement under the time frames specified in ORS 656.268, the reconsideration request is automatically deemed denied. The parties may immediately thereafter proceed as though the director had issued an Order on Reconsideration affirming the Notice of Closure. Under section (1) of this rule, the counting of the 180-day time limit for requesting a hearing under former ORS 656.268(6)(b) will resume on the date after the director should have issued an Order on Reconsideration.

(8) Notwithstanding any other provision regarding the reconsideration proceeding, the director may extend nonstatutory time frames to allow the parties sufficient time to present evidence and address their issues and concerns.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0155
Reconsideration Record

(1) The record for the reconsideration proceeding includes all documents and other material relied upon in issuing the Order on Reconsideration as well as any additional material submitted by the parties, but not considered in the reconsideration proceeding.

(a) The record is maintained in the Workers' Compensation Division's claim file and consists of all documents and material received and date stamped by the director prior to the issuance of the Order on Reconsideration, unless the document is an exact duplicate of what is in the file then the director is not required to retain the duplicate document.

(b) The insurer or self-insured employer must not send billing information and duplicate documents to the department, unless specifically requested by the director.

(c) Evidence stored by the parties on audio media and submitted as part of the reconsideration record may only be submitted in transcribed form.

(2) Except as noted in this section, the medical record submitted by the director for arbiter review will consist of all medical documents and medical material produced by the claim under reconsideration, provided the information is allowable under ORS 656.268.

(3) The director will send non-medical information, nursing notes, or physical therapy treatment notes to the arbiter if:

(a) A party requests the director to submit those specific materials;

(b) The party identifies and provides the director with specific dates of those materials requested to be submitted; and

(c) The materials otherwise meet the requirements of this rule.

(4) When any surveillance video obtained prior to closure has been submitted to a physician involved in the evaluation or treatment of the worker, it must be provided for arbiter review.

(a) Surveillance video provided for arbiter review must have been reviewed prior to claim closure by a physician involved in the evaluation or treatment of the worker.

(b) All written materials previously forwarded to a physician along with the surveillance video, such as investigator field notes, summary or narrative reports, and cover letters, must also be submitted.

(c) Surveillance video must be labeled according to the date and total time of the recording.

(5) When reconsideration is requested, the insurer is required to provide the director and the other parties with a copy of all documents contained in the record at claim closure. For cases involving a health care provider who must meet criteria other than those of an attending physician or who practices under contract with a managed care organization, the insurer must provide documentation of the health care provider's authority to act as an attending physician. Responses of the parties to the medical arbiter report will be included in the record if received prior to completion of the reconsideration proceeding.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0165
Medical Arbiter Examination Process

(1) The director will select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(7)(d).

(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director prior to the examination of the specific objection. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician. All costs related to the completion of the medical arbiter process in this rule must be paid by the insurer.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(7).

(c) Arbiters or panel members will not include any health care provider whose examination or treatment is the subject of the review.

(2) When the director has determined a claim qualifies for medical arbiter deselection, a list of appropriate physicians will be faxed or sent by overnight mail to the parties.

(a) Each party may eliminate one physician from the list by crossing out the physician's name.

(b) The parties may agree to one physician from the list by responding in writing. The parties must also deselect one physician from the list in case the agreed upon physician is unavailable.

(c) All responses must be signed and received by the director within three working days. No further opportunity will be given for the parties to provide input regarding the arbiter deselection process once the three working day period has expired. No further attempts at deselection will be made when continuing the arbiter deselection process is not practical.

(3) The worker's failure to attend the medical arbiter examination or to cooperate with the medical arbiter will result in suspension of all disability benefits effective on the date of the examination unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The worker must call the director within 24 hours after failing to attend the examination to provide any "good cause" reason for missing the exam.

(a) Notice of the examination will be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(4) If a worker misses the medical arbiter examination, the director will determine whether or not there was a "good cause" reason for missing the examination.

(5) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the worker's disability benefits will be suspended and the reconsideration proceeding postponed for up to an additional 60 days.

(6) The suspension will be lifted if any of the following occur during the additional 60-day postponement period:

(a) The worker establishes a "good cause" reason for missing or failing to cooperate with the examination;

(b) The worker withdraws the request for reconsideration; or

(c) The worker attends and cooperates with a rescheduled arbiter examination.

(7) If none of the events which end the suspension under section (6) of this rule occur prior to the expiration of the 60-day additional postponement, the suspension of benefits will remain in effect.

(8) The medical arbiter or panel of medical arbiters must perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment.

(a) The parties must submit to the director any issues they wish the medical arbiter or panel of medical arbiters to address within 14 days of the date of the director's notice of the start of the reconsideration proceeding. The parties must not submit issues directly to the medical arbiter or panel of medical arbiters. The medical arbiter or panel of medical arbiters will only consider issues appropriate to the reconsideration proceeding.

(b) The report of the medical arbiter or panel of medical arbiters must address all questions raised by the director.

(c) The medical arbiter will provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer within five

working days after completion of the arbiter review. The cost of providing copies of such additional reports must be reimbursed according to OAR 436-009-0070 and must be paid by the insurer.

(9) When the worker's medical condition is not stationary on reconsideration which may result in difficulties in obtaining findings of impairment by the arbiter, the director will, where appropriate, send a letter to the parties requesting consent to defer the reconsideration proceeding.

(a) If the parties agree to the deferral, the reconsideration proceeding will be deferred until the medical record reflects the worker's condition has stabilized sufficiently to allow for examination to obtain the impairment findings. The parties must notify the director when it is appropriate to schedule the medical arbiter examination and provide the necessary medical records when requested. Interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition may be submitted at the time the parties notify the director that the medical arbiter exam can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (7).

(b) If deferral is not appropriate, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

(10) All costs related to record review, examinations, tests, and reports of the medical arbiter must be paid under OAR 436-009-0015, 436-009-0040, and 436-009-0070.

(11) When requested by the Hearings Division, the director may schedule a medical arbiter examination for a worker who has appealed a Notice of Closure rescinding permanent total disability benefits under ORS 656.206.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0185
Reconsideration: Settlements and Withdrawals

(1) Contested matters arising out of a claim closure may be resolved by mutual agreement of the parties at any time after the claim has been closed under ORS 656.268 but before that claim closure has become final by operation of law. If the parties have reached such an agreement prior to the completion of the reconsideration proceeding, the parties must submit the stipulation agreement to the director for approval as part of the reconsideration proceeding. The stipulation submitted for review at the reconsideration proceeding must:

(a) Address only issues that pertain to a claim closure and cannot include any issues of compensability;

(b) List the body part for which any award is made and recite all disability awarded in both degrees and percent of loss as appropriate based on date of injury when permanent partial disability is part of the stipulated agreement. In the event there is any inconsistency between the stated degrees and percent of loss awarded in any stipulated agreement for claims with dates of injury prior to January 1, 2005, the stated percent of loss will control.

(2) The director will review the stipulation and issue an order approving or denying the stipulation. Stipulations approved by the director can not be appealed.

(3) When the stipulated agreement does not expressly resolve all issues relating to the claim closure, the Order on Reconsideration will include the stipulation, as well as a substantive determination of all remaining issues. In these claims, the 18 working day time frame may be postponed in the same manner as any reconsideration proceeding.

(4) If the stipulation is not approved, the reconsideration proceeding will be postponed to allow the parties to:

(a) Address the disapproval, or

(b) Request that the director issue an Order on Reconsideration addressing the substantive issues.

(5) When the parties desire to enter into a stipulated agreement to resolve disputed issues relating to the claim closure but are unable to reach an agreement, the parties may request the assistance of the director to mediate an agreement.

(6) When the parties desire to enter into a stipulated agreement that addresses all matters being reconsidered as well as issues not before the reconsideration proceeding, and the parties do not want a reconsideration on the merits of the claim closure, they may advise the director of their resolution and request the director enter an Order on Reconsideration affirming the Notice of Closure. The request for an affirming order must be made prior to the date an Order on Reconsideration is issued and in accordance with the following procedure.

(a) A written request for an affirming reconsideration order must:

(A) Be made by certified mail;

(B) Be signed by both parties or their representatives;

(C) State that the parties waive their right to an arbiter review and that all matters subject to the mandatory reconsideration process have been resolved; and

(D) Be accompanied by a copy of the proposed stipulated agreement.

(b) After the affirming Order on Reconsideration has been issued, the parties will submit their stipulation to a referee of the Hearings Division, Workers' Compensation Board, for approval in accordance with the provisions of ORS 656.289 and the Board's rules of practice and procedure.

(c) An Order on Reconsideration issued under this rule is final and is subject to review under ORS 656.283.

(d) This provision does not apply to Claims Disposition Agreements filed under ORS 656.236.

(7) A worker requesting a reconsideration may withdraw the request for reconsideration without agreement of the other parties only if:

(a) No additional information has been submitted by the other parties;

(b) No medical arbiter exam has occurred, and

(c) The insurer has not requested reconsideration under OAR 436-030-0145.

(8) Notwithstanding (7) above, if additional information has been submitted by the other party(ies), a medical arbiter exam has occurred or the insurer has requested reconsideration, the reconsideration request will not be dismissed unless all parties agree to the withdrawal.

(9) If the insurer has requested reconsideration, either the worker or the insurer may initiate the withdrawal request but both must agree to the withdrawal.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-030-0580
Penalties and Sanctions

(1) Under ORS 656.745, the director or designee may assess a civil penalty against an employer or insurer who fails to comply with the statutes, rules, or orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(2) An insurer or health care provider failing to meet the requirements set forth in these rules may be assessed a civil penalty.

(3) Under OAR 436-010-0340, the director may impose sanctions for any health care provider where the insurer can provide sufficient documentation to substantiate lack of cooperation. The medical service provider will be sent a warning letter about the reporting requirements and possible penalties. Failure by the health care provider to submit the requested information within the specified period may result in civil penalties.

(4) Sufficient documentation to substantiate lack of cooperation by the health care provider includes:

(a) Copies of letters to the health care provider;

(b) Memos to the claim file of follow-up phone calls or the lack of response;

(c) Letters from the health care provider indicating a lack of cooperation; or

(d) Medical reports received by the insurer, after adequate instruction by the insurer or the director, which do not supply the requested information or which supply information that is not consistent with the Disability Rating Standards in OAR 436-035.

Stat. Auth.: ORS 656.268, 656.726
Stats. Implemented: ORS 656.268, 656.726, 656.745
Hist.: WCD 13-1987, f. 12-17-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert.ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0003
Applicability of Rules

(1) These rules govern claims processing and carry out the provisions of:

(a) ORS 656.210. Temporary total disability;

(b) ORS 656.212. Temporary partial disability;

(c) ORS 656.230. Lump sum payments;

(d) ORS 656.262. Responsibility for processing and payment of compensation, sight drafts, claimant's duty to cooperate with an investigation, acceptance and denial and reporting of claims, and penalties for payment delays;

(e) ORS 656.264. Required reporting of information to the director;

(f) ORS 656.265. Notices of accidents from workers;

(g) ORS 656.268. Insurer claim closures, insurer recovery of overpayments;

(h) ORS 656.273 Aggravation for worsened conditions, procedures, limitations, additional compensation;

(i) ORS 656.277 Request for reclassification of nondisabling claim, nondisabling claim procedure;

(j) ORS 656.307. Determination of responsibility for compensation payments;

(k) ORS 656.325. Required medical examinations, suspension of compensation, injurious practices, claimant's duty to reduce disability, and reduction of benefits for failure to participate in rehabilitation;

(l) ORS 656.331. Notice to worker's attorney; and,

(m) ORS 656.726(4). The director's powers and duties generally.

(2) The applicability of these rules is subject to ORS 656.202.

(3) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth: ORS 656.210, 656.212, 656.230, 656.262, 656.264, 656.265, 656.268, 656.273, 656.277, 656.307, 656.325, 656.331, 656.704 & 656.726(4)
656.307, 656.325, 656.331, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.704 & 656.726(4)
Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0003, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-13-92, cert. ef. 2-1-92; WCD 1-1994(Temp), f. & cert. ef. 3-1-94; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 14-1996(Temp), f. & cert. ef. 5-31-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0008
Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005, including an assigned claims agent as a designated processing agent under ORS 656.054, aggrieved by an action taken under these rules in which a worker's right to compensation or the amount thereof is directly in issue, may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS chapter 656.

(2) Contested case hearings of Sanctions and Civil Penalties: Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director issued under ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The aggrieved person must file a hearing request with the Administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request for hearing is mailed or delivered to the administrator within 60 days of the mailing date of the proposed order or assessment.

(3) Hearings before an administrative law judge: Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (2), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

(4) Administrative review by the director or designee: Any party aggrieved by an action taken under these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters will be as follows:

(a) The request for administrative review must be made in writing to the Administrator of the Workers' Compensation Division within 90 days of the action. No administrative review will be granted unless the request specifies the grounds upon which the action is contested and is mailed or delivered to the administrator within 90 days of the contested action unless the director or the director's designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) In the course of the review, the division may request or allow such input or information from the parties that the division deems helpful.

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745
Stats. Implemented: ORS 656.245, 656.260, 656.704, 656.726(4) & 656.740(1)
Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78, WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0998, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0009
Access to Department of Consumer and Business Services Workers' Compensation Claim File Records

(1) Under ORS 192.430 and OAR 440-005-0015(1) the director, as custodian of public records, promulgates this rule to protect the integrity of claim file records and prevent interference with the regular discharge of the department's duties.

(2) The department rules on Access of Public Records, Fees for Record Search and Copies of Public Records are found in OAR 440-005. Payment of fees for access to records must be made in advance unless the director determines otherwise. Workers and insurers of record, their legal representatives and third-party administrators shall receive a first copy of any document free. Additional copies shall be provided at the rates set forth in OAR 440-005.

(3) Any person has a right to inspect nonexempt public records. The statutory right to "inspect" encompasses a right to examine original records. It does not include a right to request blind searches for records not known to exist. The director will retain or destroy records according to retention schedules published by the Secretary of State, Archives Division.

(4) Under ORS 192.502(20) workers' compensation claims records are exempt from public disclosure. Access to workers' compensation claims records will be granted at the sole discretion of the director in accordance with this rule, under the following circumstances:

(a) When necessary for insurers, self-insured employers and third-party claims administrators and their legal representatives for the sole purpose of processing workers' compensation claims. The division will accept a request by telephone or facsimile transmission, but such request must include the claimant's social security number and insurer claim number in addition to the information required in section (7).

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim. Such circumstances include when workers' compensation claims file information is required by a public or private research organization in order to contact injured workers in order to conduct its research. The director may enter into such agreements with such institutions or persons as are necessary to secure the confidentiality of the disclosed records.

(d) When a worker or the worker's representative requests review of the workers' claim record.

(5) The director may release workers' compensation claims records to persons other than those described in section (4) when the director determines such release is in the public interest.

(a) For the purpose of these rules, a "public interest" exists when the conditions set forth in ORS 192.502(20) and subsections (4)(a) through (d) of this rule have been met. The determination whether the request to release workers' compensation claims records meets those conditions shall be at the sole discretion of the director.

(b) The director may enter into written agreements as necessary to ensure that the recipient of workers' compensation claims records under this section uses or provides the information to others only in accordance with these rules and the agreement with the director. The director may terminate such agreements at any time the director determines that one or more of the conditions of the agreement have been violated.

(6) The director may deny or revoke access to workers' compensation claims records at any time the director determines such access is no longer in the public interest or is being used in a manner which violates these rules or any law of the State of Oregon or the United States.

(7) Requests to inspect or obtain copies of workers' compensation claim records must be made in writing or in person and must include:

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

(b) The reason for requesting the records;

(c) A specific identification of the public record(s) required and the format in which they are required;

(d) The number of copies required;

(e) The account number of the requester, when applicable.

(8) Except as prescribed in subsections (4)(a) through (d), a person must submit to the division an attorney retainer agreement or release signed by the claimant in order to inspect or obtain copies of workers' compensation claims records. The director may refuse to honor any release that the director determines is likely to result in disclosed records being used in a manner contrary to these rules. Upon request, the director will review proposed release forms to determine whether the proposed release is consistent with the law and this rule.

Stat. Auth.: ORS 192.502, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.704 & 656.726(4)
Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0010
Reporting Requirements

(1) A subject employer must accept notice of a claim for workers' compensation benefits from an injured worker or the worker's representative. The employer must provide a copy of the "Report of Job Injury or Illness," Form 440-801 (Form 801) to the worker immediately upon request; the form must be readily available for workers to report their injuries. Proper use of this form satisfies ORS 656.265.

(2) A "Worker's and Health Care Provider's Report for Workers' Compensation Claims," Form 440-827 (Form 827), signed by the worker, is written notice of an accident, that may involve a compensable injury under ORS 656.265. The signed Form 827 shall start the claim process, but shall not relieve the worker or employer of the responsibility of filing a Form 801. If a worker reports a claim electronically the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records under OAR 436-010-0240, necessary to process the claim.

(3) Employers, except self-insured employers, must report the claim to their insurers no later than five days after notice or knowledge of any claim or accident, that may result in a compensable injury. The employer's knowledge date is the earliest of the date the employer (any supervisor or manager) first knew of a claim, or of when the employer has enough facts to reasonably conclude that workers' compensation liability is a possibility. The report must provide the information requested on the Form 801, and include, but not be limited to, the worker's name, address, and Social Security number, the employer's legal name and address, and the data specified by ORS 656.262 and 656.265.

(4) For the purpose of this section, "first aid" means any treatment provided by a person who does not require a license in order to provide the service. If an injured worker requires only first aid, no notice need be given the insurer, unless the worker chooses to file a claim. If a worker signs a Form 801, the claim must be reported to the insurer. If the person must be licensed to legally provide the treatment or if a bill for the service will result, notice must be given to the insurer. When the worker requires only first aid and chooses not to file a claim, the employer must maintain records showing the name of the worker, the date, nature of the injury and first aid provided, for five years. These records shall be open to inspection by the director, or any party or its representative. If an employer subsequently learns that such an injury has resulted in medical services, disability or death, the date of that knowledge will be considered as the date on which the employer received notice or knowledge of the claim for the purposes of processing under ORS 656.262.

(5) The director may assess a civil penalty against an employer delinquent in reporting claims to its insurer in excess of ten percent of the employer's total claims during any quarter.

(6) An employer intentionally or repeatedly paying compensation in lieu of reporting to its insurer claims or accidents that may result in a compensable injury claim may be assessed a civil penalty by the director.

(7) The insurer must process and file claims and reports required by the director in compliance with ORS chapter 656, WCD administrative rules, and WCD bulletins. Such filings shall not be made by computer-printed forms, facsimile transmission (FAX), electronic data interchange (EDI), or other electronic means, unless specifically authorized by the director.

(8) When an insurer receives a claim and the insurer does not provide insurance coverage for the worker's employer on the date of injury, the insurer may check for other coverage or forward it to the director. The insurer must do one or the other within three days of determining they did not provide coverage on the date of injury. If the insurer finds that another insurer provides coverage, the insurer must send the claim to the correct insurer within the same three day period. If the insurer cannot find coverage, the insurer must forward the claim to the director within the same three-day period.

(9) The insurer or self-insured employer and third party administrator, if any, must be identified on all insurer generated workers' compensation forms, including insurer name, third party administrator name (if applicable), and the mailing address and phone number of the location responsible for processing the claim.

(10) The insurer must file all disabling claims with the director within 14 days of the insurer's initial decision either to accept or deny the claim. To meet this filing requirement, the Insurer's Report, Form 440-1502 (Form 1502) accompanied by the Form 801, or its electronic equivalent, is to be submitted to the director. However, when the Form 801 is not available within a time frame that would allow a timely filing, a Form 1502, accompanied by a signed Form 827 when available, will satisfy the initial reporting requirement. If the Form 801 is not submitted at the time of the initial filing of the claim, the Form 801 must be submitted within 30 days from the filing of the Form 1502. A Form 801 prepared by the insurer in place of obtaining the form from the employer/worker does not satisfy the requirement to file the Form 801, unless the employer/worker cannot be located, or the form cannot be obtained from the employer/worker due to lack of cooperation, or the form is computer-printed based upon information obtained from the employer and worker. The insurer must submit copies of all acceptance or denial notices not previously submitted to the director with the Form 1502. Form 1502 is used to report claim status and activity to the director.

(11) When submitting a Form 1502 the minimum data elements an insurer must provide are the worker's legal name, Social Security number, insurer's claim number, date of injury, and the employer's legal name.

(12) When submitting an initial compensability decision Form 1502, the insurer must report:

(a) The status of the claim;

(b) Reason for filing;

(c) Whether first payment of compensation was timely, if applicable;

(d) Whether the claim was accepted or denied timely; and

(e) Any Managed Care Organization (MCO) enrollment, and the date of enrollment, if applicable.

(13) The insurer must file an additional Form 1502 with the director within 14 days of:

(a) The date of any reopening of the claim;

(b) Changes in the acceptance or disability status;

(c) Any litigation order or insurer's decision that causes reopening of the claim or changes the acceptance or disability status;

(d) MCO enrollment that occurs after the initial Form 1502 has been filed;

(e) The insurer's knowledge that a previous Form 1502 contained erroneous information;

(f) The date of any denial; or

(g) The date the first payment of temporary disability was issued.

(14) A nondisabling claim must be reported to the director only if it is denied, in part or whole. It must be reported to the director within 14 days of the date of denial. A nondisabling claim that becomes disabling must be reported to the director within 14 days of the date of the status change.

(15) If the insurer voluntarily reopens a qualified claim under ORS 656.278, it must file a Form 3501 with the director within 14 days of the date the insurer reopens the claim.

(16) The insurer must report a new medical condition reopening on the Form 1502 if the claim cannot be closed within 14 days of the first to occur: acceptance of the new condition, or the insurer's knowledge that interim temporary disability compensation is due and payable.

(17) New condition claims that are ready to be closed within 14 days must be reported on the "Insurer Notice of Closure Summary," Form 440-1503 (Form 1503) at the time the insurer closes the claim. The "Modified Notice of Acceptance" and "Updated Notice of Acceptance at Closure" letter must accompany the Form 1503.

(18) If, after receiving a claim from a worker or from someone other than the worker on the worker's behalf, the insurer receives written communication from the worker stating the worker never intended to file a claim and wants the claim "withdrawn," the insurer must submit a Form 1502 with a copy of the worker's communication to the director, if the claim had previously been reported.

(19) The director may issue a civil penalty against any insurer delinquent in reporting or in submitting Forms 801, 1502, 1503 or 1644 with a late or error ratio in excess of twenty percent during any quarter. For the purposes of this section, a claim or form shall be deemed to have been reported or submitted timely according to the provisions of ORS 656.726(4).

(20) Insurers must make an annual report to the director reporting attorney fees, attorney salaries, and all other costs of legal services paid under ORS chapter 656. The report must be submitted on forms furnished by the director for that purpose. Reports for each calendar year must be filed not later than March 1 of the following year.

(21) If an insurer elects to process and pay supplemental disability benefits, under ORS 656.210(5)(a), the insurer does not need to inform the director of their election. The insurer must request reimbursement, under OAR 436-060-0500, by filing Form 3504 "Supplemental Disability Benefits Quarterly Reimbursement Request" with the director for any quarter during which they processed and paid supplemental disability benefits. If an insurer elects not to process and pay supplemental disability benefits, the insurer must submit Form 3530, "Supplemental Disability Election Notification," to the director. The election remains in effect for all supplemental disability claims the insurer receives until the insurer changes its election. The election is made by the insurer and applies to all third party administrators an insurer may use for processing claims.

(22) An insurer may change its election made under section (21):

(a) Annually and

(b) Once after the division completes its first audit of supplemental disability payments made by the insurer.

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

Stat. Auth.: ORS 656.262, 656.264, 656.265(6), 656.704, 656.726(4), 656.745

Stats. Implemented: ORS 656.210, 656.262, 656.264, 656.265, 656.704, 656.726(4)

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0100, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0012

Notices and Correspondence Following the Death of a Worker

(1) If a worker is deceased, regardless of the cause of death, an insurer must address all future notices and correspondence to the worker's estate or qualified beneficiaries.

(2) If a worker is deceased, regardless of the cause of death, an insurer must still provide a written notice of acceptance or denial of a claim and issue a Notice of Closure, when applicable, to the estate of the worker.

(3) Other notices required under this chapter intended for the worker are not required when the worker is deceased.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.262, 656.264, 656.268

Hist.: WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0015

Required Notice and Information

(1) When an injured worker's attorney has given written notice of representation, prior or simultaneous written notice must be given to the worker's attorney under ORS 656.331 when:

(a) The director or insurer requests the worker to submit to a medical examination;

(b) The insurer contacts the worker regarding any matter which may result in denial, reduction or termination of the worker's benefits; or

(c) The insurer contacts the worker regarding any matter relating to disposition of a claim under ORS 656.236.

(2) The director shall assess a civil penalty against an insurer who intentionally or repeatedly fails to give notice as required under section (1) of this rule.

(3) The insurer or the third party administrator must provide the pamphlet, "What Happens if I'm Hurt on the Job?," Form 440-1138 (Form 1138), to every injured worker who has a disabling claim with the first time-loss check or earliest written correspondence. For nondisabling claims, the information page, "A Guide for Workers Hurt on the Job," Form 440-3283 (Form 3283) may be provided in lieu of Form 1138, unless the worker specifically requests Form 1138.

(4) The insurer must provide Form 3283 to their insured employers. The employer must provide the Form 3283 to the worker at the time a worker files a claim for workers' compensation benefits. The Form 3283 may be printed on the back of the Form 801.

(5) The insurer must provide the "Notice to Worker," Form 440-3058 (Form 3058) or its equivalent to the worker with the initial notice of acceptance on the claim under OAR 436-060-0140(7). For the purpose of this rule, an equivalent to the Form 3058 must include all of the statutory and rule requirements.

(6) Additional notices the insurer must send to a worker are contained in OAR 436-060-0018, 436-060-0030, 436-060-0035, 436-060-0095, 436-060-0105, 436-060-0135, 436-060-0140, and 436-060-0180.

(7) When an insurer changes claims processing locations, third party administrators, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor.

(8) The insurer must provide the worker an explanation of any change in the wage used that differs from what was initially reported in writing to the insurer. Prior to claim closure on a disabling claim, the insurer must send the worker a notice documenting the wage upon which benefits were based. Work disability, if applicable, will be determined when the claim is closed. The notice must also explain how the worker can appeal the insurer's wage calculation if the worker disagrees with the wage.

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

Stat. Auth.: ORS 656.331, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.331, 656.704 & 656.726(4)

Hist.: WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0017

Release of Claim Document

(1) For the purpose of this rule:

(a) "Documents" include, but are not limited to, medical records, vocational records, written and automated payment ledgers for both time loss and medical services, payroll records, recorded statements, insurer generated records (insurer generated records exclude a claim examiner's generated file notes, such as documentation or justification concerning setting or adjusting reserves, claims management strategy, or any privileged communications), all forms required to be filed with the director, notices of closure, electronic transmissions, and correspondence between the insurer, service providers, claimant, the division or the Workers' Compensation Board.

(b) "Possession" means documents making up, or relating to, the insurer's claim record on the date of mailing the documents to the claimant, claimant's attorney or claimant's beneficiary. Any documents that have been received by the insurer five or more working days prior to the date of mailing shall be considered as part of the insurer's claim record even though the documents may not have yet reached the insurer's claim file.

(2) The insurer must date stamp each document upon receipt with the date it is received. The date stamp must include the month, day, year of receipt, and name of the company, unless the document already contains the date information and name of recipient company, as in faxes, e-mail and other electronically transmitted communications.

(3) A request for copies of claim documents must be submitted to the insurer, self-insured employer, or their respective third party administrator, and copied simultaneously to defense counsel, if known.

(4) The insurer must furnish, without cost, legible copies of documents in its possession relating to a claim, upon request of the claimant, claimant's attorney or claimant's beneficiary, at times other than those provided for under ORS 656.268 and OAR chapter 438, as provided in this rule. Except as provided in OAR 436-060-0180, an initial request by anyone other than the claimant or claimant's beneficiary must be accompanied by a worker signed attorney retention agreement or a medical release signed by the worker. The signed medical release must be in a form or format as the director may provide by bulletin. Information not otherwise available through this release, but relevant to the claim, may only be obtained in compliance with applicable state or federal laws. Upon the request of the claimant's attorney, a request for documents shall be considered an

ongoing request for future documents received and generated by the insurer for 180 days after the initial mailing date under section (7) or until a hearing is requested before the Workers' Compensation Board. The insurer must provide such new documents to claimant's attorney every 30 days, unless specific documents are requested sooner by the attorney. Such documents must be provided within the time frame of section (7).

(5) Once a hearing is requested before the Workers' Compensation Board, the release of documents is controlled by OAR chapter 438. This rule applies subsequently if the hearing request is withdrawn or when the hearing record is closed, provided a request for documents is renewed.

(6) Upon request, the entire health information record in the possession of the insurer will be provided to the worker or the worker's representative. This includes records from all healthcare providers, except that the following may be withheld:

(a) Information that was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information,

(b) Psychotherapy notes,

(c) Information compiled for use in a civil, criminal, or administration action or proceeding; and

(d) Other reasons specified by federal regulation.

(7) The insurer must furnish copies of documents within the following time frames:

(a) The documents of open and closed files, or microfilmed files must be mailed within 14 days of receipt of a request, and copies of documents of archived files within 30 days of receipt of a request.

(b) If a claim is lost or has been destroyed, the insurer must so notify the requester in writing within 14 days of receiving the request for claim documents. The insurer must reconstruct and mail the file within 30 days from the date of the lost or destroyed file notice.

(c) If no documents are in the insurer's possession at the time the request is received, the 14 days within which to provide copies of documents starts when the insurer does receive some documentation on the claim if that occurs within 90 days of receipt of the request.

(d) Documents are deemed mailed when addressed to the last known address of the claimant, claimant's beneficiary, or claimant's attorney and deposited in the U.S. Mail.

(8) The documents must be mailed directly to the claimant's or beneficiary's attorney, when the claimant or beneficiary is represented. If the documents have been requested by the claimant or beneficiary, the insurer must inform the claimant or beneficiary of the mailing of the documents to the attorney. The insurer is not required to furnish copies to both the claimant or beneficiary and the attorney. However, if a claimant or beneficiary changes attorneys, the insurer must furnish the new attorney copies upon request.

(9) The director may assess a civil penalty against an insurer who fails to furnish documents as required under this rule. The matrix attached to these rules in Appendix "A" will be used in assessing penalties.

(10) Rule violation complaints about release of requested claims documents must be in writing, mailed or delivered to the division within 180 days of the request for documents, and must include a copy of the request submitted under section (3). When notified by the director that a complaint has been filed, the insurer must respond in writing to the division. The response must be mailed or delivered to the director within 14 days of the mailing date of the division's inquiry letter. A copy of the response, including any attachments, must be sent simultaneously to the requester of claim documents. If the division does not receive a timely response or the insurer provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), a civil penalty may be assessed under OAR 436-060-0200 against the insurer. Assessment of a penalty does not relieve the insurer of the obligation to provide a response.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 656.360, 656.362, 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 3-1991, f. 4-18-91, cert. ef. 6-1-91; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0018

Nondisabling/Disabling Reclassification

(1) When the insurer changes the classification of an accepted claim, the insurer must submit an "Insurer's Report," Form 440-1502, indicating a change in status, to the director within 14 days from the date of the new classification. A notice of change of classification must be communicated by issuing a Modified Notice of Acceptance. This notice must include an explanation of the change in status and must be sent to the director, the worker, and the worker's attorney if the worker is represented. If the claim qualifies for closure, the insurer must close the claim under ORS 656.268(5).

(2) The insurer must reclassify a nondisabling claim to disabling within 14 days of receiving information that any condition already accepted meets the disabling criteria in this rule. A claim is disabling if any of the following criteria apply:

(a) Temporary disability is due and payable; or

(b) The worker is medically stationary within one year of the date of injury and the worker will be entitled to an award of permanent disability; or

(c) The worker is not medically stationary, but there is a reasonable expectation that the worker will be entitled to an award of permanent disability when the worker does become medically stationary.

(3) Under ORS 656.262 (6)(b)(F) and (7)(a) the insurer must issue a Modified Notice of Acceptance and change the classification from nondisabling to disabling upon acceptance of a new or omitted condition that meets the disabling criteria in this rule.

(4) If a claim has been classified as nondisabling for one year or less after the date of acceptance and the worker believes the claim was or has become disabling, the worker may request reclassification by submitting a written request for review of the classification status to the insurer under ORS 656.277.

(5) Within 14 days of the worker's request, the insurer must review the claim and,

(a) If the classification is changed to disabling, provide notice under this rule; or

(b) If the insurer believes evidence supports denying the worker's request to reclassify the claim, the insurer must send a Notice of Refusal to Reclassify to the worker and the worker's attorney, if the worker is represented. The notice must include the following statement, in bold print:

"If you disagree with this Notice of Refusal to Reclassify, you must appeal by contacting the Workers' Compensation Division within sixty (60) days of the mailing of this notice or you will lose your right to appeal. The address and telephone number of the Workers' Compensation Division are: [INSURER: Insert current address and telephone number of the Workers' Compensation Division, Appellate Review Unit, here.]."

(6) A worker dissatisfied with the decision in the Notice of Refusal to Reclassify may appeal to the director. Such appeal must be made no later than the 60th day after the Notice is mailed. The appeal must include a copy of the insurer's Notice of Refusal to Reclassify.

(7) For claims that are reclassified from nondisabling to disabling within one year from the date of acceptance, the aggravation rights begin with the first valid closure of the claim.

(8) For claims that are not reclassified from nondisabling to disabling within one year from the date of acceptance, the aggravation rights continue to run from the date of injury.

(9) When a claim has been classified as nondisabling for at least one year after the date of acceptance, a worker who believes the claim was or has become disabling may submit a claim for aggravation according to the provisions of ORS 656.273.

(10) Failure of the insurer or self-insured employer to respond timely to a request for reclassification may result in the assessment of penalties under OAR 436-060-0200 or attorney fees under ORS 656.386(3).

(11) Notwithstanding (12), once a claim has been accepted and classified as disabling for more than one year from date of acceptance, all aspects of the claim are classified as disabling and remain disabling. Any additional conditions or aggravations subsequently accepted must be processed according to provisions governing disabling claims, including closure under ORS 656.268.

(12) If a claim has been classified as disabling and the insurer determines the criteria for a disabling claim were never satisfied, the insurer may reclassify the claim to nondisabling. The insurer must notify the worker and the worker's representative, if applicable, by issuing a Modified Notice of Acceptance.

(a) The Modified Notice of Acceptance must advise the worker that he or she has 60 days from the date of the notice to appeal the decision.

(b) Appeals of such reclassification decisions are made to the Appellate Review Unit for issuance of a Director's Review order.

(13) The worker's appeal must be in writing. The worker may use the form specified by the director for requesting review of the insurer's claim classification decision.

(14) The worker's appeal under section (6) or (12) must be copied to the insurer.

(15) A worker need not be represented by an attorney to appeal the insurer's classification decision.

(16) The director will acknowledge receipt of the request in writing to the injured worker, the worker's attorney, if any, and the insurer, and initiate the review.

(17) Within 14 days of the director's acknowledgement, the insurer must provide the director and all other parties with the complete medical record and all official actions and notices on the claim. The director may impose penalties against an insurer under OAR 436-060-0200 if the insurer fails to provide claim documents in a timely manner.

(18) Within the same 14 days, the worker may submit any additional evidence for the director to consider. Copies must be provided to all other parties at the same time.

(19) After receiving and reviewing the required documents, the director will issue a Director's Review order.

(20) The worker and the insurer have 30 days from the mailing date of the Director's Review order to appeal the director's decision to the Hearings Division of the Workers' Compensation Board.

(21) The director may reconsider, abate, or withdraw any Director's Review order before the order becomes final by operation of law.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.262, 656.268, 656. 273, 656.277, 656.745, 656.726,

Hist.: WCD 2-2004, f. 2-19-04, cert. ef. 2-29-04, Renumbered from 436-030-0045; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0020

Payment of Temporary Total Disability Compensation

(1) An employer may pay compensation under ORS 656.262(4) with the approval of the insurer under ORS 656.262(13). Making such payments does not constitute a waiver or transfer of the insurer's duty to determine the worker's entitlement to benefits, or responsibility for the claim to ensure timely benefit payments. The employer must provide adequate payment documentation as the insurer may require to meet its responsibilities.

(2) Under ORS 656.005(30), no temporary disability is due and payable for any period of time in which the person has withdrawn from the workforce. For the purpose of this rule, a person who has withdrawn from the workforce, includes, but is not limited to:

(a) A person who, prior to reopening under ORS 656.267, 656.273 or 656.278, was not working and had not made reasonable efforts to obtain employment, unless such efforts would be futile as a result of the compensable injury.

(b) A person who was a full time student for at least six months in the 52 weeks prior to injury elects to return to school full time, unless the person can establish a prior customary pattern of working while attending school. For purposes of this subsection, "full time" is defined as twelve or more quarter hours or the equivalent.

(3) No temporary disability is due and payable for any period of time where the insurer has requested from the worker's attending physician or authorized nurse practitioner verification of the worker's inability to work and the physician or authorized nurse practitioner cannot verify it under ORS 656.262(4)(d), unless the worker has been unable to receive treatment for reasons beyond the worker's control. Before withholding temporary disability under this section, the insurer must inquire of the worker whether a reason beyond the worker's control prevented the worker from receiving treatment. If no valid reason is found or the worker refuses to respond or cannot be located, the insurer must document its file regarding those findings. The insurer must provide the division a copy of the documentation within 20 days, if requested. If the attending physician or authorized nurse practitioner is unable to verify the worker's inability to work, the insurer may stop temporary disability payments and, in place of the scheduled payment, must send the worker an explanation for stopping the temporary disability payments. When verification of temporary disability is received from the attending physician or authorized nurse practitioner, the insurer must pay temporary disability within 14 days of receiving the verification of any authorized period of time loss, unless otherwise denied.

(4) Authorization from the attending physician or authorized nurse practitioner may be oral or written. The insurer at claim closure, or the division at reconsideration of the claim closure, may infer authorization from such medical records as a surgery report or hospitalization record that reasonably reflects an inability to work because of the compensable claim, or from a medical report or chart note generated at the time of, and indicating, the worker's inability to work. No compensation is due and payable after the worker's attending physician or authorized nurse practitioner ceases to authorize temporary disability or for any period of time not authorized by the attending physician or authorized nurse practitioner under ORS 656.262(4)(g).

(5) An insurer may suspend temporary disability benefits without authorization from the division under ORS 656.262(4)(e) when all of the following circumstances apply:

(a) The worker has missed a regularly scheduled appointment with the attending physician or authorized nurse practitioner.

(b) The insurer has sent a certified letter to the worker and a letter to the worker's attorney, at least ten days in advance of a rescheduled appointment, stating that the appointment has been rescheduled with the worker's attending physician or authorized nurse practitioner; stating the time and date of the appointment; and giving the following notice, in prominent or bold face type:

"You must attend this appointment. If there is any reason you cannot attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice, as provided by ORS 656.262(4)(e)."

(c) The insurer verifies that the worker has missed the rescheduled appointment.

(d) The insurer sends a letter to the worker, the worker's attorney and the division giving the date of the regularly scheduled appointment that was missed, the date of the rescheduled appointment that was missed, the date of the letter being the day benefits are suspended, and the following notice, in prominent or bold face type:

"Since you missed a regular appointment with your doctor, we arranged a new appointment. We notified you of the new appointment by certified mail and warned you that your benefits would be suspended if you failed to attend. Since you failed to attend the new appointment, your temporary disability benefits have been suspended. In order to resume your benefits, you must schedule and attend an appointment with your doctor who must verify your continued inability to work."

(6) If temporary disability benefits end because the insurer or employer:

(a) Speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and negotiates a verbal release of the worker to return to any type of work as a result, when no return to work was previously authorized; and

(b) The worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work; then

(c) The insurer must:

(A) Document the facts;

(B) Communicate the release to the worker by mail within 7 days. The communication to the worker of the negotiated return to work release may be contained in an offer of modified employment; and

(C) Advise the worker of their reinstatement rights under ORS chapter 659A.

(7) When concurrent temporary disability is due the worker as a result of two or more accepted claims, the insurers may petition the division to make a pro rata distribution of compensation due under ORS 656.210 and 656.212. The insurer must provide a copy of the request to the worker, and the worker's attorney if represented. The division's pro rata order shall not apply to any periods of interim compensation payable under ORS 656.262 and also does not apply to benefits under ORS 656.214 and 656.245. Claims subject to the pro rata order approved by the division must be closed under OAR 436-030 and ORS 656.268, when appropriate. The insurers shall not unilaterally prorate temporary disability without the approval of the division, except as provided in section (8) of this rule. The division may order one of the insurers to pay the entire amount of temporary disability due or make a pro rata distribution between two or more of the insurers. The pro rata distribution ordered by the division shall be effective only for benefits due as of the date all claims involved are in an accepted status. The order pro rating compensation will not apply to periods where any claim involved is in a deferred status.

(8) When concurrent temporary disability is due the worker as a result of two or more accepted claims involving the same worker, the same employer and the same insurer, the insurer may make a pro rata distribution of compensation due under ORS 656.210 and 656.212 without an order by the division. The worker must receive compensation at the highest temporary disability rate of the claims involved.

(9) If a closure under ORS 656.268 has been found to be premature and there was an open ended authorization of temporary disability at the time of closure, the insurer must begin payments under ORS 656.262, including retroactive periods, and pay temporary disability for as long as authorization exists or until there are other lawful bases to terminate temporary disability.

(10) If a denied claim has been determined to be compensable, the insurer must begin temporary disability payments under ORS 656.262, including retroactive periods, if the time loss authorization was open ended

at the time of denial, and there are no other lawful bases to terminate temporary disability.

Stat. Auth.: ORS 656.210(2), 656.245, 656.262, 656.307(1)(c), 656.704, 656.726(4)
Stats. Implemented: ORS 656.210, 656.212, 656.262, 656.307, 656.704, 656.726(4), (OL 2009, ch. 526)
Hist.: WCB 12-1970, f. 9-21-70, ef. 10-25-70; 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0212, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90, Former sec. (6), (7), (8), (9) & (10) Renumbered to 436-060-0025(1) - (10); WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 14-1996(Temp), f. & cert. ef. 5-31-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0025
Rate of Temporary Disability Compensation

(1) The rate of compensation shall be based on the wage of the worker at the time of injury, except in the case of an occupational disease, for which the rate of compensation will be based on the wage as outlined in ORS 656.210(2)(d)(B). Employers shall not continue to pay wages in lieu of statutory temporary total disability payments due. However, under ORS 656.018(6) the employer is not precluded from supplementing the amount of temporary total disability paid the worker. Employers must separately identify workers' compensation benefits from other payments and shall not have payroll deductions withheld from such benefits.

(2) Notwithstanding section (1), under ORS 656.262(4)(b), a self-insured employer may continue the same wage with normal deductions withheld (e.g. taxes, medical, and other voluntary deductions) at the same pay interval that the worker received at the time of injury. If the pay interval or amount of wage changes (excluding wage increases), the worker must be paid temporary disability as otherwise prescribed by the workers' compensation law. The claim shall be classified as disabling. The rate of temporary total disability that would have otherwise been paid had continued wages not occurred and the period of disability will be reported to the division.

(3) The rate of compensation for regularly employed workers shall be computed as outlined in ORS 656.210 and this rule. "Regularly employed" means actual employment or availability for such employment.

(a) Monthly wages shall be divided by 4.35 to determine weekly wages. Seasonal workers paid monthly must have their weekly wages determined under OAR 436-060-0025(5).

(b) For workers employed through union hall call board insurers must compute the rate of compensation on the basis of a five-day work week at 40 hours a week, regardless of the number of days actually worked per week.

(4) The insurer shall resolve wage disputes by contacting the employer to confirm the correct wage and then contacting the worker with that information. If the worker does not agree with the wage calculated by the insurer, the worker may request a hearing with the Hearings Division of the Workers' Compensation Board.

(5) The rate of compensation for workers regularly employed, but paid on other than a daily or weekly basis, or employed with unscheduled, irregular or no earnings shall be computed on the wages determined by this rule.

(a) For workers employed seasonally, on call, paid hourly, paid by piece work or with varying hours, shifts or wages:

(A) Insurers must use the worker's average weekly earnings with the employer at injury for the 52 weeks prior to the date of injury. For workers with multiple employers at the time of injury who qualify under ORS 656.210(2)(b) and OAR 436-060-0035, insurers shall average all earnings for the 52 weeks prior to the date of injury. For workers employed less than 52 weeks or where extended gaps exist, insurers must use the actual weeks of employment (excluding any extended gaps) with the employer at injury or all earnings, if the worker qualifies under ORS 656.210(2)(b) and OAR 436-060-0035, up to the previous 52 weeks. For the purpose of this rule, gaps shall not be added together and must be considered on a claim-by-claim basis; the determination of whether a gap is extended must be made in light of its length and of the circumstances of the individual employment relationship itself, including whether the parties contemplated that such gaps would occur when they formed the relationship. For workers employed less than four weeks, insurers shall use the intent of the wage earning agreement as confirmed by the employer and the worker. For the purpose of this section, the wage earning agreement may be either oral or in writing.

(B)(i) Where there has been a change in the wage earning agreement due only to a pay increase or decrease during the 52 weeks prior to the date of injury, insurers must use the worker's average weekly hours worked for the 52 week period, or lesser period as required in (5)(a)(A) of this section, multiplied by the wage at injury to determine the worker's current average weekly earnings.

(ii) Where there has been a change in the wage earning agreement due to a change of hours worked, change of job duties, or for other reasons either with or without a pay increase or decrease, during the 52 weeks prior to the date of injury, insurers must average earnings for the weeks worked under the most recent wage earning agreement, calculated by the method described in (5)(a)(A).

(iii) For workers employed less than four weeks under a changed wage earning agreement as described in this subsection, insurers must use the intent of the most recent wage earning agreement as confirmed by the employer and the worker.

(iv) For determining benefits under this rule for occupational disease claims, in place of "the date of injury," insurers must use the wage at the date of disability if the worker was working at the time of medical verification of the inability to work. If the worker was not working due to the injury at the time of medical verification of the inability to work insurers must use the wage at the date of last regular employment.

(b) For workers employed through a temporary service provider on a "temporary basis," or a worker-leasing company as defined in OAR 436-050, insurers will determine the weekly wage by the method provided in subsection (a) of this section. However, each job assignment shall not be considered a new wage earning agreement.

(c) For workers paid salary plus considerations (e.g. rent, utilities, food, etc.) insurers must compute the rate on salary only if the considerations continue during the period the worker is disabled due to the injury. If the considerations do not continue, the insurer must use salary plus a reasonable value of those considerations. Expenses incurred due to the job and reimbursed by the employer (e.g. meals, lodging, per diem, equipment rental) are not considered part of the wage.

(d) Earnings from a second job will be considered for calculating temporary partial disability only to the extent that the post-injury income from the second job exceeds the pre-injury income from the second job (i.e., increased hours or increased wage).

(e) For workers employed where tips are a part of the worker's earnings insurers must use the wages actually paid, plus the amount of tips required to be reported by the employer under section 6053 of the Internal Revenue Code of 1954, as amended, or the amount of actual tips reported by the worker, whichever amount is greater.

(f) Insurers shall consider overtime hours only when the worker worked overtime on a regular basis. Overtime earnings must be included in the computation at the overtime rate. For example, if the worker worked one day of overtime per month, use 40 hours at regular wage and two hours at the overtime wage to compute the weekly rate. If overtime varies in hours worked per day or week, use the averaging method described in subsection (a). One-half day or more will be considered a full day when determining the number of days worked per week.

(g) Bonus pay shall be considered only when provided as part of the written or verbal employment contract as a means to increase the worker's wages. End-of-the-year and other one time bonuses paid at the employer's discretion shall not be included in the calculation of compensation.

(h) Incentive pay shall be considered only when regularly earned. If incentive pay earnings vary, use the averaging method described in subsection (a).

(i) Covered workers with no wage earnings such as volunteers, jail inmates, etc., must have their benefits computed on the same assumed wage as that upon which the employer's premium is based.

(j) For workers paid by commission only or commission plus wages insurers must use the worker's average commission earnings for previous 52 weeks, if available. For workers without 52 weeks of earnings, insurers must use the assumed wage on which premium is based. Any regular wage in addition to commission must be included in the wage from which compensation is computed.

(k) For workers who are sole proprietors, partners, officers of corporations, or limited liability company members including managers, insurers must use the assumed wage on which the employer's premium is based.

(l) For school teachers or workers paid in a like manner, insurers must use the worker's annual salary divided by 52 weeks to arrive at weekly wage. Temporary disability benefits shall extend over the calendar year.

(m) For workers with cyclic schedules, insurers must average the hours of the entire cycle to determine the weekly wage. For purposes of

temporary disability payments, the cycle shall be considered to have no scheduled days off. For example: A worker who works ten hours for seven days, has seven scheduled days off, then repeats the cycle, is considered to have a 14 day cycle. The weekly wage and payment schedule would be based on 35 hours a week with no scheduled days off.

(6) When a working shift extends into another calendar day, the date of injury shall be the date used for payroll purposes by the employer.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.210(2), 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210, 656.704, 656.726(4)

Hist.: WCB 12-1970, f. 9-21-70, ef. 10-25-70; 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0212, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90, Renumbered from 436-060-0020 former sections (6), (7), (8), (9) & (10); WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0035

Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) For the purpose of this rule:

(a) "Assigned processing administrator" is the company or business that the director has selected and authorized to process and pay supplemental disability benefits on behalf of the director, when the insurer has elected not to process and pay these benefits.

(b) "Primary job" means the job at which the injury occurred.

(c) "Secondary job" means any other job(s) held by the worker in Oregon subject employment at the time of injury.

(d) "Temporary disability" means wage loss replacement for the primary job.

(e) "Supplemental disability" means wage loss replacement for the secondary job(s) that exceeds the temporary disability, up to, but not exceeding, the maximum established by ORS 656.210.

(f) "Verifiable documentation" means information that provides:

(A) Identification of the Oregon subject employer(s) and the time period that establishes the worker held the secondary job, in addition to the primary job, at the time of injury; and

(B) Adequate information to calculate the average weekly wage in accordance with OAR 436-060-0025.

(g) "Insurer" includes third party administrator.

(2) The insurer shall establish the temporary disability rate by multiplying the weekly wage, determined under OAR 436-060-0025, from the primary employer by 66 2/3% (.6667). If the result meets or exceeds the maximum temporary disability rate, the worker is not eligible for supplemental disability benefits.

(3) Within five business days of receiving notice or knowledge of employment in addition to the primary job on a claim on which the temporary disability rate for the primary job does not meet or exceed the maximum rate, the insurer must:

(a) Send the worker an initial notice informing the worker what type of information the insurer or the assigned processing administrator must receive to determine the worker's eligibility for supplemental disability.

(b) Clearly advise the worker, in the initial notice, that the insurer must receive verifiable documentation within 60 days of the mailing date of the notice or the worker shall be found ineligible for supplemental disability.

(c) Copy the assigned processing administrator, if the insurer has elected not to process and pay supplemental disability benefits. The notice must contain the name, address, and telephone number of the assigned processing administrator, and must clearly advise the worker that the verifiable documentation must be sent to the assigned processing administrator.

(4) The initial notice in section (3) must inform the worker that if the verifiable documentation is not received, the insurer will determine the worker's temporary disability rate based only on the job at which the injury occurred. Any delay in the payment of a higher disability rate because of the worker's failure to provide verifiable documentation under this paragraph will not result in a penalty under ORS 656.262(11).

(5) Within 14 days of receiving the worker's verifiable documentation, the insurer or the assigned processing administrator must determine the worker's eligibility for supplemental disability and must communicate the decision to the worker and the worker's representative, if any, in writing. The letter must also advise the worker why he/she is not eligible when that is the decision and how to appeal the decision, if the worker disagrees with the decision.

(6) A worker is eligible if:

(a) The worker was employed at the secondary job by an Oregon subject employer at the time of the injury,

(b) The worker provides notification of a secondary job to the insurer within 30 days of the insurer's receipt of the initial claim, and

(c) The worker's temporary disability rate from wages at the primary job does not meet or exceed the maximum rate under section (2) of this rule.

(7) The insurer or the assigned processing administrator must calculate supplemental disability for an eligible worker by adding all earnings the worker received from all subject employment, except the assumed wage from secondary employment for Oregon subject volunteers, under ORS 656.210(2)(a)(B). In no case shall an eligible worker receive less compensation than would be paid if based solely on wages from the primary employer.

(8) If the temporary disability rate from the primary employer does not meet or exceed the maximum rate, the insurer or the assigned processing administrator must combine the weekly wages, determined under OAR 436-060-0025, for each employer and multiply by 66 2/3% (.6667) to establish the combined disability rate up to the maximum rate. This is the base amount on which the worker's combined benefits will be calculated.

(9) No three-day waiting period applies to supplemental disability benefits.

(10) The worker's scheduled days off for the job at which the injury occurred shall be used to calculate and pay supplemental disability.

(11) To establish the combined partial disability benefits when the worker has post injury wages from either job, the insurer or the assigned processing administrator must use all post injury wages from both primary and all secondary employers. The insurer or the assigned processing administrator must calculate the amount due the worker based on the combined wages at injury and combined post injury wages using the temporary partial disability calculation in OAR 436-060-0030. The insurer or the assigned processing administrator must then calculate the amount due from the primary job based only on the primary wages at injury and the primary post injury wages. That amount shall be subtracted from the amount due the worker; the remainder is the supplemental disability amount.

(12) If the worker receives post injury wages from the secondary job equal to or greater than the secondary wages at the time of injury, no supplemental disability is due.

(13) If the worker returns to a job not held at the time of the injury, the insurer or the assigned processing administrator must process supplemental disability under the same terms, conditions and limitations as OAR 436-060-0030.

(14) Supplemental disability may be due on a nondisabling claim even if temporary disability is not due from the primary job. The nondisabling claim will not change to disabling status due to payment of supplemental disability. When supplemental disability payments cease on a nondisabling claim, the insurer or the assigned processing administrator must send the worker written notice advising the worker that their supplemental disability payments have stopped and of the worker's right to appeal that action to the Workers' Compensation Board within 60 days of the notice, if the worker disagrees.

(15) If the insurer has elected to process and pay supplemental disability under ORS 656.210(5)(a), the insurer must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability simultaneously with any temporary disability due. Reimbursement for supplemental disability paid will be made under OAR 436-060-0500.

(16) If the insurer has elected not to process and pay supplemental disability, the assigned processing administrator must determine the worker's on-going entitlement to supplemental disability and must pay the worker supplemental disability due once each 14 days.

(17) A worker who is eligible for supplemental disability under section (5) of this rule has an on-going responsibility to provide information and documentation to the insurer or the assigned processing administrator, even if temporary disability is not due from the primary job.

(18) If the insurer has elected not to process and pay supplemental disability, the insurer must cooperate and communicate with the assigned processing administrator and both must retain documentation of shared information, as necessary, to coordinate benefits due.

(19) Supplemental disability applies to occupational disease claims in the same manner as to injury claims. Supplemental disability benefits for an occupational disease shall be based on the worker's combined primary and

secondary wages at the time there is medical verification the worker is unable to work because of the disability.

(20) When an insurer elects to pay supplemental disability under ORS 656.210(5)(a) and OAR 436-060-0010(20) and receive reimbursement under OAR 436-060-0500, the insurer must maintain a record of supplemental disability paid to the worker, separate from temporary disability paid as a result of the job at injury.

(21) If a worker disagrees with the insurer's or the assigned processing administrator's decision about the worker's eligibility for supplemental disability or the rate of supplemental disability, the worker may request a hearing before the Hearings Division of the Workers' Compensation Board. If the worker chooses to request a hearing on the insurer's decision concerning the worker's eligibility for supplemental disability, the worker must submit an appeal of the insurer's or the assigned processing administrator's decision within 60 days of the notice in section (5) of this rule. However, the insurer for the primary job is not required to contact the secondary job employer. The worker is responsible to provide any necessary documentation.

(22) An insurer who elects not to process and pay supplemental disability benefits may be sanctioned upon a worker's complaint if the insurer delays sending necessary information to the assigned processing administrator and that delay causes a delay in the worker receiving supplemental disability benefits.

(23) In the event of a third party recovery, previously reimbursed supplemental disability benefits are a portion of the paying agency's lien.

(24) Remittance on recovered benefits shall be made to the department in the quarter following the recovery in amounts determined in accordance with ORS 656.591 and 656.593.

Stat. Auth.: ORS 656.210, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.210, 656.325(5), 656.704, 656.726(4)
Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 6-2002(Temp), f. 4-22-02, cert. ef. 5-10-02 thru 11-5-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0095
Medical Examinations; Suspension of Compensation; and Insurer Medical Examination Notice

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker must have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when the worker refuses or fails to submit to, or otherwise obstructs, an independent medical examination reasonably requested by the insurer or the director under ORS 656.325(1). Compensation will be suspended until the examination has been completed. The conditions of the examination shall be consistent with conditions described in OAR 436-010-0265. Any action of a friend or family member which obstructs the examination shall be considered an obstruction of the examination by the worker for the purpose of this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to attend or obstruction of the examination.

(2) The division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial.

(3) A worker must submit to independent medical examinations reasonably requested by the insurer or the director. The insurer may request no more than three separate independent medical examinations for each open period of a claim, except as provided under OAR 436-010. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(7).

(4) The insurer may contract with a third party to schedule independent medical examinations. If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice is required to be sent on the insurer's stationery and must conform with the requirements of OAR 436-060-0095(5).

(5) If an examination is scheduled by the insurer or by another party at the request of the insurer, the worker and the worker's attorney shall be simultaneously notified in writing of the scheduled medical examination under ORS 656.331. The notice shall be sent at least 10 days prior to the examination. The notice sent for each appointment, including those which have been rescheduled, must contain the following:

(a) The name of the examiner or facility;

(b) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;

(c) The date, time and place of the examination;

(d) The first and last name of the attending physician or authorized nurse practitioner and verification that the attending physician or authorized nurse practitioner was informed of the examination by, at least, a copy of the appointment notice, or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(e) If applicable, confirmation that the director has approved the examination;

(f) That the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that, when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance;

(g) That an amount will be paid equivalent to net lost wages for the period during which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the absence;

(h) That the worker has the right to have an observer present at the examination, but the observer may not be compensated in any way for attending the exam; however, for a psychological examination, the notice must explain that an observer is allowed to be present only if the examination provider approves the presence of an observer; and

(i) The following notice in prominent or bold face type:

"You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend and do not have a good reason for not attending, or you fail to cooperate with the examination, your workers' compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060. You may be charged a $100 penalty if you fail to attend without a good reason or if you fail to notify the insurer before the examination. The penalty is taken out of future benefits. If you object to the location of this appointment you must contact the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 or the Ombudsman for Injured Workers at 1-800-927-1271."

(6) The insurer must include with each appointment notice it sends to the worker:

(a) A form for requesting reimbursement;

(b) The director's brochure, Form 440-3923, "Important Information about Independent Medical Exams"; and

(c) Form 440-0858, "Worker Independent Medical Exam (IME) Survey."

(7) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

(8) The request for suspension must be sent to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request must include the following information:

(a) That the insurer requests suspension of benefits under ORS 656.325 and OAR 436-060-0095;

(b) The claim status and any accepted or newly claimed conditions;

(c) What specific actions of the worker prompted the request;

(d) The dates of any prior independent medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;

(e) A copy of any approvals given by the director for more than three independent medical examinations, or a statement that no approval was necessary, whichever is appropriate;

(f) Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(g) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the exam received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;

(h) A copy of the letter required in section (5) and a copy of any written verification received under subsection (8)(g);

(i) Any other information which supports the request; and

(j) The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized."

(9) If the division consents to suspend compensation, the suspension shall be effective from the date the worker fails to attend an examination or such other date the division deems appropriate until the date the worker undergoes an examination scheduled by the insurer or director. Any delay in requesting consent for suspension may result in authorization being denied or the date of authorization being modified.

(10) The insurer must assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the independent medical examination, the insurer must verify the worker's participation and reinstate compensation effective the date of the worker's compliance.

(11) If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the mailing date of the consent to suspend order, the insurer must close the claim under OAR 436-030-0034(7).

(12) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. Failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(13) The division may also take the following actions concerning the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(14) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)
Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94, Renumbered from 436-060-0085(1),(2),(4); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0105
Suspension of Compensation for Insanitary or Injurious Practices, Refusal of Treatment or Failure to Participate in Rehabilitation; Reduction of Benefits

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker must have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension under ORS 656.325(2) when the worker commits insanitary or injurious acts which imperil or retard recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or fails or refuses to participate in a physical rehabilitation program.

(2) The insurer must demand in writing the worker either immediately cease actions which imperil or retard recovery or immediately begin to change the inappropriate behavior and participate in activities needed to help the worker recover from the injury. Such actions include insanitary or injurious practices, refusing essential medical or surgical treatment, or failing to participate in a physical rehabilitation program. Each time the insurer sends such a notice to the worker, the written demand must contain the following information, and a copy shall be sent simultaneously to the worker's attorney and attending physician:

(a) A description of the unacceptable actions;

(b) Why such conduct is inappropriate, including the fact that the conduct is harmful or retards the worker's recovery, as appropriate;

(c) The date by which the inappropriate actions must stop, or the date by which compliance is expected, including what the worker must specifically do to comply; and,

(d) The following notice of the consequences should the worker fail to correct the problem, in prominent or bold face type:

"If you continue to do insanitary or injurious acts beyond the date in this letter, or fail to consent to the medical or surgical treatment which is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we will request the suspension of your workers' compensation benefits. In addition, you may also have any permanent disability award reduced in accordance with ORS 656.325 and OAR 436-060."

(3) For the purposes of this rule, failure or refusal to accept medical treatment means the worker fails or refuses to remain under a physician's or authorized nurse practitioner's care or abide by a treatment regimen. A treatment regimen includes, but is not limited to a prescribed diet, exercise program, medication or other activity prescribed by the physician or authorized nurse practitioner that is designed to help the worker reach maximum recovery and become medically stationary.

(4) The insurer must verify whether the worker complied with the request for cooperation on the date specified in subsection (2)(c). If the worker initially agrees to comply, or complies and then refuses or fails to continue doing so, the insurer is not required to send further notice before requesting suspension of compensation.

(5) The request for suspension must be sent to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request must include the following information:

(a) That the request for suspension is made in accordance with ORS 656.325 and OAR 436-060-0105;

(b) A description of the actions of the worker that prompted the request, including whether such actions continue;

(c) Any reasons offered by the worker to explain the behavior, or a statement that the worker has not provided any reasons, whichever is appropriate;

(d) How, when, and with whom the worker's failure or refusal was verified;

(e) A copy of the letter required in section (2);

(f) Any other relevant information including, but not limited to; chart notes, surgical or physical therapy recommendations/prescriptions, and all physician or authorized nurse practitioner recommendations; and

(g) The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will close your claim."

(6) Any delay in obtaining confirmation or in requesting consent for suspension of compensation may result in authorization being denied or the date of authorization being modified by the date of actual confirmation or the date the request is received by the division.

(7) If the division concurs with the request, it shall issue an order suspending compensation from a date established under section (5) until the worker complies with the insurer's request for cooperation. Where the worker is suspended for a pattern of noncooperation, the division may require the worker to demonstrate cooperation before restoring compensation.

(8) The insurer must monitor the claim to determine if and when the worker complies with the insurer's requests. When cooperation resumes, payment of compensation must resume effective the date cooperation was resumed.

(9) The insurer must make all reasonable efforts to assist the worker to restore benefits when the worker demonstrates the willingness to make such efforts.

(10) If the worker makes no effort to reinstate benefits within 60 days of the mailing date of the consent order, the insurer must close the claim under OAR 436-030-0034.

(11) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(12) The division may also take the following actions concerning the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(13) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

(14) The director may reduce any benefits awarded the worker under ORS 656.268 when the worker has unreasonably failed to follow medical advice, or failed to participate in a physical rehabilitation or vocational assistance program prescribed for the worker under ORS chapter 656 and OAR chapter 436. Such benefits must be reduced by the amount of the increased disability reasonably attributable to the worker's failure to cooperate. When an insurer submits a request to reduce benefits under this section, the insurer must:

(a) Specify the basis for the request;

(b) Include all supporting documentation;

(c) Send a copy of the request, including the supporting documentation, to the worker and the worker's representative, if any, by certified mail; and

(d) Include the following notice in prominent or bold face type:

"Notice to worker: If you think this request to reduce your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits."

(15) The division shall promptly make a decision on a request to reduce benefits and notify the parties of the decision. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the request to reduce benefits.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)

Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94, Renumbered from 436-060-0085(1),(2),(4),(5); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0135

Injured Worker, Worker Representative Responsible to Assist in Investigation; Suspension of Compensation and Notice to Worker

(1) When the worker refuses or fails to cooperate in an investigation of an initial claim for compensation, a claim for a new medical condition, a claim for an omitted medical condition, or an aggravation claim as required by ORS 656.262(14), the division will suspend compensation under ORS 656.262(15) by order under conditions set forth in this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to cooperate with an investigation. The worker must have the opportunity to submit information disputing the insurer's request for suspension of compensation prior to issuance of the order.

(2) A worker must submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques reasonably requested by the insurer. For the purposes of this rule, "personal and telephonic interviews" may be audio or video taped by one or more of the parties if prior written notice is given of the intent to record or tape an interview.

(3) The division will consider requests for suspension of benefits under ORS 656.262(15) only after the insurer has notified the injured worker in writing of the worker's obligation to cooperate as required by section (4) of this rule and only in claims where there has been no acceptance or denial issued.

(4) For suspension of benefits to be granted under this rule, the insurer must notify the worker in writing that an interview or deposition has been scheduled, or of other investigation requirements, and must give the worker at least 14 days to cooperate. The notice must be sent to the worker and copied to the worker's attorney, if represented, and must advise the worker of the date, time and place of the interview and/or any other reasonable investigation requirements. If the insurer contracts with a third party, such as an investigation firm, to investigate the claim, the notice shall be on the insurer's stationery and must conform with the requirements of this section. The notice must inform the worker that the interview, deposition, or any other investigation requirements are related to the worker's compensation claim. The notice must also contain the following statement in prominent or bold face type:

"The workers' compensation law requires injured workers to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers are required to submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. If you fail to reasonably cooperate with the investigation of this claim, payment of your compensation benefits may be suspended and your claim may be denied in accordance with ORS 656.262 and OAR 436-060."

(5) The request for suspension must be sent to the division after the 14 days in section (4) have expired. Any delay in requesting suspension may result in authorization being denied. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service. The request must include the following information sufficient to show the worker's failure to cooperate:

(a) That the insurer requests suspension of benefits under ORS 656.262(15) and this rule;

(b) Documentation of the specific actions of the worker or worker's representative that prompted the request;

(c) Any reasons given by the worker for failure to comply, or a statement that the worker has not given any reasons, whichever is appropriate;

(d) A copy of the notice required in section (4) of this rule; and

(e) All other pertinent information, including, but not limited to, a copy of the claim for a new or omitted condition when that is what the insurer is investigating.

(6) After receiving the insurer's request as required in section (5) of this rule, the division will promptly notify all parties that the worker's benefits will be suspended in five working days unless the worker or the worker's attorney contacts the division by telephone or mails a letter documenting that the failure to cooperate was reasonable or unless the insurer notifies the division that the worker is now cooperating. The notice of the division will also advise that the insurer's obligation to accept or deny the claim within 60 days is suspended unless the insurer's request is filed with the division after the 60 days to accept or deny the claim has expired.

(7) If the worker cooperates after the insurer has requested suspension, the insurer must notify the division immediately to withdraw the suspension request. The division will notify all the parties. An order may be issued identifying the dates during which the insurer's obligation to accept or deny the claim was suspended.

(8) If the worker documents the failure to cooperate was reasonable the division will not suspend payment of compensation. However, an order may be issued identifying the dates during which the insurer's obligation to accept or deny the claim was suspended.

(9) If the worker has not documented that the failure to cooperate was reasonable, the division will issue an order suspending all or part of the payment of compensation to the worker. The suspension will be effective the fifth working day after notice is provided by the division as required by section (6) of this rule. The suspension of compensation shall remain in effect until the worker cooperates with the investigation. The worker and insurer must notify the division immediately when the worker cooperates with the investigation. If the worker makes no effort to reinstate compensation within 30 days of the date of the notice, the insurer may deny the claim under ORS 656.262(15) and OAR 436-060-0140(10).

(10) Under ORS 656.262 (14), an insurer who believes that a worker's attorney's unwillingness or unavailability to participate in an interview is unreasonable may notify the director in writing and the division will consider assessment of a civil penalty against the attorney of not more than $1,000. The worker's attorney must have the opportunity to dispute the allegation prior to the issuance of a penalty. Notice under this section must be sent to the division. A copy of the notice must be sent simultaneously to the worker and the worker's attorney. Notice to the division by the insurer must contain the following information:

(a) What specific actions of the attorney prompted the request;

(b) Any reasons given by the attorney for failing to participate in the interview; and

(c) A copy of the request for interview sent to the attorney.

(11) Failure to comply with the requirements of this rule will be grounds for denial of the insurer's request.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262, 656.704, 656.726(4), OL 2009, ch. 526

Hist.: WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 6-2002(Temp), f. 4-22-02, cert. ef. 5-10-02 thru 11-5-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0137

Vocational Evaluations; and Suspension of Compensation

(1) A worker receiving permanent total disability benefits must attend a vocational evaluation reasonably requested by the insurer or the director. The insurer may request no more than three separate vocational evaluations, except as provided under this rule.

(2) When the insurer has obtained the three vocational evaluations allowed under ORS 656.206 and wishes to require the worker to attend an additional evaluation, the insurer must first request authorization from the director. Insurers that fail to first request authorization from the director may be assessed a civil penalty. The process for requesting authorization is as follows:

(a) The insurer must submit a request for authorization to the director in a form and format as prescribed by the director, which includes but is not limited to: the reasons for an additional vocational evaluation; the conditions to be evaluated; dates, times, places, and purposes of previous evaluations; copies of previous vocational evaluation notification letters to the worker; and any other information requested by the director; and

(b) The insurer must provide a copy of the request to the worker and the worker's attorney.

(3) The director will review the request and determine if additional information is needed. Upon receipt of a request for additional information from the director, the parties will have 14 days to respond. If the parties do not provide the requested information, the director will approve or disapprove the request for authorization based on available information.

(4) The director's decision approving or denying more than three vocational evaluations may be appealed to the Hearings Division of the Workers' Compensation Board within 60 days of the order.

(5) For purposes of determining the number of insurer required vocational evaluations, any evaluations scheduled but not completed are not counted as a statutory vocational evaluation.

(6) The insurer may contract with a third party to schedule vocational evaluations. If the third party notifies the worker of a scheduled evaluation on behalf of the insurer, the third party must send the notice on the insurer's stationery and the notice must conform with the requirements of OAR 436-060-0137(7).

(7) The notice must be sent to the worker at least 10 days prior to the evaluation. The notice sent for each evaluation, including those which have been rescheduled, must contain the following:

(a) The name of the vocational assistance provider or facility;

(b) A statement of the specific purpose for the evaluation;

(c) The date, time and place of the evaluation;

(d) The first and last name of the attending physician or authorized nurse practitioner or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;

(e) If applicable, confirmation that the director has approved the evaluation;

(f) Notice to the worker that the reasonable cost of public transportation or use of a private vehicle will be reimbursed; when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed; a request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request; should an advance of costs be necessary for attendance, a request for advancement must be made in sufficient time to ensure a timely appearance; and

(g) The following notice in prominent or bold face type:

"You must attend this vocational evaluation. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the evaluation. If you fail to attend or fail to cooperate, or do not have a good reason for not attending, your compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.206 and OAR 436-060. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or the Ombudsman for Injured Workers at 1-800-927-1271."

(8) The insurer must pay the costs of the vocational evaluation and related services reasonably necessary to allow the worker to attend the evaluation. Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

(9) When the worker refuses or fails to attend, or otherwise obstructs, a vocational evaluation reasonably requested by the insurer or the director under ORS 656.206, the division may suspend the worker's compensation.

(10) The insurer must send the request for suspension to the division. A copy of the request, including all attachments, must be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service. The request must include the following information:

(a) That the insurer requests suspension of benefits under ORS 656.206 and OAR 436-060-0137;

(b) What specific actions of the worker prompted the request;

(c) The dates of any prior vocational evaluations the worker has attended and the names of the vocational assistance provider or facilities, or a statement that there have been no prior evaluations, whichever is appropriate;

(d) A copy of any approvals given by the director for more than three vocational evaluations, or a statement that no approval was necessary, whichever is appropriate;

(e) Any reasons given by the worker for failing to attend, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(f) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the vocational evaluation received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;

(g) A copy of the letter required in section (7) and a copy of any written verification received under subsection (10)(f);

(h) Any other information which supports the request; and

(i) The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits."

(11) If the insurer fails to comply with this rule, the division may deny the request for suspension.

(12) If the division suspends compensation, the suspension will be effective from the date the worker fails to attend a vocational evaluation or such other date the division deems appropriate until the date the worker attends the evaluation. The worker is not entitled to compensation during or for the period of suspension. Any delay in requesting suspension may result in suspension being denied or the date of suspension being modified.

(13) The insurer must assist the worker to meet requirements necessary for the resumption of compensation payments. When the worker has attended the vocational evaluation, the insurer must verify the worker's participation and resume compensation effective the date of the worker's compliance.

(14) The division may also:

(a) Modify or set aside the suspension order before or after filing of a request for hearing;

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error; or

(c) Reevaluate the necessity of continuing a suspension.

(15) A suspension order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.206
Hist.: WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0140
Acceptance or Denial of a Claim

(1) The insurer is required to conduct a "reasonable" investigation based on all available information in ascertaining whether to deny a claim. A reasonable investigation is whatever steps a reasonably prudent person with knowledge of the legal standards for determining compensability would take in a good faith effort to ascertain the facts underlying a claim, giving due consideration to the cost of the investigation and the likely value of the claim.

(2) In determining whether an investigation is reasonable, the director will only look at information contained in the insurer's claim record at the time of denial. The insurer may not rely on any fact not documented in the claim record at the time of denial to establish that an investigation was reasonable.

(3) The insurer must give the claimant written notice of acceptance or denial of a claim within:

(a) 90 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of a form 827 signed by the worker or the worker's representative and the worker's attending physician indicating an aggravation claim or written notice of a new medical condition claim for claims with a date of injury prior to January 1, 2002; or

(b) 60 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of a form 827 signed by the worker or the worker's representative and the worker's attending physician indicating an aggravation claim or written notice of a new medical or omitted condition claim for claims with a date of injury on or after January 1, 2002; or

(c) 90 days after the employer's notice or knowledge of the claim if the worker challenges the location of an independent medical examination under OAR 436-010-0265 and the challenge is upheld, regardless of the date of injury.

(4) The director may assess a penalty against any insurer delinquent in accepting or denying a claim beyond the days required in (3) in excess of 10 percent of their total volume of reported disabling claims during any quarter.

(5) A notice of acceptance must comply with ORS 656.262(6)(b) and the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438. It must include a current mailing date, be addressed to the worker, be copied to the worker's representative, if any, and the worker's attending physician, and describe to the worker:

(a) What conditions are compensable;

(b) Whether the claim is disabling or nondisabling;

(c) The Expedited Claim Service, of hearing and aggravation rights concerning nondisabling injuries including the right to object to a decision that the injury is nondisabling by requesting the insurer review the status;

(d) The employment reinstatement rights and responsibilities under ORS chapter 659A;

(e) Assistance available to employers from the Reemployment Assistance Program under ORS 656.622;

(f) That claim related expenses paid by the worker must be reimbursed by the insurer when requested in writing and accompanied by sales slips, receipts, or other reasonable written support, for meals, lodging, transportation, prescriptions and other related expenses. The worker must be advised of the two year time limitation to request reimbursement as provided in OAR 436-009-0025(3) and that reimbursement of expenses may be subject to a maximum established rate;

(g) That if the worker believes a condition has been incorrectly omitted from the notice of acceptance, or the notice is otherwise deficient, the worker must first communicate the objection to the insurer in writing specifying either that the worker believes the condition has been incorrectly omitted or why the worker feels the notice is otherwise deficient; and

(h) That if the worker wants the insurer to accept a claim for a new medical condition, the worker must put the request in writing, clearly identify the condition as a new medical condition, and request formal written acceptance of the condition.

(6) On fatal claims, the notice must be addressed "to the estate of" the worker and the requirements in (5)(a) through (h) shall not be included.

(7) The first acceptance issued on the claim must contain the title "Initial Notice of Acceptance" near the top of the notice. Any notice of acceptance must contain all accepted conditions at the time of the notice. When an insurer closes a claim, it must issue an "Updated Notice of Acceptance at Closure" under OAR 436-030-0015. Additionally, when reopening a claim, the notice of acceptance must specify the condition(s) for which the claim is being reopened. Under ORS 656.262(6)(b)(F) the insurer must modify acceptance from time to time as medical or other information changes. An insurer must issue a "Modified Notice of Acceptance" (MNOA) when they:

(a) Accept a new or omitted condition: on a nondisabling claim, while a disabling claim is open or after claim closure;

(b) Accept an aggravation claim;

(c) Change the disabling status of the claim; or

(d) Amend a notice of acceptance, including correcting a clerical error.

(8) Notwithstanding OAR 436-060-0140(7)(d), to correct an omission or error in an "Updated Notice of Acceptance at Closure"(UNOA), under OAR 436-030-0015(1)(e), the insurer must add the word "Corrected" to the UNOA.

(9) When an insurer accepts a new or omitted condition on a closed claim, the insurer must reopen the claim and process it to closure under ORS 656.262 and 656.267.

(10) A notice of denial must comply with the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438, and must:

(a) Specify the factual and legal reasons for the denial, including the worker's right to request a Worker Requested Medical Examination and a specific statement indicating if the denial was based in whole or part on an independent medical examination, under ORS 656.325, and one of the following statements, as appropriate:

(A) "Your attending physician agreed with the independent medical examination report"; or

(B) "Your attending physician did not agree with the independent medical examination report"; or

(C) "Your attending physician has not commented on the independent medical examination report"; and

(b) Inform the worker of the Expedited Claim Service and of the worker's right to a hearing under ORS 656.283.

(c) If the denial is under ORS 656.262(15), it must inform the worker that a hearing may occur sooner if the worker requests an expedited hearing under ORS 656.291.

(d) If paragraph (10)(a)(B) above applies, the denial notice must also include the division's Web site address and toll free Infoline number for the worker's use in obtaining a brochure about the Worker Requested Medical Examination.

(11) The insurer must send notice of the denial to each provider of medical services and health insurance when compensability of any portion of a claim for medical services is denied when any of the following applies:

(a) The denial is sent to the worker;

(b) Within 14 days of receipt of any billings from medical providers not previously notified of the denial. The notice must advise the medical provider of the status of the denial; or

(c) Within 60 days of the date when compensability of the claim has been finally determined or when disposition of the claim has been made. The notification must include the results of the proceedings under ORS 656.236 or 656.289(4) and the amount of any settlement.

(12) The insurer must pay compensation due under ORS 656.262 and 656.273 until the claim is denied, except where there is an issue concerning the timely filing of a notice of accident as provided in ORS 656.265(4). The employer may elect to pay compensation under this section in lieu of the insurer doing so. The insurer must report to the division payments of compensation made by the employer as if the insurer had made the payment.

(13) Compensation payable to a worker or the worker's beneficiaries while a claim is pending acceptance or denial does not include the costs of medical benefits or burial.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262, 656.325, 656.704, 656.726(4), OL 2009, ch. 526

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0305, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 12-1992, f. 6-12-92, cert. ef. 7-1-92; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0147

Worker Requested Medical Examination

(1) The director shall determine the worker's eligibility for a Worker Requested Medical Examination (Exam) under ORS 656.325(1). The worker is eligible for an exam if the worker has made a timely request for a Workers' Compensation Board hearing on a denial of compensability as required by ORS 656.319(1)(a); and the denial was based on one or more Independent Medical Examination reports with which the attending physician or authorized nurse practitioner disagreed.

(2) The worker must submit a request for the exam to the director. A copy of the request must be sent simultaneously to the insurer or self-insured employer. The request must include:

(a) The name, address, and claim identifying information of the injured worker;

(b) A list of physicians, including name(s) and address(es), who have previously provided medical services to the worker on this claim or who have previously provided medical services to the worker related to the claimed condition(s);

(c) The date the worker requested a hearing and a copy of the hearing request;

(d) A copy of the insurer's denial letter; and

(e) Document(s) that demonstrate that the attending physician or authorized nurse practitioner did not concur with the independent medical examination report(s).

(3) The insurer must, upon written notice from the worker, mail to the director no later than the 14th day following the insurer's receipt of the worker's request, the names and addresses of all physicians or nurse practitioners who have:

(a) Acted as attending physician or authorized nurse practitioner;

(b) Provided medical consultations or treatment to the worker;

(c) Examined the worker at an independent medical examination; or

(d) Reviewed the worker's medical records on this claim. For the purpose of this rule, "Attending Physician" and "Independent Medical Examination" have the meanings defined in OAR 436-010-0005 and 436-010-0265(1), respectively.

(4) Failure to provide the required documentation described in section (3) in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(5) The director will notify all parties in writing of the physician selected, or will provide the worker or the worker's representative a list of appropriate physicians.

(6) If the director provides a list of physicians, the following applies:

(a) The worker's or the worker's representative's response must be in writing, signed, and received by the director within ten business days of providing the list.

(b) The worker or the worker's representative may eliminate the name of one physician from the list.

(c) If the worker or the worker's representative does not respond as provided in this section, the director will select a physician.

(d) The director will notify the parties in writing of the physician selected.

(7) The worker or the worker's legal representative shall schedule the exam with the selected physician and notify the insurer and the Workers' Compensation Board of the scheduled exam date within 14 days of the notification date in (6) of this rule. An unrepresented worker may consult with the Injured Worker Ombudsman for assistance.

(8) The insurer must send the physician the worker's complete medical and diagnostic record on this claim and the original questions asked of the independent medical examination(s) physician(s) no later than 14 days prior to the date of the scheduled exam. If the diagnostic records are not in the insurer's possession, the insurer must request that the medical provider send the diagnostic records to the selected physician at least 14 days prior to the scheduled exam.

(9) The worker or the worker's representative shall communicate questions related to the compensability denial in writing to be answered by the physician at the exam to the physician at least 14 days prior to the scheduled date of the exam. An unrepresented worker may consult with the Injured Worker Ombudsman for assistance.

(10) Upon completion of the exam the physician must address the original independent medical examination(s) questions and the questions from the worker or the worker's representative under section (9) of this rule and send the report to the worker's legal representative, if any, or the worker, and the insurer within 5 working days.

(11) The insurer must pay the physician selected under this rule in accordance with OAR 436-009. Delivery of medical services to injured workers shall be in accordance with OAR 436-010.

(12) If the worker fails to attend the scheduled Worker Requested Medical Exam, the insurer must pay the physician for the missed examination. The insurer is not required to pay for another examination unless the worker did not attend the missed examination for reasons beyond the worker's reasonable control.

(13) The insurer must reimburse the worker for all necessary related services under ORS 656.325(1).

Stat. Auth.: ORS 656.704, 656.726(4)
Stats. Implemented:ORS 656.325(1), 656.704, 656.726(4)
Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0150
Timely Payment of Compensation

(1) Benefits are deemed paid when addressed to the last known address of the worker or beneficiary and deposited in the U.S. Mail or when funds are transferred to a financial institution for deposit in the worker's or beneficiary's account by approved electronic equivalent. Payments falling due on a weekend or legal holiday under ORS 187.010 and 187.020 may be paid on the last working day prior to or the first working day following the weekend or legal holiday. Subsequent payments may revert back to the payment schedule prior to the weekend or legal holiday.

(2) For the purpose of this rule, legal holidays in the State of Oregon are:

(a) Each Sunday;

(b) New Year's Day on January 1;

(c) Martin Luther King, Jr.'s Birthday on the third Monday in January;

(d) Presidents Day, for the purpose of commemorating Presidents Washington and Lincoln, on the third Monday in February;

(e) Memorial Day on the last Monday in May;

(f) Independence Day on July 4;

(g) Labor Day on the first Monday in September;

(h) Veterans Day on November 11;

(i) Thanksgiving Day on the fourth Thursday in November; and

(j) Christmas Day on December 25.

(k) Each time a holiday, other than Sunday, falls on Sunday, the succeeding Monday shall be a legal holiday. Each time a holiday falls on Saturday, the preceding Friday shall be a legal holiday.

(l) Additional legal holidays shall include every day appointed by the Governor as a legal holiday and every day appointed by the President of the United States as a day of mourning, rejoicing or other special observance only when the Governor also appoints that day as a holiday.

(3) First payment of time loss must be timely. An insurer's performance is in compliance when 90 percent of payments are timely. The director may assess a penalty against an insurer falling below these norms during any quarter.

(4) Compensation withheld under ORS 656.268(12) and (13), and 656.596(2), shall not be deemed untimely provided the insurer notifies the worker in writing why benefits are being withheld and the amount that must be offset before any further benefits are payable.

(5) Timely payment of temporary disability benefits means payment has been made no later than the 14th day after:

(a) The date of the employer's notice or knowledge of the claim, provided the attending physician or authorized nurse practitioner has authorized temporary disability. Temporary disability accrued prior to the date of the employer's notice or knowledge of the claim shall be due within 14 days of claim acceptance;

(b) The date the attending physician or authorized nurse practitioner authorizes temporary disability, if the authorization is more than 14 days after the date of the employer's notice or knowledge of the claim;

(c) The start of authorized vocational training under ORS 656.268(9), if the claim has previously been closed;

(d) The date the insurer receives medical evidence supported by objective findings that shows the worker is unable to work due to a worsening of the compensable condition under ORS 656.273;

(e) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of temporary disability. If a reconsideration order has been appealed by the insurer, the appeal stays payment of temporary disability benefits except those which accrue from the date of the order, under ORS 656.313;

(f) The date of a notice of claim closure issued by the insurer that finds the worker entitled to temporary disability;

(g) The date a notice of closure is set aside by a reconsideration order;

(h) The date any litigation authorizing retroactive temporary disability becomes final. Temporary disability accruing from the date of the order must begin no later than the 14th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the signature date and from the courts, it is the date of the appellate judgment;

(i) The date the division refers a claim to the insurer for processing under ORS 656.029;

(j) The date the division refers a noncomplying employer claim to an assigned claims agent under ORS 656.054; or

(k) The date a claim disposition is disapproved by the Board or Administrative Law Judge, if temporary disability benefits are otherwise due;

(l) The date the division designates a paying agent under ORS 656.307;

(m) The date a claim is reclassified from nondisabling to disabling, if temporary disability is due and payable; and

(n) The date an insurer voluntarily rescinds a denial of a disabling claim.

(6) Temporary disability must be paid to within seven days of the date of payment at least once each 14 days. When making payments as provided in OAR 436-060-0020(1), the employer may make subsequent payments of temporary disability concurrently with the payroll schedule of the employer, rather than at 14-day intervals.

(7) Permanent disability must be paid no later than the 30th day after:

(a) The date of a notice of claim closure issued by the insurer;

(b) The date of any litigation order which orders payment of permanent total disability. Permanent total benefits accruing from the date of the order must begin no later than the 30th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the mailing date and from the courts it is the date of the appellate judgment;

(c) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of compensation for permanent disability;

(d) The date any litigation authorizing permanent partial disability becomes final;

(e) The date a claim disposition is disapproved by the Board or Administrative Law Judge, if permanent disability benefits are otherwise due; or

(f) The date authorized training ends if the worker is medically stationary and any previous award remains unpaid, under ORS 656.268(9) and OAR 436-060-0040(2).

(8) Fatal benefits must be paid no later than the 30th day after:

(a) The date of a notice of acceptance issued by the insurer; or

(b) The date of any litigation order which orders fatal benefits. Fatal benefits accruing from the date of the order must begin no later than the 30th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the mailing date and from the courts it is the date of the appellate judgment.

(9) Subsequent payments of permanent disability and fatal benefits are made in monthly sequence. The insurer may adjust monthly payment dates, but must inform the beneficiary prior to making the adjustment. No payment period shall exceed one month without the division approval.

(10)(a) When paying temporary disability benefits the insurer must notify the worker or beneficiary in writing of the specific purpose of the payment and the time period for which the payment covers.

(b) When issuing the initial payment of permanent disability or fatal benefits the insurer must notify the worker or beneficiary in writing of the specific purpose of the payment, the schedule of future payments, and the time period each payment will cover. The insurer is not required to provide an explanation in writing with each subsequent permanent disability or fatal benefit payment.

(c) The insurer must provide an explanation in writing to the worker or beneficiary when the benefit amount, time period covered, or payment schedule changes.

(11) The insurer must maintain records of compensation paid for each claim where benefits are due and payable.

(12) If the worker submits a request for reimbursement of multiple items and full reimbursement is not made, the insurer must provide specific reasons for non-payment or reduction of each item.

(13) Payment of a Claim Disposition Agreement must be made no later than the 14th day after the Board or Administrative Law Judge mails notice of its approval of the agreement to the parties, unless otherwise stated in the agreement.

(14) Under ORS 656.126(6), when Oregon compensation is more than the compensation under another law for the same injury or occupational disease, or compensation paid the worker under another law is recovered from the worker for the same injury or occupational disease, the insurer must pay any unpaid compensation to the worker up to the amount required by the claim under Oregon law within 14 days of receipt of written documentation supporting the underpayment of Oregon compensation.

Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.262(4), 656.268(9), 656.273, 656.278, 656.289, 656.307, 656.313, 656.704, 656.726(4)
Hist.: WCB 9-1966, f. & ef. 11-14-66; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0310, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0153
Electronic Payment of Compensation

(1) An insurer may pay benefits through a direct deposit system, automated teller machine card or debit card, or other means of electronic transfer if the worker voluntarily consents. The worker's consent must be obtained prior to initiating electronic payments and may be written or verbal. The insurer must provide the worker a written confirmation when consent is obtained verbally. The worker may discontinue receiving electronic payments by notifying the insurer in writing.

(2) The worker must receive a copy of the cardholder agreement outlining the terms and conditions under which an automated teller machine card or debit card has been issued prior to or at the time the initial electronic payment is made.

(3) The instrument of payment must be negotiable and payable to the worker for the full amount of the benefit paid, without cost to the worker. The worker must be able to make an initial withdrawal of the entire amount of the benefit paid without delay or cost to the worker.

Stat. Auth: ORS 656.726(4)
Stats. Implemented: ORS 656.262(4), 84.013
Hist. ; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0155
Penalty to Worker for Untimely Processing

(1) Under ORS 656.262(11), the director may require the insurer to pay an additional amount to the worker as a penalty and an attorney fee to the worker's attorney when the insurer unreasonably delays or unreasonably refuses to pay compensation, or unreasonably delays acceptance or denial of a claim.

(2) Requests for penalties and attorney fees under this section must be in writing, stating what benefits have been delayed or remain unpaid, and mailed or delivered to the division within 180 days of the alleged violation. Attorney fees will be awarded as provided in OAR 436-001-0400 to 436-001-0440.

(3) For the purpose of this section, "violation" is either:

(a) A late payment or the nonpayment of any single payment due, in which case a request for penalty must be mailed or delivered to the director within 180 days of the date payment was due; or

(b) A continuous nonpayment or underpayment such as with yearly cost of living increases for temporary disability compensation. In these instances, a request for penalty must be mailed or delivered to the director within 180 days of the date of the last underpayment. All prior underpayments will be considered as one violation, regardless of when the first underpayment occurred.

(4) When notified by the director that additional amounts may be due the worker as a penalty under this rule, the insurer must respond in writing to the division. The response must be mailed or delivered to the division within 21 days of the mailing date of the division's inquiry letter, with copies of the response, including any attachments, sent simultaneously to the worker and the worker's attorney (if represented). If an insurer fails to respond or provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), assessment of a civil penalty may occur under OAR 436-060-0200. In addition, failure to provide copies of the response to the worker or attorney timely may result in the assessment of a $50.00 civil penalty under OAR 436-060-0200.

(5) When no written reason for delay is provided by the insurer as required in section (4) and no reason for the delay is evident from the worker's or division's records, the delay shall be considered unreasonable, unless the worker has provided insufficient information to assess a penalty. In such cases, a civil penalty may be assessed under OAR 436-060-0200.

(6) The director will only consider a penalty issue where the assessment and payment of additional amounts described in ORS 656.262(11) is the sole issue of any proceeding between the parties. If a proceeding on any other issue is initiated before the Hearings Division of the Workers' Compensation Board between the same parties prior to the director issuing an order under this section, and the director is made aware of the proceeding, jurisdiction over the penalty proceeding before the director shall immediately rest with the Hearings Division and result in referral of the proceedings to the Hearings Division. If the director has not been made aware of the proceeding before the Hearings Division and issues a penalty order which becomes final, the penalty of the director will stand.

(7) The director will use the matrix attached to these rules in Appendix "B" in assessing penalties. When there are no "amounts then due" upon which to assess a penalty, no penalty will be issued under this rule.

(8) Penalties ordered under this rule must be paid to the worker no later than the 30th day after the date of the order, unless the order is appealed. If the order is appealed and later upheld, the penalty will be due within 14 days of the date the order upholding the penalty becomes final. Failure to pay penalties in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(9) Disputes regarding unreasonable delay or unreasonable refusal to pay compensation, or unreasonable delay in acceptance or denial of a claim may be resolved by the parties. In cases where the parties wish to resolve such disputes and the assessment and payment of additional amounts described in ORS 656.262(11) is the sole issue of a proceeding between the parties, and the violation(s) occurred within the last 180 days in accordance with section (3), then a stipulation must be submitted to the division for approval. The stipulation must specify:

(a) The benefits delayed and the amounts;

(b) The time period(s) involved;

(c) If applicable, the name of the medical provider(s) and the date(s) of service(s) relating to medical bills;

(d) The amount of the penalty not to exceed 25 percent of the amount of compensation delayed; and

(e) The attorney fees, if applicable.

(10) Payment of the penalty is due within 14 days after the date the division approves the stipulation, unless otherwise stated in the stipulation. Failure to pay penalties in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

(11) Any other agreements between the parties to pay a penalty or attorney fee without benefit of a stipulation approved by the division will not be acknowledged as a violation as it applies to the matrix attached to these rules.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 656.262(11), 656.704, 656.726(4) & 656.745
Stats. Implemented: ORS 656.262(11), 656.704 & 656.726(4)
Hist.: WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-

94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0180
Designation and Responsibility of a Paying Agent

(1) For the purpose of this rule:

(a) "Compensable injury" means an accidental injury or damage to a prosthetic appliance, or an occupational disease arising out of and in the course of employment with any Oregon employer, and which requires medical services or results in disability or death.

(b) "Exposure" means a specific incident or period during which a compensable injury may have occurred.

(c) "Responsibility" means liability under the law for the acceptance and processing of a compensable claim.

(2) The division will designate by order which insurer must pay a claim if the employers and insurers admit that the claim is otherwise compensable, and where there is an issue regarding:

(a) Which subject employer is the true employer of a worker;

(b) Which of more than one insurer of a certain employer is responsible for payment of compensation to a worker;

(c) Which of two or more employers or their insurers is responsible for paying compensation for one or more on-the-job injuries or occupational diseases; or

(d) Which of two or more employers is responsible when there is joint employment.

(3) With the consent of the Workers' Compensation Board, Own Motion claims are subject to the provisions of this rule.

(4) Upon learning of any of the situations described in section (2), the insurer must expedite the processing of the claim by immediately investigating the claim to determine responsibility and whether the claim is otherwise compensable. For the purposes of this rule, insurers identified in a potential responsibility dispute under ORS 656.307 must, upon request, share claim related medical reports and other information without charge pertinent to the injury in order to expedite claim processing. The act of the worker applying for compensation benefits from any employer identified as a party to a responsibility dispute shall constitute authorization for the involved insurers to share the pertinent information in accordance with the criteria and restrictions provided in OAR 436-060-0017 and 436-010-0240. No insurer who shares information in accordance with this rule shall bear any legal liability for disclosure of such information.

(5) Upon learning of any of the situations described in section (2), the insurer must immediately notify any other affected insurers of the situation. Such notice must identify the compensable injury and include a copy of all medical reports and other information pertinent to the injury. The notice must identify each period of exposure which the insurer believes responsible for the compensable injury by the following:

(a) Name of employer;

(b) Name of insurer;

(c) Specific date of injury or period of exposure; and

(d) Claim number, if assigned.

(6) Upon deciding that the responsibility for an otherwise compensable injury cannot be determined, the insurer must request designation of a paying agent by writing to the division and sending a copy of the request to the worker and the worker's representative, if any. The request shall not be contained in or attached to any form or report the insurer is required to submit under OAR 436-060-0010 or in the denial letter to the worker required by OAR 436-060-0140. Such a request, or agreement to designation of a paying agent, is not an admission that the injury is compensably related to that insurer's claim; it is solely an assertion that the injury is compensable against a subject Oregon employer. The insurer's written request to the division must contain the following information:

(a) Identification of the compensable injury(ies);

(b) That the insurer is requesting designation of a paying agent under ORS 656.307;

(c) That the insurer acknowledges the injury is otherwise compensable;

(d) That responsibility is the only issue;

(e) Identification of the specific claims or exposures involved by

(A) Employer,

(B) Insurer,

(C) Date of injury or specific period of exposure, and

(D) Claim number, if assigned;

(f) Acknowledgment that medical reports and other material pertinent to the injury have been provided to the other parties; and

(g) Confirmation the worker has been advised of the actions being taken on the worker's claim.

(7) The division will not designate a paying agent where there remains an issue of whether the injury is compensable against a subject Oregon employer, or if the 60 day appeal period of a denial has expired without a request for hearing being received by the Board or the division receiving a request for a designation of paying agent order, or if an insurer included in the question of responsibility opposes designation of a paying agent because it has received no claim.

(8) When notified by the division that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurer must provide written clarification to the division, the worker, insurers involved and other interested parties within 21 days of the mailing date of the notification. If an insurer fails to respond timely or provides an inadequate response (e.g. failing to answer specific questions or provide requested documents), a civil penalty will be assessed under OAR 436-060-0200.

(9) Insurers receiving notice from the division of a worker's request for designation of a paying agent must immediately process the request in accordance with sections (4) through (6).

(10) Upon receipt of written acknowledgment from the insurers that the only issue is responsibility for an otherwise compensable injury claim, the division will issue an order designating a paying agent under ORS 656.307. The division will designate the insurer with the lowest compensation considering the following factors:

(a) The claim with the lowest temporary total disability rate.

(b) If the temporary total disability rates and the rates per degree of permanent disability are the same, the earliest claim.

(c) If there is no temporary disability or the temporary total disability rates are the same, but the rates per degree of permanent disability are different, the claim with the lowest rate per degree of permanent disability.

(d) If one or more claims have disposed of benefits in accordance with ORS 656.236(1), the claim providing the lowest compensation not released by the claim disposition agreement.

(e) If one claim is under "Own Motion" jurisdiction, the Own Motion claim, even if not the claim with the lowest temporary total disability rate.

(f) If more than one claim is under "Own Motion" jurisdiction, the Own Motion claim with the lowest temporary total disability rate.

(11) By copy of its order, the division will refer the matter to the Workers' Compensation Board to set a proceeding under ORS 656.307 to determine which insurer is responsible for paying benefits to the worker.

(12) The designated paying agent must process the claim as an accepted claim through claim closure under OAR 436-030-0015(9) unless relieved of the responsibility by an order of the Administrative Law Judge or resolution through mediation or arbitration under ORS 656.307(6). The parties to an order under this section shall not settle any part of a claim under ORS 656.236 or 656.289, except to resolve the issue of responsibility, unless prior approval and agreement is obtained from all potential responsible insurers. Resolution of a dispute by mediation or arbitration by a private party cannot obligate the Consumer and Business Services Fund without the director's prior approval. The Consumer and Business Services Fund shall not be obligated when one party declines to participate in a legitimate settlement conference under an ORS 656.307 order. Compensation paid under the order must include all benefits, including medical services, provided for a compensable injury to a subject worker or the worker's beneficiaries. The payment of temporary disability due must be for periods subsequent to periods of disability already paid by any insurer.

(13) After a paying agent is designated, if any of the insurers determine compensability is or will be an issue at hearing, they must notify the division. Any insurer must notify the division and all parties to the order of any change in claim acceptance status after the designation of a paying agent. When the division receives notification of a change in the acceptance of a claim or notification that compensability is an issue after designation of a paying agent, the division shall order termination of any further benefits due from the original order designating a paying agent.

Stat. Auth.: ORS 656.307, 656.704, 656.726(4) & 656.745
Stats. Implemented: ORS 656.307, 656.308, 656.704 & 656.726(4)
Hist.: WCD 1-1980(Admin), f & ef. 1-11-80; WCD 5-1980(Admin)(Temp), f & ef. 4-29-80; WCD 7-1980(Admin), f. 9-5-80, ef. 10-1-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0332, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0195
Miscellaneous Monetary Adjustments Among Insurers

(1) The director may order monetary adjustments between insurers under authority provided by ORS 656.726(4) and 656.202 where a claimant has a right to compensation, but there is a dispute between insurers that does not fall under the director's authority in ORS 656.307 and OAR 436-060-0190. Any failure to obtain reimbursement from an insurer under this rule shall not be recoverable from the Consumer and Business Services Fund. The purpose of this rule is to ensure the claimant properly receives all compensation due under the workers' compensation law, but is not unduly compensated for more than the law intended.

(2) When any litigation on issues in question is final, insurers must make any necessary monetary adjustments among themselves consistent with the determination of coverage for compensation paid to the worker, medical providers and others for which they are responsible and payment has not already been made, within 30 days of receiving sufficient information to adequately determine the benefits paid and the relationship to the condition(s) involved. Any balance due after making such adjustments must be paid in a timely manner to the worker, medical providers and others under OAR 436-009 and 436-060-0150.

(3) The division may direct any necessary monetary adjustment between parties, but shall not order an insurer to pay compensation over and beyond that required by law, as it relates to the insurer's claim, except where an insurer unduly compensates a claimant while having knowledge such compensation has already been paid by another insurer. Notwithstanding, each insurer has its own independent obligation to process its claim and pay interim compensation due until the claim is either accepted or denied. When notified by the division that a dispute over monetary adjustment exists the insurer must provide a written response to questions or issues raised, including supporting documentation, to the division, insurers involved and other interested parties within 21 days of the mailing date of the notification.

(4) Failure to respond to the division's inquiries or make monetary adjustments within 30 days of an order by the division will subject the insurer to civil penalties under OAR 436-060-0200.

(5) When the division determines improper or untimely claim processing by an insurer resulted in unnecessary costs, the division may deny monetary adjustment between the insurers.

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745
Stats. Implemented: ORS 656.704 & 656.726(4)
Hist.: WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02 ; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0200
Assessment of Civil Penalties

(1) The director through the division and under ORS 656.745 shall assess a civil penalty against an employer or insurer who intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

(2) A penalty under section (1) will only be assessed after all litigation on the matter has become final by operation of the law. For the purpose of section (1):

(a) "Intentionally" means the employer or insurer acted with a conscious objective to cause any result described in ORS 656.745(1) or to engage in the conduct so described in that section; and

(b) "Repeatedly" means more than once in any twelve month period.

(3) Under ORS 656.745, the director may assess a civil penalty against an employer or insurer who fails to comply with rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(4) An employer or insurer failing to meet the time frame requirements set forth in OAR 436-060-0010, 436-060-0017, 436-060-0018, 436-060-0030, 436-060-0060, 436-060-0147, 436-060-0155 and 436-060-0180 may be assessed a civil penalty up to $2,000.

(5) An insurer who willfully violates OAR 436-060-0160 shall be assessed a civil penalty of up to $2,000.

(6) An insurer that does not accurately report timeliness of first payment information to the division may be assessed a civil penalty of $500 for reporting inaccurate information plus $50 for each violation, or $10,000 in the aggregate for all violations within any three month period. For the purposes of this section, a violation consists of each situation where a first payment was reported to have been made timely, but was found upon audit to have actually been late.

(7) Notwithstanding section (3) of this rule, an employer or insurer who does not comply with the claims processing requirements of ORS chapter 656, and rules and orders of the director relating thereto may be assessed a civil penalty of up to $2,000 for each violation or $10,000 in the aggregate for all violations within any three month period.

(8) Any employer or insurer that misrepresents themselves in any manner to obtain workers' compensation claims records from the director, or that uses such records in a manner contrary to these rules, is subject to a civil penalty of $1,000 for each occurrence. In addition, the director may suspend or revoke an employer's or insurer's access to workers' compensation claims records for such time as the director may determine. Any other person determined to have misrepresented themselves or who uses records in a manner contrary to these rules shall have access to these records suspended or revoked for such time as the director may determine.

(9) For the purpose of section (7), statutory claims processing requirements include but are not limited to, ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331, and 656.335.

(10) In arriving at the amount of penalty, the division may consider, but is not limited to:

(a) The ratio of the volume of violations to the volume of claims reported, or

(b) The ratio of the volume of violations to the average volume of violations for all insurers or self-insured employers, and

(c) Prior performance in meeting the requirements outlined in this section.

(11) Insurer performance data is reviewed every quarter based on reports submitted by the insurer during the previous calendar quarter. Civil penalties will be issued for each of the performance areas where the percentages fall below the acceptable standards of performance as set forth in these rules. The standard for reporting claims to the division will allow insurers to report claims by filing a Form 1502 accompanied by a Form 827 where the Form 801 is not available. Penalties will be issued in accordance with the matrix set forth in Appendix "C."

(12) Under ORS 656.262(14), an injured worker's attorney that is not willing or available to participate in an interview at a time reasonably chosen by the insurer within 14 days of the request for interview may be assessed a civil penalty not to exceed $1,000 if the director finds the attorney's actions unreasonable.

[ED. NOTE: Appendices & Forms referenced are available from the agency.]
Stat. Auth.: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.202, 656.210, 656.212, 656.228, 656.234, 656.236, 656.245, 656.262, 656.263, 656.264, 656.265, 656.268, 656.273, 656.307, 656.313, 656.325, 656.331, 656.335, 656.704, 656.726(4) & 656.745, OL 2009, ch. 526
Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0981, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 3-1991, f. 4-18-91, cert. ef. 6-1-91; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0400
Penalty and Attorney Fee for Untimely Payment of Disputed Claims Settlement

(1) If the insurer fails to pay amounts due on a disputed claims settlement within five business days of receipt of notice from the worker that the payment is late, the worker or worker's attorney may request penalties and attorney fees.

(2) Requests for penalties and attorney fees under this section must be in writing, state what payments were delayed or remain unpaid, and mailed or delivered to the division within 180 days of the date of notice to the insurer. In order to be awarded an attorney fee the attorney must submit a signed, current retainer agreement.

(3) When notified by the director that a penalty or attorney fees have been requested under this rule, the insurer must respond in writing to the division. The response must be mailed or delivered to the division within 14 days of the date of the division's inquiry letter, with copies of the response, including any attachments, sent simultaneously to the worker and the worker's attorney (if represented). If an insurer fails to respond, provides an inadequate response (e.g. fails to answer specific questions or provide requested documents), or fails to timely provide copies of the response to the worker or attorney, civil penalties may be assessed under OAR 436-060-0200.

(4) The penalty and fee will be based on the amounts allocated to the worker and the attorney in the settlement agreement as prescribed in ORS 656.262(12)(b). Penalties will be issued in accordance with the matrix set forth in Appendix "D."

(5) Penalties and attorney fees ordered under this rule must be paid to the worker and attorney no later than the 30th day after the date of the order, unless the order is appealed. If the order is appealed and later upheld, the penalty and attorney fee will be due within 14 days of the date the order upholding the penalty becomes final. Failure to pay penalties and attorney fees in a timely manner will subject the insurer to civil penalties under OAR 436-060-0200.

Stat. Auth: ORS 656.726(4)
Stats. Implemented: ORS 656.262 (OL 2009, ch. 526)
Hist. : WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0500
Reimbursement of Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) When an insurer elects to pay supplemental disability due a worker with multiple jobs at the time of injury, the director shall pay reimbursement of the supplemental amount quarterly, after receipt and approval of documentation of compensation paid by the insurer or the third party administrator. The director will reimburse the insurer, in care of a third party administrator, if applicable.

(2) Requests for reimbursement must be submitted on Form 3504, "Supplemental Disability Benefits Quarterly Reimbursement Request," and must include at least:

(a) Identification and address of the insurer responsible for processing the claim;

(b) The worker's name, WCD file number, date of injury, social security number, and the insurer claim number;

(c) Whether the claim is disabling or nondisabling;

(d) The primary and secondary employer's legal names;

(e) The primary and secondary employer's WCD registration numbers;

(f) The weekly wage of all jobs at the time of the injury separated by employer;

(g) The dates for the period(s) of supplemental disability due and payable to the worker. Dates must be inclusive (e.g., 1-16-02 through 1-26-02);

(h) The amount of supplemental disability paid for the periods in (2)(g);

(i) The quarter and year in which the payment was made;

(j) A signed payment certification statement verifying the payments; and

(k) Any other information the director requires.

(3) In addition to the supplemental disability reimbursement, the division shall calculate and the insurer shall be paid an administrative fee based on the annual claim processing administrative cost factor, as published in Bulletin 316.

(4) Periodically the division will audit the physical file of the insurer responsible for processing the claim to validate the amount reimbursed. Reimbursement will be disallowed and repayment will be required if, upon such audit, it is found:

(a) Payments exceeded statutory amounts due, excluding reasonable overpayments, as determined by the division;

(b) Compensation has been paid as a result of untimely or inaccurate claims processing; or

(c) Payments of compensation have not been documented, as required by OAR 436-050.

(5) Supplemental disability benefits due subject workers of an employer who is in a noncomplying status as defined in ORS 656.052 are not eligible for separate reimbursement under this rule, but remain a cost recoverable from the employer as provided by ORS 656.054(2).

(6) Claim Dispositions or Stipulated Settlements, under ORS 656.236 or 656.289 which include amounts for supplemental disability benefits due to multiple jobs, are not eligible to receive reimbursement from the Workers' Benefit Fund unless made with the prior written approval of the director.

(a) Requests for written approval of proposed dispositions must include:

(A) A copy of the proposed disposition or settlement that specifies the amount of the proposed contribution to be made from the Workers' Benefit Fund;

(B) A statement from the insurer indicating how the amount of the contribution was calculated; and

(C) Any other information required by the director.

(b) The director will not approve the disposition for reimbursement if the proposed contribution exceeds a reasonable projection of that claim's future liability to the Workers' Benefit Fund.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.704, 656.726(4)
Stats. Implemented: ORS 656.210, 656.704, 656.726(4)
Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-060-0510
Reimbursement of Permanent Total Disability Benefits from the Workers' Benefit Fund

(1) The insurer may request reimbursement of permanent total disability benefits paid after the date of the notice of closure under ORS 656.206(6)(a).

(2) Requests for reimbursement must be filed within one year of the mailing date of the final order upholding the notice of closure and include:

(a) Sufficient information to identify the insurer and the injured worker;

(b) The net dollar amount of permanent total disability benefits paid ("Net dollar amount" means the total compensation paid less any recoveries, including, but not limited to, third party recovery or amounts reimbursable from the Retroactive Program or Reopened Claims Program.); and

(c) A statement certifying that payment has been made.

(3) If any of the monies are due under the Retroactive Program or Reopened Claims Program, any reimbursement request must be submitted under OAR 436-075 or 436-045, respectively.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.206, 656.605
Hist.: WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-105-0003
Applicability of Rules

(1) These rules apply to:

(a) All individual Employer-at-Injury Programs begun on or after January 1, 2010; and

(b) All reimbursement requests made to the division in accordance with OAR 436-105-0540(4) on or after January 1, 2010 regardless of the date an Employer-at-Injury Program began, unless the insurer requests that reimbursement be based on the rules in effect on the date an individual Employer-at-Injury Program began.

(2) The director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-105-0005
Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(3) "Consumables" means purchases required to support the functioning of tools or equipment utilized during transitional work.

(4) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Employer-at-Injury" means the organization that employed the worker when the worker:

(a) Sustained the injury or occupational disease;

(b) Made the claim for aggravation; or

(c) Requested an Own Motion opening under ORS 656.278.

(7) "Fund" means the Workers' Benefit Fund.

(8) "Insurer" means the insurance company or self-insured employer responsible for the workers' compensation claim.

(9) "Premium" means the monies paid to an insurer for the purpose of purchasing workers' compensation insurance.

(10) "Regular employment" means the employment the worker held at the time of:

(a) Injury;

(b) The claim for aggravation; or

(c) Own Motion opening under ORS 656.278.

(11) "Reimbursable wages" means the worker's gross wages for the Wage Subsidy period.

(12) "Skills building" means a class or course of instruction taken by the worker for the purpose of enhancing an existing skill or developing a new skill. When skills building is the transitional work, the worker must agree in writing to take the class or course of instruction.

(13) "Transitional Work" means temporary work with the employer-at-injury which is not the worker's full duty regular work and is assigned because the worker cannot perform full duty regular work. Transitional work must be within the worker's injury-caused limitations and may be created through modification of the worker's regular work, job restructuring, assistive devices, worksite modification(s), reduced hours, or reassignment to another job. Transitional work must be within the employer's course and scope of trade or profession, unless the work is "skills building."

(14) "Worker Leasing Company" means the person which provides workers, by contract and for a fee, as prescribed in ORS 656.850.

(15) "Work site" means a primary work area available for a worker to use to perform the required job duties. The work site may be the employer's, client's, or worker's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A work site may include a worker's personal property or vehicle if required to perform the job.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-105-0500
Insurer Participation in the Employer-At-Injury Program

(1) An insurer must be an active participant in providing reemployment assistance with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

(2) The insurer will notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice must be issued:

(a) Upon acceptance or reopening of a claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance must contain the following language:

(a) The notice to the worker must appear in bold type as follows:

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact [insurer name and phone number].

(b) The notice to the employer-at-injury must appear in bold type as follows:

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].

(4) The insurer will administer the Employer-at-Injury Program according to these rules. The insurer will assist an employer to:

(a) Obtain a qualifying medical release, pursuant to section (5) of this rule, from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer Wage Subsidy requests as specified in OAR 436-105-0520(1);

(d) Make Worksite Modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program Purchases as specified in OAR 436-105-0520(3); and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must be dated and related to the accepted or deferred conditions of the claim. The date the medical release is issued by the worker's medical service provider is considered the effective date if an effective date is not otherwise specified;

(b) Two types of medical release qualify under these rules:

(A) A medical release that states the worker's specific restrictions; or

(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work.

(c) A medical release must cover any period of time for which benefits are requested.

(6) For the purposes of the Employer-at-Injury Program, a medical release, and any restrictions it contains, remains in effect until another medical release is issued by the worker's medical service provider. An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request.

(7) The insurer must maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program Reimbursement Request. The insurer will maintain the following information at the authorized claim processing location(s):

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the Wage Subsidy period as follows:

(A) Payroll records must state the payroll period, wage rate(s), and the worker's gross wages for the Wage Subsidy period. The payroll record must also include the dates and hours worked each day if the worker has hourly restrictions;

(B) Insurers and employers may supplement payroll records with documentation of how the worker's earnings were calculated for the Wage Subsidy. Supplemental documentation may be used to determine a worker's work schedule, wages earned on a particular day, dates of paid leave, or to clarify any other necessary information not fully explained by the payroll record;

(C) If neither the payroll record(s) nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:

(i) Divide the gross wages by the number of days in the payroll period for the daily rate; and

(ii) Multiply the daily rate by the number of eligible days; and

(D) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work must be provided for those days.

(d) A legible copy of proof of purchase, providing proof the item was ordered during the EAIP period and proof of payment of the item(s) for Worksite Modification purchases and Employer-at-Injury Program Purchases;

(e) Written documentation of the insurer's decision to approve Worksite Modifications;

(f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties;

(g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services/Oregon Health Authority, if applicable;

(h) The written acceptance by the worker when skills building is the transitional work; and

(i) Documentation, including course title and curriculum for a class or course of instruction when Employer-at Injury Program Purchases are requested.

Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)
Stats. Implemented: ORS 656.340 & 656.622
Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-105-0520
Assistance Available from the Employer-at-Injury Program

The Employer-at-Injury Program may be used only once per worker per claim opening, for a non-disabling claim or a disabling claim. If a non-

disabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-at-Injury Program may be used again. Assistance available includes:

(1) Wage Subsidy, which provides 50 percent reimbursement of the worker's gross wages for the Wage Subsidy period. Wage Subsidy benefits are subject to the following conditions:

(a) A Wage Subsidy may not exceed 66 work days and must be completed within a 24 consecutive month period;

(b) A Wage Subsidy may not start or end with paid leave;

(c) If the worker has hourly restrictions, reimbursable paid leave must be limited up to the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions is not subject to reimbursement;

(d) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time not to exceed 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.

(2) Worksite Modification, which means altering a work site by renting, purchasing, modifying, or supplementing equipment to enable a worker to perform the transitional work within the worker's limitations that resulted in the worker's EAIP eligibility, or to prevent a worsening of the worker's accepted or deferred conditions. Maximum reimbursement is $2,500. Worksite Modification assistance is subject to the following conditions:

(a) The insurer determines the appropriate Worksite Modification(s) for the worker;

(b) The insurer documents its reason(s) for approving the modification(s);

(c) The Worksite Modification(s) must be ordered during the Employer-at-Injury Program;

(d) Modifications purchased by the employer in good faith are reimbursable if the worker refuses to return to work;

(e) Worksite Modification items become the employer's property upon the end of the Employer-at-Injury Program.

(3) Employer-at-Injury Program Purchases, which are limited to:

(a) Tuition, books, fees, and materials required for a class or course of instruction to enhance an existing skill or develop a new skill when skills building is used as transitional work or when required to meet the requirements of the transitional work position. Maximum expenditure is $1,000. Tuition, books, fees, and required materials will be provided under the following conditions:

(A) The insurer determines the instruction will help the worker enhance an existing skill or develop a new skill, and documents its decision;

(B) Costs for tuition, books, fees, and required materials may be fully reimbursed if the worker began participation in the class or course while eligible for the Employer-at-Injury Program; or

(C) The employer in good faith paid for the costs of the class or course after the worker agreed to take part in the training and then the worker refused to attend.

(b) Tools and equipment required for the worker to perform transitional work, including consumables. Maximum expenditure is $2,500, and these purchases will be the employer's property.

(c) Clothing required for the job, except clothing the employer normally provides. Clothing becomes the worker's property. Maximum expenditure is $400.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0041, 436-110-0042 & 436-110-0045; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0510; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-105-0540
Employer-at-Injury Program Reimbursement Procedures

(1) Reimbursements may include Wage Subsidy, Employer-at-Injury Program Purchases, and Worksite Modification.

(2) The insurer is entitled to a program administrative cost of $120.00 for the first reimbursement request of an Employer-at-Injury Program. A subsequent request for reimbursement for the same Employer-at-Injury Program is not entitled to an additional program administrative cost.

(3) The insurer must receive all required documentation for reimbursement within one year from the end of the Employer-at-Injury Program in order to qualify for reimbursement. The insurer must date stamp each reimbursement request document with the receipt date.

(4) The insurer must submit the request for reimbursement (Form 2360) to the division within one year and 30 days from the end of the Employer-at-Injury Program.

(5) The Employer-at-Injury Reimbursement Request must be a minimum of $100. The associated administrative costs will also be eligible for reimbursement.

(6) Subsequent requests less than $100 will be eligible for reimbursement. However, the requests will not be eligible for reimbursement of a subsequent administrative cost.

(7) If the original request was less than $100, but the amended request is at least $100, the request and the associated administrative costs will be eligible for reimbursement.

(8) When the division finds the insurer has submitted an Employer-at-Injury Program Reimbursement Request which is incomplete or contains an error, the division may return the form to the insurer for correction. The insurer has 60 days from the date the insurer receives the reimbursement request, or one year and 30 days from the end of Employer-at-Injury Program eligibility, whichever is greater, to make the corrections and return the corrected form to the division.

(9) The insurer may send an Employer-at-Injury Program Reimbursement Request to the division when a claim was initially denied and was subsequently accepted after the Employer-at-Injury Program eligibility ended and more than one year and 30 days have passed. In that case, the insurer must send a completed Employer-at-Injury Program Reimbursement Request to the division within 60 days of the first Order or Stipulation and Order accepting the claim. A copy of the Order accepting the claim, or Stipulation and Order accepting the claim must be attached.

(10) The insurer may request reimbursement for a qualifying Employer-at-Injury Program that took place while the claim was in accepted or deferred status even if the claim is denied at the time the reimbursement request is sent to the division.

(11) Amended reimbursement requests must be sent to the division within one year and 30 days from the end of the Employer-at-Injury Program eligibility except as provided in section (6) of this rule. The insurer may not request additional administrative cost reimbursement for filing an amended reimbursement request.

(12) Amendments are to be made on a completed Employer-at-Injury Program Reimbursement Request, Form 2360. The amended reimbursement request must cite the corrected information with the statement "Amendment" written across the top of the form. The corrected information should be highlighted.

(13) The insurer will not use Employer-at-Injury Program costs subject to reimbursement for rate making, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that Employer-at-Injury Program costs do not affect the employer's rates or dividend.

(14) If a Preferred Worker employed by an eligible employer with active Premium Exemption incurs a new injury, the claim is subject to Claim Cost Reimbursement under OAR 436-110. If the worker subsequently enters an Employer-at-Injury Program, program costs are to be separated from claim costs and will not be reimbursed as claim costs.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-105-0550
Audits

(1) Insurers and employers are subject to periodic program and fiscal audits by the division. All reimbursements are subject to subsequent audits, and may be disallowed on any of the grounds set forth in these rules. Disallowed reimbursements must be repaid to the department.

(2) The audit may include but not be limited to a review of the records required in OAR 436-105-0500(7).

(3) When conflicting documentation exists, the division will utilize a preponderance of evidence standard to decide eligibility for reimbursement and if there is no clear preponderance, reimbursement will be allowed.

(4) The division reserves the right to visit the work site to determine compliance with these rules.

Stat. Auth.: ORS 656.455, 656.622, 656.726(4) & 731.475
Stats. Implemented: ORS 656.455, 656.622 & 731.475
Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0005
Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(3) "Date of hire" means the date the worker started work for the employer for which benefits are requested.

(4) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(5) "Disability" means permanent physical or mental restriction(s) or limitation(s) caused by an accepted disabling Oregon workers' compensation claim that limits the worker from performing one or more of the worker's regular job duties.

(6) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(7) "Division approval" means a Preferred Worker agreement signed by an authorized division representative.

(8) "Employer at injury" means the organization in whose employ the worker sustained the injury or occupational disease.

(9) "Exceptional disability" means a disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury that results in impairment equal to or greater than a Class III as defined in OAR 436-035. The division will determine whether a worker has an exceptional disability based upon the combined effects of all of the worker's Oregon compensable injuries resulting in permanent disability.

(10) "Fund" means the Workers' Benefit Fund.

(11) "Insurer" means the insurance company or self-insured employer responsible for the workers' compensation claim.

(12) "Premium" means the monies paid to an insurer for the purpose of purchasing workers' compensation insurance.

(13) "Regular employment" means the job the worker held at the time of the injury, claim for aggravation, or own motion opening.

(14) "Reimbursable wages" means the worker's gross wages for the Wage Subsidy period.

(15) "Worksite" means a primary work area that is in Oregon, already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's, worker's, or worker leasing company's client's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. If the "worksite" is mobile, it must be available in Oregon for inspection and modification.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0010, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0310
Eligibility and End of Eligibility for the Preferred Worker Program

(1) The eligibility requirements for an employer, except as provided in OAR 436-110-0345(1) for Employment Purchases, are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage;

(b) The employer complies with the Oregon Workers' Compensation Law;

(c) The employer must offer or provide employment to an eligible Preferred Worker who is a subject Oregon worker according to ORS 656.027;

(d) If the employer is a worker leasing company, it must be licensed with the division; and

(e) The employer is not currently ineligible for Preferred Worker benefits under OAR 436-110-0900.

(2) The eligibility requirements for a worker are:

(a) The worker has an accepted disabling Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify;

(b) Medical evidence indicates that, because of injury-caused limitations, the worker will not be able to return to regular employment as defined in OAR 436-110-0005 under the most recent disabling claim or claim opening. If the worker is not eligible under the most recent disabling claim or claim opening, eligibility may be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from return to regular employment;

(c) Medical documentation indicates permanent disability exists as a result of the injury or disease, whether or not an order has been issued awarding permanent disability; and

(d) The worker is authorized to work in the United States.

(3) A worker may not use Preferred Worker benefits for self-employment unless the injury that gave rise to the worker's eligibility for the Preferred Worker Program occurred in the course and scope of self-employment. In that case, the worker may use the benefits to return to the same self-employment or for employment other than self-employment.

(4) Reasons for ending Preferred Worker Program eligibility include, but are not limited to, the following:

(a) Misrepresentation or omission of information by a worker or employer to obtain assistance;

(b) Failure of a worker or employer to provide requested information or cooperate;

(c) Falsification or alteration of a Preferred Worker card or a Preferred Worker Program Agreement;

(d) Conviction of fraud in obtaining workers' compensation benefits;

(e) The worker no longer meets the eligibility requirements under section (2) of this rule;

(f) The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0900;

(g) The employer does not maintain Oregon workers' compensation insurance coverage, except as provided in OAR 436-110-0345(1) for Employment Purchases;

(5) The division retains the right to reinstate Preferred Worker Program eligibility if eligibility was ended prematurely or in error, or the employer has reinstated or obtained workers' compensation insurance coverage.

(6) A worker found ineligible because he/she was not authorized to work in the United States may request a redetermination of eligibility after providing the division with documentation that he/she is authorized to work in the United States.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78, WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0020, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0020; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0280; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0325
Premium Exemption General Provisions

(1) The purpose of Premium Exemption is to provide an incentive to employers to hire Preferred Workers.

(2) Premium Exemption releases an employer from paying workers' compensation insurance premiums and premium assessments on a Preferred Worker for three years from the date premium exemption started. While using Premium Exemption, the employer does not report, and the insurer cannot use, the Preferred Worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer must report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-070. The employer must start paying insurance premiums and premium assessments when Premium Exemption ends.

(3) Premium Exemption cannot be used for regular employment unless the job is modified to accommodate the worker's injury-caused limitations.

(4) If within 90 days from the date of hire the employer-at-injury notifies the insurer they have hired a Preferred Worker, Premium Exemption starts on the date of hire.

(5) If the employer is not the employer-at-injury, the worker discloses Preferred Worker status to that employer, and the employer notifies the insurer within 90 days from the date of hire that they have hired a Preferred Worker, Premium Exemption starts on the date of hire.

(6) If an injured worker's eligibility for preferred worker status has not been determined as of the date of hire, the worker or the employer-at-injury who is reemploying the worker may request eligibility determination. The date the division determines the worker is eligible is the eligibility date and Premium Exemption starts on the eligibility date.

(7) If a worker covered under Premium Exemption incurs a compensable injury or occupational disease during the Premium Exemption period, the employer must notify its insurer of the injury and the worker's Preferred Worker status. The claim costs for the injury are reimbursed under OAR 436-110-0330.

Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 4367-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0330
Claim Cost Reimbursement

(1) Claim Cost Reimbursement provides reimbursement to the insurer for claim costs when a Preferred Worker files a claim for injury or occupational disease while employed under Premium Exemption as follows:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursable claim costs include disability benefits, medical benefits, vocational costs in accordance with OAR 436-120-0720, Claim Disposition Agreements in accordance with ORS 656.236, Disputed Claim Settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries, and administrative costs;

(c) Reimbursable claim costs for denied claims include costs incurred up to the date of denial, but are limited to benefits the insurer is obligated to pay under ORS 656 and diagnostic tests, including independent medical examinations necessary to determine compensability of the claim;

(d) The administrative cost factor to be applied to claim costs will be as published in Bulletin 316; and

(e) The claim must not be used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that claim data will not affect the employer's rates or dividend.

(2) The insurer must request Claim Cost Reimbursement as follows:

(a) Requests for reimbursement must be made within one year of the end of the quarter within which payment was made;

(b) Quarterly reimbursement requests must be in the format the director prescribes by bulletin; and

(c) Reimbursement documentation must include, but is not limited to:

(A) Net amounts paid. "Net amounts" means the total compensation paid less any recoveries including, but not limited to, third party recovery or reimbursement from the Retroactive Program, Reopened Claims Program, or the fund;

(B) Payment certification statement; and

(C) Any other information the division deems necessary.

(3) Requests for reimbursement must not include:

(a) Claim costs for any injury that did not occur while the worker was employed with Premium Exemption;

(b) Costs incurred for conditions completely unrelated to the compensable claim;

(c) Costs incurred due to inaccurate, untimely, unreasonable, or improper processing of the claim;

(d) Penalties, fines or filing fees;

(e) Disposition amounts in accordance with ORS 656.236 (CDA) and 656.289 (DCS) not previously approved by the division;

(f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Program, Retroactive Program, or the fund; or

(g) Reimbursable Employer-at-Injury Program costs.

(4) Periodically, the division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts must be refunded to the division and, as applicable, future reimbursements will be denied if, upon audit, any of the following is found to apply:

(a) Reimbursement has been made for any of the items specified in section (3) of this rule;

(b) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented;

(c) The separate payments of compensation have not been documented;

(d) The insurer included claim costs in any dividend or retrospective rating or experience rating calculations;

(e) The insurer is unable to provide applicable records relating to experience rating, retrospective rating, or dividend calculations at the time of audit or within 14 working days thereafter.

(5) If the conditions described in subsections (4)(a) through (e) of this rule are corrected and all other criteria of the rules are met, eligibility for reimbursement may be reinstated. If reimbursement eligibility is reinstated, any moneys previously reimbursed and then recovered will be reimbursed again according to these rules.

(6) A Claim Disposition Agreement according to ORS 656.236, a Disputed Claim Settlement according to ORS 656.289, or any stipulation or agreement of a claim subject to claim cost reimbursement from the fund must meet the following requirements for reimbursement:

(a) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition must be submitted to the division prior to submitting the disposition to the Workers' Compensation Board or administrative law judge for approval;

(b) A claim's future liability and the proposed contribution from the fund must be a reasonable projection, as determined by the division, in order to be approved for reimbursement from the fund; and

(c) A request for approval of the proposed disposition must include:

(A) The original proposed disposition, containing appropriate signatures and appropriate signature lines for division and Workers' Compensation Board or administrative law judge approval, that specifies the proposed assistance from the fund;

(B) A written explanation of how the calculations for the amount of assistance from the fund were made; and

(C) Other information as required by the division.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0260 & 436-110-0300; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0335
Wage Subsidy General Provisions

Wage Subsidy provides an employer with partial reimbursement of a worker's gross wages for a specified period. Wage Subsidy benefits are subject to the following conditions:

(1) The effective date of a Wage Subsidy Agreement is mutually agreed to by the division, employer, and worker if applicable;

(2) A Wage Subsidy is limited to a duration of 183 calendar days and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability as defined in OAR 436-110-0005(9). For a worker with an exceptional disability, the Wage Subsidy duration is limited to 365 calendar days and a monthly reimbursement rate of 75 percent;

(3) A Wage Subsidy Agreement may be interrupted once for reasonable cause and extended to complete the Wage Subsidy Agreement on a whole workday basis. Reasonable cause includes, but is not limited to,

personal or family illness, death in the worker's family, pregnancy of the worker or worker's spouse, a compensable injury to the worker, participation in an Employer-at-Injury Program, or layoff. A layoff must be a minimum of 10 consecutive work days. A period of time during which the employer is without workers' compensation insurance coverage is not "reasonable cause," and no extension will be granted;

(4) A Preferred Worker's pay structure must be the same as the pay structure for other workers employed in similar jobs by the employer;

(5) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by the following method:

(a) First, examine the wages paid by the employer for other workers doing the same job;

(b) If no other workers are doing the same job, a labor market survey of the local labor market may be conducted; and

(c) If the labor market survey does not support the wage rate requested, the division will determine the wage subject to reimbursement;

(6) Preferred Worker Program Wage Subsidies may not be combined with a wage subsidy for a training plan under OAR 436-120;

(7) A worker-activated and employer at injury-activated wage subsidy can not be used for the same job with the employer at injury;

(8) If the worker's employer changes during the Wage Subsidy Agreement period due to a sale of the business, incorporation, or merger, the agreement can be transferred to the new employer by an addendum to the agreement approved by the division as long as the worker's job remains the same and the new employer is eligible under OAR 436-110-0310(1);

(9) A completed and signed Wage Subsidy Reimbursement Request form must be submitted to the division with a copy of the worker's payroll records. The payroll record must state the dates (daily or weekly), hours, wage rate, and the worker's gross wage. Payroll records must be a legible copy and compiled in accordance with generally accepted accounting procedures; and

(10) All requests for reimbursement must be made within one year of the Wage Subsidy Agreement end date.

(11) Wage Subsidy cannot be used for "regular employment" as defined in OAR 436-110-0005(13) unless the job has been modified to overcome the worker's injury-caused permanent restrictions.

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

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025,436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0336

Wage Subsidy — Employer at Injury Activated

Wage Subsidy may be activated by the employer at injury as follows:

(1) The job must be within the worker's injury-caused restrictions. If a worksite modification is necessary to meet this requirement, Wage Subsidy will not be approved until the modification is complete, and verified by a representative of the division.

(2) The employer must complete and sign a Wage Subsidy Agreement, and send it to the division in the timeframes allowed in OAR 436-110-0290.

(3) The completed and signed job offer must accompany the request as required in OAR 436-110-0290(3), unless it was already submitted with another request.

(4) The employer at injury may use Wage Subsidy once during an eligibility period.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0337

Wage Subsidy — Worker Activated

A Wage Subsidy may be requested by a worker as follows:

(1) The worker and employer must complete and sign a Wage Subsidy Agreement and submit the agreement to the division within three years of the date of hire.

(2) A Preferred Worker may use Wage Subsidy twice, once each for two different jobs. The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.

(3) If the employer at injury uses Wage Subsidy for a job, the worker cannot use Wage Subsidy for the same job.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0345

Employment Purchases – General Provisions

(1) An Employment Purchase is assistance necessary for a worker to find, accept, or retain employment in Oregon. These purchases may be provided for a job with a non-subject employer in Oregon, as long as that employer complies with the appropriate workers' compensation law. Employment Purchases cannot be used for "regular employment" as defined in OAR 436-110-0005(13) unless the job has been modified to overcome the worker's injury-caused permanent restrictions. Except as provided in subsection (2)(h) of this rule, all purchases become the worker's property.

(2) Employment Purchases are limited to:

(a) Tuition, books, and fees for instruction provided by an educational entity accredited or licensed by an appropriate body in order to update existing skills or to meet the requirements of an obtained job. Maximum expenditure per use is $1,000;

(b) Temporary lodging, meals, and mileage to attend instruction when overnight travel is required. The cost of meals, lodging, public transportation, and use of a personal vehicle will be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in Bulletin 112. Lodging, meals, and mileage are limited to a combined period of one month, and the total maximum expenditure per use is $500;

(c) Tools and equipment mandatory for employment. Purchases must not include items the worker possesses, duplicate Worksite Modification items, vehicles, or items needed for worksite creation. Maximum expenditure per use is $2,500;

(d) Clothing required for the job. Maximum expenditure per use is $400;

(e) Moving expenses for a job if the new worksite is in Oregon and more than 50 miles from the worker's primary residence. When the worker's permanent disability from the injury precludes the worker from commuting the required distance, moving expenses may be provided to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening. Moving expenses are limited to one use. Expenditure is limited to:

(A) The cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker. The cost of meals, lodging, public transportation, and use of a personal vehicle will be paid at the rate of reimbursement for State of Oregon classified employees as published in Bulletin 112. Lodging and meals are limited to a maximum period of two weeks. Mileage for one personal vehicle is limited to a single one-way trip; and

(B) Rental allowance for the worker's primary residence limited to first month's rent as specified in the rental agreement, non-refundable deposit in an amount not to exceed the first month's rent, and a required credit check for that residence;

(f) Initiation fees, or back dues and one month's current dues, required by a labor union;

(g) Occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job. Maximum expenditure is $500;

(h) Worksite creation costs that are limited to equipment, furnishings or other things the employer needs to create a new job for the worker. All items purchased are the property of the employer. Maximum expenditure per use is $5,000;

(i) Placement assistance requested by a preferred worker and provided by a certified vocational counselor or any public or private agency that provides placement services, that resulted in employment that the preferred worker retained for at least 90 days. This category can be used as often as necessary up to a maximum expenditure of $2000. Placement assistance may not be combined with vocational assistance under OAR 436-120; and

(j) Miscellaneous purchases that do not fit into subsections (a) through (i) of this section, subject to approval by the director. This category does not include a vehicle purchase. This category can be used as often as necessary up to a maximum of $2,500.

(3) The person or entity that purchased the item(s) may request reimbursement by submitting to the division a legible copy of an invoice or receipt showing payment has been made for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid.

(4) Costs of Employment Purchases will be paid by reimbursement, by an Authorization for Payment, or by other instrument of payment approved by the director.

(5) The division will not purchase directly or otherwise assume responsibility for Employment Purchases.

(6) Reimbursed costs will not be charged by the insurer to the employer as claim costs or by any other means.

(7) All requests for reimbursement must be made within one year of the Employment Purchase Agreement end date.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025,436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0347

Employment Purchases — Worker Activated

Conditions for use of Employment Purchases by a worker are as follows:

(1) Except for moving expenses, placement assistance, and miscellaneous purchases needed to find a job, the worker and employer must submit a completed Employment Purchase Agreement listing item(s) that are required of the worker to obtain or perform the job.

(2) If Employment Purchases are to be used with a non-subject employer in Oregon, Premium Exemption is not activated.

(3) Except as otherwise provided in these rules, a Preferred Worker may use each Employment Purchase category twice, once each for two different jobs. The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.

(4) A Preferred Worker may request Employment Purchases as follows:

(a) The worker must contact the division directly for assistance in receiving Employment Purchases. The worker may make the request prior to employment, but not more than three years after the date of hire.

(b) The Employment Purchase Agreement form must be completed and signed by the worker and employer and submitted to the division. If the request is for moving expenses, or the miscellaneous category, only the worker's signature is required.

Stat. Auth.: ORS 656.726(4) & 656.622

Stats. Implemented: ORS 656.622

Hist.: WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0350

Worksite Modification — General Provisions

(1) Worksite Modification means altering a worksite in Oregon, or available for inspection and modification in Oregon, by purchasing, modifying, or supplementing equipment, or changing the work process, to enable a worker to work within the limitations imposed by compensable injuries or occupational diseases. Worksite Modification may also include the means to protect modifications purchased by the Preferred Worker Program in an amount not to exceed $2,500.

(2) Conditions for the use of Worksite Modification assistance are as follows:

(a) Modifications will be provided to allow the worker to perform the job duties within the worker's injury-caused permanent limitations. In order to determine appropriate Worksite Modifications, the reemployment assistance consultants have discretion to use reports by a medical service provider specific to the worker, specific documented "best practices" described by a medical service provider or authority, and their own professional judgment and experience;

(b) A job analysis that includes the duties and physical demands of the job before and after modification may be required to show how the modification will overcome the worker's limitations. The job analysis may be submitted to the attending physician for approval before the modification is performed;

(c) Modifications are limited to a maximum of $25,000 for one job. A modification over $25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005(9);

(d) Modifications not to exceed $1,000 may be provided that would reasonably be expected to prevent further injury or exacerbation of the worker's accepted condition. A reemployment assistance consultant will determine the appropriateness of this type of modification based upon his or her professional judgment and experience, reports by a medical service provider specific to the worker, or specific documented "best practices" described by a medical service provider or authority. Costs of the modification(s) are included in the calculation of the total Worksite Modification costs;

(e) Modifications are limited to $2,500 for on-the-job training under OAR 436-120 or other similar on-the-job training programs when the trainer is not the employer-at-injury. A modification will not be approved for any other type of training;

(f) Modifications limited to $2,500 may be provided to protect the items approved in the Worksite Modification Agreement from theft, or damage from the weather. Insurance policy premiums will not be paid;

(g) When a vehicle is being modified, the vehicle owner must provide proof of ownership and insurance coverage. The worker must have a valid driver license;

(h) Rented or leased vehicles and other equipment will not be modified;

(i) Modifications must be reasonable, practical, and feasible, as determined by the division.;

(j) When the division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon division approval, funds equal to the cost of the form of modification identified by the division may be applied toward the cost of the modification desired by the worker or employer;

(k) A modification may include rental of tools, equipment, fixtures, or furnishings to determine the feasibility of a modification. It may also include consultative services necessary to determine the feasibility of a modification, or to recommend or design a Worksite Modification;

(l) Rental of Worksite Modification items and consultative services require division approval and are limited to a cost of up to $3,500 each. The cost for rental of Worksite Modification items and consultative services does not apply toward the total cost of a Worksite Modification;

(m) Modification equipment will become the property of the employer, worker, or worker leasing company's client on the "end date" of a Worksite Modification Agreement or when the worker's employment ends, whichever occurs first. The division will determine ownership of Worksite Modification equipment prior to approving an agreement and has the final authority to assign property;

(n) The division may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent limitations. The cost of temporary lodging, meals, public transportation, and use of a personal vehicle necessary for a worker to participate in one or more of these required activities will be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in Bulletin 112. The cost of the services described in this subsection does not apply toward the total cost of a Worksite Modification;

(o) If the property provided for the modification is damaged, in need of repair, or lost, the division will not repair or replace the property;

(p) The employer must not dispose of the property provided for the modification or reassign it to another worker while the worker is employed in work for which the modification is necessary or prior to the end of the agreement without division and worker approval. Failure to repair or replace the property, or inappropriate disposal or reassignment of the property, may result in sanctions under OAR 436-110-0900; and

(q) The worker must not dispose of the property provided for the modification while employed in work for which the modification is necessary or prior to the end of the agreement without division approval. Failure to repair or replace the property, or inappropriate disposal of the property, may result in sanctions under OAR 436-110-0900.

(3) A worker, employer or their representative may request Worksite Modification assistance.

(4) The person or entity that purchased the item(s) may request reimbursement by submitting to the division proof of payment for the items purchased. Reimbursement will be made for only those items and costs approved and paid; and

(5) Costs of approved Worksite Modifications are paid by reimbursement, an Authorization for Payment, or by other instrument of payment approved by the director.

(6) The division will not purchase directly or otherwise assume responsibility for Worksite Modifications.

(7) Reimbursed costs will not be charged by the insurer to the employer as claims costs or by any other means.

(8) A division Worksite Modification Consultant will determine if competitive quotes are required.

(9) All requests for reimbursement must be made within one year of the Worksite Modification Agreement end date.

[Publications: Publications referenced are available from the agency]
Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-110-0900
Sanctions

(1) Any person who knowingly makes any false statement or representation to the director or an employee of the director for the purpose of obtaining any benefit or payment from the Preferred Worker Program, or who knowingly misrepresents the amount of a payroll, or who knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for the director to sanction an individual certified under OAR 436-120, a vocational assistance provider authorized under OAR 436-120, an agency of the State of Oregon, an insurer, an employer, or a Preferred Worker include, but are not limited to, the following:

(a) Misrepresenting information in order to obtain reemployment assistance. Two examples of misrepresentation are:

(A) Changing a job description or job title in order to obtain benefits where there are not corresponding job duty changes; and

(B) Obtaining a worker's signature on incomplete, incorrect, or blank agreements or reimbursement requests;

(b) Making a serious error or omission that resulted in the division approving a Preferred Worker Program Agreement, issuing a Preferred Worker card, or reimbursing claim costs in error;

(c) Failing to abide by the terms and conditions of a Preferred Worker Program Agreement;

(d) Failing to abide by the provisions of these rules or ORS 656.990;

(e) Failing to return required receipts or invoices;

(f) Submitting false reimbursement requests or job analyses;

(g) Altering an Authorization for Payment form or purchasing unauthorized items; or

(h) Failing to return a Preferred Worker card if requested by the division.

(3) Sanctions by the director may include one or more of the following:

(a) Ordering the person being sanctioned to repay the department for reemployment assistance costs incurred, including the department's legal costs;

(b) Prohibiting the person being sanctioned from negotiating or arranging reemployment assistance for such period of time as the director deems appropriate;

(c) Decertifying an individual or vocational assistance provider under the authority of OAR 436-120;

(d) Ordering an employer or worker ineligible for reemployment assistance for a specific period of time; and

(e) Pursuing civil or criminal action against the party.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622 & 656.990
Hist.: WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0110; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0500; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0004
Notices and Reporting Requirements

(1) The insurer must inform a worker with a compensable injury of the employment reinstatement rights and responsibilities of the worker under ORS chapter 659A and this rule. This information must be given:

(a) At the time of claim acceptance, under ORS 656.262(6);

(b) At the time of contact of the worker under OAR 436-120-0115 about the need for vocational assistance, under ORS 656.340(2); and

(c) Within five days of receiving knowledge of the attending physician's release of the worker to return to work, under ORS 656.340(3), the insurer must inform the worker about the opportunity to seek reemployment or reinstatement under ORS 659A.043 and 659A.046, and inform the employer about the worker's reemployment rights.

(2) All notices and warnings to the worker issued under OAR 436-120 must be in writing, signed and dated, and state the basis for the decision, the effective date of the action, the relevant rule(s), the worker's appeal rights required under this rule, and the telephone number of the Ombudsman for Injured Workers. However, the insurer's response does not need to be in writing when the insurer approves a worker's request for a particular vocational service. All notices and warnings are subject to the following conditions:

(a) The following headings must be used for the following notices. Should one notice be used for multiple actions, all appropriate headings must be listed:

(A) Eligibility. This notice must:

(i) Inform the worker which category of vocational assistance will be provided: NOTICE OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE and NOTICE OF ENTITLEMENT TO TRAINING (or) NOTICE OF ENTITLEMENT TO DIRECT EMPLOYMENT SERVICES, EFFECTIVE (date) and;

(ii) Include the following statement in bold type:

"You have the right to request a return-to-work plan conference if the insurer does not approve a return-to-work plan within 90 days of determining you entitled to a training plan, or within 45 days of determining you entitled to a direct employment plan. The purpose of the conference will be to identify and remove all obstacles to return-to-work plan completion and approval. The insurer, the worker, the plan developer, and any other parties involved in the return-to-work process must attend the conference. The insurer or the worker may request a conference with the division if other delays in the vocational rehabilitation process occur. Your request for this conference should be directed to the Employment Services Team of the Workers' Compensation Division. The address and telephone number of the division are: Employment Services Team, Workers' Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 503-378-3351 or 1-800-452-0288."

(B) Ineligibility: NOTICE OF INELIGIBILITY FOR VOCATIONAL ASSISTANCE, EFFECTIVE (date)

(C) Selection or change of provider: SELECTION OF (OR CHANGE OF) VOCATIONAL ASSISTANCE PROVIDER, EFFECTIVE (date)

(D) End of training: NOTICE OF TRAINING END, EFFECTIVE (date)

(E) End of eligibility: NOTICE OF END OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE, EFFECTIVE (date)

(F) Deferral of vocational assistance eligibility determination: NOTICE OF DEFERRAL OF VOCATIONAL ASSISTANCE ELIGIBILITY DETERMINATION, EFFECTIVE (date)

(b) Warning letters do not require specific language in the headings but should include a heading clearly indicating the purpose of the warning.

(c) The insurer must simultaneously send a copy to the worker's representative. Failure to send a copy of the notice to the worker's representative stays the appeal period until the worker's representative receives actual notice.

(d) All notices and warnings except those notifying a worker of eligibility, entitlement to training or deferral of vocational assistance eligibility must contain the worker's appeal rights in bold type, as follows:

"If you disagree with this decision, you should contact (person's name and insurer) within five days of receiving this letter to discuss your concerns. If you are still dissatisfied, you must contact the Workers' Compensation Division within 60 days of receiving this letter or you will lose your right to appeal this decision. A consultant with the division can talk with you about the disagreement and, if necessary, will review your appeal. The address and telephone number of the division are: Employment Services Team, Workers' Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 503-378-3351 or 1-800-452-0288."

(3) Notice of Eligibility for vocational assistance and Notice of Entitlement to Training (or) Notice of Entitlement for Direct Employment Services must include the following:

(a) Selection of the category of vocational assistance. When direct employment services are selected, the notice must state the worker is not entitled to training and must include the appeal rights language in OAR 436-120-0004(2)(d);

(b) The worker's rights and responsibilities;

(c) Procedures for resolving dissatisfaction with an action of the insurer regarding vocational assistance;

(d) The current list of vocational assistance providers, and an explanation of the worker's participation in the selection of a vocational assistance provider. This notice must include the following language in bold type:

"If you have questions about the vocational counselor selection process, contact (use appropriate reference to the insurer). If you still have questions contact the Workers' Compensation Division's toll free number at 1-800-452-0288."

(e) Information about potential reemployment assistance under OAR 436-110.

(4) Notice of Ineligibility for vocational assistance is subject to the following conditions:

(a) The notice must be sent to the worker by both regular and certified mail.

(b) The notice must include information about services that may be available at no cost from the Employment Department or the Office of Vocational Rehabilitation Services, and reemployment assistance under OAR 436-110.

(c) If the notice is based on a finding of "no substantial handicap," it must list some suitable occupations.

(5) Notice of Denial of Vocational Service must be given by the insurer.

(6) The approved, denied or amended return-to-work plan must be sent to the worker. Notification of Denial of Return-to-Work Plan must identify any components of the plan that the insurer did not approve.

(7) Notice of End of Training must state whether the worker is entitled to further training. The effective date of the end of training letter is the worker's last date of attendance.

(8) Notice of End of Eligibility for vocational assistance must be sent by both regular and certified mail to the worker.

(9) Notice of Deferral of Vocational Assistance Eligibility Determination is subject to the following conditions:

(a) The notice must be sent to the worker by both regular and certified mail.

(b) The notice must inform the worker that the insurer will not complete the vocational eligibility process because the employer at injury has activated preferred worker benefits and the worker has chosen to accept the job offer from the employer at injury. The notice must also inform the worker that, if the job has not begun by the hire date listed in the job offer letter, the worker can request that the vocational eligibility determination be completed.

(c) This notice must include the following language in bold type:

"If you have questions about the deferral of the vocational eligibility process, contact (use appropriate reference to the insurer). If you still have questions contact the Workers' Compensation Division's toll free number at 1-800-452-0288."

(10) Warnings to the worker must state what the worker must do within a specified time to avoid ineligibility or the ending of eligibility or training.

(11) The insurer must simultaneously send a copy of the following notices to the department:

(a) Notice of Eligibility;

(b) Notice of Ineligibility;

(c) Approved Return-to-Work Plan and any amendments;

(d) Notice of End of Training;

(e) Notice of Ending of Eligibility for Vocational Assistance; and

(f) Notice of Deferral of Vocational Assistance Eligibility Determination

(12) The insurer must file a closing status report with the division for each eligible worker within 30 days after eligibility ends. The insurer must report the following information:

(a) The date and reason for ending of eligibility, return-to-work and vocational assistance provider information.

(b) For post-1985 injuries, the insurer must also report cost information for eligibility determination and vocational services provided under these rules as required by the director.

Stat. Auth.: ORS 656.340(9), 656.726(4) & 192.410 - 192.505

Stats. Implemented: ORS 656.340(5) & 656.340(7)

Hist.: WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0600, 436-120-0610 & 436-120-0620 [WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0005

Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrative approval" means approval of the director.

(2) "Cost-of-living matrix" is a chart issued annually by the director in Bulletin 124 or in an addendum to Bulletin 124 that publishes the conversion factors, effective July 1 of each year, used to adjust for changes in the cost-of-living rate from the date of injury to the date of calculation. The conversion factor is based on the annual percentage increase or decrease in the average weekly wage, as defined in ORS 656.211.

(3) "Delivered" means physical delivery to the Workers' Compensation Division during regular business hours.

(4) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(5) "Division" refers to the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Employer at injury" means an employer in whose employ the worker sustained the compensable injury, or occupational disease.

(7) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules.

(8) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer. A vocational assistance provider acting as the insurer's delegate may provide notices and warnings required by OAR 436-120.

(9) "Likely eligible" means the worker will be unable to return to regular or other suitable work with the employer-at-injury or aggravation or is unable to perform all of the duties of the regular or suitable work and it is reasonable to believe that the barriers are caused by the accepted conditions.

(10) "Mailed" means postmarked to the last known address.

(11) "Permanent employment" is a job with no projected end date or a job that had no projected end date at time of hire. Permanent employment may be year-round or seasonal.

(12) "Physical Demand Characteristics of Work" Strength Rating: The physical demands strength rating reflects the estimated overall strength requirements of the job, which are considered to be important for average, successful work performance. The following definitions are used: "occasionally" is an activity or condition that exists up to 1/3 of the time; "frequently" is an activity or condition that exists from 1/3 to 2/3 of the time; "constantly" is an activity or condition that exists 2/3 or more of the time.

(a) Sedentary Work (S): Exerting up to 10 pounds of force occasionally or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

(b) Light Work (L): Exerting up to 20 pounds of force occasionally, or up to 10 pounds of force frequently, or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing or pulling of arm or leg controls; or (3) when the job requires working at a production rate pace entailing the constant pushing or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

(c) Medium Work (M): Exerting 20 to 50 pounds of force occasionally, or 10 to 25 pounds of force frequently, or greater than negligible up to 10 pounds of force constantly to move objects. Physical demand requirements are in excess of those for Light Work.

(d) Heavy Work (H): Exerting 50 to 100 pounds of force occasionally, or 25 to 50 pounds of force frequently, or 10 to 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for Medium Work.

(e) Very Heavy (VH): Exerting in excess of 100 pounds of force occasionally, or in excess of 50 pounds of force frequently, or in excess of 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for Heavy Work.

(13) "Reasonable cause" may include, but is not limited to, a medically documented limitation in a worker's activities due to illness or medical condition of the worker or the worker's family, financial hardship, incarceration for less than six months, or circumstances beyond the reasonable control of the worker. "Reasonable cause" for failure to provide information or participate in activities related to vocational assistance will be determined based upon individual circumstances of the case.

(14) "Reasonable labor market": An occupation can be said to have reasonable employment opportunities if competitively qualified workers can expect to find equivalent jobs in the occupation within a reasonable period of time. A reasonable period of time, for workers in the majority of occupations, would be the six months that they could collect regular unemployment insurance benefits, if they were entitled to them. (Oregon Occupational Projections Handbook, 2002-2008)

(15) "Regular employment" means the employment the worker held at the time of the injury or at the time of the claim for aggravation, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker not employed at the time of aggravation, the employment the worker held on the last day of work prior to the aggravation claim. If the basis for potential eligibility is a reopening to process a newly accepted condition, "regular employment" is the employment the worker held at the time of the injury; when the condition arose after claim closure, "regular employment" is determined as if it were an aggravation claim.

(16) "Substantial handicap to employment," as determined under OAR 436-120-0340, means the worker, because of the injury or aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed in suitable employment. "Knowledge," "skills," and "abilities" have meanings as follows:

(a) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training and experience.

(b) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.

(c) "Abilities" means the cognitive, psychological, and physical capability to apply the worker's knowledge and skills.

(17) "Suitable employment" or "suitable job" means employment or a job:

(a) For which the worker has the necessary physical capacities, knowledge, skills and abilities;

(b) Located where the worker customarily worked, or within reasonable commuting distance of the worker's residence. A reasonable commuting distance is no more than 50 miles one-way modified by other factors including, but not limited to:

(A) Wage of the job. A low wage may justify a shorter commute;

(B) The pre-injury commute;

(C) The worker's physical capacities, if they restrict the worker's ability to sit or drive for 50 miles;

(D) Commuting practices of other workers who live in the same geographic area; and

(E) The distance from the worker's residence to the nearest cities or towns that offer employment opportunities;

(c) That pays or would average on a year-round basis a suitable wage as defined in section (18) of this rule;

(d) That is permanent. Temporary work is suitable if the worker's job at injury was temporary; and the worker has transferable skills to earn, on a year-round basis, a suitable wage as defined in section (18) of this rule; and

(e) Modified or new employment that results from an employer at injury activated use of the Preferred Worker Program, under OAR 436-110, will be considered "suitable":

(A) Nine months from the effective date of the premium exemption if there are no worksite modifications, or

(B) Twelve months from the date the department determines the worksite modification is complete, or

(C) If the worker is terminated for cause, or

(D) If the worker voluntarily resigns for a reason unrelated to the work injury.

(18) "Suitable wage" means:

(a) For the purpose of determining eligibility for vocational assistance, a wage at least 80 percent of the adjusted weekly wage as defined in OAR 436-120-0007.

(b) For the purpose of providing or ending vocational assistance, a wage as close as possible to 100 percent of the adjusted weekly wage. This wage may be considered suitable if less than 80 percent of the adjusted weekly wage, if the wage is as close as possible to the adjusted weekly wage.

(19) "Transferable skills" means the knowledge and skills demonstrated in past training or employment that make a worker employable in suitable new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills.

(20) "Vocational assistance" means any of the services, goods, allowances and temporary disability compensation under these rules to assist an eligible worker return to work. This does not include activities for determining a worker's eligibility for vocational assistance.

(21) "Vocational assistance provider" means an insurer or other public or private organization, registered under these rules to provide vocational assistance to injured workers.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCB 7-1966, f. & ef. 6-30-66;WCB 6-1973, f. 12-20-73, ef. 1-11-74; WCB 45-1974(Temp), f. & ef. 11-5-74; WCD 4-1975(Admin), f. 2-6-75, ef. 2-25-75; WCB 1-1976, f. 3-29-76, ef. 4-1-76; WCD 3-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 1-1978(Admin), f. & ef. 2-1-78; WCD 6-1980(Admin), f. 5-22-80, ef. 6-1-80; WCD 4-1981(Admin), f. 12-4-81, ef. 1-1-82; WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0005, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0007
Establishing the Adjusted Weekly Wage to Determine Suitable Wage

To determine a suitable wage as defined in OAR 436-120-0005(18), the insurer must first establish the adjusted weekly wage as described in this rule. The insurer must calculate the "adjusted weekly wage" whenever determining or redetermining a worker's eligibility.

(1) For the purposes of this rule, the following definitions apply:

(a) "Adjusted weekly wage" is the wage currently paid as calculated under this rule.

(b) "Cost-of-living adjustments" or "collective bargaining adjustments" are increases or decreases in the wages of all workers performing the same or similar jobs for a specific employer. These adjustments are not variations in wages based on skills, merit, seniority, length of employment, or number of hours worked.

(c) "Earned income" means gross wages, salary, tips, commissions, incentive pay, bonuses and the reasonable value of other consideration (housing, utilities, food, etc.) received from all employers for services performed from all jobs held at the time of injury or aggravation. Earned income also means gross earnings from self- employment after deductions of business expenses excluding depreciation. Earned income does not include fringe benefits such as medical, life or disability insurance, employer contributions to pension plans, or reimbursement of the worker's employment expenses such as mileage or equipment rental.

(d) "Job at aggravation" means the job or jobs the worker held on the date of the aggravation claim; or, for a worker not employed at time of aggravation, the last job or concurrent jobs held prior to the aggravation. Volunteer work does not constitute a job for purposes of this subsection.

(e) "Job at injury" is the job on which the worker originally sustained the compensable injury. For an occupational disease, the job at injury is the job the worker held at the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease.

(f) "Permanent, year-round employment" is permanent employment in which the worker worked or was scheduled or projected to work in 48 or more calendar weeks a year. Paid leave is counted as work time. Permanent year-round employment includes trial service. It does not include employment with an annual salary set by contract or self-employment.

(g) "Temporary disability" means wage loss replacement for the job at injury.

(h) "Trial service" is employment designed to lead automatically to permanent, year-round employment subject only to the employee's satisfactory performance during the trial service period.

(2) The insurer must determine the nature of the job at injury or the job or jobs at aggravation by contacting the employer or employers to verify the worker's employment status. All figures used in determining a weekly wage by this method must be supported by verifiable documentation such as the worker's state or federal tax returns, payroll records, or reports of earnings or unemployment insurance payments from the Employment Department. The insurer must calculate the worker's adjusted weekly wage as described by this rule.

(3) When the job at injury or the job at aggravation was temporary or seasonal, calculate the worker's average weekly wage as follows, then convert to the adjusted weekly wage as described in section (6) of this rule:

(a) When the worker's regular employment is the job at injury and the worker did not hold more than one job at the time of injury, and did not receive unemployment insurance benefits during the 52 weeks prior to the injury, the worker's average weekly wage is the same as the wage upon which temporary disability is based.

(b) When the worker's regular employment is the job at aggravation and the worker did not hold more than one job at the time of aggravation, and did not receive unemployment insurance benefits during the 52 weeks prior to the aggravation, the worker's average weekly wage is calculated using the same methods used to calculate temporary disability as described in OAR 436-060-0025.

(c) If the worker held more than one job at the time of the injury or aggravation, and did not receive unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation, divide the worker's earned income by the number of weeks the worker worked during the 52 weeks prior to the date of injury or aggravation.

(d) If the worker held one or more jobs at the time of the injury or aggravation, and received unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation, combine the earned income with the unemployment insurance payments and divide the total by the number of weeks the worker worked and received unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation.

(4) When the job at injury was other than as described in section (3) of this rule, use the weekly wage upon which temporary disability was based, and then convert the weekly wage to the adjusted weekly wage as described in section (6) of this rule.

(5) When the job at aggravation was other than as described in section (3) of this rule, the worker's average weekly wage is calculated using the same methods used to calculate temporary disability as described in OAR 436-060-0025, and then convert to the adjusted weekly wage as described in section (6) of this rule.

(6) Adjusted weekly wage: After arriving at the weekly wage under this rule, establish the adjusted weekly wage by determining the percentage increase or decrease from the date of injury or aggravation, or last day worked prior to aggravation, to the date of calculation, as follows:

(a) Contact the employer at injury or aggravation regarding any cost-of-living or collective bargaining adjustments for workers performing the same job. When the worker held two or more jobs at aggravation, contact the employer for whom the worker worked the most hours. Adjust the worker's weekly wage by any percentage increase or decrease;

(b) If the employer at injury or aggravation is no longer in business and the worker's job was covered by a union contract, contact the applicable union for any cost-of-living or collective bargaining adjustments. Adjust the worker's weekly wage by the percentage increase or decrease; or

(c) If the employer at injury or aggravation is no longer in business or does not currently employ workers in the same job category, adjust the worker's weekly wage by the appropriate factor from the cost-of-living matrix.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340(5) & (6)
Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88, 436-120-0030 Renumbered to 436-120-0075; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0025; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; Renumbered from 436-120-0310, WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0008
Administrative Review and Contested Cases

(1) Administrative review of vocational assistance matters: Under ORS 656.340(16), a worker wanting review of any vocational assistance matter must apply to the director for administrative review. Also, under ORS 656.340(11) and OAR 436-120-0185 (1) when the worker and insurer are unable to agree on a vocational assistance provider, the insurer must apply to the director for administrative review. Because effective vocational assistance is best realized in a nonadversarial environment, the first objective of the administrative review is to bring the parties to resolution through alternative dispute resolution procedures, including mediation conferences, whenever possible and appropriate. When a dispute is not resolved through mutual agreement or dismissal, the director will close the record and issue a Director's Review and Order as described in subsections (f) and (g) of this section. A worker need not be represented to request or to participate in the administrative review process, which is as follows:

(a) The worker's request for review must be mailed or otherwise communicated to the department no later than the 60th day after the date the worker received written notice of the insurer's action; or, if the worker was represented at the time of the notice, within 60 days of the date the worker's representative received actual notice. Issues raised by the worker where written notice was not provided may be reviewed at the director's discretion.

(b) The worker, insurer, employer at injury, and vocational assistance provider must supply needed information, attend conferences and meetings, and participate in the administrative review process as required by the director. Upon the director's request, any party to the dispute must provide available information within 14 days of the request. The insurer must promptly schedule, pay for, and submit to the director any medical or vocational tests, consultations, or reports required by the director. The worker, insurer, employer at injury, or vocational assistance provider must simultaneously send copies to the other parties to the dispute when sending material to the director. If necessary, the director will assist an unrepresented worker in sending copies to the appropriate parties. Failure to comply with this subsection may result in the following:

(A) If the worker fails to comply without reasonable cause, the director may dismiss the administrative review as described in subsection (d); or, the director may decide the issue on the basis of available information.

(B) If the insurer, vocational assistance provider, or employer at injury fails to comply without reasonable cause, the director may decide the issue on the basis of available information.

(c) At the director's discretion, the director may issue an order of deferral to temporarily suspend administrative review. The order of deferral will specify the conditions under which the review will be resumed.

(d) The director may issue an order of dismissal under appropriate conditions.

(e) The director will issue a letter of agreement when the parties resolve a dispute within the scope of these rules. Any agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney. The agreement will become effective on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may reconsider approval of the agreement upon the director's own motion or upon a motion by a party. The director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) One or both parties fail to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the review.

(f) After the parties have had the opportunity to present evidence, and any meetings or conferences deemed necessary by the director have been held, the director will issue a final order. The parties will have 60 days from the mailing date of the order to request a hearing.

(g) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence that could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request for reconsideration must be mailed before the administrative order becomes final, or if appealed, before the proposed and final order is issued.

(h) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.

(i) Any party requesting reconsideration or responding to a reconsideration request must simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(j) A request for reconsideration does not stay the 60-day time period within which the parties may request a hearing.

(2) Attorney fees will be awarded as provided in ORS 656.385(1) and OAR 436-001-0400 to 436-001-0440.

(3) Hearings before an administrative law judge:

(a) Under ORS 656.283(2) and 656.704(2), any party that disagrees with an order issued under subsection (1)(f) of this rule or a dismissal issued under subsection (1)(d) of this rule may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.

(b) Under ORS 656.704(2), any party that disagrees with an order of dismissal based on lack of jurisdiction under subsection (1)(d) of this rule or department denial of reimbursement for vocational assistance costs may request a hearing by filing a request for hearing as provided in OAR 436-

001-0019 within 30 days after the party received the dismissal or written denial.

(c) Under ORS 656.704(2), an insurer sanctioned under OAR 436-120-0900, a vocational assistance provider or certified individual sanctioned under ORS 656.340(9) and OAR 436-120-0915, a vocational assistance provider denied registration under ORS 656.340(9)(a) and OAR 436-120-0800, or an individual denied certification under ORS 656.340(9)(a) and OAR 436-120-0810 may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 no later than 60 days after the party received notification of the action.

(d) OAR 436-001 applies to the hearing.

(4) Contested case hearings of civil penalties: Under ORS 656.740 an insurer or an employer may appeal a proposed order or proposed assessment of civil penalty under ORS 656.745 and OAR 436-120-0900 as follows:

(a) The insurer or employer must send the request for hearing in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The party must file the request with the division within 60 days after the mailing date of the notice of the proposed order or assessment.

(c) The division will forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(d) The Hearings Division will conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

[ED. NOTE: Matrix referenced are available from the agency.]

Stat. Auth.: ORS 656.704(2) & 656.726(4)

Stats. Implemented: ORS 656.704, 656.340, 656.447, 656.740, 656.745

Hist.: WCD 9-1982(Admin), f. 5-28-82, ef. 6-1-82; WCD 2-1983(Admin), f. & ef. 6-30-83; Renumbered from 436-061-0970, 5-1-85; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0191, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0210 & 436-120-0260; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0115

Conditions Requiring Completion of a Vocational Eligibility Evaluation

(1) If the worker has an accepted disabling claim, the insurer is required to do an eligibility evaluation when any of the following conditions occurs:

(a) The insurer knows the worker is medically stationary and the worker is likely eligibl e for vocational assistance;

(b) The worker notifies the insurer that the worker is likely eligible for vocational assistance;

(c) The insurer receives information that indicates the worker is likely eligible for vocational assistance;

(d) The time the worker is medically stationary, if the worker has not returned to or been released for the worker's regular employment or has not returned to other suitable employment with the employer at the time of injury or aggravation and the worker is not receiving vocational assistance;

(e) The worker enters into a Claim Disposition Agreement, retains vocational assistance rights, and is likely eligible for vocational assistance; or

(f) Eligibility was previously determined under the current opening of the claim and the worker has newly accepted conditions.

(2) Even if conditions in (1) are met, the insurer is not required to do an eligibility evaluation if the worker is deceased, the worker has a permanent total disability award, or the worker's claim is reopened under a Board's Own Motion.

(3) Nothing in these rules prevents an insurer from finding a worker eligible and providing vocational assistance at any time.

(4) If the insurer receives a request for vocational assistance from the worker and the insurer is not required to determine eligibility, the insurer must notify the worker in writing, within 14 days of the request. The notice must include at least:

(a) The reason(s) an eligibility determination is not required;

(b) The circumstances that, if present, would trigger a requirement to determine eligibility; and

(c) Instructions to contact the division at 503-378-3351 or 1-800-452-0288 with questions about vocational assistance eligibility requirements and procedures.

Stat. Auth.: ORS 656.340, 656.726(4)

Stats. Implemented.: ORS 656.340

Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0320 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0125

Conditions for Postponement of the Vocational Eligibility Evaluation

(1) If the worker requested an eligibility evaluation but the insurer does not know the worker's permanent limitations, the insurer may postpone the evaluation until the worker's permanent restrictions are known or can be projected. In that case, within 14 days of receiving the worker's request the insurer must contact the attending physician to ask if permanent limitations are known or can be projected. The insurer must also notify the worker in writing that the determination will be postponed until permanent restrictions are known or can be projected.

(2) If the claim qualifies for closure under ORS 656.268(1)(b) or (c), the insurer may postpone the determination until the worker is medically stationary or until permanent restrictions are known or can be projected, whichever occurs first.

(3) If the insurer is unable to determine eligibility or make a decision regarding a particular vocational service because of insufficient data, the insurer must explain to the worker in writing what information is necessary and when it expects to determine eligibility or make a decision. This explanation must be mailed to the worker within 14 days of the insurer receiving notification that the worker is likely eligible for vocational assistance,

Stat. Auth.: ORS 656.340, ORS 656.726(4)

Stats. Implemented.: ORS 656.340

Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0320 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0135

General Requirements and Timeframes for Vocational Eligibility Evaluations

(1) When an eligibility evaluation is required, the insurer must contact the worker to start the eligibility determination process within 5 days of the date the insurer received knowledge of likely eligibility.

(2) A certified vocational counselor must determine vocational eligibility and the insurer must provide the vocational counselor with all existing relevant medical information.

(3) At the insurer's request, the worker must provide vocationally relevant information needed to determine eligibility within a reasonable time set by the insurer.

(4) The insurer must complete the eligibility determination within 30 days of the date the insurer initiated contact with the worker under subsection (1) of this rule, unless postponed under OAR 436-120-0125.

(5) If the eligibility determination is postponed, the eligibility evaluation must be completed within 30 days of the insurer's receipt of requested relevant information.

(6) Either the insurer or certified vocational counselor may issue the notice with the results of the eligibility evaluation to the worker.

(7) Vocational assistance will only be provided for one claim at a time, unless the parties agree otherwise. If the worker is eligible for vocational assistance under two or more claims, the claim for the injury with the most severe vocational impact is the claim that gave rise to the need for vocational assistance. The parties may agree to provide services for more than one claim at a time, and extend time and fee limits beyond those allowable in these rules.

Stat. Auth.: ORS 656.340, 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0320 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0145
Vocational Assistance Eligibility Criteria

(1) A worker whose permanent total disability benefits have been terminated by a final order is eligible for vocational assistance.

(2) A worker is eligible for vocational assistance if all the following conditions are met:

(a) The worker is authorized to work in the United States;

(b) The worker is available for vocational assistance in Oregon or within commuting distance of Oregon.

(A) If the worker is not available in Oregon, or within commuting distance of Oregon, the insurer must consider the worker available in Oregon if the worker states in writing that within 30 days of being determined eligible for vocational assistance the worker will move back to Oregon, or to within commuting distance of Oregon, at the worker's own expense.

(B) The requirement that the worker be available in Oregon for vocational assistance does not apply if the Oregon subject worker did not work and live in Oregon at the time of the injury.

(c) As a result of the limitations caused by the injury or aggravation, the worker:

(A) Is not able to return to regular employment;

(B) Is not able to return to suitable and available work with the employer at injury or aggravation; and

(C) Has a substantial handicap to employment and requires assistance to overcome that handicap.

(d) The worker was not employed in suitable employment for at least 60 days after the injury or aggravation.

(e) The worker did not refuse or fail to make a reasonable effort in available light-duty work intended to result in suitable employment. Prior to finding the worker ineligible, the insurer must document the existence of one or more suitable jobs that would be available for the worker after completion of the light-duty work. If the employer-at-injury offers such employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(f) The worker is available for vocational assistance. If the worker is not available, the insurer must determine if the reasons are for reasonable or unreasonable cause prior to ending the worker's eligibility. If the reason was for incarceration, this reason must be cited in the notice to the worker. Declining vocational assistance to accept modified or new employment that results from an employer-at-injury activated use of the Preferred Worker Program, under OAR 436-110, is reasonable cause.

(3) The worker must participate in the vocational assistance process and must provide relevant information. If the worker does not participate, or fails to provide relevant information, the insurer must issue a written warning before finding the worker ineligible under this rule.

(4) The worker must not misrepresent a matter material to evaluating eligibility.

Stat. Auth.: ORS 656.340, 656.726(4)
Stats. Implemented: ORS 656.206, 656.340
Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0126, 5-1-85; WCD 7-1985, 12-12-85, eff. 1/1/86; Renumbered from 436-120-0090, WCD 11-1987, 12-17-87, eff. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0045; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0320 & 436-120-0350 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0155
Deferral and Completion of an Eligibility Evaluation When the Employer Activates Preferred Worker Program Benefits:

(1) The insurer must defer the determination of vocational assistance eligibility when the employer at injury activates preferred worker benefits under OAR 436-110 and the worker agrees in writing to accept the new or modified regular job. All of the following conditions must exist:

(a) The employer must make a written job offer to the worker that includes the following information:

(A) The start date;

(B) Wage and hours;

(C) Job site location;

(D) Description of job duties; and

(E) A statement that the job does not begin until the modifications are in place.

(b) The insurer must send the worker a Notice of Deferral of Vocational Assistance Eligibility Determination within 14 days of the date the worker signed the job offer letter indicating acceptance of the job.

(2) The insurer must complete the eligibility evaluation within 30 days of a determination that preferred worker benefits will not be provided or if the agreement is terminated.

Stat. Auth.: ORS 656.340, 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0320 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0165
End of Eligibility for Vocational Assistance

A worker's eligibility ends when any of the following conditions apply:

(1) Based on new information that did not exist or that could not have been obtained with reasonable effort at the time the insurer determined eligibility, the worker no longer meets the eligibility requirements.

(2) The worker, prior to beginning an authorized return-to-work plan, refused an offer of suitable employment. If the employer-at-injury offers employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(3) The worker, prior to beginning an authorized return-to-work plan, left suitable employment after the injury or aggravation for a reason unrelated to the limitations caused by the injury.

(4) The worker, prior to beginning an authorized return-to-work plan, refused or failed to make a reasonable effort in available light-duty work intended to result in suitable employment. Prior to ending eligibility, the insurer must document the existence of one or more suitable jobs that would be available for the worker after completion of the light-duty work. If the employer-at-injury offers such employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(5) The worker, after completing an authorized training plan, refused an offer of suitable employment.

(6) The worker declined or became unavailable for vocational assistance. The insurer must determine if the reasons are for reasonable or unreasonable cause prior to ending the worker's eligibility. If the reason was for incarceration, this reason must be cited in the notice to the worker. Declining vocational assistance to accept modified or new employment that results from an employer-at-injury activated use of the Preferred Worker Program, under OAR 436-110, is reasonable cause.

(7) The worker refused a suitable training site after the vocational counselor and worker have agreed in writing upon a return-to-work goal.

(8) The worker failed after written warning to participate in the development or implementation of a return-to-work plan. No written warning is required if the worker fails to attend two consecutive training days and fails, without reasonable cause, to notify the vocational counselor or the insurer by the close of next business day.

(9) The worker's lack of suitable employment cannot be resolved by providing vocational assistance. This includes circumstances in which the worker cannot benefit from, or participate in, vocational assistance because of medical conditions unrelated to the injury.

(10) The worker misrepresented information relevant to providing vocational assistance.

(11) The worker refused after written warning to return property provided by the insurer or reimburse the insurer as required. No vocational assistance will be provided under subsequent openings of the claim until the worker returns the property or reimburses the funds.

(12) The worker misused funds provided for the purchase of property or services. No vocational assistance will be provided under subsequent openings of the claim until the worker reimburses the insurer for the misused funds.

(13) After written warning the worker continues to harass any participant to the vocational process. This section does not apply if such behavior is the result of a documented medical or mental condition.

(14) The worker entered into a claim disposition agreement and disposed of vocational rights. The parties may agree in writing to suspend vocational services pending approval by the Workers' Compensation Board. The insurer must end eligibility when the Worker's Compensation Board

approves the claims disposition agreement that disposes of vocational assistance rights. No notice regarding the end of eligibility is required.

(15) The worker received maximum direct employment services and is not entitled to other categories of vocational assistance.

Stat. Auth.: ORS 656.340, 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 11-1982(Temp), f. 12-29-82 eff. 1/1/83; WCD 2-1983, 6-30-83, eff. 6-30-83; WCD 5-1983, 12-14-83, eff. 1-1-84; Renumbered from 436-061-0126, 5-1-85; WCD 7-1985, 12-12-85, eff. 1/1/86; Renumbered from 436-120-0090, WCD 11-1987, 12-17-87, eff. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0045; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0350 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0175
Redetermining Eligibility for Vocational Assistance

If a worker was previously found ineligible or the worker's eligibility ended for any of the following reasons, the insurer must redetermine eligibility within 35 days of notification of a change of circumstances, including:

(1) The worker, for reasonable cause, was unavailable for vocational assistance and is now available.

(2) The worker's lack of suitable employment could not be resolved by providing vocational assistance. The insurer may require the worker to provide documentation that the circumstances have changed.

(3) The worker declined vocational assistance to accept modified or new employment that resulted from an employer-at-injury-activated use of preferred worker benefits under OAR 436-110, and the job was not suitable. In this case, the worker must request redetermination within 30 days of termination of the employment for which preferred worker benefits were provided.

(4) The worker becomes available in Oregon and requests redetermination within six months of receiving the insurer's notice that the worker is not eligible because the worker is not available in Oregon.

(5) The worker's claim, that had been denied, has been accepted and all appeals have been exhausted.

(6) The worker, who was not authorized to work in the United States, is now authorized to work in the United States. Within six months of the date of the worker's receipt of the insurer's notice of ineligibility or end of eligibility, the worker must:

(a) Request redetermination; and

(b) Submit evidence to the insurer that the worker has applied for authorization to work in the United States and is awaiting a decision by the U.S. Citizenship and Immigration Services (USCIS). The worker must provide the insurer with a copy of any decision by the USCIS within 30 days of receipt. The insurer must redetermine eligibility upon receipt of documentation of the worker's authorization to work in the United States.

(7) The worker, who returned to work prior to becoming medically stationary, informs the insurer that he or she is likely eligible for vocational assistance and requests a redetermination within 60 days of the mailing date of the Notice of Closure.

(8) Prior to claim closure a worker's limitations due to the injury became more restrictive.

(9) Prior to claim closure the insurer accepts a new condition that was not considered in the original determination of the worker's eligibility.

(10) The worker's average weekly wage is redetermined and increased.

Stat. Auth.: ORS 656.340, 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0095; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0055; WCD 23-1996; f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0360 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0185
Choosing a Vocational Assistance Provider

(1) Once the worker is found eligible, the insurer and worker must agree on a vocational assistance provider. Within 20 days of an eligibility finding, the insurer must notify the worker of the selection of vocational assistance provider. If they are unable to agree on a vocational assistance provider, the insurer or self-insured employer must notify the director and the director will select a provider.

(2) If the worker or insurer requests a change in vocational assistance provider, the insurer and worker must agree on a vocational assistance provider. If they are unable to agree, the insurer must refer the dispute to the director.

Stat. Auth.: ORS 656.340, 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0111, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88, Renumbered from 436-120-0060; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0035; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0330 & 436-120-0370; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; Renumbered from 436-120-0320 by WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0340
Determining Substantial Handicap

(1) A certified vocational counselor must perform a substantial handicap evaluation as part of the eligibility determination when applicable.

(2) To complete the substantial handicap evaluation the vocational counselor must submit a report documenting the following information:

(a) Relevant work history for at least the preceding five years;

(b) Level of education, proficiency in spoken and written English or other languages, where relevant, and achievement or aptitude test data if it exists;

(c) Adjusted weekly wage as determined under OAR 436-120-0007 and suitable wage as defined by OAR 436-120-0005(18);

(d) Permanent limitations due to the injury;

(e) An analysis of the worker's transferable skills, if any;

(f) A list of physically suitable jobs for which the worker has the knowledge, skills and abilities, that pay a suitable wage, and for which a reasonable labor market is documented to exist as described in subsection (g) below;

(g) An analysis of the worker's labor market using standard labor market reference materials, including but not limited to Employment Department (OED) information such as Oregon Wage Information (OWI), Oregon Comprehensive Analysis File and other publications of the Occupational Program Planning System (OPPS), and material developed by the division. When using the OWI data, the presumed standard will be the 10th percentile unless there is sufficient evidence that a higher or lower wage is more appropriate. When such data is not sufficient to make a decision about substantial handicap, the vocational counselor must perform individual labor market search as described in OAR 436-120-0410(7); and

(h) Consideration of the vocational impact of any limitations that existed prior to the injury.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.340(5) & (6)
Hist.: WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0410
Vocational Evaluation

A certified vocational counselor must complete the vocational evaluation. Vocational evaluation may include one or more of the following:

(1) Vocational testing must be administered by an individual certified to administer the test.

(2) A work evaluation must be performed by a Certified Vocational Evaluation Specialist (CVE), certified by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(3) On-the-job evaluations must evaluate a worker's work traits, aptitudes, limitations, potentials and habits in an actual job environment.

(a) First, the vocational counselor must perform a job analysis to determine if the job is within the worker's capacities. The insurer must submit the job analysis to the attending physician if there is any question about the appropriateness of the job.

(b) The evaluation should normally be no less than five hours daily for four consecutive days and should normally last no longer than 30 days.

(c) The evaluation does not establish any employer-employee relationship.

(d) A written report must evaluate the worker's performance in the areas originally identified for assessment.

(4) Situational assessment is a procedure that evaluates a worker's aptitude or work behavior in a particular learning or work setting. It may focus on a worker's overall vocational functioning or answer specific questions about certain types of work behaviors.

(a) The situational assessment requires these steps: planning and scheduling observations; observing, describing and recording work behav-

iors; organizing, analyzing and interpreting data; and synthesizing data including behavioral data from other pertinent sources.

(b) The assessment should normally be no less than five hours daily for four consecutive days and should normally last no longer than 30 days.

(5) Work adjustment is work-related activities that assist workers in understanding the meaning, value, and demands of work. It may include the assistance of a job coach.

(6) Job analysis is a detailed description of the physical and other demands of a job based on direct observation of the job.

(7) Labor market search is obtained from direct contact with employers, other actual labor market information, or from other surveys completed within 90 days of the report date.

(a) A labor market search is needed when standard labor market reference materials do not have adequate information upon which to base a decision, or there are questions about a worker's specific limitations, training and skills, that must be addressed with employers to determine if a reasonable labor market exists.

(b) The person giving the information must have hiring responsibility or direct knowledge of the job's requirements; and the job must exist at the firm contacted.

(c) The labor market search report must include, but is not limited to, the date of contact; firm name, address and telephone number; name and title of person contacted; the qualifications of persons recently hired; physical requirements; wages paid; condition of hire (full-time, part-time, seasonal, temporary); date and number of last hire(s); and available and anticipated openings.

(d) Specific openings found in the course of a labor market search are not, in themselves, proof a reasonable labor market exists.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340(7)
Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef 1-1-95, Renumbered from 436-120-0081; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0420; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0440
Training

(1) Training services include plan development, training, monthly monitoring of training progress, and job placement services as necessary.

(2) A worker enrolled and actively engaged in training must receive temporary disability compensation subject to OAR 436-060, and payment of awards of permanent disability are suspended. Temporary disability compensation is limited to 16 months subject to an extension to a maximum of 21 months by the insurer. In no event will temporary disability compensation be paid for a period longer than 21 months.

(3) Training costs may be paid for periods longer than 21 months. Reasons for extending training may include but are not limited to reasons beyond the worker's control, an exceptional disability, or an exceptional loss of earning capacity.

(a) "Exceptional disability" is defined as disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury that results in impairment equal to or greater than Class III as defined in OAR 436-035.

(b) An "exceptional loss of earning capacity" exists when no suitable training plan of 16 months or less is likely to eliminate the worker's substantial handicap to employment. The extension must allow the worker to obtain a wage "significantly closer," as described in OAR 436-120-0400(2)(b), to the worker's adjusted weekly wage and at least 10 percent greater than could be expected with a shorter training program.

(4) The selection of plan objectives and kind of training must attempt to minimize the length and cost of training necessary to prepare the worker for suitable employment. Notwithstanding OAR 436-120-0145(2), the director may order the insurer, or the insurer may elect, to provide training outside Oregon if such training would be more timely, appropriate or cost effective than other alternatives. The plan must be developed and monitored by a vocational assistance provider certified under these rules.

(5) Training status continues during the following breaks:

(a) A regularly scheduled break of not more than six weeks between fixed school terms;

(b) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; and

(c) A period of illness or recuperation that does not prevent completion of the training by the planned date.

(6) On-the-job training prepares the worker for permanent, suitable employment with the training employer and for employment in the labor market at large. On-the-job training must be considered first in developing a training plan. The following conditions apply:

(a) Training time is limited to a duration of 12 months.

(b) The on-the-job training contract between the training employer, the insurer, and the worker must include, but is not limited to, the worker's name; the employer's legal business name, Workers' Compensation Division Employer Registration number, and the name of the individual providing the training; the training plan start and end dates; the job title, the job duties, and the skills to be taught; the base wage and the terms of wage reimbursement; and an agreement that the employer will pay all taxes normally paid on the entire wage and will maintain workers' compensation insurance for the trainee. If the training prepares a worker for a job unique to the training site, the contract must acknowledge that the training may not prepare the worker for jobs elsewhere.

(c) The insurer must not reimburse the training employer 100 percent of the wages for the entire contract period.

(d) The insurer must pay temporary disability compensation as provided in ORS 656.212.

(e) The worker's schedule must be the same as for a regular full-time employee. The schedule may be modified to accommodate the worker's documented medical condition or class schedule.

(7) Occupational skills training is offered through a community college, based on predetermined curriculum, at the training employer's location. Occupational skills training is subject to the following conditions:

(a) Training is limited to 12 months.

(b) Training does not establish any employer-employee relationship with the training employer. The activity is primarily for the worker's benefit. The worker does not receive wages. The training employer makes no guarantee of employing the worker when the training is completed.

(c) The training employer has a sufficient number of employees to accomplish its regular work and the training of the worker, and the worker does not displace an employee.

(d) The worker's schedule must be the same as for a regular full-time employee. The schedule may be modified to accommodate the worker's documented medical condition or class schedule.

(8) Rehabilitation facilities training provides evaluation, training and employment for severely disabled individuals.

(9) Basic education may be offered, with or without other training components, to raise the worker's education to a level to enable the worker to obtain suitable employment. It is limited to six months.

(10) Formal training may be offered through a vocational school licensed by an appropriate licensing body, or community college or other post-secondary educational facility that is part of a state system of higher education. Courseload must be consistent with the worker's abilities, limitations and length of time since the worker last attended school. Courses must relate to the vocational goal.

(11) The worker is entitled to job placement assistance after completion of training.

(12) When the worker returns to work following training, the insurer must monitor the worker's progress for at least 60 days to assure the suitability of employment before ending eligibility.

(13) Training ends and the plan must be re-evaluated when any of the following occurs:

(a) A change in the worker's limitations that renders the training inappropriate.

(b) The worker's training performance is unsatisfactory and training is not likely to result in employment in that field. In an academic program, the worker fails to maintain at least a 2.00 grade point average for at least two grading periods or to complete the minimum credit hours required under the training plan. The vocational counselor must report any unsatisfactory performance and the insurer must give the worker a written warning of the possible end of training at the first indication of unsatisfactory performance.

(14) The insurer will not provide any further training to a worker who has completed one training plan unless there is reasonable cause to do so.

(15) Training will end if any of the following applies:

(a) The worker has successfully completed training;

(b) The worker's eligibility has ended under OAR 436-120-0165; or

(c) The worker is not enrolled and actively engaged in the training. However, none of the following will be considered as ending the worker's training status:

(A) A regularly scheduled break of not more than six weeks between fixed school terms;

(B) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; or

(C) A period of illness or recuperation that does not prevent completion of the training by the planned date.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; Renumbered from 436-061-0060, WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; Renumbered from 436-120-0030, WCD 11-1987, f. 12-17-87, ef. 1-1-88; Renumbered from 436-120-0075 & 436-120-0085, WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0450 & 436-120-0460,WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0500
Return-to-Work Plans: Development and Implementation

(1) A return-to-work plan should be a collaborative effort between the vocational counselor and the injured worker, and should include all the rights and responsibilities of the worker, the insurer, and the vocational counselor. Prior to submitting the plan to the insurer, the vocational counselor must review the plan and plan support with the worker. Certain information may be excluded, as allowed by OAR 436-010. The injured worker must be given the opportunity to review the plan with the worker's representative prior to signing it. The vocational assistance provider must confirm the worker's understanding of and agreement with the plan by obtaining the worker's signature. The counselor must submit copies signed by the vocational counselor and the worker to all parties. If the insurer lacks sufficient information to make a decision, the insurer must advise the parties what information is needed and when it expects to make a decision.

(2) If the insurer does not approve a return-to-work plan within 90 days of determining the worker is entitled to a training plan, or within 45 days of determining the worker is entitled to a direct employment plan, the insurer must contact the division within five days to schedule a conference. The purpose of the conference will be to identify and remove all obstacles to return-to-work plan completion and approval. The insurer, the worker, the plan developer, and any other parties involved in the return-to-work process must attend the conference. The conference may be postponed for a period of time agreeable to the parties. The insurer or the worker may request a conference with the division if other delays in the vocational rehabilitation process occur.

(3) If, during development of a return-to-work plan, an employer offers the worker a job, the insurer must perform a job analysis, obtain approval from the attending physician, verify the suitability of the wage, and confirm the offer is for a bona fide, suitable job as defined in OAR 436-120-0005(17). If the job is suitable, the insurer must help the worker return to work with the employer. The insurer must provide return-to-work follow-up during the first 60 days after the worker returns to work. If return to work with the employer is unfeasible or, during the 60-day follow-up the job proves unsuitable, the insurer must immediately resume development of the return-to-work plan.

(4) If the vocational goal or category of assistance is later changed, the insurer must amend the plan. All amendments to the plan must be initialed by the insurer, vocational assistance provider, and the worker.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340(9)
Hist.: WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0172, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from OAR 436-120-0105 & 436-120-0170; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; Renumbered from 436-120-0600, WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0510
Return-to-Work Plan Support

(1) The injured worker and vocational counselor must work together to develop a return-to-work plan that includes consideration of the following:

(a) The injured worker's transferable skills;

(b) The injured worker's physical and mental capacities and limitations;

(c) The injured worker's vocational interests;

(d) The injured worker's educational background and academic skill level;

(e) The injured worker's pre-injury wage; and

(f) The injured worker's place of residence and that labor market.

(2) Return-to-work plan support must contain, but is not limited to, the following:

(a) Specific vocational goal(s) and projected return-to-work wage(s).

(b) A description of the worker's current medical condition, relating the worker's permanent limitations to the vocational goals.

(c) A description of the worker's education and work history, including job durations, wages, Standard Occupational Classification (SOC) codes, Dictionary of Occupational Titles (DOT) codes or other standardized job titles and codes, and specific job duties.

(d) If a direct employment plan, a description of the worker's transferable skills that relate to the vocational goals and a discussion of why training will not bring the worker a wage significantly closer to 100 percent of the adjusted weekly wage at the time of injury.

(e) If a training plan, a discussion of why direct employment services will not return the worker to suitable employment.

(f) A summary of the results of any evaluations or testing. If the results do not support the goals, the vocational assistance provider must explain why the goals are appropriate.

(g) A summary of current labor market information that shows the labor market supports the vocational goals and documents that the worker has been informed of the condition of the labor market.

(h) A labor market search as prescribed in 436-120-0410(7), if needed.

(i) If the labor market information does not support the goals, the vocational assistance provider must explain why the goals are appropriate. The worker and worker's representative, if any, must acknowledge in writing an awareness of the poor labor market conditions and a willingness to proceed with the plan in spite of these conditions. In the case of a training plan, this acknowledgment must include an understanding the insurer will provide no additional training should the worker be unable to find suitable employment because of the labor market.

(j) A job analysis prepared by the vocational assistance provider, signed by the worker and by the attending physician or a qualified facility designated by the attending physician, and based on a visit to a worksite comparable to what the worker could expect after completing training. If the attending physician is unable or unwilling to address the job analysis and does not designate a facility as described above, the insurer may submit the job analysis to a qualified facility of its choice. The insurer must submit the resulting information to the attending physician for concurrence. If the attending physician has not responded within 30 days of the date of request for concurrence, the plan may proceed.

(k) A signed on-the-job training contract, if applicable.

(l) A description of the curriculum, which must be term by term if the curriculum is for formal training.

(m) If material pertinent to a return-to-work plan is contained in a previous eligibility the insurer may attach a copy of the evaluation to the plan.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94,cert. ef. 1-1-95; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00, Renumbered from 436-120-0105; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0720
Fee Schedule and Conditions for Payment of Vocational Assistance Costs

(1) The director has established the following fee schedule for professional costs and direct worker purchases. The schedule sets maximum spending limits per claim opening for each category; however, the insurer may spend more than the maximum limit if the insurer determines the individual case so warrants. Spending limits are to be adjusted annually, effective July 1. The annual adjustment is based on the conversion factor described in OAR 436-120-0005(2) and published with the cost-of-living matrix.

(2) For workers found to have an exceptional disability or exceptional loss of earning capacity as defined in OAR 436-120-0440 the fee schedule spending limits for the Training category and DE/Training Combined category listed below must be increased by 30%.

(3) Amounts include professional costs, travel/wait, and other travel expenses: [Table not included. See ED. NOTE.]

(4) Wage reimbursement for on-the-job training contracts are not covered by the fee schedule.

(5) Services and direct worker purchases provided after eligibility ends to complete a plan or employment is subject to the maximum amounts in effect at the time of closure.

(6) The insurer must pay, within 60 days of receipt, the vocational assistance provider's billing for services provided under the insurer-vocational assistance provider agreement. The insurer must not deny payment

on the grounds the worker was not eligible for the assistance if the vocational assistance provider performed the services in good faith without knowledge of the ineligibility.

(7) An insurer entitled to claims cost reimbursement under OAR 436-110 for services provided under OAR 436-120 is subject to the following limitations:

(a) Optional services are not reimbursable.

(b) The insurer must obtain the director's approval in advance for any waiver of the provisions of OAR 436-120.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340 & 656.258

Hist.: WCD 6-1980(Admin), f. 5-22-80, ef. 6-1-80; WCD 4-1981(Admin), f. 12-4-81, ef. 1-1-82; WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0120, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0070 & 436-120-0215; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0800

Registration of Vocational Assistance Providers

(1) A vocational assistance provider may not provide vocational assistance services unless they are first registered by the director under this rule.

(2) A vocational assistance provider must submit an application that includes: a description of the specific vocational services to be provided and verification of staff certifications under these rules;

(3) The director may approve or deny registration based on the completed application and the department's registration and counselor certification records.

(a) The registration will specify the scope of authorized vocational services as determined by the vocational assistance provider's staff certifications.

(b) Vocational assistance providers whose registration is denied under this rule may appeal as described in OAR 436-120-0008.

(4) A registered vocational assistance provider must:

(a) Notify the division within 30 days of any changes in office address, telephone number, contact person or staff.

(b) Maintain the worker's vocational assistance files for four years after the end of vocational assistance with that vocational assistance provider, or in a pre-1986 case, for five years after the end of vocational assistance with that provider.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 4-1981(Admin), f. 12-4-81, ef. 1-1-82; WCD 8-1981(Admin) (Temp), f. 12-31-81, ef. 1-1-82; WCD 9-1982(Admin), f. 5-28-82, ef. 6-1-82; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0180, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-061-0200 & 436-120-0203; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0810

Certification of Individuals

Individuals determining workers' eligibility and providing vocational assistance must be certified by the director and on the staff of a registered vocational assistance provider, insurer, or self-insured employer.

(1) An applicant for certification must submit an application, as prescribed by the director, demonstrating the qualifications for the specific classification of certification as described in OAR 436-120-0830.

(2) Department certification is not required to perform work evaluations, but the work evaluator must be certified by the professional organizations described in OAR 436-120-0410(2).

(3) The director may approve or disapprove an application for certification based on the individual's application.

(a) Certification will be granted for five years. A vocational counselor who is nationally certified as described in OAR 436-120-0830(1)(a) will be granted an initial certification period to coincide with their national certification.

(b) Certified individuals must notify the division within 30 days of any changes in address and telephone number.

(c) Individuals whose certification is denied under this rule may appeal as described in OAR 436-120-0008.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0205; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0820

Renewal of Certification

(1) A certified individual must renew their certification every five years by submitting the following documentation to the director no later than 30 days prior to the end of their certification period:

(a) Current certification by the Commission on Rehabilitation Counselor Certification (CRCC) or the Commission for Case Managers Certification (CCMC) or the Certification of Disability Management Specialists Commission (CDMSC); or

(b) Verification of a minimum of 60 hours of continuing education units under this rule within the five years prior to renewal.

(A) At least eight hours must be for training in ethical practices in rehabilitation counseling.

(B) At least six hours of training must be on the Oregon vocational assistance and reemployment assistance rules. Individuals already certified on the effective date of these rules will have no less than one year to complete this requirement.

(2) The department will accept continuing education units for training approved by the CRCC, CCMC or the CDMSC; courses in or related to psychology, sociology, counseling, and vocational rehabilitation, if given by an accredited institution of higher learning; training presented by the department pertaining to OAR 436-120, 436-105, and 436-110; and any continuing education program certified by the department for vocational rehabilitation providers. Sixty minutes of continuing education will count as one unit, except as noted in section (3) of this rule.

(3) In the case of college course work, the department will grant credit only for grades of C or above and will multiply the number of credit hours by six to establish the number of continuing education units.

(4) Failure to meet the requirements of this section will cause an individual's certification to expire. Such an individual may reapply for certification upon completion of the required 60 hours of continuing education.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0830

Classification of Vocational Assistance Staff

Individuals providing vocational assistance will be classified as follows:

(1) Vocational Rehabilitation Counselor certification allows the individual to determine eligibility and provide vocational assistance services. Vocational Rehabilitation Counselor certification requires:

(a) Certification by the following national certifying organizations: Commission on Rehabilitation Counselor Certification (CRCC), the Commission for Case Managers Certification (CCMC), or the Certification of Disability Management Specialists Commission (CDMSC);

(b) A master's degree in vocational rehabilitation counseling and at least six months of direct experience;

(c) A master's degree in psychology, counseling, or a field related to vocational rehabilitation, and 12 months of direct experience; or

(d) A bachelor's or higher degree and 24 months of direct experience. Thirty-six months of direct experience may substitute for a bachelor's degree.

(2) Vocational Rehabilitation Intern certification allows an individual who does not meet the requirements for certification as a Vocational Rehabilitation Counselor the opportunity to gain direct experience. Vocational Rehabilitation Intern certification requires a master's degree in psychology, counseling, or a field related to vocational rehabilitation; or a bachelor's degree and 12 months of direct experience. Thirty-six months of direct experience may substitute for a bachelor's degree. The Vocational Rehabilitation Intern certification is subject to the following conditions:

(a) The intern must be supervised by a certified Vocational Rehabilitation Counselor who must co-sign and assume responsibility for all the intern's eligibility determinations, return-to-work plans, vocational and billing reports.

(b) When the intern has met the experience requirements, the intern may apply for certification as a Vocational Rehabilitation Counselor.

(3) Return-to-Work Specialist certification allows the person to provide job search skills instruction, job development, return-to-work follow-up, labor market search, and to determine eligibility for vocational assistance, except where such determination requires a judgment as to whether the worker has a substantial handicap to employment. This certification requires 24 months of direct experience. Full-time (or the equivalent) additional college coursework in psychology, counseling, education, a human

services related field, or a field related to vocational rehabilitation may substitute for up to 18 months of direct experience, on a month-for-month basis. To conduct only labor market research /or job development does not require certification when conducted under the supervision of a certified vocational rehabilitation counselor.

(4) To meet the direct experience requirements for Vocational Rehabilitation Counselor, the individual must:

(a) Perform return-to-work plan development and implementation for the required number of months; or

(b) Perform three or more of the qualifying job functions listed in paragraphs (A) through (J) of this subsection for the required number of months, with at least six months of the experience in one or more of functions listed in paragraphs (A) through (D) of this subsection. The qualifying job functions are:

(A) Return-to-work plan development and implementation;

(B) Employment counseling;

(C) Job development;

(D) Early return-to-work assistance which must include working directly with workers and their employers;

(E) Vocational testing;

(F) Job search skills instruction;

(G) Job analysis;

(H) Transferable skills assessment or employability evaluations;

(I) Return-to-work plan review and approval; or

(J) Employee recruitment and selection for a wide variety of occupations.

(5) To meet the direct experience requirements for Vocational Rehabilitation Intern or Return-to-Work Specialist, the individual must:

(a) Perform return-to-work plan development and implementation for the required number of months; or

(b) Perform three or more of the qualifying job functions listed in paragraphs (4)(b)(A) through (J) of this rule for the required number of months.

(6) To receive credit for direct experience, the individual must:

(a) Perform one or more of the qualifying job functions listed in paragraphs (4)(b)(A) through (J) of this rule at least 50 percent of the work time for each month of direct experience credit. Qualifying job functions performed in a job that is less than full time will be prorated. For purposes of this rule, full time will be 40 hours a week. An individual will not receive credit for any function performed less than 160 hours.

(b) Provide any documentation required by the director, including work samples. The director may also require verification by the individual's past or present employers.

(7) All degrees must be from accredited institutions and documented by a copy of the transcript(s) with the application for certification.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0205; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0840
Professional Standards for Authorized Vocational Assistance Providers and Certified Individuals

(1) Registered vocational assistance providers and certified individuals must:

(a) Determine eligibility and provide assistance in an objective manner not subject to any conditions other than those prescribed in these rules;

(b) Fully inform the worker of the categories and kinds of vocational assistance under OAR 436-120 and reemployment assistance under OAR 436-110;

(c) Document all case activities in legible file notes or reports;

(d) Provide only vocationally relevant information about workers in written and oral reports;

(e) Recommend workers only for suitable employment;

(f) Fully inform the worker of the purpose and results of all testing and evaluations and

(g) Comply with generally accepted standards of conduct in the vocational rehabilitation profession.

(2) Registered vocational assistance providers and certified individuals must not:

(a) Provide evaluations or assistance if there is a conflict of interest or prejudice concerning the worker;

(b) Enter into any relationship with the worker to promote personal gain, or the gain of a person or organization in which the vocational assistance provider or certified individual has an interest;

(c) Engage in, or tolerate, sexual harassment of a worker. "Sexual harassment" means deliberate or repeated comments, gestures or physical contact of a sexual nature;

(d) Violate any applicable state or federal civil rights law;

(e) Commit fraud, misrepresent, or make a serious error or omission, in connection with an application for registration or certification;

(f) Commit fraud, misrepresent, or make a serious error or omission in connection with a report or return-to-work plan, or the vocational assistance activities or responsibilities of a vocational assistance provider under OAR chapter 436;

(g) Engage in collusion to withhold information, or submit false or misleading information relevant to the determination of eligibility or provision of vocational assistance;

(h) Engage in collusion to violate these rules or other rules of the department, or any policies, guidelines or procedures issued by the director;

(i) Fail to comply with an order by the director to provide specific vocational assistance, except as provided in ORS 656.313; or

(j) Instruct any individual to make decisions or engage in behavior that is contrary to the requirements of these rules.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.313, 656.340
Hist.: WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0207; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0900
Audits, Penalties and Sanctions

(1) Insurers and employers at injury must fully participate in any department audit, periodic program review, investigation or review, and provide records and other information as requested.

(2) If the director finds the insurer or employer at injury failed to comply with OAR 436-120, the director may impose one or more of the following sanctions:

(a) Reprimand by the director.

(b) Recovery of reimbursements.

(c) Denial of reimbursement requests.

(d) An insurer or employer may be assessed a civil penalty under ORS 656.745 for any violation of statutes, rules, or orders of the director.

(3) In determining the amount of a civil penalty to be assessed the director may consider:

(a) The degree of harm inflicted on the worker;

(b) Whether there have been previous violations or warnings; and

(c) Other matters as justice may require.

(4) under ORS 656.447, the director may suspend or revoke an insurer's authority to issue worker's compensation insurance policies upon determination that the insurer has failed to comply with these rules.

Stat. Auth.: ORS 656.340 & 656.726(4)
Stats. Implemented: ORS 656.340, 656.447 & 656.745(1) & (2)
Hist.: WCD 4-1981, f. 12-4-81, ef. 1-1-82; WCD 2-1983, f. 6-30-83, ef. 6-30-83; WCD 5-1983, f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0981, 5-1-85; WCD 7-1985, f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, eff. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95, Renumbered from 436-120-0255 & 436-120-0270; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-120-0915
Sanctions of Registered Vocational Assistance Providers and Certified Individuals

(1) Vocational assistance providers and certified individuals must fully participate in any department audit, periodic program review, investigation or review, and provide records and other information as requested.

(2) If the director finds any registered vocational assistance provider or certified individual failed to comply with OAR 436-120, the director may impose one or more of the following sanctions:

(a) Reprimand by the director.

(b) Probation, in which the department systematically monitors the vocational assistance provider's or individual's compliance with OAR 436-120 for a specified length of time. Probation may include the requirement an individual receive supervision, or successfully complete specified training, personal counseling or drug or alcohol treatment.

(c) Suspension, which is the termination of registration or certification to determine eligibility and provide vocational assistance to Oregon injured workers for a specified period of time. The vocational assistance provider or individual may reapply for registration or certification at the

end of the suspension period. If granted, the vocational assistance provider or individual will be placed on probation as described in subsection (2)(b) of this rule.

(d) Revocation, which is a permanent termination of registration or certification to determine eligibility and provide vocational assistance to Oregon injured workers.

(3) The director will investigate violations of OAR 436-120 and may impose a sanction under these rules. Before issuing a suspension or revocation, the director will send a notice of the proposed action and provide the opportunity for a show-cause hearing. The process is as follows:

(a) The director will send by certified mail a written notice of intended suspension or revocation and the grounds for such action. The notice must advise of the right to participate in a show-cause hearing.

(b) The vocational assistance provider or individual has 10 days from the date of receipt of the notification of proposed action in which to request a show-cause hearing.

(c) If the vocational assistance provider or individual does not request a show-cause hearing, the proposed suspension or revocation will become final.

(d) If the vocational assistance provider or individual requests a show-cause hearing, the director will send a notification of the date, time and place of the hearing.

(e) After the show-cause hearing, the director will issue a final order which may be appealed as described in OAR 436-120-0008(3).

(4) For the purposes of section (3) "show-cause hearing" means an informal meeting with the director in which the vocational assistance provider or certified individual will be provided an opportunity to be heard and present evidence regarding any proposed actions by the director to suspend or revoke a vocational assistance provider or certified individual's authority to provide vocational assistance services to injured workers.

(5) The director may bar a vocational assistance provider or individual who has received a suspension or revocation under this rule from sponsoring or teaching continuing education programs.

Stat. Auth.: ORS 656.340(9) & 656.726(4)
Stats. Implemented: ORS 656.340
Hist.: WCD 11-1987, f. 12-17-87, eff. 1-1-88; Renumbered from 436-120-0207, WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0850, WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-150-0005
Definitions

As used in OAR 436-150-0001 through 436-150-0040, unless the context requires otherwise:

(1) "Compensation," for the purposes of this program, means temporary and permanent disability due injured workers pursuant to ORS chapter 656, and out-of-pocket expenses for injured workers in accordance with OAR 436-009-0025, such as prescription and mileage reimbursements. Compensation does not include amounts payable to providers, or benefits payable pursuant to claim settlements or claim disposition agreements.

(2) "Default" means an insurer has failed to make payments of compensation due injured workers pursuant to ORS chapter 656 for which there is no dispute over the right of the worker to receive such compensation or the amount therein.

(3) "Director" means the director of the Department of Consumer and Business Services or the director's delegate for the matter.

(4) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(5) "Insurer" means an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

(6) "Oregon Insurance Guaranty Association" or "OIGA" means the association created by ORS 734.550.

(7) "Paying Agency" means the insurer, or the insurer's authorized representative, responsible for paying compensation due under ORS chapter 656.

Stat. Auth.: ORS 656.445, 656.726(4)
Stats. Implemented: ORS 656.445
Hist.: WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-150-0010
Criteria for Eligibility

(1) In order for the director to authorize expenditures from the Workers' Benefit Fund Claims Program there must be:

(a) Verification from an authority from the insurer's state of domicile that the insurer responsible for payment of compensation is in default, such as a notice of voluntary or involuntary rehabilitation, conservatorship, or other information indicating the insurer cannot or will not make payments of compensation; and

(b) An order of the director authorizing disbursements to injured workers from the Workers' Benefit Fund Claims Program. The order shall specify the qualifying claims, duration of payment obligation, and maximum expenditure limitation. The maximum expenditure limitation may not exceed the amount of securities on deposit for the insurer pursuant to ORS 731.628.

(2) When expenditures are authorized pursuant to section (1) of this rule, the paying agency shall provide the director with sufficient information, as specified in OAR 436-150-0030(2), to enable the director to advance funds to eligible injured workers.

(3) To be eligible for payment under the program:

(a) Compensation must be due and payable pursuant to ORS chapter 656; and

(b) There must be a record of an insurance policy on file with the director by the insurer covering the employer on the date of injury.

(4) Payments to eligible injured workers in accordance with these rules shall be applied toward the insurer's payment obligations under ORS chapter 656 and will be deducted from compensation due, pursuant to ORS 734.570.

Stat. Auth.: ORS 656.445, 656.726(4)
Stats. Implemented: ORS 656.445
Hist.: WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-150-0030
Payment of Benefits

(1) Payment of compensation may be made by the director after receipt of documentation that compensation is due and payable.

(2) Documentation to support payment from the Workers' Benefit Fund Claims Program shall be submitted by the paying agent to include, but not be limited to:

(a) Insurer name, address, and policy number;

(b) Injured worker name, address, insurer claim number, Workers' Compensation Division claim number, and date of injury;

(c) Employer name and address;

(d) Amount, duration, and purpose of compensation due;

(e) Amounts payable for support pursuant to ORS 656.234, along with supporting documentation; and

(f) Any other information deemed necessary by the director.

Stat. Auth.: ORS 656.445, 656.726(4)
Stats. Implemented: ORS 656.445
Hist.: WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-160-0310
Proof of Coverage Electronic Filing Requirements

(1) The chart in Appendix "A" shows all proof of coverage data elements accepted via EDI in Oregon, and whether the data element is mandatory (M), conditional (C), or optional (O) for each transaction type.

(2) Unless otherwise provided in these rules, the data elements shall have the meaning provided in the data dictionary under OAR 436-160-0004.

(3) Transactions will be rejected if mandatory or required conditional data elements are omitted or submitted in a format that is not capable of being processed by the division's information processing system designated for proof of coverage transactions.

(4) Optional data element(s) in a transaction will be ignored if the optional data element is either omitted, or submitted in a format that is not capable of being processed by the division's information processing system designated for proof of coverage transactions.

(5) Unless otherwise provided in these rules, an insurer must transmit proof of coverage via EDI. Insurers may not submit paper documents to the director without the director's express permission or as provided in OAR 436-160-0350(7).

(6) Changes or corrections to proof of coverage transactions must be filed within 30 days of insurer knowledge of the change to a required data field.

(7) Professional employee organization (PEO) policies will be accepted via EDI, subject to the same data and transaction editing standards as other policies. A policy filing for a PEO does not eliminate the PEO's requirement to file worker leasing notices under OAR 436-050-0410.

(8) Wrap-up policies will be accepted via EDI, subject to the same data and transaction editing standards as other policies.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.264
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

436-160-0340
Proof of Coverage Changes or Corrections

(1) Changes or corrections to proof of coverage information must be submitted pursuant to the standards referenced in OAR 436-160-0004.

(2) To report changes or corrections of an insured employer's name or address, or other data elements, the insurer must transmit the appropriate transaction to specify what data is being changed or corrected.

(3) The insurer's policy number is used to assist in matching each transaction to the appropriate employer. When an insurer changes a policy number, the insurer must report that change with or prior to the next transaction submitted for that policy. Failure to report a change in the policy number will render future filings incapable of being processed by the division's information processing system and the insurer will receive a transaction rejected acknowledgement.

(4) If changing a partner name of an insured or employer does not change the entity, a new guaranty contract or policy proof of coverage does not need to be filed.

(5) To add or delete coverage for corporate officers, members of a limited liability company, partners, sole proprietors or other non-subject workers, the insurer must file the appropriate "include" or "exclude" endorsement transaction to the associated policy filing.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.264, 656.419
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10

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Department of Corrections
Chapter 291

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Notice Publication Date: 10-1-2009
Rules Amended: 291-070-0130
Subject: Amend of this rule is necessary to clarify that offender records at Community Corrections offices will be retained in accordance with the State Archivist schedule.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-070-0130
Retention and Destruction of Offender Records

(1) The State Archivist grants authorization to Oregon government agencies, in the form of records retention schedules, for the retention or disposition of public records in their custody.

(2) Centralized control over retention and disposition of all records will be in accordance with state statutes.

(3) Agency working files will be maintained in accordance with the approved Special Schedule.

(4) At the time of closure of Community Corrections working files, the closing summary and other required documents will be sent to OISC for archiving in accordance with the State Office Operations Network approved protocol. Community Corrections Offices will retain working file documents in accordance with the State Archivist schedule.

(5) Medical, dental, and mental health treatment files on inmates confined in a Department of Corrections facility will be maintained in accordance with the Department of Corrections rule on Health Services (Inmate) (OAR 291 124).

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075
Hist.: DOC 9-2008, f. & cert. ef. 4-10-08; DOC 21-2009, f. & cert. ef. 11-20-09

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Rule Caption: Food Services — Kosher Diets.
Adm. Order No.: DOC 22-2009
Filed with Sec. of State: 11-20-2009
Certified to be Effective: 11-20-09
Notice Publication Date: 9-1-2009
Rules Repealed: 291-084-0010, 291-084-0020, 291-084-0030, 291-084-0040
Subject: Repeal of the Department's rules is necessary because they are inconsistent with current Department policy and procedures governing inmate access to a kosher diet. As part of a settlement of disputed litigation filed by a non-Jewish inmate, the Department has agreed not to enforce or apply its current administrative rules governing inmate participation in the Department's kosher diet program, and to work on developing a new kosher diet policy.
Rules Coordinator: Janet R. Worley—(503) 945-0933

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Rule Caption: Prison Term Modification Credits to Comply with 2009 Legislative Enhancements and Administrative Enhancements.
Adm. Order No.: DOC 23-2009
Filed with Sec. of State: 11-20-2009
Certified to be Effective: 11-20-09
Notice Publication Date: 10-1-2009
Rules Adopted: 291-097-0023
Rules Amended: 291-097-0005, 291-097-0010, 291-097-0015, 291-097-0020, 291-097-0025, 291-097-0040, 291-097-0080, 291-097-0100
Subject: The 2009 Legislative Assembly enacted Oregon Laws 2009, chapter 660 (House Bill 3508), effective July 1, 2009. HB 3508 increases the amount of earned time that an otherwise eligible inmate can obtain from 20 percent to 30 percent. HB 3508 contains an emergency clause and the amendments to ORS 421.121 become effective on either July 1, 2009 (for inmates sentenced on or after that date), or August 30, 2009 (for inmates who committed their crimes prior to July 1, 2009 if the sentencing court authorizes an increase in earned time credits for the otherwise eligible inmate). ORS 421.121 requires the Department to adopt administrative rules that establish a process for granting, retracting, and restoring earned time credits, which the Department has done under OAR 291-097. Because of the emergency clause contained in HB 3508, and in order to bring the Department's administrative rules into compliance with HB 3508, it is necessary for the Department to adopt temporary administrative rules that amend the existing process.

Other temporary changes are necessary to align these rules with recent changes to the Department's rules on Prohibited Inmate Conduct and Processing Disciplinary Actions, OAR 291-105, and to implement administrative enhancements for earned time credits available to inmates during review periods for maintaining appropriate institution conduct by maintaining misconduct free behavior for Level 1 or Level 2 rule violations.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-097-0005
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120, 421.121, 421.122, 423.020, 423.030 and 423.075.

(2) The purpose of this rule is to establish procedures for calculating, applying, retracting, and restoring earned time, statutory good time and extra good time credits, and for recommending modifications of parole release dates to the Board of Parole and Post-Prison Supervision, for inmates sentenced for crimes committed on or after November 1, 1989 (sentencing guidelines), and for inmates sentenced for crimes committed prior to November 1, 1989 (matrix sentences).

(3) Policy:

(a) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed on or after November 1, 1989 (sentencing guidelines), may be considered for a reduction in their term of incarceration pursuant to ORS 421.121, as set forth in these rules.

(A) Inmates sentenced under sentencing guidelines may be eligible to earn sentence reduction credits (earned time credits) up to a maximum of 20 percent of each sentencing guidelines sentence. Inmates sentenced under sentencing guidelines on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced under the sentencing guidelines prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, may be eligible to earn sentence reduction credits (earned time credits) up to a maximum of 30 percent of each sentencing guidelines sentence.

(B) Earned time credits are designed to provide a minimum amount of time credits necessary to serve as adequate incentive for appropriate institutional behavior and program participation.

(b) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible for prison term reduction credits (statutory good time and extra good time credits) pursuant to ORS 421.120, as set forth in these rules.

(c) It is the policy of the Department of Corrections that inmates sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible to receive a recommendation from the Department to the Board of Parole and Post-Prison Supervision that the inmate receive prison term reduction credits for an earlier date, as set forth in these rules.

(d) It is the policy of the Department of Corrections to develop Oregon Corrections plans on all inmates assigned to a Department of Corrections facility.

(e) It is the policy of the Department of Corrections to not calculate earned time for boarders from another state or those inmates serving pre-sentencing guidelines sentences or sentences of death, life without the possibility of parole or life with the possibility of parole.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0010
Definitions

(1) Earned Time Credits: Sentence reduction credits (days), up to 30 percent of the sentence imposed, that can be earned by an inmate sentenced under sentencing guidelines, pursuant to ORS 421.121, and these rules. The inmate earns the reductions by compliance with his/her Oregon Corrections Plan and institution conduct.

(2) Earned Time Release Date: The release date that has been achieved by an inmate, calculated by subtracting the earned time credits accrued from the maximum date.

(3) Extra Good Time Credits: Sentence reduction credits (days) that can be earned by an inmate sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines), for satisfactory work assignment or participation in an educational program, pursuant to ORS 421.120(1)(c), (d) and (e) and 421.122, and these rules. Days earned reduce the statutory good time date. Methods of computation are delineated in OAR 291-097-0070.

(4) Final Review Period: An increment of at least four months prior to an inmate's projected release date.

(5) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(6) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, or an Assistant Director and has responsibility for the delivery of program services or coordination of program operations.

(7) Judgment: Document issued by the court that commits an inmate to the legal and physical custody of the Department of Corrections, and reflects the inmate's term of incarceration, term of post-prison supervision, and court-ordered supervision conditions, if any.

(8) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(9) Offender: Any person under the supervision of the Department of Corrections, local supervisory authority or community corrections who is on probation, parole or post-prison supervision status.

(10) Offender Information & Sentence Computation Unit (OISC): The functional unit charged to administrate applicable statutes pertaining to sentencing; develop, implement and revise applicable processes for inmate and offender sentence computation; respond to public information requests with regard to inmates and offenders; certify an inmate's release date; and provide supportive services to Department facilities with regard to inmate sentencing.

(11) Oregon Corrections Plan (OCP): An automated case management tool incorporated into the Corrections Information System that serves as the primary tool for tracking an inmate's progress in working to mitigate the identified risk factors.

(12) Parole Release Date: The date on which an inmate is ordered to be released from an indeterminate prison sentence(s) to parole by the Board of Parole and Post-Prison Supervision. Parole release may be to the community, detainer or to another Department of Corrections sentence.

(13) Pre-Sentence: That period of time a defendant spends in physical custody or incarceration from the point of arrest to the date of delivery to the Department to serve that sentence.

(14) Prison Term:

(a) Sentencing Guidelines Sentences: The length of incarceration time within a Department of Corrections facility as established by the court in the judgment for each crime of conviction.

(b) Pre-Sentencing Guidelines Sentences: The length of required incarceration time within a Department of Corrections facility as established by the order of the Board of Parole and Post-Prison Supervision setting of a parole release date.

(15) Prison Term Analyst: The staff person from OISC responsible for calculating inmates' sentences, applying sentence reduction credits and establishing release dates pursuant to applicable rules and statutes.

(16) Projected Release Date: The date upon which an inmate is anticipated to complete service of the prison term.

(17) Restoration of Earned Time, Statutory Good Time, Extra Good Time Credits: Where previously retracted earned time, statutory good time, extra good time and previously forfeited statutory good time and extra good time for parole violators are granted and applied back to the inmate's sentence.

(18) Retraction: Where previously granted earned time, statutory good time or extra good time credits are forfeited by an inmate as a result of a significant negative action on the part of the inmate, in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105), or forfeiture of program earned time credits granted following the effective date of this rule for inmates identified for residential alcohol and drug treatment (SCF 25) who fail to satisfactorily complete the prescribed program during their term of incarceration.

(19) Review Period: A six-month increment, beginning with an inmate's admission date, used to determine an inmate's compliance with institution behavior and his/her OCP.

(20) Short-Term Transitional /Non-Prison Leave: A leave for a period not to exceed 90 days preceding an established release date that allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. Short-term transitional leave/non-prison leave is granted in accordance with ORS 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves, and Supervised Trips (OAR 291-063).

(21) Special Case Factor 25: An inmate identified as both highly criminal and highly involved with drugs or alcohol through intake screening or subsequent assessment who is required to participate and complete a residential alcohol and drug program if available prior to the inmate's release.

(22) Statutory Good Time Credits: Prison term reduction credits (days) applicable to sentences for crimes committed prior to November 1, 1989 (matrix sentences) consisting of a reduction of one day for every two days served, pursuant to ORS 421.120(1)(a) and (b), and these rules. The application of statutory good time days establishes the initial statutory good time date and is re-calculated upon parole revocation based on the length of the remaining sentence.

(23) Supplemental Judgment: The form of judgment prepared by and transmitted to a sentencing court pursuant to Oregon Laws 2009, Chapter 660, §18 (House Bill 3508) which authorizes the Department to consider the inmate for a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent of the total term of incarceration in a DOC facility.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0015
Earned Time Credits

(1) Pursuant to ORS 421.121, inmates sentenced under sentencing guidelines may earn sentence reduction credits up to 20 percent of the total sentencing guidelines prison term imposed for acceptable participation in OCP requirements and for maintaining appropriate institution conduct, except inmates:

(a) Serving a sentence subject to ORS 137.635;

(b) Serving presumptive sentences or required incarceration terms under ORS 161.737;

(c) Serving statutory minimum sentences under ORS 137.700 or ORS 137.707;

(d) Serving a presumptive sentence under ORS 137.719;

(e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;

(f) Serving time as a sanction for violation of conditions of post prison supervision; or

(g) Subject to any other Oregon statutes restricting earned time credits.

(2) Pursuant to ORS 421.121, inmates sentenced under sentencing guidelines on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced under the sentencing guidelines prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, may earn sentence reduction credits up to 30 percent of the total sentencing guidelines prison term imposed for acceptable participation in OCP requirements and for maintaining appropriate institution conduct, except inmates:

(a) Serving a sentence subject to ORS 137.635;

(b) Serving presumptive sentences or required incarceration terms under ORS 161.737;

(c) Serving statutory minimum sentences under ORS 137.700 or ORS 137.707;

(d) Serving a presumptive sentence under ORS 137.719;

(e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;

(f) Serving time as a sanction for violation of conditions of post prison supervision;

(g) Subject to any other Oregon statutes restricting earned time credits;

(h) Released onto short-term transitional leave on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, §18 (House Bill 3508);

(i) Released onto conditional release (Second Look) on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, §18 (House Bill 3508);

(j) Released onto short-term transitional leave/non-prison leave on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, §18 (House Bill 3508) as part of an Alternative Incarceration Program as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062);

(k) Whose prison term reached its earned time release date prior to or on August 31, 2009;

(l) Whose prison term reached its earned time release date prior to the date the sentencing court enters a supplemental judgment; or

(m) Serving a sentence for the following crimes:

(A) Rape in the Third Degree under ORS 163.355;

(B) Sodomy in the Third Degree under ORS 163.385;

(C) Sexual Abuse in the Second Degree under ORS 163.425;

(D) Criminally Negligent Homicide under ORS 163.145;

(E) Assault in the Third Degree under ORS 163.165;

(F) Assault in the Fourth Degree under ORS 163.160(3);

(G) A crime listed in ORS 137.700; or

(H) An attempt to commit a crime described in this subsection.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 3-1998(Temp), f. & cert. ef. 2-20-98 thru 8-17-98; DOC 19-1998, f. & cert. ef. 8-14-98; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0020

Calculation and Application of Earned Time Credits

(1) For inmates sentenced on or after November 1, 1989, the maximum amount of earned time credits is 20 percent of the total sentencing guidelines sentence. In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 10 percent for compliance with the Oregon Corrections Plan and 10 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(2) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, the maximum amount of earned time credits is 30 percent of the total sentencing guidelines sentence. In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 15 percent for compliance with the Oregon Corrections Plan and 15 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(3) Earned Time Review Periods:

(a) Oregon Corrections Plan compliance is defined as acceptable participation in work and self-improvement programs required within the OCP. The required activities within the OCP are determined by ongoing assessment and evaluation, which begins at the inception of the inmate prison term.

(A) An inmate will be considered to be compliant if he/she was not failed from the required program activity(ies) during the review period under consideration, nor did the inmate refuse to participate in required programming during the review period under consideration.

(i) As needed, the counselor will communicate with the treatment or program providers as well as work crew supervisors to evaluate an inmate's compliance with the required program activity(ies).

(ii) If the inmate's counselor determines the inmate is non-compliant with the OCP, he/she will approve a program failure for documentation in the inmate's computer record.

(B) Inmates Needing Residential Alcohol and Drug Treatment:

(i) Inmates identified as needing Residential Alcohol and Drug treatment (SCF 25), and who are not within the timeframes for the program will not be responsible for entering or completing that specific program activity, but will be held responsible for completing all other available required activities identified within the OCP.

(ii) However, any program earned time previously applied will be retracted during the final review period if it is determined the inmate has refused to enter, or failed to complete a residential alcohol and drug program prior to release.

(b) Institution conduct compliance is defined as maintaining Level I or Level II major misconduct-free behavior during the review period. Major misconduct is documented in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Any finding of a Level I or Level II major misconduct violation during the review period will be considered as noncompliance. The date of the adjudication, not of the incident, will be used for the date of the violation.

(c) At the end of each review period, the prison term analyst will review the inmate's computer records for information reflecting the inmate's compliance with the current Oregon Corrections Plan and institution conduct. Based on the information contained in the inmate's computer records, the prison term analyst will apply either:

(A) An effective 0, 10, or 20 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates sentenced on or after November 1, 1989, or

(B) An effective 0, 15, or 30 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to July 1, 2013 or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits.

(d) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will review the inmate's institution file including any reports received from the housing facility to determine compliance with the current OCP and institution conduct.

(A) OCP compliance will be determined by the inmate's reported compliance with requirements as determined by Department staff or the housing facility staff.

(B) Due process comparable to the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) shall be applied. Institution conduct non-compliance will be determined by substituting the rule(s) of prohibited conduct, for the rule(s) violated at the housing facility, with the most equivalent charges as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The functional unit manager or designee may impose sanctions, in addition to that imposed by the housing facility, related to sentence reductions.

(e) For each review period under consideration for inmates housed in Oregon Department of Corrections facilities, the prison term analyst will list the reasons for applying or not applying earned time credits and record

the corresponding percentage of earned time applied to the inmate's sentence on the Earned Time Computation Form (CD 1154D).

(f) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied on the Earned Time Computation Form (CD 1154D).

(g) Upon the prison term analyst's or counselor's application of earned time credits toward an inmate's sentence for the review period under consideration, the OISC Unit will recompute the inmate's new earned time release date, file the Earned Time Computation Form (CD 1154D) in the institution file, and provide a copy of the determination to the inmate.

(4) Determination of Earned Time Credits During Presentence Incarceration: For crimes committed on or after November 1, 1989, earned time credits will be computed for the period in which an inmate is in custody in a non-Department of Corrections facility prior to sentencing and admission to the Department of Corrections, based solely on the inmate's conduct in the facility.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For inmates sentenced on or after November 1, 1989, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(b) Any verified major misconduct equivalent to a Level 1 or Level 2 major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during any of the presentence incarceration credits applied to the sentence will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the total length of presentence incarceration.

(A) For inmates sentenced on or after November 1, 1989, conduct compliance will result in an effective 20 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, conduct compliance will result in an effective 30 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(5) If the inmate escapes, the prison term analyst will close out the current earned time review period, changing the current review period to end the day after escape. An inmate that is returned from an escape to a Department of Corrections facility will have the starting date of the new earned time credit cycle begin with the date of return. The escape will constitute a program failure for the period up to the escape.

(6) Alternative Incarceration Program:

(a) If, during any review period, the inmate is assigned to an Alternative Incarceration Program and for sufficient justification as determined by the functional unit manager's committee to be unsuccessful, the inmate will be considered a program failure as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062).

(b) If the inmate fails to successfully complete the short-term transitional leave (non-prison leave) granted through the Alternative Incarceration Program, the inmate will be considered a program failure and non-compliant with institution conduct from the effective date of the short-term transitional leave until he/she is returned to a Department of Corrections facility.

(7) Determination of earned time credits for inmates on non-AIP transitional leave:

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration on short-term transitional leave (OAR 291-063).

(A) Institution conduct and Oregon Corrections Plan compliance will be assumed while an inmate is released on short-term transitional leave.

(B) Earned time credits for the period on transitional leave will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto short-term transitional leave.

(b) A revocation of an inmate's short-term transitional leave is deemed non-compliance with the inmate's Oregon Corrections Plan and non-compliance with institution conduct. Upon revocation of short-term transitional leave, an inmate will receive an effective 0 percent reduction for OCP compliance and 0 percent reduction toward the sentencing guidelines sentence for institutional conduct proportional for the length of the inmate's short-term transitional leave.

(8) If all of an inmate's sentence(s) is vacated, reversed and remanded for new trial, or conviction affirmed and remanded for resentencing, the prison term analyst will close out the current earned time review period to end the day after release to the sentencing court. An inmate that is returned on a resentence will start a new review period, effective the date of return to a Department of Corrections facility. The new earned time credit cycle date will be reflected on the inmate's facesheet.

(9) Determination of earned time credits for inmates serving the remainder of a sentencing guidelines sentence on conditional release (Second Look):

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration in the community on conditional release, based solely on the inmate's compliance with his/her conditional release plan.

(b) Earned time credits for the period on conditional release (Second Look) will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto conditional release (Second Look).

(c) Conduct compliance will be assumed, unless the inmate's conditional release is revoked by the sentencing court.

(d) Any revocation of an inmate's conditional release prior to the inmate reaching his/her projected earned time date will result in an effective 0 percent reduction in the sentencing guidelines prison term for the length of the inmate's sentence being served in the community on conditional release.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)
Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0023
Court Notification of Inmate Eligibility for Increase in Earned Time Credits

Pursuant to Oregon Laws 2009, Chapter 660 §18 (House Bill 3508), for inmates with sentencing guidelines sentences imposed prior to July 1, 2009 for crimes committed on or after November 1, 1989:

(1) Upon identifying an inmate who is eligible for earned time credits that exceed 20 percent, the Department will send written notification to the inmate, as well as the presiding judge, trial court administrator, and the district attorney of the county in which the inmate was sentenced, of the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits. The Department will also provide a supplemental judgment to the presiding judge and trial court administrator of the county in which the inmate was sentenced that lists the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits.

(2) The Department will not send a written notification or supplemental judgment for any sentence in which an inmate has completed his/her prison term prior to or on August 31, 2009.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)
Hist.: DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0025
Retraction of Earned Time Credits

Time credits previously earned or applied will be retracted as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and the disciplinary order directs that earned time credits earned or applied be forfeited in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291 105).

(a) A recommendation for retraction of earned time shall be within the range corresponding to the violation level as set forth in **Table 1**.

(b) A recommendation for retraction of earned time credits may not exceed the amount previously applied.

(2) Inmates identified as needing residential alcohol and drug treatment (SCF 25) who have not completed the prescribed program by their final review period will have all previously applied earned time for program compliance retracted from the first full review period following September 1, 1996. Retraction of program earned time may not exceed the amount previously applied.

(a) If earned time is retracted during or after the final review period in which a final release date is calculated, the release date will be adjusted by the OISC Unit. After such a retraction, the new release date will remain as established by the OISC Unit and that inmate shall be ineligible for any future earned time credit.

(b) The prison term analyst will contact the counselor for confirmation of whether an SCF 25 inmate requires a retraction at the time of the final review. SCF 25 retractions will be documented in writing by the counselor.

(3) Failure to comply with the OCP during the final review period will result in a retraction of the portion of the earned time credits for program compliance advanced at the beginning of the final review period. The prison term analyst will document the retraction on the Earned Time Computation form (CD 1154D).

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

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0040

Determination of Earned Time Credits During Final Review Period for Sentencing Guideline Sentences

(1) Four months prior to an inmate's projected release date, prison term analysts (or the designated counselor for inmates housed in non-Oregon Department of Corrections facilities) will conduct a final review of inmates' earned time compliance. Final reviews will be conducted only for inmates serving a sentencing guidelines sentence. Prison term analysts will advance and apply earned time credits for the final review period as follows:

(a) Advancement and application of earned time credits for the final review period:

(A) Except for residential alcohol and drug treatment (SCF 25) inmates, an inmate's full compliance with the OCP and institutional behavior will be assumed during the final review period.

(i) For inmates sentenced on or after November 1, 1989, the prison term analyst will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(ii) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the prison term analyst will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(B) For residential alcohol and drug treatment (SCF 25) inmates, only institutional behavior compliance will be assumed during the final review period unless the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review.

(i) For inmates sentenced on or after November 1, 1989, if the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(ii) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, if the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(iii) For inmates sentenced on or after November 1, 1989, if the inmate has not successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 10 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(iv) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to July 1, 2013, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, if the inmate has not successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 15 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(2) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is extended as a result of a new sentence or an adjustment in presentence time, the prison term analyst will delete the final review and any earned time credits advanced for the final review period. The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the extended prison term is reviewed in accordance with these rules.

(3) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is reduced, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period provided the inmate was in full compliance with his/her Oregon Corrections Plan and institutional behavior at the time of the final review.

(a) If the inmate was in partial compliance with his/her Oregon Corrections Plan or institutional behavior at the time of the final review, the prison term analyst will delete the final review and any earned time credits advanced for the final review period.

(b) The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the reduced prison term is reviewed in accordance with these rules.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0080

Retraction of Statutory Good Time and Extra Good Time Credits

Statutory good time and extra good time credits previously earned or applied may be retracted as a result of a disciplinary action as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and the disciplinary order directs that time credits earned are forfeited in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) and **Table 2** attached.

(2) A recommendation for retraction of statutory good time and extra good time credits may not exceed the amount previously earned or applied.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

291-097-0100

Inmates With Indeterminate Sentences of More than Thirty-six Months

(1) The functional unit manager may recommend to the Board of Parole and Post-Prison Supervision that an inmate receive prison term reduction credits in those cases where the inmate has received a parole release date set from the Board of Parole and Post-Prison Supervision of 36 months or more, if:

(a) The inmate has applied for a reduction and the period under review falls within the established prison term;

(b) The inmate has completed a three-year period of good conduct; and

(c) The inmate has complied with OCP efforts to address problems associated with the inmate's criminal conduct present at the time of incarceration.

(d) Notwithstanding (b) and (c) above, the functional unit manager may consider significant improvement in inmate behavior and OCP efforts during the last 12 months of the three-year period and recommend that the parole release date be reset.

(2) Three-Year Period of Good Conduct: For purposes of these rules, an inmate shall be considered to have maintained a three-year period of good conduct if:

(a) The inmate has not received any Level I — II rule violations as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during the three years under review.

(b) Notwithstanding (a) above, upon finding that an inmate has committed a Level III or IV rule violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105), after a formal disciplinary hearing or upon waiver of the inmate's right to hearing, the hearings officer may recommend to the functional unit manager that the inmate not be considered for a positive recommendation for prison term reduction within a three-year period from the date of the rule violation.

(3) Demonstrable Achievement in Addressing Problems Associated with the Inmate's Criminal Conduct Present at the Time of Incarceration: For purposes of these rules, an inmate shall be considered to have made demonstrable achievement in addressing problems associated with the inmate's criminal conduct present at the time of incarceration if the inmate has received favorable reports for his/her successful participation in one or more self-improvement programs appropriate to his/her need as determined by departmental assessment captured in the OCP (to the extent these specific programs are available to the inmate). An inmate will be considered to be successfully participating in a self-improvement program if he/she is documented to be registered on a waiting list for the program within 30 days of the development of the OCP.

(4) Inmates serving a term of incarceration in a Department of Corrections facility as a sanction for violation of parole or post-prison supervision are ineligible for consideration for a positive recommendation.

(a) Inmates sentenced for aggravated murder or as dangerous offenders, and those whose parole the Board of Parole and Post-Prison Supervision denied are not subject to personal reviews.

(b) Dangerous offenders may be eligible for personal reviews upon receipt of a positive recommendation from the Department of Corrections, if the Board of Parole and Post-Prison Supervision has found their condition absent or in remission and has set a parole release date.

(5) The functional unit manager or designee will review the recommendation of the counselor, approve/deny or otherwise modify the recommendation, and send the determination to the Board of Parole and Post-Prison Supervision on an action sheet and supplemental report for the Board's consideration.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120-122, 423.020, 423.030 & 423.075, OL 2009 Ch 660 (HB 3508)

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09

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Department of Energy, Energy Facility Siting Council
Chapter 345

Rule Caption: Amend Carbon Dioxide Emission Standard for Non Base Load Electric Generating Facilities.
Adm. Order No.: EFSC 1-2009
Filed with Sec. of State: 11-24-2009
Certified to be Effective: 11-24-09
Notice Publication Date: 9-1-2009
Rules Amended: 345-001-0010, 345-024-0590
Subject: The amendment to OAR 345-024-0590(5) provides an alternate means of measuring "actual gross carbon emissions" every five years during the operation of a non-base load power plant. The amendment allows a certificate holder for a non-base load power plant to report actual carbon dioxide emissions consistent with any mandatory carbon dioxide emissions reporting required by either the Oregon Department of Environmental Quality or the United State Environmental Protection Agency. The amendment accounts for new variable power electric plants that are needed to accommodate the variable nature of electric power available from wind and other renewable sources.

The amendment to OAR 345-001-0010 revises the definition in section (38) "non-base load power plant" to provide that for facilities designed to operate at variable load, the annual limit of 6,600 hours of operation could be determined by dividing the annual electric output of the facility by the nominal electric generating capacity of the facility.
Rules Coordinator: John White—(503) 378-3194

345-001-0010
Definitions

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

(1) "Adjusted to ISO conditions" as defined in ORS 469.503(2)(e).

(2) "Analysis area" means the area or areas specifically described in the project order issued under 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant shall describe the proposed facility's impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.

(3) "Applicant" as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.

(4) "Associated transmission lines" as defined in ORS 469.300.

(5) "Average electric generating capacity" as defined in ORS 469.300.

(6) "Background radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background shall be determined as follows:

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility shall be provided and 6 to 10 measurements shall be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background shall be calculated at the average and at the 95% confidence level.

(b) Environmental samples shall be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples shall be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations shall be selected and surveyed. Six to ten samples of each material shall be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements shall include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout shall be characterized as well.

(d) All measurements shall be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(7) "Base load gas plant" as defined in ORS 469.503(2)(e).

(8) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.

(9) "Chair" means the chairman or chairwoman of the Energy Facility Siting Council.

(10) "Committed firm energy and capacity resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(11) "Construction" as defined in ORS 469.300.

(12) "Corridor" means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. "Micrositing corridor" is defined below in this rule.

(13) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(14) "Council Secretary" means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.

(15) "Department" means the Office of Energy or the Department of Energy created under ORS 469.030.

(16) "Direct cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(17) "Energy facility" means an energy facility as defined in ORS 469.300, including a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210.

(18) "Energy supplier" means:

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company; or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(19) "Existing corridor," as used in ORS 469.300 and 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.

(20) "Facility" as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.

(21) "Facility substantially similar to the proposed facility" means:

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(22) "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.

(23) "Fossil-fueled power plant" as defined in ORS 469.503(2)(e).

(24) "Fuel chargeable to power heat rate" means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula, FCP = (FI - FD)/ P, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value). (d) P = Annual net electric output of the cogeneration facility in kilowatt-hours.

(25) "Generating facility" as defined in ORS 469.503(2)(e).

(26) "Gross carbon dioxide emissions" as defined in ORS 469.503(2)(e). The Council shall measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis. For nongenerating energy facilities that emit carbon dioxide, the Council shall measure the gross carbon dioxide emissions as described in OAR 345-024-0620(1).

(27) "High efficiency cogeneration facility" means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under normal operating conditions has a useful thermal energy output of no less than 33 percent of the total energy output or:

(a) For an energy facility with a nominal electric generating capacity of 50 megawatts or more, a fuel chargeable to power heat rate of no greater than 5550 Btu per kilowatt-hour (higher heating value);

(b) For an energy facility with a nominal electric generating capacity of less than 50 megawatts, a fuel chargeable to power heat rate of no greater than 6000 Btu per kilowatt-hour (higher heating value).

(28) "Land use approval" means a final quasi-judicial decision or determination made by a local government that:

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;

(d) Applies the statewide planning goals to a proposed facility; or

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.

(29) "Local government" as defined in ORS 469.300.

(30) "Micrositing corridor" means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.

(31) "Mitigation" means taking one or more of the following actions listed in order of priority:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;

(e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or

(f) Implementing other measures approved by the Council.

(32) "Natural gas" means all gas and all other fluid hydrocarbons not defined as oil in ORS 520.005(6), including condensate originally in the gaseous phase in the reservoir.

(33) "Natural gas fired facility" means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate fuel use shall not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.

(34) "Net carbon dioxide emissions" as defined in ORS 469.503(2)(e).

(35) "Net electric power output" means the electric power produced or capacity made available for use. Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.

(36) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder shall determine the new and clean basis:

(a) By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility, unless the Council specifies a different testing period for a non-base load power plant (or power augmentation) or a nongenerating energy facility. A 100-hour test performed for purposes of the certificate holder's commercial acceptance of the facility may suffice in lieu of testing after beginning commercial operation;

(b) With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels unless the Council specifies that the results for a non-base load power plant (or power augmentation) or a nongenerating energy facility be adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate;

(c) Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value); and,

(d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if such fuel use is proposed by the applicant.

(e) Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis shall mean average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.

(37) "Nominal electric generating capacity" as defined in ORS 469.300.

(38) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. For a non-base load power plant designed to operate at variable loads, the facility's annual hours of operation are determined by dividing the actual annual electric output of the facility in megawatt-hours by the facility's nominal electric generating capacity in megawatts. The Council shall assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approves a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder shall operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, shall request an amendment of the site certificate to extend the operational life.

(39) "Nongenerating facility" as defined in ORS 469.503(2)(e).

(40) "Office of Energy" and "Office" mean the Oregon Office of Energy and the Oregon Department of Energy.

(41) "Offset" as defined in ORS 469.503(2)(e).

(42) "Offset funds" means the amount of funds determined by the Council to satisfy the applicable carbon dioxide emissions standard pursuant to OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2) and (4).

(43) "Owner" means owner or lessee under a capital lease.

(44) "Permit" means any permit, license, certificate or other approval required by state statute, state administrative rule or local government ordinance.

(45) "Person" as defined in ORS 469.300.

(46) "Power augmentation" means technologies that increase the capacity and the heat rate of the plant above the capacity and heat rate of the base load gas plant. These include, but are not limited to, duct burning and some forms of steam augmentation.

(47) "Project order" as defined in ORS 469.300.

(48) "Qualified organization" means an organization that:

(a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(b) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(c) Has in effect articles of incorporation that:

(A) Require that offset funds received under OAR 345-024-0710(3) are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions;

(B) Require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the Council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024-0550, 345-024-590, and 345-024-0620 and the holders of such site certificates; and

(C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under OAR 345-024-0710(3);

(d) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to ORS 469.503 conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(e) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(f) Has to the extent applicable, except for good cause, complied with OAR 345-024-0710(3).

(49) "Related or supporting facilities" as defined in ORS 469.300. The Council interprets the terms "proposed to be built in connection with" as meaning that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be significantly modified solely to serve the energy facility.

(50) "Reviewing agency" means any of the following officers, agencies or tribes:

(a) Department of Environmental Quality;

(b) Water Resources Commission and the Water Resources Director through the Water Resources Department;

(c) Fish and Wildlife Commission through the Department of Fish and Wildlife;

(d) State Geologist;

(e) Department of Forestry;

(f) Public Utility Commission;

(g) Department of Agriculture;

(h) Department of Land Conservation and Development;

(i) Northwest Power Planning Council

(j) Office of State Fire Marshal;

(k) Department of State Lands;

(l) State Historic Preservation Office;

(m) Any other agency identified by the Department of Energy

(n) Any tribe identified by the State Commission on Indian Services as affected by the proposed facility;

(o) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services;

(p) Any special advisory group designated by the Council under ORS 469.480;

(q) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.

(51) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

(52) "Site" as defined in ORS 469.300. "Energy facility site" means all land upon which an energy facility is located or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

(53) "Site boundary" means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.

(54) "Site certificate" as defined in ORS 469.300.

(55) "Special nuclear material" means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.

(56) "Strategic flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

(57) "Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

(a) For impacts to threatened and endangered plant and animal species, 5 miles.

(b) For impacts to scenic resources and to public services, 10 miles.

(c) For land use impacts and impacts to fish and wildlife habitat, one-half mile.

(d) For impacts to recreational opportunities, 5 miles.

(e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.

(f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.

(g) The distances stated in subsections (a), and (d) above do not apply to pipelines or transmission lines.

(58) "Substantial loss of steam host" means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(59) "Substantial loss of fuel use efficiency" means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(60) "Surface facilities related to an underground gas storage reservoir" means structures or equipment adjacent to and associated with an

underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:

(a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;

(b) Pipelines, such as gathering lines and liquid collection lines; and

(c) Roads and road maintenance equipment housing at the reservoir site.

(61) "Thermal power plant" as defined in ORS 469.300.

(62) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.

(63) "Underground gas storage reservoir" as defined in ORS 469.300.

(64) "Useful thermal energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(65) "Utility" as defined in ORS 469.300.

(66) "Vice-chair" means the vice-chairman or vice-chairwoman of the Energy Facility Siting Council.

(67) "Waste disposal facility" as defined in ORS 469.300.

Stat. Auth.: ORS 469.373 & 469.470

Stats. Implemented: ORS 469.300-570, 469.590-619 & 469.992

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 8-1981, f. & ef. 10-29-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0025, 345-100-0025, 345-111-0020 & 345-125-0025; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07; EFSC 1-2009, f. & cert. ef. 11-24-09

345-024-0590

Standard for Non-Base Load Power Plants

To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.675 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power augmentation technology as defined in OAR 345-001-0010, the Council shall apply this standard to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility, the limitation on the hours of generation for each fuel type and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. For a base load gas plant designed with power augmentation technology, the Council shall base its determination of the incremental carbon dioxide emissions on the proposed design of the facility, the proposed limitation on the hours of generation using the power augmentation technology and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate with power augmentation technology. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis; however, the Council may modify the parameters of the new and clean basis to accommodate average conditions at the times when the facility is intended to operate and technical limitations, including operational considerations, of a non-base load power plant or power augmentation technology or for other cause;

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0600 or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0600(2), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria and as provided in OAR 345-024-0680:

(a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets;

(4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of an equipment vendor and shall submit a written design information report to the Department sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. For a base load gas plant designed with power augmentation technology, the certificate holder shall include in the report information sufficient to verify the facility's designed new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the nominal electric generating capacity at average site conditions during the intended use for each fuel type from the operation of the proposed facility using the power augmentation technology. The certificate holder shall include the proposed limit on the annual average number of hours for each fuel used, if applicable. The certificate holder shall include the proposed total number of hours of operation for all fuels, subject to the limitation that the total annual average number of hours of operation per year is not more than 6,600 hours. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the gross carbon dioxide emissions from the facility and the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0600;

(5)(a) Every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual gross carbon dioxide emissions. The certificate holder shall calculate actual gross carbon dioxide emissions using the new and clean heat rate and the actual hours of operation on each fuel during the five-year period or shall report to the Council the actual measured or calculated carbon dioxide emissions as reported to either the Oregon Department of Environmental Quality or the U.S. Environmental Protection Agency pursuant to a mandatory carbon dioxide emissions reporting requirement.

(b) The certificate holder shall specify its election of method used to measure or calculate carbon dioxide emissions in the notification report described at section (4) of this rule. That election, once made, shall apply for each five year period unless the site certificate is amended to allow a different election. If the certificate holder calculates actual carbon dioxide emissions using the new and clean heat rate and the actual hours of operation, the certificate holder shall also report to the Council the facility's actual annual hours of operation by fuel type. If the actual gross carbon dioxide emissions, exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council.

(6) For a base load gas plant designed with power augmentation technology, every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual hours of operation using the power augmentations technology for each fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the actual hours of operation using the power augmentation technology on each fuel during the five-year period exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council.

Stat. Auth.: ORS 469.470 & 469.503

Stats. Implemented: ORS 469.501 & 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 1-2000, f. & cert. ef. 2-2-00; EFSC 1-2002, f. & cert. ef. 4-3-02; EFSC 1-2003, f. & cert. ef. 9-3-03; EFSC 1-2007, f. & cert. ef. 5-15-07; EFSC 1-2009, f. & cert. ef. 11-24-09

Department of Fish and Wildlife
Chapter 635

Rule Caption: Modifications to Southwest Zone Sport Chinook Salmon Regulations for the Chetco River.
Adm. Order No.: DFW 143-2009(Temp)
Filed with Sec. of State: 11-17-2009
Certified to be Effective: 11-19-09 thru 12-31-09
Notice Publication Date:
Rules Amended: 635-016-0090
Rules Suspended: 635-016-0090(T)
Subject: Amended rule opens a sport Chinook salmon season in the Chetco River, that was temporarily closed to protect Chinook stacked up at the head of tide due to unseasonably low flows. These modifications allow opportunity for harvest of both naturally and hatchery produced fall Chinook in the Chetco River mainstem up to river-mile 10.5, and in the Chetco Estuary.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-016-0090
Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Southwest 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 **2009 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the 2009 Oregon Sport Fishing Regulations, the following restrictions apply to angling in waters of the Southwest Zone:

(a) All waters of the Umpqua River Basin (including Smith River), Coquille River Basin, and Elk River Basin that are open for Chinook salmon are limited to no more than 1 non fin-clipped adult Chinook salmon retained per day and 5 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone with a 5 adult non fin-clipped Chinook salmon seasonal aggregate limit, and no more than 10 total adult non fin-clipped Chinook in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(b)(A) All waters of the Coos River Basin and Rogue River Basin that are open for Chinook salmon are limited to no more than 2 adult non fin-clipped Chinook salmon retained per day, and no more than 10 total adult non fin-clipped Chinook in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(B) Rogue River mainstem from Gold Ray Dam to Dodge Bridge: from 12:01 a.m. August 1 thru 11:59 p.m. August 31, 2009 only adult fin-clipped Chinook salmon may be retained. Non fin-clipped jacks may be retained. Catch limits and other restrictions listed in the 2009 Oregon Sport Fishing Regulations for the Southwest Zone remain in effect.

(c) All waters of Floras Creek, Floras Lake, New River, New Lake, Sixes River, Hunter Creek, Pistol River, and Chetco River that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 2 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone with a 2 adult Chinook salmon seasonal aggregate limit, and no more than 10 total adult non fin-clipped Chinook in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone, and all state waters terminal area seasons in the Marine Zone. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31, 2009.

(d) All waters of the North Fork Smith River (Umpqua River Basin) are closed for Chinook salmon between August 1 and December 31, 2009.

(e) Within the Coos River Basin the following additional rules apply:

(A) All waters of the Millicoma River upstream of the Doris Place Boat Ramp at river mile 0.25 are closed for Chinook salmon between August 1 and December 31, 2009, and closed for steelhead from August 1 through November 14;

(B) All waters of the South Fork Coos River upstream from the confluence with Besse Cr. at river mile 6.25 are closed for Chinook salmon from August 1 through December 31, 2009, and closed for steelhead from August 1 through November 14; and

(C) All waters of the Coos River and Bay upstream to the Doris Place Boat Ramp at river mile 0.25 on the Millicoma River and upstream to the confluence with Besse Cr. at river mile 6.25 on the South Fork Coos River are closed for non fin-clipped coho salmon from 11:59 p.m. September 18 through December 31, 2009 due to attainment of the 1,000 non-finclipped adult coho quota.

(f) Within the Coquille River Basin the following additional rules apply:

(A) All waters of the Coquille River Basin upstream of the Highway 42S bridge (Sturdivant Park) at river mile 24.0 are closed for Chinook salmon between August 1 and December 31, 2009, and closed for steelhead from August 1 through November 14;

(B) open for non fin-clipped coho salmon in Coquille River and Bay upstream to the Highway 42S bridge (Sturdivant Park) at river mile 24.0 from September 1 through the earlier of November 30 or attainment of an adult coho quota of 1,500 non-finclipped coho. The daily catch limit may include one adult non fin-clipped coho salmon per day and one non fin-clipped jack coho salmon, and no more than 5 total adult non fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(g) All waters of Floras Creek upstream of the County Road 124 bridge over Floras at river mile 5.0 are closed for Chinook salmon between August 1 and December 31, 2009.

(h) All waters of the Sixes River upstream of Edson Cr. are closed for Chinook salmon between August 1 and December 31, 2009.

(i) All waters of the Chetco River upstream of the US Forest Service Bridge at river mile 10.5 are closed for Chinook salmon between November 19 and December 31, 2009.

(j) All waters of the Winchuck River are closed to Chinook angling from August 1 through December 31, 2009.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 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 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; 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 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; 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 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, certe. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; 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 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09

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Rule Caption: Amend rules related to 2010 Oregon Sport Fishing Regulations.
Adm. Order No.: DFW 144-2009
Filed with Sec. of State: 12-8-2009

Certified to be Effective: 1-1-10
Notice Publication Date: 7-1-2009
Rules Amended: 635-008-0145, 635-011-0100, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134, 635-039-0080, 635-039-0090
Subject: Amended rules to adopt changes to the sport fishing regulations for finfish, shellfish, and marine invertebrates for 2010. Housekeeping and Technical corrections were made to ensure rule consistency.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-008-0145
St. Louis Ponds: Marion County

(1) St. Louis Ponds is that area posted Department lands located in Sections 21, 22, 27, and 28, Township 5 South, Range 2 West of the Willamette Meridian in Marion County and containing 222 acres more or less.

(2) In the area described in section (1) of this rule it is unlawful to:

(a) Use the area for any purpose between one hour after sunset and one hour before sunrise;

(b) Use any floating craft on any pond;

(c) Swim or otherwise enter any pond;

(d) Build open fires;

(e) Discharge rifles and pistols;

(f) Discharge shotguns except during open seasons between the beginning of pheasant season and the end of waterfowl season, or during dog trials authorized by Department permit;

(g) Operate motor vehicles off established roads;

(h) Run dogs except in posted areas;

(i) Violate the terms of any permit issued by the Department.

Stat. Auth.: ORS 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.138, 496.146 & 496.162
Hist.: FWC 21-1980, f. & ef. 4-25-80, Renumbered from 635-008-0012; FWC 14-1983, f. & ef. 4-4-83; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; DFW 5-2009, f. & cert. ef. 1-15-08; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-011-0100
General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2010 Oregon Sport Fishing Regulations** by reference. 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**.

[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 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-013-0003
Purpose and Scope

(1) The purpose of Division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures as adopted by the **Pacific Fishery Management Council** in its annual Ocean Salmon Management Measures and Impacts, as finalized in April 2009 and in addition to the extent they are consistent with these rules, Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H.

(3) This rule also incorporates by reference the 2010 Oregon Sport Fishing Regulations.

(4) A copy of the **Pacific Fishery Management Council referenced document** and the Federal Regulations may be obtained by contacting the Pacific Fishery Management Council at www.pcouncil.org or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-013-0004
Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations**, **Title 50**, **Part 660**, **Subparts A and H**, and the **2010 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR)**, **Title 50**, **Part 660**, **Subparts A and H**, and the **2010 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2010 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR**, **Title 50**, **Part 660**, **Subparts A and H)**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp) f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert .ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-014-0080
Purpose and Scope

(1) The purpose of division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates by reference the **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to division 011 and division 014 to determine all applicable sport fishing requirements for the Northwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-014-0090
Inclusions and Modifications

The **2010 Oregon Sport Fishing Regulations** provide requirements for the Northwest 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**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; 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 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; 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 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; 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 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; 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 118-2002(Temp), f, 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert, ef, 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(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 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; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-016-0080
Purpose and Scope

(1) The purpose of division 016 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 016 incorporates by reference the **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to division 011 and division 016 to determine all applicable sport fishing requirements for the Southwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-016-0090
Inclusions and Modifications

The **2010 Oregon Sport Fishing Regulations** provide requirements for the Southwest 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**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 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 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; 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 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; 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 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, certe. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; 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 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-017-0080
Purpose and Scope

(1) The purpose of division 017 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 017 incorporates by reference the **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to division 011 and division 017 to determine all applicable sport fishing requirements for the Willamette Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-017-0090
Inclusions and Modifications

(1) The **2010 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2010 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Effective March 1, 2009, regulations for Chinook in the Willamette River downstream of Willamette Falls (including Multnomah Channel and the lower Clackamas River downstream of Highway 99 Bridge) have been modified as follows:

(a) Retention of adipose fin-clipped Chinook allowed seven days per week from March 1 through March 15; and three days per week (Thursdays through Saturdays) from March 19 through April 30. Retention of Chinook is prohibited from May 1 through August 15.

(b) Daily bag limit will be two adult adipose fin-clipped salmonids per day, only one of which may be a Chinook. All other permanent regulations remain in effect, including open for adipose fin-clipped steelhead entire year.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; 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 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp) f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; 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 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert ef. 7-12-02 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 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-017-0095
Sturgeon Season

(1) The **2010 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2010 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the areas identified in section (2) of this rule is prohibited August 1 through September 30.

(4) Only white sturgeon with a fork length of 38–54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-018-0080
Purpose and Scope

(1) The purpose of Division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates by reference the **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 018 to determine all applicable sport fishing requirements for the Central Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-018-0090
Inclusions and Modifications

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**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
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. 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

635-019-0080
Purpose and Scope

(1) The purpose of Division 019 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 019 incorporates by reference the **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 019 to determine all applicable sport fishing requirements for the Northeast Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-019-0090
Inclusions and Modifications

The **2010 Oregon Sport Fishing Regulations** provide requirements for the Northeast 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**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 and 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; 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 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp) f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; 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 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-021-0080
Purpose and Scope

(1) The purpose of Division 021 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 021 incorporates by reference the **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 021 to determine all applicable sport fishing requirements for the Southeast Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-021-0090
Inclusions and Modifications

The **2010 Oregon Sport Fishing Regulations** provide requirements for the Southeast 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**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325, 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; 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 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp) f. 8-19-02,cert. ef 8-20-02 thru 11-1-0 2 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; 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 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; 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 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-023-0080
Purpose and Scope

(1) The purpose of Division 023 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 023 incorporates by reference the **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 023 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; 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 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, 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 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; 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

635-023-0090
Inclusions and Modifications

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**.

[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. 6-27-27, 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. 8-29-01, 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

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) 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.

(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

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 from January 1 through March 31 from the mouth at Buoy 10 upstream to the I-5 Bridge with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2010 Oregon Sport Fishing Regulations**.

(3) 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. 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

635-023-0128
Summer 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) Notwithstanding all other specifications and restrictions in the **2010 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through July 31 the mainstem Columbia River is open to the retention of jack Chinook from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Oregon/Washington border.

(b) Effective June 22 through July 5 or until the harvest guideline is achieved; the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult Chinook salmon; and

(c) Effective July 1 through July 31 or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult Chinook salmon.

(d) The combined daily bag limit for adult salmon and adipose fin-clipped steelhead is two fish.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-023-0130
Fall 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) Notwithstanding all other specifications and restrictions in the **2010 Oregon Sport Fishing Regulations**:

(a) Effective August 1 through December 31, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, the combined bag limit for adult Chinook salmon, adipose fin-clipped coho salmon, and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook; except:

(A) Retention of Chinook is prohibited during September 1 through December 31;

(B) Effective September 1 through December 31, the daily bag limit may include up to three adipose fin-clipped adult coho salmon.

(b) Effective August 1 through December 31, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam, the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook; except:

(A) Retention of Chinook is only allowed during August 1 through September 13 or until the harvest guideline is achieved, in the area bounded by a line projected from the Warrior Rock Lighthouse on the Oregon shore to Red Buoy #4 to a marker on the lower end of Bachelor Island, Washington, downstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank.

[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 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-023-0134
Snake River Fishery

The **2010 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2010 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

635-039-0080
Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2010 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2010 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions or News documents dated June and November 2008 (copy 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) as amended by Federal Regulations, and Title 50 of the Code of Federal Regulations, Part 660, Vol. 74, No. 52, dated March 19, 2009 and Vol. 24, No. 78 (corrections), dated April 24, 2009; 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

635-039-0090
Inclusions and Modifications

(1) The 2010 Oregon Sport Fishing Regulations provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine 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) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish and canary rockfish that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2010 are specified in the Pacific Council Decisions or News documents dated June and November, 2009.

(b) Harvest targets for yelloweye rockfish and canary rockfish effective at the start of the Oregon sport fishery in 2010 are:

(A) Yelloweye rockfish, 2.5 metric tons.

(B) Canary rockfish, 16.0 metric tons.

(c) Harvest targets for yelloweye rockfish and canary rockfish may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) For 2010, the sport harvest cap for black rockfish is 440.8 metric tons.

(4) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysolmelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).

(5) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2010 the sport landing caps are:

(a) Black rockfish and blue rockfish combined, 481.8 metric tons.

(b) Other nearshore rockfish, 13.6 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(6) In addition to the regulations for Marine Fish in the **2010 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2010:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2010 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species *except* Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult the Pacific Council Decisions; **Title 50 of the Code of Federal Regulations**, **Part 300**, **Subpart E** (**61FR35550, July 5, 1996**); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a), (6)(b) and (6)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through September 30, outside of the 40 fathom curve (defined by latitude and longitude) as shown on **Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006**. A 20 fathom, 25 fathom, or 30 fathom curve, as shown on **Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006** may be implemented as the management line as in-season modifications necessitate.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in **Title 50 Code of Federal Regulations Part 660 Section 390**. Within the YRCA, it is *unlawful* to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Tables 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 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp) , f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; 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 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 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; 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 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; 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 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(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 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10

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Rule Caption: Administratively Set Fees for Licenses and Permits Adopted by the Fish and Wildlife Commission.
Adm. Order No.: DFW 145-2009
Filed with Sec. of State: 12-9-2009
Certified to be Effective: 1-1-10

Notice Publication Date: 8-1-2009
Rules Amended: 635-006-0001, 635-006-0020, 635-006-0910, 635-006-1025, 635-006-1075, 635-006-1085, 635-007-0605, 635-007-0910
Subject: Amended rules relating to administratively set licenses and fees. Modification implement changes to miscellaneous and occupational fees for the Department as set by the 2009 Legislative Assembly in HB 2223.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-0001
Definitions

For the purposes of OAR 635-006-0001 through 635-006-1210:

(1) "Commercial fishing license" means the commercial fishing licenses required by ORS 508.235 and, for purposes of the Limited Fish Seller Permit, includes an Albacore Tuna Landing License.

(2) "Commission" means the Oregon Fish and Wildlife Commission.

(3) "Department" means the Oregon Department of Fish and Wildlife.

(4) "Director" means the Director of the Oregon Department of Fish and Wildlife.

(5) "Fair market value" shall be based on the market price of food fish or shellfish at the same time and place that the fish are landed, or the price established in OAR 635-006-0232 when the market price cannot be determined. For species not listed in OAR 635-006-0232, fair market value shall be based on the average price per pound paid to law enforcement officials for any fish or shellfish confiscated from persons landing legal overages, or the average ex-vessel price per pound paid for that species in that port during the month in which the overage occurred, whichever is greater. Unless otherwise noted, the fair market value is the price per pound and is based on round weight.

(6) "Fish buyer" means an individual employed by a wholesale fish dealer or food fish canner to purchase or receive food fish or shellfish from commercial fishers at locations other than the licensed premises of the wholesale fish dealer or food fish canner.

(7) "Fish-buying station" means a location other than the licensed premises of a wholesale fish dealer or food fish canner at which such wholesale fish dealer or food fish canner purchases or receives food fish or shellfish from commercial fishers.

(8) "Food fish canner" means a wholesale fish dealer who cans food fish including shellfish in hermetically sealed containers whereby no further preservation, artificial or otherwise, is required.

(9) "Harvester" means any person legally authorized to take food fish for commercial purposes.

(10) "Import" means to transport into Oregon from outside the State of Oregon.

(11) "Land" or "landing" means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing, except anchovies being held live on a vessel for the purpose of using for bait in that vessel's commercial fishing operation.

(12) "Landing fees" means all fees due to the Department based on the pounds of fish or value of fish landed.

(13) "Limited fish seller" means any person who holds a valid Oregon commercial fishing license and who has obtained an annual Limited Fish Seller Permit which enables the fisher to sell any species of food fish, taken in lawful activity directly from his or her boat, pursuant to ORS 508.550.

(14) "Limited fish seller – nontreaty Columbia River Gillnet Salmon Vessel Permit fishery" means a person who holds a valid Oregon commercial fishing license, a Columbia River Gillnet Salmon Vessel Permit, and who has obtained an annual limited fish seller permit which enables the fisher to sell any species of food fish, taken in lawful activity directly from his or her boat or at locations away from the boat.

(15) "Nonreporting fish dealer" means a wholesale fish dealer or fish bait dealer who buys food fish exclusively from other wholesale fish dealers or bait dealers.

(16) "Overage" means any landing or portion of a landing that exceeds groundfish trip limits. Groundfish trip limits are approved by Pacific Fisheries Management Council and implemented by the National Marine Fisheries Service.

(17) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(18) "Processing" means smoking, reducing, loining, steaking, pickling, filleting, or fresh packaging requiring freezing of food fish, or any part thereof. (Does not include cooking crab.)

(19) "Processor" means a person who buys fresh food fish from a licensed commercial fisher or a wholesale fish dealer and processes food fish for sale through retail outlets or for sale to the ultimate consumer.

(20) "Purchase" means to obtain by paying money or its equivalent, trade, or barter.

(21) "Receive" or "Receiving" means to take or come into possession of.

(22) "Resident" means an actual bona fide resident of this state for at least one year immediately prior to application.

(23) "Retail fish bait dealer" means a person who buys fresh food fish or shellfish from a wholesale fish dealer or wholesale fish bait dealer, and sells to the ultimate consumer for use as bait.

(24) "Retail fish dealer" means a person who buys fresh food fish or shellfish from wholesale fish dealers, undertakes limited processing activity (limited to loining of tuna, filleting, smoking, steaking, or pickling food fish or shellfish), and sells only to the ultimate consumer.

(25) "Retain" means to keep in possession or use.

(26) "Shellfish canner" means a wholesale fish dealer who cans only shellfish in hermetically sealed containers whereby no further preservation, artificial or otherwise, is required.

(27) "Transport" means, for purposes of OAR 635-006-0165, to move the food fish after landing.

(28) "Ultimate consumer" means the party that utilizes the product as food, including restaurants.

(29) "Value" means the monetary value of the food fish, or parts thereof, including eggs and other by-products, at the point of landing as usually determined by the first exchange between the harvester and the first purchaser. In addition:

(a) Value is typically the amount of money which the first purchaser pays at the time and place that the fish are off-loaded from a vessel, or brought to shore if there is no vessel involved in harvesting, before any reductions or deductions in the amount of money as a result of the dealer furnishing ice, fuel, food or other commodities; and

(b) Value includes bonuses and other payments based directly on the quantity or quality of food fish exchanged, regardless of the time of payment of such bonuses or other payments; and

(c) Value includes any payments based on the proportion or percentage of processed products recovered from the food fish landed in the round or other form; and

(d) Value for food fish not sold by the harvester is the value received for comparable fish sold to a wholesale fish dealer at the same time and place that the fish are landed; and

(e) Value for food fish purchased from a harvester, by the harvester when acting as a wholesale fish dealer, is the price that is or would be paid to any other harvester for the same fish; and

(f) Value for food fish sold by a limited fish seller is the retail price received by the harvester from the first purchaser; and

(g) Value for food fish imported from out of state but not previously taxed out of state is the price paid for the fish by the first Oregon purchaser.

(30) "Wholesale fish bait dealer" means a person who buys food fish or shellfish, or parts thereof, from a licensed commercial fisher, licensed commercial bait fisher, or licensed angler, and sells or uses such food fish or shellfish for bait, scientific or educational purposes, or live public display.

(31) "Wholesale fish dealer" means a person who:

(a) Buys food fish or shellfish from a commercial fisher; or

(b) Processes food fish or shellfish or any part thereof; or

(c) Sells food fish or shellfish to retail dealers or other wholesale fish dealers.

Stat. Auth.: ORS 506.119 & 513.020
Stats. Implemented: ORS 506.129, 508.025, 508.040 & 508.550
Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 91-2009, f. & cert. ef. 8-10-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

635-006-0020
Experimental Fishing Gear Permit

(1) The Director is authorized to issue experimental fishing gear permits for the taking of food fish under the authority of ORS 508.106 provided the use of such fishing gear is not otherwise prohibited by the commercial fishing laws.

(2) Application for a permit shall be in writing accompanied by a fee of $30.00 (plus a $2.00 license agent fee) and shall include the species of fish to be taken, the method to be used, and the name and location of the body of water from which the food fish are to be taken.

(3) It is *unlawful* to use the experimental fishing gear in the waters of this state or the Pacific Ocean except under the terms and conditions specified in the permit.

Stat. Auth.: ORS 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.119 & 506.129
Hist.: FC 203, f. 1-6-70, ef. 2-11-70, Renumbered from 625-020-0040; FWC 64-1978, f. & ef. 12-20-78, Renumbered from 635-036-0365; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

635-006-0910
Procedures for Issuance, Transfer and Renewal of Developmental Fisheries Species Permits

(1) Applications:

(a) An applicant for a permit must submit a complete application in writing accompanied by an annual fee of $100.00 (plus a $2.00 license agent fee). The application shall include the species of fish to be taken, the method and gear proposed to be used, and the area from which the Developmental Fisheries Species are to be taken, the vessel operator, and other information as the Oregon Department of Fish and Wildlife (Department) may require;

(b) Except as listed below, complete applications must be received postmarked or date-stamped by January 1 of the year of issue for new species added to the developmental fishery list in OAR 635-006-0850, and thereafter by the annual filing date of February 1 of the year of issue.

(A) Applications for box crab permits must be postmarked or date-stamped by January 1 of the year of issue; and

(B) Applications for new hagfish permits will be accepted on a first-come, first-serve basis.

(c) An application shall be considered complete if it is legible, has all information requested on the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned and, unless it is thereafter resubmitted and deemed complete by the filing date, the individual shall not be considered to have applied in a timely manner;

(d) Before applying for a permit, an applicant must first have obtained the appropriate vessel license (or individual license if permit is issued to individual) for the year the permit will be issued.

(e) The vessel operator designated in subsection (1)(a) above may change up to twice a year, with at least three work days' notice by the permit holder to ODFW, Newport office.

(2) Number of permits allowed:

(a) An individual shall not submit more than one application, per vessel (or per person for individual permits), foreach developmental fishery species gear category;

(b) A permit holder who holds a valid developmental fisheries permit may not apply for any additional permits for the same vessel (or person for an individual permit) and species gear category unless the Department proposes to deny that permit;

(c) If a permit holder who holds a permit at issue either before the Commercial Fishery Permit Board or a court of law, is awarded another permit for the same species gear category through the lottery and thereafter prevails before the Commercial Fishery Permit Board or in court, the permit holder shall immediately surrender one of the permits to any Department office, so that only one valid permit per species gear category is held.

(3) Issuance of permits:

(a) Except for new hagfish permits, if the number of applications received by the filing date is less than the number of permits available, all applicants who have submitted complete applications shall be issued a permit within 14 days of the filing date.

(A) Any remaining permits shall be issued on a first-come, first-served basis, within 14 days of receipt of each completed application, until the maximum number of permits is issued. Priority shall be based on postmark or date-stamped date;

(B) The names of applicants who did not receive a permit shall be placed on an alternates list, in the order they are received, until the next annual filing date. Applicants whose names are placed on the alternates list shall be refunded their permit fee minus a $10 application fee. Permits which become available before the end of the year shall be made available to the alternates list, in the order listed. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply, he shall forfeit the permit and the permit shall then be made available to the next name on the alternates list.

(b) Except for new hagfish permits, if the number of applications received by the filing date is greater than the number of permits available, the Department shall determine first how many applications there are with preference points as accrued under OAR 635-006-0915, except for new species that have qualification restrictions set forth in OAR 635-006-0850. Evidence of landings must be supplied by the applicant and submitted with the application.

(A) If the number of these applicants does not exceed the number of permits, they shall be given all available permits and any remaining applicants shall be placed in a lottery;

(B) If the number of applicants who have preference points exceeds the number of permits, then these applicants only shall be placed in a lottery, and grouped by the number of preference points they have accrued for each species gear category. Applicants with the highest number of preference points for each species gear category will be drawn first. Applicants having the highest number of preference points per species gear category will be drawn next. This permit issuance process will continue through descending numbers of preference points until all the available permits have been issued, unless all qualified applicants with preference points have been issued permits prior to that point. Permits shall be issued within 14 days of the lottery;

(C) In addition, remaining applicants (who do not have preference points) shall be placed in a lottery and their names shall be drawn;

(D) The Department then shall prepare an alternates list, in which applicants who have preference points are listed first (in the order drawn), and thereafter remaining applicants are listed, in the order in which they were drawn. All applicants whose names are placed on the alternates list shall be refunded their permit fee minus a $10 application fee. Any permits available before the end of the year shall be made available to the first name on the alternates list. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply for the lottery permit within 30 days, he shall forfeit such permit and the permit shall then be made available to the next name on the alternates list.

(c) Permits may be made available before the end of the year by a permit holder voluntarily turning in a permit.

(d) A subcommittee of the Developmental Fishery Board shall evaluate the business plans submitted by hagfish fishery applicants to determine if the applicant is likely to actively prosecute the fishery. If more applicants submit acceptable business plans than there are available new permits, then the available permits will be distributed as otherwise specified in subsections (3)(a) and (3)(b) of this rule.

(4) Persons to whom permits are issued: Permits shall be issued to an individual person or entity and assigned to a vessel, except when hand harvest methods are used. The permit holder is the owner or controller of the vessel or the individual person when hand harvest methods are used.

(5) Transfer of permits: Permits for Developmental Fisheries Species are not transferable to another person or entity; provided however that permits may be transferred to another vessel owned or leased and controlled by the permit holder up to two times annually.

(a) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member as defined by OAR 635-006-0810. Permit transfer shall require a copy of the death certificate and the original permit, and must be requested by the family member to the deceased which shall be presumed by possession of the permit and death certificate.

(b) To transfer the vessel on a permit, a permit holder shall first apply on a form provided by the Department and shall include a $100.00 fee;

(c) If the permit holder is not the registered owner of the vessel to which a permit is being transferred, a copy of a signed lease agreement with the owner of the vessel must accompany the application. The lease agreement must show the permit holder will be in control of the daily activities of the vessel during the time of the lease.

(d) No reassignment shall be effective until the permit holder has received approval from the Department and an updated permit.

(e) If a permit is transferred to a vessel under the ownership of other than the permit holder, the permit holder or designated vessel operator must be aboard the vessel during harvest activities under the permit.

(6) Renewal of permits:

(a) Permits may be renewed by submission, to the Department, of the appropriate fee and a complete application date-stamped or postmarked before January 1 of the year for which renewal is sought, except renewal applications for box crab permits must be postmarked or date-stamped before December 1 of the year prior to which renewal is sought;

(b) An application for renewal shall be considered complete if it is legible and has all information requested on the form and is accompanied

by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete before the deadline listed in section (6)(a) above, the individual shall not be considered to have applied for renewal in a timely manner;

(c) It is the responsibility of the permit holder to ensure an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner;

(d) In addition to timely and complete filing to renew a permit, a permit holder must annually lawfully land the required pounds and/or landings listed in OAR 635-006-0850. However, if a permit holder obtained a permit later than July 1 of the prior year, the permit holder shall not be required to make the annual landing requirement by the following January. Instead, at the next renewal thereafter, the permit holder shall be required to demonstrate the annual landing requirement was fulfilled during the first full year in which the permit was held.

(e) Landings made by one vessel can not be used for qualification to renew more than one permit per permit category in any given year.

(f) In addition to the above landing requirements, logbooks required under OAR 635-006-0890 must be turned into an ODFW office by the application deadline for renewal of a permit.

(7) Authority of Director: Consistent with OAR 635-006-0810 through 635-006-0950, the Director is authorized to issue Developmental Fisheries Permits under the authority of ORS 506.460.

Stat. Auth.: ORS 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 506.450
Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 2-1996, f. & cert. ef. 1-23-96; FWC 1-1997, f. & cert. ef. 1-16-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 102-2001, f. & cert. ef. 10-23-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 48-2002(Temp), f. & cert. ef. 5-13-02 thru 11-8-02; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 6-2004(Temp), f. 1-28-04, cert. ef. 1-31-04 thru 3-31-04; DFW 24-2004, f. & cert. ef. 3-23-04; DFW 121-2004, f. 12-13-04, cert. ef. 12-15-04; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 4-2008, f. & cert. ef. 1-23-08; DFW 149-2008, f. & cert. ef. 12-17-08; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

635-006-1025
Permit Fee

The annual fee to participate in limited entry fisheries is as follows:

(1) Gillnet salmon:

(a) The annual fee is $100.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 (plus a $2.00 license agent fee) for nonresident applicants. See ORS 508.790, ORS 508.775 and Section 6, Chapter 512, Oregon Laws 1989.

(b) A fee of $100.00 shall be charged for each transfer of participation rights under this section.

(2) Troll salmon:

(a) The annual fee is $100.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 (plus a $2.00 license agent fee) for nonresident applicants. See ORS 508.816, ORS 508.822 and Section 6, Chapter 512, Oregon Laws 1989.

(b) A fee of $100.00 shall be charged for each transfer of participation rights under this section.

(3) Shrimp:

(a) The annual fee is $125.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 (plus a $2.00 license agent fee) for nonresident applicants. See ORS 508. 901 and 508.907.

(b) A fee of $100.00 shall be charged for each transfer of participation rights under this section.

(4) Scallop:

(a) The annual fee is $125.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 (plus a $2.00 license agent fee) for nonresident applicants. See ORS 508.858 and 508.840.

(b) A fee of $100.00 shall be charged for each transfer of participation rights under this section.

(5) Roe-herring:

(a) The annual fee is $125.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 (plus a $2.00 license agent fee) for nonresident applicants. See ORS 508.765.

(b) A fee of $100.00 shall be charged for each transfer of participation rights under this section.

(6) Sea Urchin:

(a) The annual fee is $100.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 (plus a $2.00 license agent fee) for nonresident applicants. See ORS 508.760.

(b) A fee of $100 shall be charged for each transfer of participation rights under this section.

(7) Ocean Dungeness crab:

(a) The annual fee is $125.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 (plus a $2.00 license agent fee) for nonresident applicants. See ORS 508.941(4).

(b) A fee of $100.00 shall be charged for each transfer of participation rights under this section.

(8) Black rockfish/blue rockfish/nearshore fishery — $100.00 (plus a $2.00 license agent fee). See ORS 508.949 and ORS 508.957.

(a) A fee of $100.00 shall be charged for each transfer of participation rights under this section.

(9) Brine Shrimp:

(a) The annual fee is $100.00 (plus a $2.00 license agent fee) for applicants.

(10) Bay clam dive fishery:

(a) The annual fee is $100.00 (plus a $2.00 license agent fee) for applicants.

(11) Sardine fishery:

(a) The annual fee is $100.00 (plus a $2.00 license agent fee) for applicants.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109
Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

635-006-1075
Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

(a) Gillnet salmon — Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application, see ORS 508.781 and 508.790;

(b) Troll salmon — Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application, see ORS 508.807 and 508.816;

(c) Shrimp — see ORS 508.892 and 508.907;

(d) Scallop — see ORS 508.849 and 508.858;

(e) Roe-herring permit — Permits may be renewed by submission to the Department of a $125.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of the Commercial Fishery Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing requirement by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit — see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department $100.00 fee (plus a $2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought and;

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10)(d), annual renewal requirements are waived in the year the transfer occurred.

(k) Sardine fishery:

(A) Permits may be renewed for the following year:

(i) By submitting $100.00 fee (plus a $2.00 license agent fee) and a complete application to the Department date-stamped or postmarked by December 31 of the year the permit is sought for renewal and;

(ii) Submitting the logbooks required under OAR 635-006-1110; and

(iii) If during the year preceding the calendar year for which the permit is sought for renewal, the federal coastwide maximum harvest guideline referenced in OAR 635-004-0016 was greater than 100,000 metric tons and the permitted vessel lawfully landed into Oregon either (I) a minimum of 10 landings of sardines of a least 5 metric tons each, or (II) landings of sardines having an aggregate ex-vessel price of at least $40,000.

(B) The Commercial Fishery Permit Board may waive the landing requirements of section (A)(iii) of this rule if it finds that the failure to meet these requirements is due to the permit holder's illness or injury, or to circumstances beyond the control of the permit holder. Final Orders shall be issued by the Commercial Fishery Permit Board and may be appealed as provided in ORS 183.480 through 183.550.

(C) The Commission may, at its discretion, waive the landing requirements of section (A)(iii) of this rule for all Limited Entry Sardine Permit holders due to unusual market conditions.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 23-2006, f. & cert, ef, 4-21-06; DFW 2-2007, f. & cert. ef. 1-12-07; DFW 86-2007(Temp), f. & cert. ef. 9-10-07 thru 9-17-07; Administrative correction 10-16-07; DFW 3-2008, f. & cert. ef. 1-15-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

635-006-1085

Lottery for Certain Limited Entry Fisheries

(1) A lottery process is provided in all limited entry fisheries except ocean Dungeness crab.

(2) A lottery for issuance of permits shall be conducted as follows:

(a) Gillnet salmon — see ORS 508.792;

(b) Troll salmon — see ORS 508.819;

(c) Shrimp — see ORS 508.904;

(d) Scallop — see ORS 508.861. If the number of permits issued in accordance with ORS 508.849 falls below 25, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 25;

(e) Roe-herring — If the number of permits issued in accordance with OAR 635-006-1035 falls below six, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed six;

(f) Sea Urchin:

(A) If the total number of permits which have been renewed, and/or for which an appeal is pending, with the Commercial Fishery Permit Board and/or awarded through a prior lottery, is less than 30, a lottery shall be held on the 4th Friday in April;

(B) An individual must be 18 years of age or older and furnish proof of age to be eligible for the lottery;

(C) An individual may not already hold a valid urchin permit, however, an individual whose permit is at issue in a pending Sea Urchin Permit Board proceeding or before a court of law may participate in the lottery;

(D) If a permittee whose permit is at issue either before the Sea Urchin Permit Board or a court of law is awarded another permit through the lottery and thereafter prevails before the Board or in court, the permittee shall immediately surrender one of the permits to any Department office, so that only one valid permit is held;

(E) An individual who qualifies to participate in the lottery shall send a complete lottery application to the Department, date-stamped or postmarked no later than April 15 of the year for which the permit is to be issued. An individual shall not submit more than one application to participate in the lottery. For successful applicants, the application fee shall apply toward the permit fee of $100.00 (plus a $2.00 license agent fee) for resident applicants and $290.00 fee (plus a $2.00 license agent fee) for nonresident applicants;

(F) The names of lottery applicants shall be drawn to obtain the available permits. All other names of lottery applicants shall be drawn and placed on an alternate list in the order in which they were drawn, and shall be issued permits during the next 24 months as they may become available through Permit Board actions or surrender of permits by a permit holder;

(G) An individual whose name is drawn in the lottery shall thereafter apply on the prescribed form, to the Department to obtain a permit. Such application must be received by the Department within 30 days of the date the notification was mailed to the successful applicant following the lottery;

(H) Any individual who fails to apply for the lottery permit within 30 days shall forfeit such permit. The permit shall then be made available to the first name on the alternate list, and shall be applied for in accordance with section (G) of this rule;

(I) If all permits are not issued by renewal or through the lottery, permits thereafter may be issued on a first come first served basis up to the total number of permits allowed. All applications shall be mailed to the Department and priority shall be based on postmark or date-stamped date;

(J) The Commission may suspend the lottery for up to two years based upon its assessment of the condition of the resource and recommendations of the Sea Urchin Permit Review Board.

(g) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.955. If the number of permits issued in accordance with ORS 508.947 falls below 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement, the Department in the next succeeding calendar year may issue permits by a lottery system. However, the total number of permits issued shall not exceed 80 for black rockfish and blue rockfish permits or 50 for black rockfish and blue rockfish permits with a nearshore endorsement.

(h) Brine Shrimp — If the number of permits issued in accordance with OAR 635-006-1035 falls below three, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed three;

(i) Bay clam dive fishery — If the number of permits issued in accordance with OAR 635-006-1035 falls below ten for coast-wide permits or five for south-coast permits, the Department may issue permits by a lottery system. However, as a result of any such lottery, the total number of permits issued shall not exceed ten for coast-wide permits or five for south-coast permits;

(j) Sardine fishery:

(A) If the number of permits issued in accordance with OAR 635-006-1035 falls below 24, the Department in the next succeeding calendar year may issue permits by a lottery system. However, as a result of such a lottery the total number of permits issued shall not exceed 26.

(3) Each applicant for a permit lottery shall complete the application form prescribed by the Department.

(4) Application for vessel permits shall only be accepted for vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting the permitted species are not eligible for the lottery.

(5) Only one application per vessel may be submitted for each permit fishery lottery.

(6) Any application which is not legible, has incomplete information, or is postmarked after the deadline will not be entered in the lottery. Applications for all permits will be accepted at the Salem headquarters office of the Department, and shall be postmarked or date stamped no later than March 31 of the year for which the permit is issued.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 70-2004(Temp), f. & cert. ef. 7-12-04 thru 12-31-04; Administrative correction, 2-18-05; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 149-2008, f. & cert. ef. 12-17-08; DFW 17-2009(Temp), f. 2-25-09, cert. ef. 2-26-09 thru 8-24-09; DFW 38-2009, f. & cert. ef. 4-22-09; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

635-007-0605
Permit Application

(1) Any person wishing to obtain a Fish Transport Permit shall complete and submit to the Department the appropriate permit application form.

(2) A fee of $10.00 (plus a $2.00 license agent fee) shall be charged for each Fish Transportation Permit issued by the Department.

(a) An invoices will be issued to Private Fish Suppliers for fish transferred to or from their production facilities for permits that the Department has issued the previous year.

(b) Invoice Payment must be received in full by March 1 for permits issued the previous year.

(c) Failure to pay invoice in full by March 1 shall result in suspension of approved permits.

(3) The Department may prescribe such terms and conditions in a permit as it deems necessary, including but not limited to, the period of time (usually 30 days) during which the transportation and/or release of fish is authorized.

(4) Fish may be held for an indefinite period of time under a Fish Transport Permit. The permit, or a copy thereof, shall be made available for inspection upon request by the Department or the Oregon State Police.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 497.252 & 498.222
Hist.: FWC 27-1982, f. & ef. 4-30-82; FWC 25-1984, f. 6-21-84, ef. 7-1-84, Renumbered from 635-043-0305; FWC 3-1991, f. & cert. ef. 1-18-91; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

635-007-0910
Scientific Taking Permit Application — Fish

(l) Any person or entity wishing to obtain a Scientific Taking Permit must complete and submit to the Department the appropriate permit application form.

(a) A fee of $15.00 (plus a $2.00 license agent fee) shall be charged for each Fish Scientific Taking Permit issued for scientific or educational purposes as part of a program or course of study at a K-12 educational institution.

(b) A fee of $100.00 (plus a $2.00 license agent fee) shall be charged for each Fish Scientific Taking Permit issued for any agency, corporation, association, or other such entity.

(2) The Department may prescribe such terms and conditions in a permit as it may deem necessary to ensure that fish taken pursuant to the permit will be used only for scientific or educational purposes.

(3) Permits will not be issued to any person or entity for the purpose of collecting fish to sell to scientific or educational supply houses or to any other person or entity.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 497.298 & 508.111
Hist.: FWC 18-1992, f. 3-24-92, cert. ef. 4-1-92; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 145-2009, f. 12-9-09, cert. ef. 1-1-10

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Rule Caption: Amended Rules to Suspend Participants from Master Hunter Program for Violation of the Wildlife Laws.
Adm. Order No.: DFW 146-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 11-1-2009
Rules Amended: 635-048-0080
Subject: Amended rules to suspend hunters from participation in the Master Hunter program for a period of five years if the hunter is convicted of, or pleads guilty to, a violation of wildlife laws.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-048-0080
Master Hunter Program

The department will administer a voluntary program for hunters which will include but is not limited to instruction on hunting ethics, wildlife management, firearms safety and landowner relations. The department may require completion of this program as a prerequisite for participating in certain controlled hunts. If a Master Hunter is convicted of, or pleads guilty to, a violation of the wildlife laws, the Department will suspend the person from the Master Hunter program for a period of five years.

Stat. Auth.: ORS 496 & 497
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.360
Hist.: FWC 54-1997, f. & cert. ef. 9-3-97; DFW 44-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-3-09; Administrative correction 11-19-09; DFW 146-2009, f. & cert. ef. 12-15-09

Rule Caption: Amended rules related to the capture of Peregrine Falcons for use in Falconry.
Adm. Order No.: DFW 147-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 11-1-2009
Rules Amended: 635-055-0000, 635-055-0035, 635-055-0037, 635-055-0070
Subject: Amend rules related to the capture of Peregrine Falcons to be used in the practice of Falconry and capture permits. Specific rule changes include: the capture of post-fledge peregrine falcons from the wild for the purpose of falconry, establish an allocation of available peregrine falcon take for use in the sport of falconry. establish that capture permit application fees are nonrefundable and establish in rule criteria in which permits may be revoked.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-055-0000
Definition of Terms

For the purpose of these rules, the following definitions apply:

(1) "Captive bred" means any raptor, including eggs, hatched in captivity resulting from parents that mated in captivity, or are the progeny of artificial insemination.

(2) "Falconry" is caring for and training raptors for pursuit of game, and the sport of hunting wild game with raptors.

(3) "Indigenous raptor", for purposes of falconry, means golden eagle (*Aquila chrysaetos*), sharp-shinned hawk (*Accipter striatus*), Cooper's hawk (*Accipter cooperii*), northern goshawk (*Accipter gentilis*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*, and great horned owl (*Bubo virginianus*),

(4) "Passage" means first year migrant raptors capable of flight.

(5) "Post-fledgling" means a young first-year bird capable of flight which has recently flown from its nest.

(6) "Raptor" means any species or hybrid of the families Strigidae, Falconidae and Accipitridae.

(7) "Raptors at hack" means the intentional release of a raptor as a training technique, with the expectation of recapture after a period of time.

(8) "Take", for the purposes of these rules, means to trap, capture, or attempt to trap or capture a raptor from the wild for the purpose of falconry.

Stat. Auth.: ORS 496
Stats. Implemented: ORS 496
Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 11-1983, f. & ef. 3-24-83; FWC 7-1984, f. & ef. 2-29-84; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08; DFW 147-2009, f. & cert. ef. 12-15-09

635-055-0035
Capture and Transportation of Raptors

A raptor capture permit is required prior to capturing or attempting to capture any raptor. A non-resident falconer from a state having a federally approved falconry program may obtain a capture permit for a red-tailed hawk, Cooper's hawk, sharp-shinned hawk, prairie falcon, peregrine falcon, great horned owl, golden eagle or American kestrel only. All non-resident applications must include copies of current state and federal falconry permits. All applicants for golden eagle capture must include a copy of the federal authorization to take golden eagles. Only 20 non-resident capture permits will be issued in total each capture season. All non-resident capture permits, except for capture permits for peregrine falcons, will be issued on a first come first served basis.

(1) A nonrefundable application fee of $15.00 (plus a $2.00 license agent fee) will be charged for each capture permit allowing the capture of one raptor per permit.

(2) Except for take of peregrine falcons, the Department will issue capture permits in the order applications are received. The permit process will begin January 1st of each year, and applicants must hold a valid Oregon falconry license. The category of species shall be listed on the permit (e.g. "golden eagle", "gyrfalcon", "peregrine falcon", or "other raptor") and the falconer is authorized to take only one raptor from the category specified. A falconer may apply for a capture permit in more than one category. The falconer whose name appears on the permit must do the capturing except for peregrine falcon nestlings; the permit is not transferable.

(3) Capture permit applications for peregrine falcons may be submitted to the Department beginning January 1st and received no later than March 1st of each year. The Department will issue peregrine falcon capture permits by way of a lottery draw pursuant to OAR 635-055-0037.

(4) Of the number of permits available for issuance annually, the Department will make one such permit available to nonresidents. Each permit will include conditions crafted by the Department on a case by case basis to address the particular proposal to capture peregrine falcons. Such conditions may include, but are not limited to, requirements to protect the safety of falconers and other humans during capture of peregrine falcons, and shall specify where the permittee may capture peregrine falcons. The following general conditions apply to all peregrine falcon capture permits:

(a) Nestling (eyas) peregrine falcons may not be removed from the nest by falconers. EXCEPTION: nestling peregrine falcons may be removed from nests on man-made structures (e.g. bridges or buildings) by persons authorized by the department during nest-site management activities. Such nestlings may be made available to master falconers who possess an unfilled peregrine capture permit for the current capture season.

(b) A post-fledgling peregrine falcon may be taken (trapped) by a permitted master falconer after the falcon flies from its nest through August 31st.

(A) Trapping attempts will be permitted only at locations approved by the Department.

(B) Permittee must be present at all times whenever a trap is in operation while attempting to take a post-fledgling peregrine falcon.

(c) A permit holder must notify the Department's Falconry Program at the Salem headquarters office prior to the proposed dates of any peregrine falcon capture attempts. Proposed capture locations must be disclosed to the Department program staff prior to attempting to capture a post-fledgling peregrine falcon.

(d) Each falconer who takes a peregrine falcon from the wild must report the sex and precise capture location to the Department and the U.S. Fish and Wildlife Service within 5 days after. If the falconer later determines that the sex of any peregrine falcon taken was reported incorrectly, then the falconer must submit a corrected report as soon as possible after discovering the error.

(e) Falconers must band each peregrine falcon taken with a band provided by the Department.

(f) After a captured falcon reaches 30 days of age, the falconer must pluck breast feathers from the falcon and submit them to the U.S. Fish and Wildlife Service, along with a written record of the precise location of where the bird was taken from in the wild. The address for submission is U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203-1610.

(5) Upon taking the raptor authorized, the permittee shall immediately validate the permit by recording the date, species, sex, county, and capture method and signing his/her name in the space provided. At the time of capture, the permittee shall affix the permanent plastic band, issued with the permit, to one leg of the bird. Within five business days of capture, the permitee shall take the bird to a Department office to have the permit certified.

(6) Lost, raptors at hack, or captive bred raptors may be re-trapped at anytime without a capture permit. All other raptors captured shall be immediately released.

(7) Exportation of wild caught raptors — No raptor taken from the wild in Oregon shall be transferred to another person residing outside the state except those Oregon wild caught raptors held for six months or longer may be transferred to another person residing outside the state.

(8) An Oregon licensed falconer is allowed to retain legally captured raptors in their possession if they move from Oregon.

(9) Falconers are responsible for treatment and rehabilitation costs of raptors taken for falconry and injured during trapping efforts.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 14-1982, f. & ef. 2-25-82; FWC 11-1983, f. & ef. 3-24-83; FWC 8-1986, f. & ef. 3-6-86; FWC 19-1990, f. & cert. ef. 2-28-90; FWC 40-1991, f. & cert. ef. 4-24-91; FWC 33-1992(Temp), f. & cert. ef. 5-11-92; FWC 116-1992, f. & cert. ef. 10-28-92; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08; DFW 152-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 25-2009(Temp), f. 3-10-09, cert. ef. 5-15-09 thru 8-31-09; Administrative correction 9-29-09; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 147-2009, f. & cert. ef. 12-15-09

635-055-0037
Peregrine Falcon Capture Permit Process

(1) The Department will conduct the lottery to award peregrine falcon capture permits by drawing names of eligible entrants at random. To participate in the lottery, a person must:

(a) If an Oregon resident) possess a current Master Falconers license as per OAR 635-055-0002; or

(b) If a nonresident) possess a Master Falconers license from a state having a federally approved falconry program.

(2) The Department will not accept a permit application from any person who:

(a) Is awaiting prosecution for, or has been convicted of, any violation of the animal cruelty or animal abuse laws;

(b) Is awaiting prosecution for, or has been convicted of, a wildlife violation involving the illegal take of wildlife;

(c) Is awaiting prosecution for, or has been convicted of, aiding in the illegal take of wildlife; or

(d) Has had his or her hunting or fishing license suspended for a wildlife violation.

(3) A $15.00 application fee (plus a $2.00 license agent fee) must be submitted with the application. Application fees are nonrefundable, whether or not an applicant is successful in the drawing.

(4) Peregrine capture permit applications (including fees) must be submitted to the Department's Salem headquarters office no later than March 1 each year.

(a) If hand delivered, an application must be received at Department headquarters office (3406 Cherry Ave, NE, Salem, OR, 97303) by 5:00 p.m. on March 1

(b) If sent via postal mail, an application must be postmarked no later than March 1.

(5) If an applicant violates any of the following restrictions, the Department will remove his or her application from the drawing.

(a) An applicant may submit only one peregrine capture permit application per capture season.

(b) An applicant must submit a completed application containing name, license number, address, and phone number.

(6)(a) During each year's lottery, the Department will draw six Oregon resident applications and two alternates, plus one non-resident application and a non-resident alternate.

(b) The Department will notify successful applicants and alternates by mail. If the applicant does not reply in writing (mail, fax, or email) within 10 calendar days, the applicant will be disqualified and the Department will offer the permit to the next alternate. If neither alternate replies in the required time, the permit will not be issued.

(7) Peregrine falcon capture permits are not transferable.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Hist.: DFW 152-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 147-2009, f. & cert. ef. 12-15-09

635-055-0070
Revocation of License and Permits

(1) The Department may revoke a falconry license or permit if the holder is convicted of, or admits to a violation of, any wildlife law, or any rule, order or permit issued under the wildlife laws. Upon revocation, the Department may seize any raptors held for the purpose of falconry.

(2) Failure to comply with permit conditions is grounds for revocation or suspension of a capture permit.

Stat. Auth.: ORS 496
Stats. Implemented: ORS 496
Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 11-1983, f. & ef. 3-24-83; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 147-2009, f. & cert. ef. 12-15-09

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Rule Caption: Amend Rules Related to Access and Habitat Board and Grants.
Adm. Order No.: DFW 148-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 635-090-0030, 635-090-0050
Subject: Amended rules to implement HB 2218 (Chapter 291, 2009 Laws) and HB 3089 (Chapter 778, 2009 Laws), enacted by the 2009 Legislative Assembly.

Amended rules related to the minimum number of landowner representative applicants for the Access and Habitat Board. and rules authorizing the department to grant moneys available for the Access and habitat Program to promote access to public and private lands through the acquisition of easements.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-090-0030
Access and Habitat Board

(1) The Access and Habitat Board shall consist of seven members appointed by the commission.

(2) Members shall be appointed as follows:

(a) One member of the board to represent the public and serve as board chairperson. In making appointments to the board pursuant to this subsection, the commission shall consider recommendations from the director.

(b) Three members to represent the broad spectrum of hunters. In making appointments to the board pursuant to this subsection, the commission shall consider recommendations from the director.

(c) Three members to represent the broad spectrum of agriculture and timber landowners. In making appointments to the board pursuant to this subsection, the commission shall consider recommendations from the director and from a list of at least five persons submitted by the State Forester and the Director of Agriculture.

(3) Board members shall serve four-year terms. Members of the board are eligible for appointment to two consecutive terms.

(4) Official actions of the board require the affirmative vote of at least four members.

(5) The board shall select officers for such terms and with such duties and powers as considered necessary to carry out the responsibilities of the board.

(6) The board shall meet at such times and places as may be determined by the chair or by the majority of board members.

(7) A board member shall receive no compensation, beyond reimbursement for actual and necessary travel and expenses, for expenditures incurred in the performance of official duties.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.232 & 496.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232 & 496.242
Hist.: FWC 17-1994, f. & cert. ef. 3-10-94; DFW 48-1998, f. & cert. ef. 6-22-98; DFW 46-1999, f. & cert. ef. 6-15-99; DFW 148-2009, f. 12-15-09, cert. ef. 1-1-10

635-090-0050
Access and Habitat Subaccount Expenditures

All moneys made available for access and habitat programs from surcharges received under section 19 of the Act and from gifts and grants to the Access and Habitat Program may be expended only upon the recommendation of the board and the approval of the commission. Funds may be expended on programs that:

(1) Benefit wildlife by improving habitat. Such programs shall be coordinated with the Wildlife Division and shall be in addition to programs provided by federal funds. These programs may:

(a) Be on private land;

(b) provide seed and fertilizer to offset forage consumed by wildlife and for other programs that enhance forage; and

(c) be adjacent to agricultural and forest land to attract animals from those crops.

(2) Promote access to public and private lands through contracting for various levels of management of these lands. These management programs may include:

(a) Creating hunting lease programs that provide access at present levels or stimulate new access;

(b) Controlling access;

(c) Opening hunter access, including vehicle access;

(d) Promoting land exchanges;

(e) Promoting proper hunting behavior; or

(f) Acquisition of easements.

(3) Provide for wildlife feeding to alleviate damage, to intercept wildlife before they become involved in a damage situation, and for practical food replacement in severe winters.

(4) Coordinate volunteers to improve habitat, repair damage to fences or roads by wildlife or recreationists, monitor orderly hunter use of public and private lands, and assist the Oregon State Police in law enforcement activities.

(5) Administer the auction or raffle of access and habitat deer/elk tags to provide incentives for habitat or access projects.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.232 & 496.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232 & 496.242
Hist.: FWC 17-1994, f. & cert. ef. 3-10-94; DFW 48-1998, f. & cert. ef. 6-22-98; DFW 46-1999, f. & cert. ef. 6-15-99; DFW 148-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Amended Rules to Expand the Authority of ODFW to Require Fingerprints in Certain Circumstances.
Adm. Order No.: DFW 149-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 635-600-0000, 635-600-0005, 635-600-0010, 635-600-0030, 635-600-0040
Subject: Amendments expands the authority of the Oregon Fish and Wildlife Department to require fingerprints of employees, those who provide services or volunteer to the department, in certain circumstances, for the purpose of requesting a state or federal criminal records check.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-600-0000
Statement of Purpose and Statutory Authority

(1) Purpose. These rules provide for the Department's acquisition of information about a subject individual's criminal history through criminal history checks and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, contractor, vendor or volunteer in a position covered by OAR 635-600-0010(2)(a)–(d). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, contractor, vendor or volunteer.

(2) Authority. These rules are authorized under ORS 181.534 and 496.121.

Stat. Auth.: ORS 181.534 & 496.121
Stats. Implemented: ORS 181.534(9)
Hist.: DFW 40-2008, f.& cert. ef. 4-24-08; DFW 149-2009, f. 12-15-09, cert. ef. 1-1-10

635-600-0005
Definitions

As used in OAR chapter 635, division 600, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 635-600-0020 or a final fitness determination under OAR 635-600-0030, the Department has determined that the subject individual is fit to be an employee, contractor, vendor or volunteer in a position covered by OAR 635-600-0010(2)(a)–(d).

(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or dismissed by a subsequent court decision.

(3) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Identification Services Section for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(4) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 635-600-0035.

(5) "Criminal History Check and Fitness Determination Rules" or "These Rules" means OAR chapter 635, division 600.

(6) "Criminal History Check" or "CHC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) A check of criminal offender information conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Computerized Criminal History check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department's request (Oregon Criminal History Check); or

(c) A national check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department's request (National Criminal History Check).

(7) "Denied" means that, pursuant to a preliminary fitness determination under OAR 635-600-0020 or a final fitness determination under OAR 635-600-0030, the Department has determined that the subject individual is not fit to be an employee, contractor, vendor or volunteer in a position covered by OAR 635-600-0010(2)(a)–(d).

(8) "Department" means the Oregon Department of Fish and Wildlife or any subdivision thereof.

(9) "False Statement" means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided the Department with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record; or

(b) Failed to provide to the Department information material to determining his or her criminal history.

(10) "Fitness Determination" means a determination made by the Department pursuant to the process established in OAR 635-600-0020 (preliminary fitness determination) or 635-600-0030 (final fitness determination) that a subject individual is or is not fit to be a Department employee, contractor, vendor or volunteer in a position covered by OAR 635-600-0010(2)(a)–(d).

(11) "Subject Individual" means an individual identified in OAR 635-600-0010 who is required to complete a criminal history check pursuant to these rules and from whom the Department may require fingerprints for the purpose of conducting a criminal history check.

Stat. Auth.: ORS 181.534 & 496.121
Stats. Implemented: ORS 181.534(9)
Hist.: DFW 40-2008, f.& cert. ef. 4-24-08; DFW 149-2009, f. 12-15-09, cert. ef. 1-1-10

635-600-0010
Subject Individual

"Subject Individual" means a person who is required to complete a criminal history check pursuant to these rules and from whom the Department may require fingerprints for the purpose of conducting a criminal history check because the person:

(1)(a) Is employed by or considered for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a contractor, vendor or volunteer; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person has direct access to persons under 18 years of age, elderly persons or persons with disabilities;

(b) That has personnel or human resources functions as one of the position's primary responsibilities;

(c) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(d) That involves the use, possession, issuance, transport, purchase, sale or forfeiture of firearms or munitions, access to firearms or munitions or the training of others in the use or handling of firearms;

(e) In which the person resides on property managed by the Department;

(f) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(g) That has payroll functions or in which the person has responsibility for receiving, receipting or depositing money or negotiable instruments, for billing, collections or other financial transactions or for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(h) That has mailroom duties as a primary duty or job function;

(i) In which the person has responsibility for auditing the Department;

(j) In which the person has access to Social Security numbers, dates of birth or criminal background information of employees or members of the public; or

(k) In which the person has access to tax or financial information about individuals or business entities.

Stat. Auth.: ORS 181.534 & 496.121
Stats. Implemented: ORS 181.534(9)
Hist.: DFW 40-2008, f.& cert. ef. 4-24-08; DFW 149-2009, f. 12-15-09, cert. ef. 1-1-10

635-600-0030
Final Fitness Determination

(1) If the Department elects to conduct a criminal history check, the Department shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 635-600-0015(1), the criminal history check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, the Department shall consider the factors in subsections (a)-(f) in relation to information provided by the subject individual under OAR 635-600-0020(1), any LEDS report or criminal offender information obtained through a criminal history check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, the Department may request to meet with the subject individual, to receive written materials from him or her, or both. The Department will use all collected information in considering:

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 635-600-0035;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 635-600-0035;

(E) whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of an employer;

(3) Possible Outcomes of a Final Fitness Determination

(a) Automatic Approval. The Department shall approve a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 635-600-0035;

(B) Evidence that the subject individual has a pending indictment for any crime listed in OAR 635-600-0035;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 635-600-0035;

(D) Evidence of the subject individual having made a false statement; or

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule, the Department may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the Department determines (i) that the evidence is not credible; or (ii) if the evidence is credible, that the subject individual acting in the position for which the fitness determination is being conducted would not pose any risk of harm to the Department, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If the Department approves a subject individual under subsection (3)(b) of this rule, the Department may restrict the approval to specific activities or locations.

(B) The Department shall complete a new criminal history check and fitness determination on the subject individual before removing a restriction.

(d) Denial.

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)-(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, the Department concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose any risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal history check, including fingerprint identification, the Department shall deny the employment of the subject individual, or revoke or deny any applicable position or authority to provide services. A person may not appeal any determination made based on a refusal to consent.

(C) If a subject individual is denied as not fit, then the subject individual may not be employed by or provide services as a contractor, vendor or volunteer to the Department in a position covered by OAR 635-600-0010(2).

(4) Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(5) Final Order. A completed final fitness determination is final unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 635-600-0050(2)(a) or an alternative appeals process as provided by OAR 635-600-0050(6).

Stat. Auth.: ORS 181.534 & 496.121
Stats. Implemented: ORS 181.534(9)
Hist.: DFW 40-2008, f.& cert. ef. 4-24-08; DFW 149-2009, f. 12-15-09, cert. ef. 1-1-10

635-600-0040
Incomplete Fitness Determination

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 635-600-0010;

(b) The subject individual does not provide materials or information under OAR 635-600-0015(1) within the timeframes established under that rule;

(c) The Department cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with the Department's attempts to acquire other relevant information under OAR 635-600-0030(2); or

(e) The Department determines that the subject individual is not eligible or not qualified for the position of employee, contractor, vendor or volunteer for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 635-600-0050 or alternative appeal process under OAR 635-600-0050(6) to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534 & 496.121
Stats. Implemented: ORS 181.534(9)
Hist.: DFW 40-2008, f.& cert. ef. 4-24-08; DFW 149-2009, f. 12-15-09, cert. ef. 1-1-10

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Department of Human Services, Addictions and Mental Health Division: Addiction Services
Chapter 415

Rule Caption: Revise OAR 415-060 to specify where cigarette vending machines may be located.
Adm. Order No.: ADS 1-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 415-060-0030
Subject: OAR 415-060-0030 is being revised to comply with HB 2136 Enrolled (2009 Session) that changed where cigarette vending machines can be located under ORS 167.402.
Rules Coordinator: Richard Luthe—(503) 947-1186

415-060-0030
Laws Designed to Discourage Use of Tobacco by Minors

(1) Tobacco Sales to Minors: Pursuant to ORS 163.575:

(a) Any person who knowingly distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years commits the crime of endangering the welfare of a minor; and

(b) Supplying tobacco to a minor is a violation punishable by a fine of not less than $100 or more than $500.

(2) Other Tobacco Produce Violation: Pursuant to ORS 431.840, it is unlawful to:

(a) Distribute free tobacco products to person under 18 years of age as part of a marketing strategy to encourage the use of tobacco products;

(b) Fail to post a notice in a location clearly visible to the seller and the purchaser that sale of tobacco products to persons under 18 years of age is prohibited;

(c) Sell cigarettes in any form other than a sealed package; and

(d) The civil penalty for violation of any of these provisions shall not be less than $100 or exceed $500.

(3) Vending Machines: Pursuant to ORS 167.402:

(a) No person shall locate a vending machine from which tobacco products in any form are dispensed in any place except in an establishment where the premises are posted as permanently and entirely off-limits to minors under rules adopted by the Oregon Liquor Control Commission; and

(b) This is a violation punishable by a fine or not more than $250. Each day of violation constitutes a separate offense.

(4) Tobacco Possession by Minors: Pursuant to ORS 167.400;

(a) It is unlawful for any person under 18 years of age to possess tobacco products; and

(b) This is a violation punishable by a fine of not more than $100.

(5) Devices for Smoking: Pursuant to ORS 163.575:

(a) A person commits the crime of endangering the welfare of a minor if the person knowingly sells to a person under 18 years of age any smoking device.; and

(b) This is a violation punishable by a fine of not less than $100 nor more than $500.

(6) Posting of Signs Concerning Smoking Devices: Pursuant to ORS 163.580;

(a) Any person who sells smoking devices shall display a sign clearly stating that the sale of such devices to persons under 18 years of age is prohibited by law; and

(b) Any person who violates this section commits a Class B violation.

Stat. Auth.: ORS 409.410 & 431.853
Stats. Implemented: ORS 409.420 & 431.853
Hist.: ADAP 2-1994, f. & cert. ef. 8-23-94; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 1-2009, f. 11-30-09, cert. ef. 1-1-10

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Rule Caption: Rules prescribing standards for "Recovery Housing" serving people recovering from alcohol/drug abuse or dependancy.
Adm. Order No.: ADS 2-2009
Filed with Sec. of State: 12-3-2009
Certified to be Effective: 12-3-09
Notice Publication Date: 8-1-2009
Rules Adopted: 415-052-0100, 415-052-0105, 415-052-0110
Subject: The Addictions & Mental Health Division is adopting new rules to prescribe standards for providing financial assistance in the form of loans under 42 U.S.C. 300x-25, to support the establishment of recovery homes for people in recovery from alcohol and drug abuse or dependancy.
Rules Coordinator: Richard Luthe—(503) 947-1186

415-052-0100
Purpose

These rules prescribe standards for providing financial assistance in the form of loans under 42 U.S.C. 300x-25 to support the establishment of recovery homes for people in recovery from alcohol and drug abuse or dependency.

Stat. Auth.: ORS 409.050 & 409.410
Stats. Implemented: ORS 90.100 - 90.459, 105.105 - 105.168, 430.265 - 430.920, 279B & 42 U.S.C. 300x-25; & 45 CFR 96.129
Hist.: ADS 2-2009, f. & cert. ef. 12-3-09

415-052-0105
Definitions

(1) "Alcohol or drug abuse" means repetitive, excessive use of alcohol, a drug or controlled substance short of dependence, without medical supervision, which may have a detrimental effect on the individual, the family, or society.

(2) "Alcohol or drug dependence" means the loss of a person's ability to control the personal use of controlled substances or other substances with abuse potential, including alcohol, or use of such substances or controlled substances to the extent that the health of the person or that of others is substantially impaired or endangered or the social or economic functioning of the person is substantially disrupted. A drug-dependent person may be physically dependent, a condition in which the body requires a continuing supply of a drug or controlled substance to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition charac-

terized by an overwhelming mental desire for continued use of a drug or controlled substance.

(3) "Division" means the Addictions and Mental Health (AMH) Division of the Department of Human Services (DHS).

(4) "In recovery" means an individual who is recovering from alcohol or drug abuse or dependency.

(5) "Nonprofit Entity" means a charitable organization that has been approved for tax exemption by the Internal Revenue Code under Section 501(c)(3) or an affiliate of such charitable organization.

(6) "Recovery home" means a group home for individuals in recovery, as described in 42 U.S.C. 300x-25, that is developed by a nonprofit entity and prohibits the use of alcohol or any illegal drug on the premises. Recovery homes operate consistent with the following provisions:

(a) The use of alcohol or any illegal drugs in the housing is prohibited;

(b) Any resident of the housing who violates this prohibition is immediately expelled;

(c) The costs of the housing, including fees for rent and utilities, and repayment of the loan, are paid by the residents; and

(d) The residents of the housing will, through a majority vote, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.

(7) "Revolving Loan Fund" or "loan" means a fund established under 42 U.S.C. 300x-25 for the purpose of making loans to cover the cost of establishing a recovery home for 6 or more persons in recovery.

Stat. Auth.: ORS 409.050 & 409.410
Stats. Implemented: ORS 90.100 - 90.459, 105.105 - 105.168, 430.265 - 430.920, 279B & 42 U.S.C. 300x-25; & 45 CFR 96.129
Hist.: ADS 2-2009, f. & cert. ef. 12-3-09

415-052-0110
Revolving Loan Fund

(1) **Establishment of the Revolving Loan Fund.** The Division will establish and administer a revolving loan fund to assist the establishment of recovery homes. This fund shall be known as the "Oregon Recovery Homes Revolving Loan Fund". The revolving loan fund will be established with federal funds allocated for this purpose under 42 U.S.C. 300x-25 and may be supplemented with state funds designated for this purpose.

(2) **Administration of the Revolving Loan Fund.** The Division may contract with a private, nonprofit entity to administer the revolving loan fund The private, nonprofit entity will be selected through a competitive process consistent with state contracting practices under ORS 279B. The selection of the contractor shall be based upon a review of qualifications, expertise, experience and documented capabilities relating to the administration of a revolving loan fund. The revolving loan fund will be administered consistent with all federal, state and local laws and the following requirements:

(a) The revolving loan fund will be maintained in an account that is separate and distinct from all other accounts maintained by the contractor that is selected by the Division. The account will be interest-bearing, if such an account is available, and be kept in a depository approved by the State of Oregon;

(b) The contractor will adopt policies and procedures for the administration of the revolving loan fund consistent with 42 U.S.C. 300x-25, 45 CFR 96.129 and these rules. These policies and procedures will include criteria for approving loans, collecting payments, assessing penalties, and managing loans in default. These policies and procedures will be reviewed and approved by the Division;

(c) The contractor will use forms and other written materials to provide loans. These will include, but not be limited to, a loan application form, a loan approval letter indicated loan terms, and a past due notification letter;

(d) Loans will be limited to legitimate costs relating to the establishment or relocation of a recovery home. These costs will include, but not be limited to, first month's rent, necessary furniture, facility modifications, and purchase of appliances and equipment necessary to the operation of the household

(e) Loans will not exceed $5,000. This amount will include no more than $4,000 from federal sources. No interest will be charged;

(f) The terms for the loan shall specify that repayment will occur within two years after the date on which the loan is made;

(g) The loan will be paid through monthly installments with funds collected from residents of the recovery home;

(h) A reasonable penalty will be assessed for each failure to pay the monthly installment by the due date;

(i) There will be procedures that outline liability and recourse in the case of default; and

(j) A record for each loan shall be maintained and include the application, approval documentation, payment history, correspondence, penalties, default remedies and documentation of pay-off.

(3) **Reporting Requirements.** The contractor shall provide a monthly report to the Division on the status of the revolving loan fund and assist the Division with supplying data for an annual report to the federal government on the status of the revolving loan fund.

(4) **Non-performance.** In the event of contractor non-performance, the Division may take actions necessary to remediate problems or terminate the contract for administration of the revolving loan fund. If contract termination results in a period of time when no contractor is available to administer the fund, the Division will administer the fund until such time another contractor may be selected.

Stat. Auth.: ORS 409.050 & 409.410
Stats. Implemented: ORS 90.100 - 90.459, 105.105 - 105.168, 430.265 - 430.920, 279B & 42 U.S.C. 300x-25; & 45 CFR 96.129
Hist.: ADS 2-2009, f. & cert. ef. 12-3-09

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

Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.
Adm. Order No.: SSP 34-2009(Temp)
Filed with Sec. of State: 11-16-2009
Certified to be Effective: 11-16-09 thru 5-14-10
Notice Publication Date:
Rules Amended: 461-135-1195
Subject: OAR 461-135-1195 about the specific requirements to be eligible for the State Family Pre-SSI/SSDI (SFPSS) program is being amended to state that a client is required to sign an interim assistance agreement allowing the Department to collect the amount of any interim SFPSS program benefits a client received once the client receives an initial Supplemental Security Income payment.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1195
Specific Requirements; SFPSS Eligibility

In the SFPSS program:

(1) To be eligible, a client must meet the following requirements:

(a) Be an adult;

(b) Meet all TANF program eligibility requirements (except as provided otherwise in this rule);

(c) Be receiving TANF benefits;

(d) Have an impairment that meets the requirements in OAR 461-125-0260;

(e) File an application for Supplemental Security Income (SSI) disability benefits under the Social Security Act; and

(f) Sign an Interim Assistance Authorization authorizing the Department to recover interim SFPSS program benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or the initial payment after the decision on SSI eligibility. The following provisions are considered part of the Interim Assistance Authorization:

(A) Interim SFPSS program benefits include only those SFPSS program cash benefits paid to the adult, who is applying for SSI, during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim SFPSS program cash benefit.

(C) If the Department cannot stop delivery of an SFPSS program benefit issued after the SSI payment is made, the SFPSS program payment is included in the interim assistance reimbursement to the Department.

(2) Counting earned and unearned income.

(a) The TANF standards in OAR 461-155-0030 are used to determine eligibility for the SFPSS program.

(b) The SFPSS payment standard (see OAR 461-155-0320) is used to determine the benefit amount for the SFPSS program.

(3) When the only adult in the filing group (see OAR 461-110-0330) is applying for SSI, and the child or all children in the filing group are receiving an SSI grant, the family does not receive an SFPSS grant. The family remains on TANF (if eligible) and receives a TANF grant.

(4) A client whose impairment no longer meets the criteria in OAR 461-125-0260 is ineligible for SFPSS benefits.

(5) An SFPSS client found by the Social Security Administration (SSA) not to meet disability criteria may continue receiving SFPSS benefits until all SSA administrative appeals are exhausted.

(6) Once a client is approved for SFPSS, the client is no longer subject to OAR 461-120-0340. The client remains exempt from OAR 461-120-0340 as long as the client is eligible for and receiving SFPSS.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049, 412.084
Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-14-10

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Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.
Adm. Order No.: SSP 35-2009(Temp)
Filed with Sec. of State: 11-24-2009
Certified to be Effective: 11-24-09 thru 5-23-10
Notice Publication Date:
Rules Amended: 461-145-0550
Subject: OAR 461-145-0550 about how the Department treats unemployment compensation benefits when determining a client's income is being amended— in response to recent federal legislation, the Worker, Home Ownership, and Business Assistance Act of 2009 (Pub. Law 111-92) — to state that the $25 supplemental payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded from income when determining eligibility for all of the Department's programs, and that in the Employment Related Day Care (ERDC) and Food Stamp (FS) programs this exclusion is retroactive to November 1, 2009.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-145-0550
Unemployment Compensation Benefit

In all programs covered by Chapter 461 of the Oregon Administrative Rules, unemployment compensation benefits are treated as follows:

(1) Retroactive payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Disaster Unemployment Assistance is treated as provided in OAR 461-145-0100.

(3) In all programs except the ERDC and FS programs, the $25 supplemental payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded from countable (see OAR 461-001-0000) income.

(4) In the ERDC and FS programs, effective November 1, 2009, the $25 supplemental payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded from countable income.

(5) All payments not covered under sections (1) to (4) of this rule are counted as unearned income.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.014, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.014, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 3-2009(Temp), f. & cert. ef. 3-3-09 thru 8-30-09; SSP 24-2009, f. & cert. ef. 8-31-09; SSP 35-2009(Temp), f. & cert. ef. 11-24-09 thru 5-23-10

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Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.
Adm. Order No.: SSP 36-2009(Temp)
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 12-1-09 thru 12-31-09
Notice Publication Date:
Rules Amended: 461-135-1100
Rules Suspended: 461-135-1100(T)
Subject: OAR 461-135-1100 — which was amended by temporary rule on October 1, 2009 and is about the specific eligibility requirements for the Oregon Health Plan (OHP) program — is being amended to state the conditions under which an individual under age 19 may qualify for an extension of his or her current medical assistance benefits. This rule also is being amended to implement, in part, the recent Healthy Kids legislation (2009 Oregon Laws Chapter 867, House Bill 2116) to ensure children in Oregon have health insurance coverage available.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1100
Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule and OAR 461-135-1149, the term *private major medical health insurance* refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than $10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, *see* ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and must not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) Must not be covered by *private major medical health insurance* and must not have been covered by *private major medical health insurance* during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP, or OHP-OP6;

(b) Meet budgeting requirements of OAR 461-160-0700;

(c) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by *private major medical health insurance* or by any *private major medical health insurance* during the preceding two months. The two-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of employment;

(C) The person's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The person's private health insurance premium was subsidized by FHIAP; or

(E) A member of the person's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

(9) Effective December 1, 2009 an individual under 19 years of age may qualify for an extension of his or her current medical benefits. The extension may not extend past March 31, 2010. To be eligible the individual must meet all of the following requirements:

(a) Be eligible for and receiving CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits on November 30, 2009;

(b) Be ineligible for CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, and SAC program benefits after November 30, 2009; and

(c) Except for not meeting the income requirements of OAR 461-160-0700, otherwise meet all the eligibility requirements for the OHP-CHP program as of December 1, 2009.

Stat. Auth.: ORS 411.060 & 2009 OL Ch. 867
Stats. Implemented: ORS 411.060 & 2009 OL Ch. 867
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09

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Rule Caption: Changing OARs affecting public assistance, medical assistance or food stamp clients.
Adm. Order No.: SSP 37-2009(Temp)
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 12-1-09 thru 5-30-10
Notice Publication Date:
Rules Amended: 461-150-0090
Subject: OAR 461-150-0090 about how the Department treats contract and self-employment income for clients in all programs, except the Oregon Health Plan (OHP) and Refugee Assistance Medical (REFM) programs, who are assigned to prospective budgeting is being amended to state how the Department determines countable income when current contract income is not representative of future income. This rule also is being amended to state that non-self employment income received during a less than 12-month period but intended as a full year's income is prorated over 12 months in the Employment Related Day Care (ERDC), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), and Temporary Assistance for Needy Families (TANF) programs.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-150-0090
Prospective Budgeting: Annualizing and Prorating Contracted or Self-employment Income

In all programs except the OHP and REFM programs:

(1) Income from self-employment, including contract income while self-employed, is treated in accordance with OAR 461-145-0910 unless the income meets the provisions of section (2) of this rule.

(2) If past contract income is not representative of future income or when a substantial increase or decrease is expected in *countable* (see OAR 461-001-0000) self-employment income in the next year, costs as allowed under 461-145-0930 and anticipated income are used to determine the *countable* income.

(3) In the ERDC, FS, MAA, MAF, REF, and TANF programs, contract income that does not meet the criteria of self-employment income (see OAR 461-145-0910) is treated as follows:

(a) Income received during a less than 12-month period but intended as a full year's income is annualized. The income is prorated over 12 months.

(b) Income that is not the annual income of the *financial group* (see OAR 461-110-0530) and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.

(c) Income received on an hourly or piecework basis or monthly over the term of the contract period is treated as *stable income* (see OAR 461-001-0000) under 461-150-0070 or *variable income* (see 461-001-0000) under 461-150-0080.

(4) Contract income that is not the annual income of the *financial group* and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049 & 414.042
Stats. Implemented: ORS 411.060, 411.816, 412.014, 412.049 & 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 37-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10

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

Rule Caption: Human Immunodeficiency Virus (HIV) Targeted Case Management (TCM) — expansion of target group and types of qualified providers in Multnomah County.
Adm. Order No.: DMAP 34-2009(Temp)
Filed with Sec. of State: 11-16-2009
Certified to be Effective: 11-16-09 thru 5-1-10
Notice Publication Date:
Rules Adopted: 410-138-0390
Rules Amended: 410-138-0300, 410-138-0360, 410-138-0380
Rules Suspended: 410-138-0340
Subject: These Targeted Case Management (TCM) Services administrative rules govern Division of Medical Assistance Program (DMAP) payments for services provided to certain eligible clients who have a documented HIV infection or a diagnosis of AIDS, whether symptomatic or asymptomatic. DMAP needs to take the temporary rule filing actions described above to expand the defined target group of TCM-HIV clients and to expand the types of qualified TCM providers in Multnomah County. As a result of the State Plan Amendment approved by the Centers for Medicare and Medicaid Services, received on March 19, 2009, the TCM-HIV program will be expanded in accordance with the current federal requirements and the State's approved plan. Multnomah County will be permitted to bill for service dates retroactive to January 1, 2009, in accordance with these rules.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-138-0300
Targeted Case Management Human Immunodeficiency Virus Program

(1) This rule is in effect for services rendered retroactive to January 1, 2009.

(2) These administrative rules are to be used in conjunction with the Division of Medical Assistance Program's (DMAP) General Rules (chapter 410 division 120) and Targeted Case Management Rules 410-138-0005 through 410-138-0009.

(3) The Human Immunodeficiency Virus (HIV) Targeted Case Management (TCM) program is a medical assistance program operated by public health authorities. HIV TCM services authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for TCM Eligible for Federal Financial Participation.) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(4) The HIV TCM rules explain the Oregon Medicaid Program's policies and procedures for reimbursing HIV TCM services. This program improves access to needed medical, psychosocial, educational, and other services for Medicaid eligible clients in Multnomah County with symptomatic or asymptomatic HIV disease. Without targeted case management services an eligible client's ability to remain safely in their home may be at risk.

(5) HIV TCM services include management of medical and non-medical services, which address physical, psychosocial, nutritional, educational, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by an HIV TCM case manager consistent with

these rules. No direct care services are authorized as part of case management activities.

(6) Provision of HIV TCM services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available HIV TCM service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.085
Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10

410-138-0340
Risk Criteria — HIV Program

Risk Factors:

(1) Advanced HIV-related dementia-confusion, severe memory loss, aggressive behavior;

(2) Need for assistance to ambulate and/or transfer between bed and chair;

(3) Suicidal ideation with plan for action;

(4) Need for assistance with activities of daily living based on severe fatigue and weakness;

(5) Care providers/family members overwhelmed by needs of the person with HIV disease;

(6) Uncontrolled pain;

(7) Loss of ability to manage medically prescribed care at home (medication, skin care, IVs);

(8) Significant weight loss associated with frequent diarrhea, nausea, vomiting and/or anorexia;

(9) Inability to maintain adequate nutrition;

(10) Decreased mobility — Potential for falls;

(11) Presence of substance abuse in conjunction with advanced HIV disease;

(12) Presence of chronic mental illness in conjunction with advanced HIV disease;

(13) Complex family situations (e.g., both spouses or partners infected);

(14) Families with children affected by HIV (parent or child infected);

(15) Homelessness or inadequate housing/heat/ sanitation;

(16) Inability to manage household activities due to advanced HIV disease.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; Suspended by DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10

410-138-0360
Targeted Case Management Human Immunodeficiency Virus (HIV) Program — Provider Requirements

(1) This rule is in effect for services rendered retroactive to January 1, 2009.

(2) HIV – Targeted Case Management (TCM) organizations must be public health authorities. The providers must demonstrate the ability to provide all core elements of case management services including:

(a) Triage assessment and comprehensive assessment;

(b) Reassessment of the client's status and needs;

(c) Comprehensive care and service plan development;

(d) Referral and linking/coordination of services;

(e) Monitoring and follow-up of referral and related services.

(3) Program providers must demonstrate the following targeted case management experience and capacity:

(a) Coordination and linking of community resources as required by the target population;

(b) Demonstrated and documented experience providing services for the target population;

(c) Staffing levels sufficient to meet the case management service needs of the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs and is able to generate quarterly service utilization reports that can be used to monitor services rendered against claims submitted and paid. The service utilization reporting requirements are as follows:

(A) Report on the number of unduplicated clients receiving services during the reporting period;

(B) Report on the number of FTE case managers providing services during the reporting period;

(C) Report on the number of distinct case management activities performed during the reporting period (Triage Assessments, Comprehensive Assessments, Re-Assessments, Care Plan Development, Referral and Related Services, and Monitoring and Follow-Up) along with the total number of 15-minute increments associated with each activity category;

(f) The capacity to document and maintain individual case records in accordance with state and federal requirements, including HIPAA Privacy requirements applicable to Case Management Services, ORS 192.518 – 192.524, 179.505, and 411.320;

(g) A demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(h) Are enrolled as a unit of government TCM provider with the Department of Human Services (DHS) and meeting the requirements set forth in the provider enrollment agreement.

(4) Case managers must possess the following education and qualifications:

(a) A current active Oregon registered nurse (RN) license, or

(b) A Bachelor of Social Work, or other related health or human services degree from an accredited college or university, and;

(c) Additionally, all case managers must have documented evidence of completing the Department of Human Services (DHS) HIV Care and Treatment designated HIV Case Manager training, and must participate in DHS on-going training for HIV case managers. The training must either be provided by DHS, or be approved by DHS and provided by the TCM provider organization.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10

410-138-0380
Targeted Case Management Rate Methodology, Billing Criteria and Codes — Human Immunodeficiency Virus (HIV) Program

(1) This rule is in effect for services rendered retroactive to January 1, 2009.

(2) This rule is to be used in conjunction with 410-138-0005 and General Rules (chapter 410 division 120).

(3) Providers shall only bill for allowable activities in the HIV Targeted Case Management (TCM) program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the activities listed below must occur in order to bill. The maximum number of 15 minute increments allowable per day is shown in parentheses:

(a) Assessment — Initial triage (maximum four 15 minute increments);

(b) Assessment — Comprehensive (maximum six 15 minute increments);

(c) Assessment — Reassessment (maximum four 15 minute increments);

(d) Development of a care plan (maximum nine 15 minute increments);

(e) Referral and related services (including follow-up) (maximum six 15 minute increments);

(f) Monitoring (including follow-up) (maximum three 15 minute increments).

(4) The maximum number of fifteen minute units of service which can be performed and billed in any given calendar day (midnight to midnight) will be twenty four units (24 fifteen minute increments). The assumption is that no more than six hours would ever be provided to the same client, by the same case manager in any twenty four hour calendar day. Documentation must be maintained of the number of 15 minute units of service provided for each activity shown in (3) above.

(5) A unit of service can only be billed under one procedure code and one provider number:

(a) The procedure code to be used is "T1017";

(b) The provider must use diagnosis code "V08" or "042" for HIV TCM program services.

(6) Any place of service (POS) is valid.

(7) Prior authorization is not required.

(8) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for HIV TCM services

under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0020). DMAP will recover duplicate payments.

(9) DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10

410-138-0390
Targeted Case Management Retroactive Payments — Human Immunodeficiency Virus (HIV) Program

(1) Providers may submit claims retroactively for services provided to the targeted population described in 410-138-0300 on or after January 1, 2009, if they meet the following criteria:

(a) Services were provided less than 12 months prior to the date of first claim submission, and were allowable services in accordance with 410-138-0380 and 410-138-0007;

(b) The maximum number of 15 minute increments billed does not exceed the maximum described in 410-138-0380;

(c) The case manager was appropriately licensed or certified, and met all current requirements for case managers at the time the service was provided, as described in 410-138-0360;

(d) Documentation regarding provider qualifications and the services that the provider retroactively claims must have been available at the time the services were performed;

(e) Providers must be able to meet the quarterly reporting requirements described in 410-138-0360, for all quarters in which billed services were provided.

(2) HIV TCM claims already paid by DMAP with a monthly rate may not be adjusted or resubmitted for the sole purpose of receiving a different rate.

(3) Prior payment of a monthly rate for a client will be considered payment in full for any case management services received by that client from any HIV TCM case manager during that month.

(4) DMAP will not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay (see also 410-138-0005).

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.085
Hist.: DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10

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Rule Caption: FCHP Non-contracted Hospital reimbursement rate methodology change — rule filing date correction retroactive to October 1, 2009.
Adm. Order No.: DMAP 35-2009(Temp)
Filed with Sec. of State: 12-4-2009
Certified to be Effective: 12-4-09 thru 3-25-10
Notice Publication Date:
Rules Amended: 410-120-1295
Rules Suspended: 410-120-1295(T)
Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. On September 11, 2009, DMAP filed the necessary forms to temporarily amend OAR 410-120-1295 to reference the reimbursement methodology changes indicated in HB 3259 (2009 Legislative session), effective for services rendered on or after October 1, 2009. However, DMAP failed to update the effective date inside the rule text to match the intended effective date of October 1, 2009. Therefore, DMAP is now filing this emergent rule revision retroactive to October 1, 2009. This rule is necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and are referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients. The statute is based upon the budget period that coordinates with the managed care and DMAP contracts. The effective date of the contracts coincides with the effective date of the reimbursement rate documents. DMAP intends to permanently amend this rule on or before the end of the initial Temporary rule filing, March 25, 2010.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1295
Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Division of Medical Assistance Programs (DMAP) that does not have a contract with an DMAP-contracted Prepaid Health Plan (PHP) is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the PHP, a Non-Participating Provider, other than a hospital governed by (3) below, must accept from the DMAP-contracted PHP, as payment in full, the amount that the provider would be paid from DMAP if the client was fee-for-service (FFS).

(3) For covered services provided on and after October 1, 2009, the DMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full, the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) Using a Medicare payment methodology the FCHP will reimburse inpatient and outpatient services in all other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, at a rate no less than a percentage of the Medicare reimbursement rate. The percentage of the Medicare reimbursement shall be equal to two percentage points less than the percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to FCHP's, excluding any supplemental payments. Emergency services must be consistent with 1932(b)(2) of the Social Security Act.

(4) The percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to the FCHP are calculated by the Department's actuarial unit. The FCHP Non-Contracted DRG Hospital Reimbursement Rates dated October 1, 2009 are on the Department's Web site at: www.dhs.state.or.us/policy/healthplan/guides/ohp/main.html, archived data is available on request from DMAP.

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package;

(d) The FCHP contract and DMAP Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

(c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065
Stats. Implemented: ORS 414.025, 414.065, 414.705, 414.743
Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35 2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 28-2006, f. 6-22-06, cert. ef. 6-23-06; OMAP 42-2006(Temp), f. 12-15-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 2-2007, f. & cert. ef. 4-5-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 28-2009(Temp), f. 9-11-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 35-2009(Temp), f. & cert. ef. 12-4-09 thru 3-25-10

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Rule Caption: October 09 and January 10 technical changes to the January 1, 2009–December 31, 2010 Health Services Commission's Prioritized List of Health Services.
Adm. Order No.: DMAP 36-2009(Temp)
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 1-1-10 thru 3-29-10

Notice Publication Date:
Rules Amended: 410-141-0520
Rules Suspended: 410-141-0520(T)
Subject: The Oregon Health Plan Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP temporarily amended 410-141-0520, referencing the January 1, 2009–December 31, 2010 Oregon Health Services Commission's Prioritized List of Health Services that reflect interim modifications and technical changes made, subject to Centers for Medicare and Medicaid Services (CMS) approval, and effective October 1, 2009 and January 1, 2010. The October 1, 2009 and January 1, 2010 interim modifications and technical changes include application of 2009 national code to the HSC lines and HSC guideline refinements. DMAP intends to permanently amend this rule effective on or before March 29, 2010.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520
Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: www.oregon.gov/DHS/healthplan/priorlist/main, or, for a hardcopy contact the Office for Oregon Health Policy and Research. Effective January 1, 2009, this rule incorporates by reference the CMS approved Biennial January 1, 2009–December 31, 2010 Prioritized List, including technical revisions and interim modifications effective April 1, 2009, October 1, 2009 and January 1, that include expanded definitions, practice guidelines and condition treatment pairs funded through line 503.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Addictions and Mental Health and approval to bill Medicaid for CD services.

Stat. Auth.: ORS 192.527, 192.528, 409.050 & 414.065
Stats. Implemented: ORS 192.527, 192.528, 414.010, 414.065 & 414.727
Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10

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Rule Caption: Pilot project for prenatal coverage for CAWEM women; adding additional participating counties.
Adm. Order No.: DMAP 37-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-120-0030
Rules Repealed: 410-120-0030(T)
Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. Effective October 1, 2009, DMAP temporarily amended 410-120-0030 subject to approval by the Centers for Medicare and Medicaid Services (CMS). Oregon received federal approval for the pilot project, and at that time, DMAP added Benton, Clackamas, Hood River, Lincoln and Jackson counties providing prenatal care during pregnancy and labor and delivery services for CAWEM women.

DMAP permanently amended this rule to add Benton, Clackamas, Hood River and Jackson counties to participate in the April 2008 pilot project. Text within this rule specifies effective dates for each county.

Effective December 1, 2009, Lincoln County was unable to continue participation due to budget constraints, therefore as of December 1, 2009, DMAP no longer recognizes Lincoln County as a participant and will no longer add Lincoln County clients to this program.

Other text will be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0030
Children's Health Insurance Program (CHIP)

(1) The Children's Health Insurance Program (CHIP) is a federal non-entitlement program for children under 19 years of age that provides health coverage for uninsured, low-income children who are ineligible for Medicaid and meet the CHIP eligibility requirements. The CHIP program is administered by the Department of Human Services (DHS) in accordance with the Oregon Health Plan waiver and the CHIP state plan. The General Rules (OAR 410-120-0000 et. seq.) and Oregon Health Plan Rules (OAR 410-141-0000 et. seq.) applicable to the Medicaid program are also applicable to the DHS CHIP program.

(2) Eligibility criteria, including but not limited to income methodologies and citizenship requirements for medical assistance applicable to children under the age of 19 years, are established in OAR Chapter 461 through the program acronym OHP-CHP.

(3) Benefit package of covered services: Children determined eligible for CHIP receive the same OHP Plus benefits as covered under Medicaid categorically needy program. (For benefits refer to 410-120-1210).

(4) CHIP Pilot project — Prenatal coverage for CAWEM under CHIP:

(a) Notwithstanding subsections (2) and (3) of this rule, CAWEM pregnant women residing in the participating counties during pregnancy will receive expanded medical services (OHP Plus benefit package, as limited under subsection (d) of this subsection) to provide prenatal care for the unborn child and labor and delivery services through this pilot program:

(A) Effective 4/1/08 Multnomah and Deschutes;

(B) Effective 10/1/09 Benton, Clackamas, Hood River and Jackson.

(b) This population is exempt from managed care enrollment. The preferred service delivery system will be Primary Care Management (PCM). Fee-For-Service (FFS) enrollment will be available by exception for continuity of care or other DHS-approved reasons that could justify disenrollment from a PCM under OAR 410-141-0085;

(c) Pilot project services continue through labor and delivery. The day after pregnancy ends, eligibility for medical services is based on eligibility categories established in OAR chapter 461;

(d) The following services are not covered for the pilot project:

(A) Postpartum care beyond the global payment;

(B) Sterilization;

(C) Abortion;

(D) Death with dignity services;

(E) Hospice.

Stat. Auth.: ORS 409.010, 409.110, 409.050
Stats. Implemented: ORS 414.065
Hist.: DMAP 7-2008(Temp), f. 3-17-08 & cert. ef. 4-1-08 thru 9-15-08; DMAP 14-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 29-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 37-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Jan. '10 — Benefit packages, claim re-determination, exclusions and non participating provider revisions.
Adm. Order No.: DMAP 38-2009
Filed with Sec. of State: 12-15-2009

Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-120-1200, 410-120-1210, 410-120-1230, 410-120-1295, 410-120-1340, 410-120-1380, 410-120-1570, 410-120-1600
Subject: The General Rules program administrative rules govern DMAP payment for services to clients. DMAP will amend rules as follows:

OAR 410-120-1200: to clarify the agencies intent regarding pain center treatment exclusions.

OAR 410-120-1210: to incorporate the 09-11 budget reductions for OHP Plus non-pregnant adult client vision and dental benefits. This reduction has Centers for Medicare and Medicaid (CMS) approval.

OAR 410-120-1230: to exempt from co-payments all Nicotine Replacement Therapy (NRT) products (nicotine gum, nasal spray, lozenges or patches used to quite tobacco use). This revision has CMS approval.

OAR 410-120-1340: to reflect the annual update to the CMS Relative Value Units (RVU) for physician services.

OAR 410-120-1295, Non-Participating provider: Having temporarily amended this rule, DMAP permanently amended because House Bill 3259, signed into law 8/4/09, changes the method used to reimburse non-participating hospitals by FCHPs. This rule is revised to reflect the new methodology.

OAR 410-120-1380: CHIPRA legislation required changes to managed care contracts. This rule is revised to incorporate the new CFR citations.

OAR 410-120-1570: This rule was revised effective July 2009 however, DMAP is refining the process based on internal processes and discussions with providers.

OAR 410-120-1600: to change prior terminology of "reconsideration," to new term "re-determination."
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1200
Excluded Services and Limitations

(1) Certain services or items are not covered under any program or for any group of eligible Clients. If the Client accepts financial responsibility for a Non-Covered Service, payment is a matter between the Provider and the Client subject to the requirements of OAR 410-120-1280.

(2) The Division of Medical Assistance Programs (DMAP) will make no payment for any expense incurred for any of the following services or items that are:

(a) Not expected to significantly improve the basic health status of the Client as determined by DMAP staff, or its contracted entities, for example, the DMAP Medical Director, medical consultants, dental consultants or Quality Improvement Organizations (QIO);

(b) Not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury;

(c) Determined not medically or dentally appropriate by DMAP staff or authorized representatives, including Acumentra or any contracted Utilization Review organization;

(d) Not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his or her scope of practice or licensure;

(e) For routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the Client. Examples include exams for employment or insurance purposes;

(f) Provided by friends or relatives of eligible Clients or members of his or her household, except when the friend, relative or household member:

(A) Is a health professional, acting in a professional capacity; or

(B) Is directly employed by the Client under the Department of Human Services (DHS) Seniors and People with Disabilities Division (SPD) Home and Community Based Waiver or the SPD administrative rules, OAR 411-034-000 through 411-034-0090, governing Personal Care Services covered by the State Plan; or

(C) Is directly employed by the Client under the Children, Adults and Families Division (CAF) administrative rules, OAR 413-090-0100 through 413-090-0220, for services to children in the care and custody of the Department who have special needs inconsistent with their ages. A family member of a minor Client (under the age of 18) must not be legally responsible for the Client in order to be a Provider of personal care services;

(g) For services or items provided to a Client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under DMAP administrative rules;

(h) Needed for purchase, repair or replacement of materials or equipment caused by adverse actions of Clients to personally owned goods or equipment or to items or equipment that DMAP rented or purchased;

(i) Related to a non-covered service; some exceptions are identified in the individual Provider rules. If DMAP determines the provision of a service related to a non-covered service is cost-effective, the related medical service may, at the discretion of DMAP and with DMAP Prior Authorization (PA), be covered;

(j) Considered experimental or investigational, including clinical trials and demonstration projects, or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy;

(k) Identified in the appropriate program rules including the Hospital rules, Revenue Codes Section, as Non-Covered Services.

(l) Requested by or for a Client whom DMAP has determined to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services;

(m) For copying or preparing records or documents that except those Administrative Medical Reports requested by the branch offices or DMAP for casework planning or eligibility determinations;

(n) Whose primary intent is to improve appearances;

(o) Similar or identical to services or items that will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the Client will be essentially the same;

(p) For the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence,

(q) Items or services which are for the convenience of the Client and are not medically or dentally appropriate;

(r) The collection, processing and storage of autologous blood or blood from selected donors unless a Physician certifies that the use of autologous blood or blood from a selected donor is Medically Appropriate and surgery is scheduled;

(s) Educational or training classes that are not Medically Appropriate (Lamaze classes, for example);

(t) Outpatient social services except Maternity Case Management services and other social services described as covered in the individual Provider rules;

(u) Plasma infusions for treatment of Multiple Sclerosis;

(v) Post-mortem exams or burial costs, or other services subsequent to the death of a Client;

(w) Radial keratotomies;

(x) Recreational therapy;

(y) Telephone calls covered only as specified for:

(A) Tobacco cessation counseling, as described in OAR 410-130-0190;

(B) Maternity Case Management as described in OAR 410-130-0595;

(C) Telemedicine as described in OAR 410-130-0610; and

(D) Services specifically identified as allowable for telephonic delivery when appropriate in the Mental Health and Chemical Dependency procedure code and reimbursement rates published by the DHS Addiction and Mental Health Division;

(z) Transsexual surgery or any related services or items;

(aa) Weight loss programs, including, but not limited to Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss;

(bb) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered;

(cc) Immunizations prescribed for foreign travel;

(dd) Services that are requested or ordered but not provided (i.e., an appointment which the Client fails to keep or an item of equipment which has not been provided to the Client);

(ee) DUII-related services already covered by the Intoxicated Driver Program Fund as directed by ORS 813.270(1) and (5);

(ff) Transportation to meet a Client's personal choice of a Provider;

(gg) Pain center evaluation and treatment for unfunded condition/treatment pairs on the Oregon Health Services Commission's Prioritized List of Health Services;

(hh) Alcoholics Anonymous (AA) and other self help programs;

(ii) Medicare Part D covered prescription drugs or classes of drugs, and any cost sharing for those drugs, for Medicare-Medicaid Fully Dual Eligible Clients, even if the Fully Dual Eligible Client is not enrolled in a Medicare Part D plan. See OAR 410-120-1210 for Benefit Package.

Stat. Auth.: ORS 409.010, 409.110, 409.065 & 409.050

Stats. Implemented: ORS 414.065, 414.025

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 15-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

410-120-1210

Medical Assistance Benefit Packages and Delivery System

(1) The services Clients are eligible to receive are based upon the Benefit Package for which they are eligible. Benefit packages define a client's benefits and services. Not all packages receive the same benefits. The Benefit Package identifiers are available on the MMIS eligibility verification screen. New clients receive 'coverage letters' listing their assigned benefit package and other information. A new letter is sent whenever benefit package, service delivery or information changes.

(2) The Division of Medical Assistance Programs (DMAP) Benefit Package description, codes and eligibility criteria are identified in these rules.

(3) The benefit limitations and exclusions listed here are in addition to those described in OAR 410-120-1200 and in each of the DMAP chapter 410 OARs. The benefits and limitations included in each OHP Benefit Package follow:

(a) Oregon Health Plan (OHP) Plus Benefit Package (Benefit Package identifier BMH)-Clients on this Benefit Package are categorically eligible for medical assistance as defined in federal regulations and in the 1115 OHP waiver demonstration. A Client is categorically eligible for medical assistance if he or she is eligible under a federally defined mandatory, selected, optional Medicaid program or the Children's Health Insurance Program (CHIP) and also meets Department of Human Services' (DHS) adopted income and other eligibility criteria.

(A) OHP Plus Benefit Package coverage includes:

(i) Services above the funding line on the Health Services Commission's (HSC) Prioritized List of Health Services, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Chemical dependency services provided through local alcohol and drug treatment Providers;

(iv) Mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post Hospital Extended Care benefit, up to a 20-day stay in a Nursing Facility for non-Medicare DMAP Clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires Prior Authorization by Pre-Admission Screening (OAR 411-070-0043), or by the Fully Capitated Health Plan (FCHP) for Clients enrolled in an FCHP;

(vii) Cost sharing may apply to some covered services;

(B) The following services have limited coverage for non pregnant adults age 21 and older. (Refer to the cited OAR Chapters and Divisions for details):

(i) Selected Dental (OAR chapter 410 division 123);

(ii) Vision Services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR Chapter 410, Division 140);

(b) OHP Standard Benefit Package (Benefit Package identifier KIT) - Clients on this Benefit Package are eligible for OHP through the 1115 Medicaid expansion waiver. These Clients are adults and childless couples who meet DHS adopted income and other eligibility criteria; DHS identifies these Clients through the program acronym, OHP-OPU,

(A) OHP Standard coverage includes:

(i) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(ii) Ancillary services, (OAR 410-141-0480);

(iii) Outpatient chemical dependency services provided through local alcohol and drug treatment Providers;

(iv) Outpatient mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(v) Hospice;

(vi) Post Hospital Extended Care benefit, up to a 20-day stay in a nursing facility for non-Medicare DMAP Clients who meet Medicare criteria for a post-hospital skilled nursing placement. This benefit requires Prior Authorization by Pre-Admission Screening (OAR 411-070-0043) or by the Fully Capitated Health Plan (FCHP) for Clients enrolled in an FCHP.

(B) The following services have limited coverage for the OHP Standard benefit package (Refer to the cited OAR Chapters and Divisions for details):

(i) Selected Dental (OAR chapter 410 division 123);

(ii) Selected Durable Medical Equipment and medical supplies (OAR chapter 410, division 122 and 130);

(iii) Selected home enteral/parenteral services (OAR chapter 410, division 148);

(iv) Selected Hospital services (OAR chapter 410, division 125);

(v) Other limitations as identified in individual DMAP program administrative rules.

(C) The following services are not covered under the OHP Standard Benefit Package. Refer to the cited OAR Chapters and Divisions for details:

(i) Acupuncture services, except when provided for chemical dependency treatment (OAR chapter, 410 division 130);

(ii) Chiropractic and osteopathic manipulation services (OAR chapter 410, division 130);

(iii) Hearing aids and related services (i.e., exams for the sole purpose of determining the need for or the type of hearing aid), (OAR chapter 410, division 129);

(iv) Home Health Services (OAR chapter 410, division 127), except when related to limited EPIV services (OAR chapter 410, division 148);

(v) Non-emergency Medical Transportation (OAR chapter 410, division 136);

(vi) Occupational Therapy services (OAR chapter 410, division 131);

(vii) Physical Therapy services (OAR chapter 410, division 131);

(viii) Private Duty Nursing Services (OAR Chapter 410, Division 132), except when related to limited EPIV services;

(ix) Speech and Language Therapy services (OAR chapter 410, division 129);

(x) Vision Services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR Chapter 410, Division 140);

(xi) Other limitations as identified in individual DMAP program administrative rules, chapter 410.

(c) Qualified Medicare Beneficiary (QMB) + OHP with limited drug Benefit Package (Benefit Package identifier BMM) - Clients on this Benefit package are dual eligible for Medicare and Medicaid benefits. Coverage includes any service covered by Medicare and OHP Plus, except that drugs or classes of drugs covered by Medicare Part D Prescription Drug are only covered by Medicare. Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, except as limited in (E) below. This package also covers:

(A) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(B) Mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(C) Chemical dependency services provided through a local alcohol and drug treatment Provider;

(D) Ancillary services, (OAR 410-141-0480);

(E) Cost sharing may apply to some covered services, however, cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the Benefit Package;

(F) DMAP will continue to coordinate benefits for drugs covered under Medicare Part B, subject to Medicare's benefit limitations and DMAP Provider rules;

(G) DMAP will cover drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR 410 Division 121 for specific limitations). The drugs include but are not limited to:

(i) Benzodiazepines;

(ii) Over-the-Counter (OTC) drugs;

(iii) Barbiturates;

(H) The following services have limited coverage for non pregnant adults age 21 and older (Refer to the cited OAR Chapters and Divisions for details):

(i) Selected Dental (OAR chapter 410 division 123);

(ii) Vision Services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR Chapter 410, Division 140);

(d) OHP with limited drug Benefit Package (Benefit Package identifier BMD) — Clients on this Benefit Package are also dual eligible for Medicare and Medicaid but are not designated a QMB by Medicare. Coverage includes any service covered by Medicare and OHP Plus, except that drugs or classes of drugs covered by Medicare Part D Prescription Drug are only covered by Medicare. Payment for services is the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, except as limited in (E) below. This package also covers:

(A) Services above the funding line on the HSC Prioritized List, (OAR 410-141-0480 through 410-141-0520);

(B) Mental health services based on the Prioritized List of Health Services, to be provided through Community Mental Health Programs or their subcontractors;

(C) Chemical dependency services provided through a local alcohol and drug treatment Provider.

(D) Ancillary services, (OAR 410-141-0480);

(E) Cost sharing may apply to some covered services, however cost sharing related to Medicare Part D is not covered since drugs covered by Part D are excluded from the Benefit Package;

(F) DMAP will continue to coordinate benefits for drugs covered under Medicare Part B, subject to Medicare's benefit limitations and DMAP Provider rules;

(G) DMAP will cover drugs excluded from Medicare Part D coverage that are also covered under the medical assistance programs, subject to applicable limitations for covered prescription drugs (Refer to OAR 410 Division 121 for specific limitations). The drugs include but are not limited to:

(i) Benzodiazepines;

(ii) Over-the-Counter (OTC) drugs;

(iii) Barbiturates;

(H) The following services have limited coverage for non pregnant adults age 21 and older. (Refer to the cited OAR Chapters and Divisions for details):

(i) Selected Dental (OAR chapter 410 division 123);

(ii) Vision Services such as frames, lenses, contacts corrective devices and eye exams for the purpose of prescribing glasses or contacts (OAR Chapter 410, Division 140);

(e) Qualified Medicare Beneficiary (QMB)-Only Benefit Package (Benefit Package identifier MED) — Clients on this limited Benefit Package are Medicare beneficiaries who have limited income but do not meet the income standard for full medical assistance coverage. These Clients have coverage through Medicare Parts A and B only for most covered services:

(A) Payment for services by DMAP is limited to the co-insurance or deductible for the Medicare service. Payment is based on the Medicaid allowed payment less the Medicare payment up to the amount of co-insurance and deductible, but no more than the Medicare allowable;

(B) Providers may bill QMB Clients for services that are not covered by Medicare. Providers may not bill QMB-only Clients for the deductible and coinsurance amounts due for services that are covered by Medicare.

(f) Citizen/Alien-Waived Emergency Medical (CAWEM) Benefit Package (Benefit Package identifier CWM)- Clients on this limited Benefit Package are certain eligible, non-qualified aliens that are not eligible for other Medicaid programs pursuant to Oregon Administrative Rules (OAR) 461-135-1070. The Citizen/Alien-Waived Emergency Medical Assistance (CAWEM) Benefit Package provides limited services:

(A) Emergency medical services and labor and delivery services; CAWEM services are strictly defined by 42 CFR 440.255 (the "prudent layperson standard" does not apply to the CAWEM emergency definition);

(B) A CAWEM Client is eligible for services only after sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(C) The following services are not covered for CAWEM Clients, even if they are seeking emergency services:

(i) Prenatal or postpartum care;

(ii) Sterilization;

(iii) Family Planning;

(iv) Preventive care;

(v) Organ transplants and transplant-related services;

(vi) Chemotherapy;

(vii) Hospice;

(viii) Home Health;

(ix) Private Duty Nursing;

(x) Dialysis;

(xi) Dental Services provided outside of an Emergency Department Hospital setting;

(xii) Outpatient drugs or over-the-counter products;

(xiii) Non-emergency Medical Transportation;

(xiv) Therapy services;

(xv) Durable Medical Equipment and medical supplies;

(xvi) Rehabilitation services.

(g) CAWEM Plus-CHIP Prenatal coverage for CAWEM (Benefit Code CWX) - refer to OAR 410-120-0030 for coverage.

(4) DMAP clients are enrolled for covered health services to be delivered through one of the following means:

(a) Prepaid Health Plan (PHP):

(A) These Clients are enrolled in a PHP for their medical, dental and mental health care;

(B) Most non-emergency services are obtained from the PHP or require a referral from the PHP that is responsible for the provision and reimbursement for the medical, dental or mental health service;

(C) Inpatient hospitalization services that are not the responsibility of a Physician Care Organization (PCO) are governed by the Hospital rules (OAR 410 Division 125);

(D) The name and phone number of the PHP appears on the Medical Care Identification.

(b) Primary Care Managers (PCM):

(A) These Clients are enrolled with a PCM for their medical care;

(B) Most non-emergency services provided to Clients enrolled with a PCM require referral from the PCM.

(c) Fee-For-Service (FFS):

(A) These Clients are not enrolled in a PHP or assigned to a PCM;

(B) Subject to limitations and restrictions in individual program rules, the Client can receive health care from any DMAP-enrolled Provider that accepts FFS Clients. The Provider will bill DMAP directly for any covered service and will receive a fee for the service provided.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110

Stats. Implemented: ORS 414.025, 414.065, 414.705, 414.706, 414.707, 414.708, 414.710

Hist.: OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

410-120-1230

Client Co-payment

(1) Oregon Health Plan (OHP) Plus Clients shall be responsible for paying a co-payment for some services. This co-payment shall be paid directly to the Provider.

(2) The following services are exempt from co-payment:

(a) Emergency medical services, as defined in OAR 410-120-0000;

(b) Family planning services and supplies;

(c) Prescription drug products for Nicotine Replacement Therapy (NRT);

(d) Prescription drugs ordered through Division of Medical Assistance Program's (DMAP) Mail Order (a.k.a., Home-Delivery) Pharmacy program;

(e) Any service not listed in (10) below.

(3) The following Clients are exempt from co-payments:

(a) Services provided to pregnant women;

(b) Children under age 19;

(c) Any Client receiving services under the Home and Community based waiver and Developmental Disability waiver, or is an inpatient in a hospital, Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF/MR);

(d) American Indian/Alaska Native (AI/AN) Clients who are members of a federally recognized Indian tribe or receive services through Indian Health Services (IHS), tribal organization or services provided at an Urban Tribal Health Clinic as provided under P.L. 93-638.

(4) Clients enrolled in a DMAP contracted Prepaid Health Plan (PHP) will be exempt from co-payments for any services paid for by their plan(s).

(5) Services to a Client cannot be denied solely because of an inability to pay an applicable co-payment. This does not relieve the Client of the responsibility to pay, nor does it prevent the Provider from attempting to collect any applicable co-payments from the Client; the amount is a legal debt, and is due and payable to the Provider of service.

(6) A Client must pay the co-payment at the time service is provided unless exempted (see (2), (3) and (4) above).

(7) The Provider should not deduct the co-payment amount from the usual and customary fee submitted on the claim. Except as provided in subsection (2) of this rule, DHS will deduct the amount of the co-payment from the amount paid to the Provider (whether or not Provider collects the co-payment from the Client). If the DMAP paid amount is less than the required co-payment, the co-payment amount will be equal to what DMAP would have paid, unless the Client or services is exempt according to exclusions listed in (2), (3) and (4) above.

(8) Unless specified otherwise in individual program rules, and to the extent permitted under 42 CFR 1001.951 – 1001.952, DMAP does not require Providers to bill or collect a co-payment from the Medicaid Client. The Provider may choose not to bill or collect a co-payment from a Medicaid Client, however, DMAP will still deduct the co-payment amount from the Medicaid reimbursement made to the Provider.

(9) OHP Standard co-payments are eliminated for OHP Standard Clients effective June 19, 2004. Elimination of co-payments by this rule shall supercede any other General Rule, 410-120-0000 et seq; any Oregon Health Plan Rule, OAR 410-141-0000 et seq; or individual DMAP program rule(s), that contain or refer to OHP Standard co-payment requirements.

(10) Services which require co-payments are listed in Table 120-1230-1:

(a) For the purposes of this rule, dental diagnostic services are considered oral examinations used to determine changes in the patient's health or dental status. Diagnostic visits include all routine cleanings, x-rays, laboratory services and tests associated with making a diagnosis and/or treatment. One co-payment assessed per Provider/per visit /per day unless otherwise specified. Co-payment applies regardless of location, i.e. Provider's office or Client's residence;

(b) Mental Health Service co-payments are defined as follows:

(A) Inpatient hospitalization- includes ancillary, facility and professional fees (DRG 424-432);

(B) Outpatient hospital- Electroconvulsive (ECT) treatment (Revenue code 901) including facility, professional fees (90870-90871) and anesthesiology fees (00104);

(C) Initial assessment/evaluation by psychiatrist or psychiatric mental health nurse practitioners (90801);

(D) Medication Management by psychiatrist or psychiatric mental health nurse practitioner (90862);

(E) Consultation between psychiatrist/psychiatric mental health nurse practitioner and primary care physician (90887). **Table 120-1230-1**

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110

Stat. Implemented: ORS 414.025, 414.065

Hist.: OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2004(Temp), f. 6-14-04 cert. ef. 6-19-04 thru 11-30-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 5-2008, f. 2-28-08, cert. ef. 3-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

410-120-1295

Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Division of Medical Assistance Programs (DMAP) that does not have a contract with an DMAP-contracted Prepaid Health Plan (PHP) is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the PHP, a Non-Participating Provider, other than a hospital governed by (3) below, must accept from the DMAP-contracted PHP, as payment in full, the amount that the provider would be paid from DMAP if the client was fee-for-service (FFS).

(3) For covered services provided on and after October 1, 2009, the DMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full, the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) Using a Medicare payment methodology the FCHP will reimburse inpatient and outpatient services in all other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, at a rate no less than a percentage of the Medicare reimbursement rate. The percentage of the Medicare reimbursement shall be equal to two percentage points less than the percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to FCHP's, excluding any supplemental payments. Emergency services must be consistent with 1932(b)(2) of the Social Security Act.

(4) The percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to the FCHP are calculated by the Department's actuarial unit. The FCHP Non-Contracted DRG Hospital Reimbursement Rates dated October 1, 2009 are on the Department's Web site at: www.dhs.state.or.us/policy/healthplan/guides/ohp/main.html, archived data is available on request from DMAP.

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package;

(d) The FCHP contract and DMAP Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

(c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

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

Stats. Implemented: ORS 414.025, 414.065, 414.705, 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35 2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 28-2006, f. 6-22-06, cert. ef. 6-23-06; OMAP 42-2006(Temp), f. 12-15-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 2-2007, f. & cert. ef. 4-5-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 28-2009(Temp), f. 9-11-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 35-2009(Temp), f. & cert. ef. 12-4-09 thru 3-25-10; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

410-120-1340

Payment

(1) The Division of Medical Assistance Programs (DMAP) will make payment only to the enrolled Provider who actually performs the service or to the Provider's enrolled Billing Provider for covered services rendered to eligible Clients. Any contracted Billing Agent or Billing Service submitting claims on behalf of a Provider but not receiving payment in the name of or on behalf of the Provider does not meet the requirements for Billing Provider enrollment. If electronic transactions will be submitted, Billing Agents and Billing Services must register and comply with Department of Human Services (DHS) Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. DMAP may require that payment for services be made only after review by DMAP.

(2) DMAP or the Department of Human Services (DHS) office that is administering the program under which the billed services or items are provided sets Fee-for-Service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the DMAP maximum allowable amount or the reimbursement specified in the individual program Provider rules:

(a) Amount billed may not exceed the Provider's Usual Charge (see definitions);

(b) DMAP's maximum allowable rate setting process uses the following methodology. The rates are updated periodically and posted on the DMAP web site at http://www.oregon.gov/DHS/healthplan/data_pubs/feeschedule/main.shtml:

(A) For all CPT/HCPCS codes assigned a Relative Value Unit (RVU) weight and reflecting services not typically performed in a facility, DMAP will convert to the 2009 Transitional Non-Facility Total RVU weights published in the Federal Register, Vol. 73, December 31, 2008, to be effective for dates of services beginning January 1, 2010. For CPT/HCPCS codes for professional services typically performed in a facility, the Transitional Facility RVU weight Totals will be adopted:

(i) The conversion factor for labor and delivery (59400-59622) is $41.61;

(ii) CPT codes 92340-92342 and 92352-92353 remain at a flat rate of $26.81;

(iii) All remaining RVU weight based CPT/HCPCS codes have a conversion factor of $27.82;

(B) Surgical assist reimburses at 20% of the surgical rate;

(C) The base rate for anesthesia services 00100-01996 is $24.19 and is based on per unit of service;

(D) Clinical lab codes are priced based upon the Centers for Medicare and Medicaid Service (CMS) mandates. Other Non-RVU weight based Lab vary by code are generally between 62% to 97% of Medicare's rates;

(E) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80% of Medicare's fee schedule;

(F) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed the rate will be based upon Average Wholesale Price (AWP). Pricing information for AWP is provided by First Data Bank. These rates may change periodically based on drug costs;

(G) All procedures used for vision materials and supplies are based on contracted rates which include acquisition cost plus shipping and handling;

(c) Individual Provider rules may specify reimbursement rates for particular services or items.

(4) DMAP reimburses Inpatient Hospital service under the DRG methodology, unless specified otherwise in the DMAP Hospital services administrative rules (chapter 410 division 125). Reimbursement for services, including claims paid at DRG rates, will not exceed any Upper Limits established by federal regulation.

(5) DMAP reimburses all out-of-state Hospital services at Oregon DRG or fee-for-service rates as published in the Hospital Services rules (OAR 410 Division 125) unless the Hospital has a contract or Service Agreement with DMAP to provide highly specialized services.

(6) Payment rates for in-home services provided through DHS Seniors and People with Disabilities Division (SPD) will not be greater than the current DMAP rate for Nursing Facility payment.

(7) DHS sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by SPD for out-of-state Nursing Facilities.

(8) DMAP will not make payment on claims that have been assigned, sold, or otherwise transferred or when the Billing Provider, Billing Agent or Billing Service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a Provider for accounts receivable.

(9) DMAP will not make a separate payment or copayment to a Nursing Facility or other Provider for services included in the Nursing Facility's All-Inclusive Rate. The following services are not included in the All-Inclusive Rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services administrative rules (chapter 410 division 121) and Home Enteral/Parenteral Nutrition and IV Services administrative rules, (chapter 410 division 148);

(b) Physical Therapy, Speech Therapy, and Occupational Therapy provided by a non-employee of the Nursing Facility within the appropriate program administrative rules, (chapter 410 division 131 and 129);

(c) Continuous oxygen which exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment and Medical Supplies administrative rules, (chapter 410 division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services administrative rules, (chapter410 division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services administrative rules, (chapter 410 division 130);

(f) Medical services provided by Physician or other Provider of medical services, such as radiology and Laboratory, as outlined in the Medical-Surgical Services Provider rules, (chapter 410 division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment and Medical Supplies administrative rules, (chapter 410 division 122).

(10) DMAP reimburses Hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment will not be made for services included in the core package of services as outlined in OAR 410 Division 142.

(11) Payment for DMAP Clients with Medicare and full Medicaid:

(a) DMAP limits payment to the Medicaid allowed amount less the Medicare payment up to the Medicare co-insurance and deductible, whichever is less. DMAP payment cannot exceed the co-insurance and deductible amounts due;

(b) DMAP pays the DMAP allowable rate for DMAP covered services that are not covered by Medicare.

(12) For Clients with Third-Party Resources (TPR), DMAP pays the DMAP allowed rate less the TPR payment but not to exceed the billed amount.

(13) DMAP payments, including contracted Prepaid Health Plan (PHP) payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For DMAP such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding the DMAP allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain Payment Authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual Provider rules.

(14) Payment by DMAP does not limit DHS or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050 & 409.110

Stats. Implemented: ORS 414.019, 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742, 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

410-120-1380

Compliance with Federal and State Statutes

(1) When a Provider submits a claim for medical services or supplies provided to a Division of Medical Assistance Programs (DMAP) Client, DMAP will deem the submission as a representation by the medical Provider to the Medical Assistance Program of the medical Provider's

compliance with the applicable sections of the federal and state statutes referenced in this rule:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories).

(c) Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, the Provider must comply and, as indicated, cause all sub-contractors to comply with the following federal requirements to the extent that they are applicable to the goods and services governed by these rules. For purposes of these rules, all references to federal and state laws are references to federal and state laws as they may be amended from time to time:

(A) The Provider must comply and cause all subcontractors to comply with all federal laws, regulations, executive orders applicable to the goods and services provided under these rules. Without limiting the generality of the foregoing, the Provider expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the goods and services provided under these rules:

(i) Title VI and VII of the Civil Rights Act of 1964, as amended;

(ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

(iii) The Americans with Disabilities Act of 1990, as amended;

(iv) Executive Order 11246, as amended;

(v) The Health Insurance Portability and Accountability Act of 1996;

(vi) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

(vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (viii) all regulations and administrative rules established pursuant to the foregoing laws;

(viii) All other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations;

(ix) All federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the goods and services governed by these rules and required by law to be so incorporated. No federal funds may be used to provide services in violation of 42 USC 14402.

(B) Any Provider that receives or makes annual payments under the Title XIX State Plan of at least $5,000,000, as a condition of receiving such payments, shall:

(i) Establish written policies for all employees of the entity (including management), and of any contractor, subcontractor, or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblowing protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

(ii) Include as part of written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste and abuse; and

(iii) Include in any employee handbook for the entity, a specific discussion of the laws described in (i), the rights of the employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

(C) If the goods and services governed under these rules exceed $10,000, the Provider must comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in DHS of Labor regulations (41 CFR Part 60);

(D) If the goods and services governed under these rules exceed $100,000, the Provider must comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act—33 U.S.C. 1251 to 1387), specifically including, but not limited to, Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations must be reported to the Department of Human Services (DHS), the federal Department of Health and Human Services (DHHS) and the appropriate Regional Office of the Environmental Protection Agency. The Provider must include and cause all subcontractors to include in all contracts with subcontractors receiving more than $100,000, language requiring the subcontractor to comply with the federal laws identified in this section;

(E) The Provider must comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163);

(F) The Provider certifies, to the best of the Provider's knowledge and belief, that:

(i) No federal appropriated funds have been paid or will be paid, by or on behalf of the Provider, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Provider must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(iii) The Provider must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors must certify and disclose accordingly;

(iv) This certification is a material representation of fact upon which reliance was placed when this Provider agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Provider agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(G) If the goods and services funded in whole or in part with financial assistance provided under these rules are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), the Provider agrees to deliver the goods and services in compliance with HIPAA. Without limiting the generality of the foregoing, goods and services funded in whole or in part with financial assistance provided under these rules are covered by HIPAA. The Provider must comply and cause all subcontractors to comply with the following:

(i) Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between the Provider and DHS for purposes directly related to the provision to Clients of services that are funded in whole or in part under these rules. However, the Provider must not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 410-014-0000 et. seq., or DHS Notice of Privacy Practices, if done by DHS. A copy of the most recent DHS Notice of Privacy Practices is posted on the DHS Web site or may be obtained from DHS;

(ii) If the Provider intends to engage in Electronic Data Interchange (EDI) transactions with DHS in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, the Provider must execute an EDI Trading Partner Agreement with DHS and must comply with the DHS EDI rules;

(iii) If a Provider reasonably believes that the Provider's or the DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, the Provider must promptly consult the DHS Privacy Officer. The Provider or DHS may initiate a request to test HIPAA transactions, subject to available resources and the DHS testing schedule.

(H) The Provider must comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act

(codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247;

(I) The Provider must comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations;"

(J) The Provider must not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Providers and subcontractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding their exclusion status and that of their principals prior to award;

(K) The Provider must comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace:

(i) The Provider certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in the Provider's workplace or while providing services to DHS Clients. The Provider's notice must specify the actions that will be taken by the Provider against its employees for violation of such prohibitions;

(ii) Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace, the Provider's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;

(iii) Provide each employee to be engaged in the performance of services under these rules a copy of the statement mentioned in paragraph (J)(i) above;

(iv) Notify each employee in the statement required by paragraph (J)(i) that, as a condition of employment to provide services under these rules, the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(v) Notify DHS within ten (10) days after receiving notice under subparagraph (J)(iv) from an employee or otherwise receiving actual notice of such conviction;

(vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

(vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (J)(i) through (J)(vi);

(viii) Require any subcontractor to comply with subparagraphs (J)(i) through (J)(vii);

(ix) Neither the Provider, nor any of the Provider's employees, officers, agents or subcontractors may provide any service required under these rules while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Provider or Provider's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Provider or Provider's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS Clients or others. Examples of abnormal behavior include, but are not limited to hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech, difficulty walking or performing job activities;

(x) Violation of any provision of this subsection may result in termination of the Provider agreement under these rules.

(L) The Provider must comply and cause all sub-contractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.);

M) The Provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. Seq., and CHIP benefits established by Title XXI of the Social Security Act, including without limitation:

(i) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and must furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); 42 CFR 457.950(a)(3);

(ii) Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B); 42 CFR 457.950(a)(3);

(iii) Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(iv) Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. The Provider must acknowledge Provider's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

(2) Hospitals, Nursing Facilities, Home Health Agencies (including those providing personal care), Hospices and Health Maintenance Organizations will comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named Providers and organizations will give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-State Providers of these services should comply with Medicare, Medicaid and CHIP regulations in their state. Submittal to DMAP of the appropriate billing form requesting payment for medical services provided to a Medicaid/CHIP eligible Client shall be deemed representation to DMAP of the medical Provider's compliance with the above-listed laws.

(3) Providers described in ORS chapter 419B are required to report suspected child abuse to their local DHS Children, Adults and Families office or police, in the manner described in ORS 419.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered, under CLIA to be a laboratory.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.025, 409.040, 409.050
Stats. Implemented: ORS 414.025, 414.065
Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0160 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040 & 410-120-0400; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef 4-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

410-120-1570
Claim Re-Determinations

(1) If a Department of Human Services (DHS) Division of Medical Assistance Program (DMAP) provider disagrees with an initial claim determination, they may request a review for re-determination of the denied claim payment.

(a) This rule does not apply to actions that result in a "Notice of Action" that must be provided to the OHP Client. If the decision under review requires any notice to the OHP Client under applicable rules (OAR 410-120-1860, 410-414-0263), the procedures for notices and hearings must be followed.

(b) The request to open an initial claim determination for a re-determination review must be made through DMAP Provider Services in writing, within 180 days from the date of the DMAP original claim adjudication date.

(2) All requests must contain a detailed letter of explanation identifying the specific re-determination denial issue and/or alleged error. This information must be submitted to DMAP at the time of the request. (3) At the time the request for re-determination is made, providers, physicians and suppliers are responsible for providing the information needed to adjudicate their claims, including relevant medical records and evidence-based prac-

tice data to support the position being asserted on review. DMAP may request additional information that it finds relevant to the review. A provider requesting a re-determination review must include the following: the specific service, supply or item being denied, include all relevant codes and detailed justification for the re-determination of the denied service;

(a) A copy of the original claim and a copy of the original denial notice or remittance advice that describes the basis for the claim denial under re-determination;

(b) Any information and/or medical documentation pertinent to support the request and to obtain a resolution of the re-determination review dispute;

(3) A provider requesting a re-determination review must demonstrate one or more of the following reasons that would allow coverage in the particular case:

(a) A below-the-line condition/treatment pair is justified under the comorbid rule OAR 410-141-0480(8);

(b) A treatment that is part of a covered complex procedure and/or related to an existing funded condition;

(c) A service not listed on the HSC Prioritized List that may be covered under OAR 410-141-0480(10);

(d) A service that satisfies the Citizen/Alien-Waived Emergency Medical (CAWEM) emergency service criteria;

(e) Medical documentation of applicable evidence-based practice literature that is consistent with the condition or service under review;

(f) A service that satisfies the prudent layperson definition of emergency medical condition;

(g) A service intended to prolong survival or palliate symptoms, due to expected length of life consistent with the HSC Statement of Intent for Comfort/Palliative Care;

(h) A service that should be covered where denial was due to technical errors and omissions with the Oregon Health Services Commission's (HSC) Prioritized List of approved Health Services

(i) Misapplication of a fee schedule;

(j) A denied duplicate claim that the provider believes were incorrectly identified as a duplicate;

(k) Incorrect data items, such as provider number, use of a modifier or date of service, unit changes or incorrect charges;

(l) Errors with the Medicaid Management Information System (MMIS), such as a code is missing in MMIS that the Oregon Health Services Commission (HSC) has placed on the Prioritized List of Health Services;

(m) Services provided without the required prior-authorization, except for those authorizations subject to provision outlined in OAR 410-120-1280(2)(a)(C);

(n) A covered diagnostic service.

(4) A re-determination review is based on the DMAP review of documentation and applicable law. DMAP does not provide a face-to-face meeting with providers as part of the re-determination process.

(a) The provider is responsible for the timely submission of review request and all information pertinent to conducting the review and consistent with the requirements of this rule.

(b) DMAP will notify a provider requesting review that the re-determination request has been denied if:

(A) The provider did not submit a timely request;

(B) The required information is not provided at the same time the request is submitted; and/or

(C) The provider fails to submit any additional requested information within 14 business days of request.

(5) If the recipient is enrolled in a Prepaid Health Plan (PHP) and the claim was denied by a PHP, the provider requesting review must contact the PHP in accordance with 410-120-1560.

(6) The department's final decision under this rule is the final decision on appeal. Under ORS 183.484, this decision is an order in other than a contested case. ORS 183.484 and the procedures in OAR 137-004-0080 to 137-004-0092 apply to the department's final decision under this rule.

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

410-120-1600

Provider Appeals — Contested Case Hearings

(1) A contested case procedure is a hearing that is conducted by the Office of Administrative Hearings where a contested case is appropriate and consistent with the Provider Appeal rules OAR 410-120-1560. If the request for contested case hearing was timely filed but should have been filed as a claim redetermination or Administrative Review, or Client Appeal, DMAP will refer the request to the proper appeal procedure and notify the Provider, Provider Applicant or PHP Provider.

(2) Contested case hearings are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 to 137-003-0700.

(3) The party to a Provider contested case hearing is the Provider, Provider Applicant or PHP Provider who requested the appeal. In the event that DMAP determines that a PHP Provider is entitled to a Contested Case Hearing under OAR 410-120-1560, the PHP Provider and the PHP are parties to the hearing. A Provider, PHP Provider or PHP that is a corporation may be represented by any of the persons identified in ORS 410.190.

(4) Informal Conference: DMAP may notify the Provider(s) Provider Applicant or PHP Provider (and PHP, if applicable) of the time and place of an informal conference, without the presence of the Administrative Law Judge (ALJ). The purposes of this informal conference are:

(a) To provide an opportunity to settle the matter;

(b) To make sure the parties and DHS understand the specific reason for the action of the hearing request;

(c) To give the parties and DHS an opportunity to review the information which is the basis for action;

(d) To give the parties and DHS the chance to correct any misunderstanding of the facts; and

(e) The Provider, Provider Applicant or PHP Provider (or PHP, if applicable) may, at any time prior to the hearing date, request an additional informal conference with DMAP and DHS representative(s), which may be granted if DMAP finds at its sole discretion, the additional informal conference will facilitate the Contested Case Hearing process or resolution of disputed issues.

(5) Contested Case Hearing: The Administrative Law Judge (ALJ) will conduct the contested case hearing using the Attorney General's Model Rules at OAR 137-003-0501 to 137-003-0700.

(a) The burden of presenting evidence to support a Provider Appeal is on the Provider, Provider Applicant or PHP Provider that requested the Appeal. Consistent with OAR 410-120-1360, payment on a claim will only be made for services that are adequately documented and billed in accordance with OAR 410-120-1280 and all applicable administrative rules related to covered services for the Client's benefit package and establishing the conditions under which services, supplies or items are covered, such as the Prioritized List, medical appropriateness and other applicable standards.

(b) Subject to the DMAP approval under OAR 137-003-0525, the ALJ will determine the location of the Contested Case Hearings.

(6) Proposed and Final Orders: The ALJ is authorized to serve a proposed order on all parties and DMAP unless prior to the hearing, DMAP notifies the ALJ that a final order may be served by the ALJ.

(a) If the ALJ issues a proposed order, and the proposed order is adverse to a party, the party may file written exceptions to the proposed order to be considered by DMAP, or the ALJ when the ALJ is authorized to issue the final order. The exceptions must be in writing and received by DMAP, or the ALJ when the ALJ is authorized to issue the final order, not later than 10 calendar days after the date of the proposed order is issued by the ALJ. No additional evidence may be submitted without prior approval of DMAP.

(b) The proposed order issued by the ALJ will become a final order if no exceptions are filed within the time specified in subsection (a) of this rule, unless DMAP notifies the parties and the ALJ that DMAP will issue the final order. After receiving the exceptions or argument, if any, DMAP may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, DMAP may issue an amended proposed order.

(c) Procedures applicable to default orders for withdrawal of a hearing request, failure to timely request a hearing, failure to appear at a hearing, or other default, are governed by the Attorney General's Model Rules, OAR 137-003-0670 – 137-003-0672.

(d) The final order is effective immediately upon being signed or as otherwise provided in the order.

(7) All Contested Case Hearing decisions are subject to the procedures established in OAR 137-003-675 to 137-003-0700 and to judicial review under ORS 183.482 in the Court of Appeals.

Stat. Auth.: ORS 409.040, 409.050, 409.110 & 409.120

Stats. Implemented: ORS 414.065

Hist.: AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-44, ef. 9-1-84; AFS 51-1985, f. 8-16-85, ef. 9-1-85; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0191 & 461-013-0225; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0820; OMAP 41-2000, f. & cert. ef. 12-1-00; OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 73-2003, f.

& cert. ef. 10-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Jan. '10 — Development of Enforceable Preferred Drug List (PDL) for Physical Health Drugs and Voluntary PDL for Mental Health Drugs and associated Prior Authorization Enhancements.
Adm. Order No.: DMAP 39-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-121-0000, 410-121-0030, 410-121-0032, 410-121-0040, 410-121-0060, 410-121-0100, 410-121-0135, 410-121-0420
Subject: The Pharmaceutical Services program administrative rules govern DMAP payment for services to certain clients. The Pharmaceutical Services program rules (Division 121) govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP needs to amend the administrative rules listed above to clarify current policies and procedures for pharmacy providers to ensure DMAP OARs are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance. DMAP will amend as follows:

410-121-0000 Forward and Definition of Terms: Adding definitions pursuant to legislatively mandated program changes. Definitions to be amended include physical and mental health drugs, preferred and non-preferred products, and Narrow Therapeutic Index(NTI);

410-121-0030 Practitioner Managed Prescription Drug Plan: Development of an Enforceable Physical Health Preferred Drug List and a Voluntary Mental Health Plan Drug List (PDL) including requirements for exceptions, and exemptions or "grand-fathering" of currently existing prescriptions. Due to new information obtained during the Public Comment Period, DMAP will not make permanent the proposed addition of the drug Duragesic patches to the Physical Health PDL at this time. If DMAP were not to take this action, it would list a product on the PDL as being preferred when it does not meet the criteria under this rule for placement. Specifically, this action would place a product on the PDL which would be above the Average Net Price (ANP) for the class.

Beginning January 2010, DMAP will re-review the withdrawal of this drug from the PDL using the DMAP rule process, including Rule Advisory Committee, stakeholder reviews and re-Noticing the rule in April to allow for another Public Comment Period during the month of May 2010.

410-121-0032 Supplemental Rebate Agreements: Changes in processes and procedures for manufacturers to follow in order to participate in the Supplemental Rebate Program;

410-121-0040 Prior Authorization Required for Drugs and Products: Addition of language reflecting that PA could be required for some non-preferred product and updates to Table 1 & 2 (Drugs Subject to PA) based on Drug Utilization Review (DUR) Board recommendations;

410-121-0060 How to Get Prior Authorizations for Drugs: Language revisions relating to PA response times and processes relating to notification of client and prescriber, including rights to appeal;

410-121-0100 Drug Use Review: Revision of language to be reflective of current Retrospective Drug Utilization Review (Retro-DUR) practices and addition of legislatively mandated review of polypharmacy and psychotropic drug use for children placed in foster care by DHS;

410-121-0135 Pharmacy Management Program: Update of language to reflect current business practices;

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

410-121-0145 Prescription Requirements: As a result of Federal rule changes, the age at which DMAP may reimburse a pharmacy for distributing the over-the-counter Plan B emergency contraceptive drug product will be lowered to age 17 and older from age 18 and older who are (fee-for-service) Medicaid eligible;

410-121-0420 DESI: Updates to reflect CMS and FDA policy changes.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0000
Foreword and Definition of Terms

(1) The Pharmaceutical Services Oregon Administrative Rules (OARs) are designed to assist providers in preparing claims for services provided to Division of Medical Assistance Programs' (DMAP) fee-for-service clients. Providers must use Pharmaceutical OARs in conjunction with the General Rules OARs (chapter 410, division 120) for Oregon Medical Assistance Programs.

(2) Pharmaceutical services delivered through managed care plans contracted with DMAP, under the Oregon Health Plan (OHP), are subject to the policies and procedures established in the OHP Administrative Rules (chapter 410, division 141) and by the specific managed health care plans.

(3) Definition of Terms:

(a) Actual Acquisition Cost: The net amount paid per invoice line item to a supplier. This net amount does not include separately identified discounts for early payment;

(b) Average Net Price: The average of Net Price (definition below) of all drugs in an identified Preferred Drug List (PDL) (definition below) class or group.

(c) Average Manufacturer's Price (AMP): The average price at which manufacturers sell medication to wholesalers and retail pharmacies, as further clarified in 42 CFR 447;

(d) Bulk Dispensing: Multiple doses of medication packaged in one container labeled as required by pertinent Federal and State laws and rules.

(e) Centers for Medicare and Medicaid Services (CMS) Basic Rebate: The quarterly payment by the manufacturer of a drug pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927 (c) (3) of the Social Security act (42 U.S.C. 1396r-8(c) (1) and 42 U.S.C. 1396r-8 (c) (3). See 410-121-0157;

(f) CMS CPI Rebate: The quarterly payment by the manufacturer pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927 (c) (2) of the Social Security act (42 U.S.C. 1396r-8(c) (2)

(g) Community Based Care Living Facility: For the purposes of the Division of Medical Assistance Programs (DMAP) Pharmacy Program, a home, facility, or supervised living environment licensed or certified by the state of Oregon which provides 24 hour care, supervision, and assistance with medication administration. These include, but are not limited to:

(A) Supportive Living Facilities;

(B) 24-Hour Residential Services;

(C) Adult Foster Care;

(D) Semi-independent Living Programs;

(E) Assisted Living and Residential Care Facilities;

(F) Group Homes and other residential services for people with developmental disabilities or needing mental health treatment; and

(G) Inpatient hospice;

(h) Compounded Prescriptions:

(A) A prescription that is prepared at the time of dispensing and involves the weighting of at least one solid ingredient that must be a reimbursable item or a legend drug in a therapeutic amount;

(B) Compounded prescription is further defined to include the Oregon Board of Pharmacy definition of Compounding (see OAR 855-006-0005);

(i) Dispensing: Issuance of a prescribed quantity of an individual drug entity by a licensed pharmacist;

(j) Drug Order/Prescription:

(A) A medical practitioner's written or verbal instructions for a patient's medications; or

(B) A medical practitioner's written order on a medical chart for a client in a nursing facility;

(k) Durable Medical Equipment and supplies (DME): Equipment and supplies as defined in OAR 410-122-0010, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

(l) Estimated Acquisition Cost (EAC): The estimated cost at which the pharmacy can obtain the product listed in OAR 410-121-0155;

(m) Intermediate Care Facility: A facility providing regular health-related care and services to individuals at a level above room and board, but less than hospital or skilled nursing levels as defined in ORS 442.015;

(n) Legend Drug: means a drug limited by § 503(b)(1) of the federal Food, Drug, and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(A) Habit-forming;

(B) Toxic or having potential for harm; or

(C) Limited in its use to use under a practitioner's supervision by the new drug application for the drug.

(i) The product label of a legend drug is required to contain the statement: "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION."

(ii) A legend drug includes prescription drugs subject to the requirement of § 503(b)(1) of the federal Food, Drug, and Cosmetic Act which shall be exempt from § 502(F)(1) if certain specified conditions are met;

(o) Long Term Care Facility: Includes skilled nursing facilities and intermediate care facilities with the exclusions found in ORS 443.400 to 443.455;

(p) Maintenance medication: Drugs that have a common indication for treatment of a chronic disease and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of "Y" or "1";

(q) Mental health drug: A type of legend drug defined by the Department by rule that includes, but is not limited to those drugs classified by First DataBank in the following Standard Therapeutic Classes:

(A) Therapeutic class 7 ataractics-tranquilizers; and Therapeutic class 11 psychostimulants-antidepressants,

(B) Depakote, Lamictal and their generic equivalents and other drugs that the Division of Medical Assistance Programs (DMAP) specifically carved out from capitation from Fully Capitated Health Plans (FCHPs) in accordance with sections (8) through (11) of OAR 410-141-0070

(r) Narrow Therapeutic Index (NTI) Drug: A drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring;

(s) Net Price: The amount a drug costs DHS and calculated using the following formula. "Estimated Acquisition Cost — CMS Basic Rebate — CMS CPI Rebate — State Supplemental Rebate";

(t)) Non-Preferred Products: Any medication in a class that has been evaluated and that is not listed on the PMPDP PDL in OAR 410-121-0030 and may be subject to co-pays;

(u) Prior Authorization Program: The Prior Authorization Program is a system of determining, through a series of therapeutic and clinical protocols, which drugs require authorizations prior to dispensing:

(A) OAR 410-121-0040 lists the drugs or categories of drugs requiring prior authorization (PA);

(B) The practitioner, or practitioner's licensed medical personnel listed in OAR 410-121-0060, may request a PA;

(v) Nursing Facility: An establishment that is licensed and certified by the DHS Seniors and People with Disabilities Division (SPD) as a Nursing Facility;

(w) Physical health drug: All other drugs not included in section (q) of this rule.

(x) Preferred Drug List: A PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent the most effective drug(s) available at the best possible price. (See details for the DMAP PMPDP PDL in OAR 410-121-0030);

(A) Enforceable Physical Health Preferred Drug List: The list of drug products used to treat physical health diagnosis which the Division has identified which shall be exempt from client co-pays and may be subject to Prior Authorization. Drugs prescribed which do not appear on the PDL (non-preferred products) will be subject to both co-pays and Prior Authorization as determined to be appropriate by the Division.

(B) Voluntary Mental Health Preferred Drug List: The list of drug products used to treat mental health diagnosis. Products which shall be exempt from client co-pay. Any drug prescribed for the treatment of mental health diagnosis shall be exempt from Prior Authorization requirements by the Division.

(y) Point-of-Sale (POS): A computerized, claims submission process for retail pharmacies that provides on-line, real-time claims adjudication;

(z) Preferred Products: Products in classes that have been evaluated and placed on the PMPDP PDL in OAR 410-121-0030 and are not subject to co-pays;

(aa) Prescription Splitting: Any one or a combination of the following actions:

(A) Reducing the quantity of a drug prescribed by a licensed practitioner for prescriptions not greater than 34 days (see OAR 410-121-0146);

(B) Billing the agency for more than one dispensing fee when the prescription calls for one dispensing fee for the quantity billed;

(C) Separating the ingredients of a prescribed drug and billing the agency for separate individual ingredients, with the exception of compounded medications (see OAR 410-121-0146); or

(D) Using multiple 30-day cards to dispense a prescription when a lesser number of cards will suffice;

(bb) State Supplemental Rebates: DMAP and CMS approved discounts paid by manufacturers per unit of drug. These rebates are authorized by the Social Security Act section 42 USC 1396r-8(a)(1) and are in addition to federal rebates mandated by the Omnibus Budget Rehabilitation Act (OBRA 90) and the federal rebate program;

(cc) Unit Dose: A sealed, single unit container of medication, so designed that the contents are administered to the patient as a single dose, direct from the container, and dispensed following the rules for unit dose dispensing system established by the Oregon Board of Pharmacy.

(dd) Urgent Medical Condition: means a medical conditions that arises suddenly, is not life-threatening, and requires prompt treatment to avoid the development of more serious medical problems.

[ED NOTE: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110,414.065 & 414.325

Stats. Implemented: ORS 414.065

Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

410-121-0030

Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent the most effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify the drug(s) in the class that DHS determines to be the most effective drug(s) and determine the Net Price for each drug and Average Net Price of the class;

(d) The PDL will include drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the Average Net Price. If pharmaceutical manufacturers enter into supplemental rebate agreements with DHS that reduce the cost of their drug below that of the Average Net Price for the class, DHS, in consultation with the HRC recommendations, may include their drug on the PDL;

(e) A copy of the current PDL is available on the web at www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html.

(3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3) (a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. DHS will determine relative price using the methodology described in subsection (4);

(c) DHS will evaluate drug classes and selected drug(s) for the drug classes periodically:

(A) Evaluation will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL will be non-preferred until the new drug has been reviewed by the HRC;

(C) DHS will make all changes or revisions to the PDL, using the rulemaking process and will publish the changes on the DHS Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. DHS will weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the Average Net Price for each PDL drug class. ;

(d) DHS will include drugs on the PDL based on all of the above and with a Net Price under the Average Net Price.

(5) Regardless of the PDL, pharmacy providers shall dispense prescriptions in the generic form, unless the practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows;

(a) If the prescribing practitioner, in his/her professional judgment, wishes to prescribe a physical health drug not on the PDL, he/she may request an exception, subject to the requirements of OAR 410-121-0040.

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060

(c) Exceptions will be granted in instances:

(i) Where the prescriber in his/her professional judgment determines the non-preferred drug is medically appropriate after consulting with DMAP or the Oregon Pharmacy Help Desk; or

(ii) Where the prescriber requests an exception subject to the requirement of (6) (b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060. Table 121-0030-1, PMPDP PDL

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110, 414.065, 414.325

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

410-121-0032

Supplemental Rebate Agreements

(1) The Division of Medical Assistance Programs (DMAP) has a CMS approved Supplemental Rebate Agreement. This template and instructions are available on the DHS website at; http://www.oregon.gov/DHS/healthplan/supp-rebate/main.shtml

(2) DMAP negotiates Supplemental Rebate Agreements for specific drug products through the Sovereign States Drug Consortium (SSDC) multi-state pool and pharmaceutical manufacturers. Negotiations are confidential, and shall not be disclosed, except in connection with an agreement/contract or as may be required by law. Confidentiality is required of any third party involved in administration of the agreement/contract.

(3) Manufacturers may submit Supplemental Rebate offers for consideration to include their drug(s) on the Practitioner's-Managed Prescription Drug Plan (PMPDP) Preferred Drug List (PDL), OAR 410-121-0030 after gaining access to the SSDC secure web-based offer entry system.

(4) Manufacturers must abide by requirements of the SSDC.

(5) The Practitioner-Managed Prescription Drug List (PMPDP) also called the Preferred Drug List (PDL) consist of drugs after the Food and Drug Administration (FDA) has determined to be safe and effective and reimbursable as determined by the Centers for Medicaid and Medicare Services (CMS), and evaluated using an evidence-based review process by the Oregon Health Resources Commission (HRC). If pharmaceutical manufacturers enter into supplemental rebate agreements with the SSDC that reduced the cost of a drug below the Average Net Price (ANP) for the PDL class, DHS may include that drug on the PDL.

(6) Acceptance of the offer:

(a) DMAP may accept an offer through the SSDC process as long as the offer meets the cost reduction requirements of ANP described above

(b) The SSDC will notify manufacturers of the status of their offer(s).

(c) Supplemental Agreements will be executed after signed by all parties, approved by CMS if required, and added to the PMPDP Preferred Drug List by the Administrative rule process.

(d) DMAP may contract for the functions of tracking utilization, invoicing, and dispute resolution for supplemental rebate products.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 97-2004, f. 12-30-04, cert. ef. 1-1-05; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining Prior Authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by OHP in a manner consistent with the Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication will not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited.

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these Pharmacy Provider rules, including PA requirements imposed in this rule.

(3) The Department of Human Services (DHS) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs for which DHS requires PA for this purpose are listed in Table 410-121-0040-1, with their approval criteria.

(4) DHS may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Drug Use Review (DUR) Board and adopted by the Department in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which DHS requires PA for this purpose are included in Table 410-121-0040-2, with their approval criteria.

(5) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon Drug Use Review Board.

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration.

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply.

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria.

(B) If (5)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(6) PA is required for non-preferred PDL products in a class evaluated for the PDL except in the following cases:

(a) The drug is a Mental Health drug as defined in OAR 410-121-0000,

(b) The original prescription is written prior 1/1/10,

(c) The prescription is a refill for the treatment of seizures, cancer, HIV or AIDS, or

(d) The prescription is a refill of an immunosuppressant

(7) PA may not be required

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by DHS,,

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or,

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334. Table 121-0040-1, Table 121-0040-2

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 409.110, 414.065, 414.334

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

410-121-0060

How to Get Prior Authorization for Drugs

(1) A prescriber electing to order a drug requiring PA may have any licensed medical personnel in their office request the PA. The PA request may be transmitted to the Oregon Pharmacy Help Desk by any of the following methods:

(a) Call the Oregon Pharmacy Help Desk

(b) FAX the request form shown in the Pharmaceutical Services Supplemental Information on the Department of Human Services website to the Oregon Pharmacy Help Desk

(c) Transmit the request electronically via the secure MMIS web portal.

(2) The status of a PA request received from prescribers or their licensed medical personnel will be reported on the secure MMIS web portal, or by calling the Automated Voice Recognition (AVR) System, within 24 hours of receipt by the Oregon Pharmacy Help Desk

(3) PA approval:

(a) It is the pharmacy personnel's responsibility to check whether the drugs are covered, whether the client is eligible, and to note restrictions such as date ranges and quantities before dispensing any medications that require PA.

(b) The pharmacy personnel must also check whether the client's prescribed medications are covered by a managed care plan because an enrollment may have taken place after PA was received. If the client is enrolled in a managed care plan and the pharmacy receiving the PA is not a participating pharmacy provider in the managed care plan's network, the pharmacy must inform the client that it is not a participating provider in the managed care plan's network and must also recommend that the client contact his or her managed care plan for a list of pharmacies participating in its network..

(c) After a PA request is approved, the patient will be able to fill the prescription at any Medicaid pharmacy provider, if consistent with all other applicable administrative rules.

(3) If the PA request has been denied, notification to client and prescriber will occur in accordance with OHP General Rules 410-120-1860.

(4) Emergency Need: The Pharmacist may request an emergent or urgent dispensing from the Pharmacy Benefits Manager (PBM) when the client is eligible for covered fee-for-service drug prescriptions.

(a) Clients who do not have a PA pending may receive an emergency dispensing for a 96-hour supply.

(b) Clients who do have a PA pending may receive an emergency dispensing up to a seven-day supply.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0180; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; HR 2-1995, f. & cert. ef. 2-1-95; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 20-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

410-121-0100

Drug Use Review

(1) Drug Use Review (DUR) in Division of Medical Assistance Programs (DMAP) is a program designed to measure and assess the proper utilization, quality, therapy, medical appropriateness, appropriate selection and cost of prescribed medication through evaluation of claims data. This is done on both a retrospective and prospective basis. This program shall include, but is not limited to, education in relation to over-utilization, under-utilization, therapeutic duplication, drug-to-disease and drug-to-drug interactions, incorrect drug dosage, duration of treatment and clinical abuse or misuse.

(a) Information collected in a DUR program that identifies an individual is confidential and may not be disclosed by the DMAP DUR Board or contractors to any person other than health care providers appearing on a recipient's medication profile.

(b) Staff of the DUR Board and contractors may have access to identifying information to carry out intervention activities approved by DMAP, after signing an agreement to keep the information confidential. The identifying information may not be released to anyone other than staff members of the DUR Board, or health care providers appearing on a recipient's medication profile. For purposes of DUR activities, identifying information is defined as the names of prescribing providers, pharmacy providers, and clients.

(2) Prospective DUR is the screening for potential drug therapy problems before each prescription is dispensed. It is performed at the point of sale by the dispensing pharmacist.

(a) Dispensing pharmacists must offer to counsel each DMAP client receiving benefits who presents a new prescription, unless the client refuses such counsel. Pharmacists must document these refusals.

(A) Dispensing pharmacists may offer to counsel the client's caregiver rather than the client presenting the new prescription if the dispensing pharmacist determines that it is appropriate in the particular instance.

(B) Counseling must be done in person whenever practicable.

(C) If it is not practicable to counsel in person, providers whose primary patient population does not have access to a local measured telephone service must provide access to toll-free services (for example, some mail order pharmacy services) and must provide access to toll-free service for long-distance client calls in relation to prescription counseling.

(b) Prospective DUR is not required for drugs dispensed by Fully Capitated Health Plans (FCHPs).

(c) Oregon Board of Pharmacy rules defining specific requirements relating to patient counseling, record keeping and screening must be followed.

(3) Retrospective DUR is the screening for potential drug therapy problems based on paid claims data. DMAP provides a professional drug therapy review for Medicaid clients through this program.

(a) The criteria used in retrospective DUR are compatible with those used in prospective DUR. Retrospective DUR criteria may include Pharmacy Management (Lock-In), Polypharmacy, and Psychotropic Use in Children. Drug therapy review is carried out by pharmacists with the Oregon State University College of Pharmacy, Drug Use Research and Management Program.

(b) If therapy problems are identified, an educational letter is sent to the prescribing provider, the dispensing provider, or both. Other forms of education are carried out under this program with DMAP approval.

(4) The DUR Board is a group of individuals who comprise an advisory committee to DMAP.

(a) The DUR Board is comprised of health care professionals with recognized knowledge and expertise in one or more of the following areas:

(A) Clinically appropriate prescribing of outpatient drugs covered by Medicaid;

(B) Clinically appropriate dispensing and monitoring of outpatient drugs covered by Medicaid;

(C) Drug use review, evaluation and intervention; or

(D) Medical quality assurance.

(b) The DUR Board's membership is made up of at least one-third, but not more than 51 percent, licensed and actively practicing physicians and at least one-third licensed and actively practicing pharmacists. The DUR Board is composed of the following:

(A) Four practicing pharmacists;

(B) Five practicing physicians;

(C) Two persons who represent people on Medical Assistance; and

(D) One person actively practicing dentistry.

(c) The Retrospective DUR Reviewer will attend board meetings in an ex officio capacity.

(d) Appointments to the DUR Board are made by the DMAP Director.

(A) Nominations for DUR Board membership may be sought from various professional associations and each member may serve a two-year term.

(B) When a vacancy occurs, a new member is appointed to serve the remainder of the unexpired term.

(C) An individual appointed to the DUR Board may be reappointed upon the completion of the member's current term of service.

(e) Members of the DUR Board receive no compensation for their services, but subject to any applicable state law, shall be allowed actual and necessary travel expenses incurred in the performance of their duties.

(f) Members of the DUR Board attend quarterly meetings, two of which must be attended in person.

(5) The DUR Board is designed to develop policy recommendations in the following areas in relation to Drug Use Review :

(a) Appropriateness of criteria and standards for prospective DUR and needs for modification of these areas. DUR criteria are predetermined elements of health care based upon professional expertise, prior experience, and the professional literature with which the quality, medical appropriateness, and appropriateness of health care service may be compared. Criteria and standards will be consistent with the following compendia:

(A) American Hospital Formulary Services Drug Information (AAFS-DI);

(B) US Pharmacopeia-Drug Information for the Health Care Professional (USP-DI);

(C) Drug DEX Information System;

(D) Peer-reviewed medical literature; or

(b) Recommendations for continued maintenance of patient confidentiality will be sought;

(c) The use of different types of education and interventions to be carried out or delegated by the DUR Board and the evaluation of the results of this portion of the program; and

(d) The preparation of an annual report on Oregon Medicaid DUR Program which describes:

(A) DUR Board Activities

(i) A description of how pharmacies comply with prospective DUR;

(ii) Detailed information on new criteria and standards in use; and

(iii) Changes in state policy in relation to DUR requirements for residents in nursing homes.

(B) A summary of the education/intervention strategies developed; and

(C) An estimate of the cost savings in the pharmacy budget and indirect savings due to changes in levels of physician visits and hospitalizations.

Stat. Auth.: ORS 409, 42 USC 1396r-8(g)(1)(b)
Stats. Implemented: ORS 414.065
Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 38-1992, f. 12-31-92, cert. ef. 1-1-93; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

410-121-0135
Pharmacy Management Program

(1) Pursuant to 42 CFR 431.54, the Pharmacy Management Program limits some fee-for-service clients to receiving their prescription drugs through the following sources:

(a) A single retail pharmacy to pick up prescriptions;

(b) The Division of Medical Assistance Program (DMAP) mail order pharmacy contractor; and

(c) A specialty pharmacy.

(2) DMAP will not include the following clients in the Pharmacy Management Program:

(a) Prepaid Health Plan (PHP) DMAP members;

(b) Clients with Medicare drug coverage in addition to OHP fee-for-service and no other third party pharmacy insurance coverage;

(c) Children in the care and custody of the Department of Human Services;

(d) Inpatients or residents in a hospital, nursing facility, or other medical institution.

(3) DMAP will consider referrals of potential Pharmacy Management Program clients from the following sources:

(a) Providers;

(b) Retro Drug Utilization Review (DUR) staff;

(c) Department of Human Services (DHS) staff; and

(d) DHS contractors.

(4) Reasons for referring a client to DMAP for review and enrollment in the Pharmacy Management Program include, but are not limited to concern for patient safety or risk of drug misuse, where the client:

(a) Used 3 or more pharmacies during the prior 6 months;

(b) Uses multiple prescribers to obtain prescriptions of the same or comparable medications;

(c) Has altered a prescription; or

(d) Exhibits patterns of prescription drug use involving the drug use review factors listed in ORS 414.360 (a) through (h), as those terms are defined in ORS 414.350.

(5) When DMAP identifies a client meeting the criteria in subsection (4) that is appropriate for the Pharmacy Management Program, DMAP will send the client a notice that provides the following information:

(a) DMAP plans to require that the client use a designated pharmacy for an 18-month period and the date when that requirement will begin;

(b) The client's right to request the following, within 45 days of the date of the notice:

(A) A different designated pharmacy;

(B) An administrative hearing to appeal DMAP's decision to enter the client into the Pharmacy Management Program.

(6) Changing the Pharmacy Management Program client's enrolled pharmacy:

(a) Clients may change their enrolled pharmacy if they:

(A) Move out of area;

(B) Are reapplying for OHP benefits; or

(C) Are denied access to pharmacy services by their selected pharmacy for reasons other than the Pharmacy Management Program factors identified by DMAP;

(b) Clients cannot change their choice of pharmacy more than once every 3 months.

(7) Pharmacy Management Program clients may receive drugs from a different pharmacy if the client urgently needs to fill a prescription and the enrolled pharmacy:

(a) Is not available;

(b) Does not have the prescribed drug in stock; or

(c) Is more than 50 miles away from the client's location at the time the prescription needs to be filled.. However, DMAP may deny coverage if the client frequently fills prescriptions out of the area of the enrolled pharmacy.

(8) Call the Oregon Pharmacy Help Desk for authorization to fill a prescription in the situations described in (7)(a-c) above.

(9) The client's appeal rights and the process for appealing a DMAP decision to lock a client into use of a single pharmacy is found in Oregon Administrative Rule (OAR) 410-120-1860.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 26-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

410-121-0420
DESI Less-Than-Effective Drug List

1) An October 23, 1981 ruling by District of Columbia Federal Court directed the Department of Health and Human Services to stop reimbursement, effective October 30, 1981, under Medicaid and Medicare Part B for all DESI less-than-effective drugs which have reached the Federal Drug Administration Notice-of-Opportunity-for-Hearing stage.

(2) In accordance with Section 1903(i) (5) of the Social Security Act, federal funds participation (FFP) is not available for drugs deemed Less Than Effective (LTE) or Identical, Related of Similar (IRS) drugs for which the Food and Drug Administration (FDA) issued a Notice of Opportunity for a Hearing (NOOH) for all labeled indications.

These drugs are also termed Drug Efficacy Study Implementation (DESI) drugs. DMAP does not reimburse for drugs designated as less than effective or drugs identical, related, or similar to a DESI drug.

(3) A current list of LTE/IRS drugs is available at http://www.cms.hhs.gov/MedicaidDrugRebateProgram/12_LTEIRSDrugs.asp The list is updated on approximately a quarterly basis by CMS after being reviewed for accuracy by the FDA.

(4) The US Food & Drug Administration (FDA) has the responsibility of determining the DESI status of a drug product.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 64-1989(Temp), f. 10-24-89, cert. ef. 11-15-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 17-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0390; HR 20-1991, f. & cert. ef. 4-16-91; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10

Rule Caption: Jan. '10 — Oxygen and Oxygen Equipment; Orthotics and Prosthetics; Ankle-Foot Orthoses and Knee-Ankle-Foot Orthoses.
Adm. Order No.: DMAP 40-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-122-0182, 410-122-0203, 410-122-0660, 410-122-0662
Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Services program administrative rules govern DMAP payment for services to certain clients. DMAP will amend as follows:

410-122-0182, Legend: Clarifies intent regarding rented equipment.

410-122-0203, Oxygen and Oxygen Equipment: Clarifies coverage intent for duals and non-duals and oxygen rental equipment.

410-122-0660, Orthotics and Prosthetics: Moves codes L2232, L2750 and L2780 to 410-122-0662.

410-122-0662, Ankle-Foot Orthoses and Knee-Ankle-Foot Orthoses: Rule will be rewritten to clarify conditions of coverage.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0182
Legend

This rule is retroactive and applies to services rendered on or after Jan. 1, 2009.

(1) DMAP uses abbreviations in the tables within this division.

(2)This rule explains the meaning of these abbreviations.

(3) PA — Prior authorization (PA): "PA" indicates that PA is required, even if the client has private insurance. See OAR 410-122-0040 for more information about PA requirements.

(4) PC — Purchase: "PC" indicates that purchase of this item is covered for payment by DMAP.

(5) RT — Rent: "RT" indicates that the rental of this item is covered for payment by DMAP.

(6) MR — Months Rented:

(a) "13" — Indicates up to 13 consecutive months of continuous rental, when DMAP fee schedule purchase price is met for the item, when the usual purchase price is reached or the actual charge is met (whichever is lowest), the equipment is considered paid for and owned by the client. The provider must then transfer title of the equipment to the client;

(b) For any other rental situation, where DMAP fee schedule lists a purchase price and this purchase price is met for the item, when the usual purchase price is reached or the actual charge is met (whichever is lowest), the equipment is considered paid for and owned by the client. The provider must then transfer title of the equipment to the client.

(7) RP — Repair: "RP" indicates that repair of this item is covered for payment by DMAP.

(8) NF — Nursing Facility: "NF" indicates that this procedure code is covered for payment by DMAP when the client is a resident of a nursing facility.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 37-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 40-2009, f. 12-15-09, cert. ef. 1-1-10

410-122-0203
Oxygen and Oxygen Equipment

Unless stated otherwise within this rule, this rule is retroactive and applies to services rendered on or after January 1, 2009. Prior authorization (PA) requirements referenced in Table 122-0203-2 are effective January 1, 2010.

(1) Indications and limitations of coverage and medical appropriateness - DMAP may cover home oxygen therapy services. Refer to Table 122-0203-1 and the following guidelines:

(a) For children under age 19 when the treating practitioner has determined oxygen services to be medically appropriate; or

(b) For adults age 19 years of age and older who are fully dual-eligible clients (Medicare clients who are also eligible for Medicaid/Oregon Health Plan (OHP); See definition in General Rules, OAR 410-120-0000), DMAP may cover oxygen services as follows:

(A) If Medicare paid on the claim for the oxygen equipment, DMAP may provide reimbursement;

(B) If Medicare denied payment on the claim for the oxygen equipment, DMAP will not provide reimbursement in accordance with Medicare rules and regulations;

(C) Refer to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Supplemental Information for additional details on Medicare's reimbursement limitation of 36 monthly rental payments;

(c) For adults 19 years of age and older who are not eligible for Medicare (only eligible for Medicaid/OHP), PA is required effective January 1, 2010 and all of the following conditions must be met:

(A) The treating practitioner has determined that the client has a severe lung disease or hypoxia-related symptoms that might be expected to improve with oxygen therapy;

(B) The client's blood gas study meets the criteria stated below;

(C) The qualifying blood gas study was performed by a physician or by a qualified provider or supplier of laboratory services;

(D) The qualifying blood gas study was obtained under the following conditions:

(i) If the qualifying blood gas study is performed during an inpatient hospital stay, the reported test must be the one obtained closest to, but no earlier than two days prior to the hospital discharge date; or

(ii) If the qualifying blood gas study is not performed during an inpatient hospital stay, the reported test must be performed while the client is in a chronic stable state – i.e., not during a period of acute illness or an exacerbation of their underlying disease;

(E) Alternative treatment measures have been tried or considered and deemed clinically ineffective;

(d) Group I coverage duration and indications:

(A) Initial coverage for clients meeting Group I criteria is limited to 12 months or the practitioner-specified length of need, whichever is shorter. See information on recertification in section 3(g) and (6);

(B) Group I criteria include any of the following:

(i) An arterial PO2 at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent taken at rest (awake);

(ii) An arterial PO2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 88 percent, for at least 5 minutes taken during sleep for a client who demonstrates an arterial PO2 at or above 56 mm Hg or an arterial oxygen saturation at or above 89 percent while awake;

(iii) A decrease in arterial PO2 more than 10 mm Hg, or a decrease in arterial oxygen saturation more than 5 percent, for at least five minutes taken during sleep associated with symptoms (e.g., impairment of cognitive processes and [nocturnal restlessness or insomnia]) or signs (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis) reasonably attributable to hypoxemia;

(iv) An arterial PO2 at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent, taken during exercise for a client who demonstrates an arterial PO2 at or above 56 mm Hg or an arterial oxygen saturation at or above 89 percent during the day while at rest. In this case, oxygen is provided for during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air;

(e) Group II coverage duration and indications:

(A) Initial coverage for clients meeting Group II criteria is limited to three months or the practitioner-specified length of need, whichever is shorter. See information on recertification in section 3(g) and (6);

(B) Group II criteria include the presence of an arterial PO2 of 56-59 mm Hg or an arterial blood oxygen saturation of 89 percent at rest (awake), during sleep for at least five minutes, or during exercise (as described under Group I criteria) and any of the following:

(i) Dependent edema suggesting congestive heart failure;

(ii) Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure; gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF);

(iii) Erythrocythemia with a hematocrit greater than 56 percent;

(f) Group III indications include a presumption of non-coverage. Criteria include arterial PO2 levels at or above 60 mm Hg or arterial blood oxygen saturations at or above 90 percent;

(g) For all the sleep oximetry criteria, the five minutes does not have to be continuous;

(h) When both arterial blood gas (ABG) and oximetry tests have been performed on the same day under the same conditions (i.e., at rest/awake, during exercise, or during sleep), the ABG result will be used to determine if the coverage criteria were met;

(i) If an ABG test at rest/awake is nonqualifying, but an exercise or sleep oximetry test on the same day is qualifying, the oximetry test result will determine coverage;

(j) Oxygen therapy and related services, equipment or supplies are not covered for any of the following:

(A) Angina pectoris in the absence of hypoxemia. This condition is generally not the result of a low oxygen level in the blood and there are other preferred treatments;

(B) Dyspnea without cor pulmonale or evidence of hypoxemia;

(C) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia. There is no evidence that increased PO2 will improve the oxygenation of tissues with impaired circulation;

(D) Terminal illnesses that do not affect the respiratory system;

(E) Group III clients;

(F) Emergency or stand-by oxygen systems for clients who are not regularly using oxygen since these services are precautionary and not therapeutic in nature;

(G) Topical hyperbaric oxygen chambers (A4575);

(H) When furnished by an airline (responsibility of the client);

(I) When provided/used outside the United States and its territories.

(2) Testing Specifications:

(a) The term blood gas study in this policy refers to either an ABG test or an oximetry test:

(A) An ABG is the direct measurement of the partial pressure of oxygen (PO2) on a sample of arterial blood. The PO2 is reported as mm Hg.

(B) An oximetry test is the indirect measurement of arterial oxygen saturation using a sensor on the ear or finger. The saturation is reported as a percent.

(b) The qualifying blood gas study must be one that complies with the Fiscal Intermediary, Local Carrier, or A/B Medicare Administrative Contractor (MAC) policy on the standards for conducting the test and is covered under Medicare Part A or Part B;

(c) The test must be performed by a qualified provider (a laboratory, a physician, etc.);

(A) A DMEPOS provider is not considered a qualified provider or a qualified laboratory for purposes of this policy;

(B) DMAP will not accept blood gas studies either performed or paid for by a DMEPOS provider;

(C) This prohibition does not extend to blood gas studies performed by a hospital certified to do such tests;

(d) When oxygen is covered based on an oxygen study obtained during exercise, documentation of three oxygen studies performed within the same testing session in the client's medical record is required:

(A) Testing at rest without oxygen;

(B) Testing during exercise without oxygen; and

(C) Testing during exercise with oxygen applied, to demonstrate the improvement of the hypoxemia;

(e) Only the qualifying test value (i.e., testing during exercise without oxygen) is reported on the Certificate of Medical Necessity (CMN). The other results do not have to be routinely submitted but must be available on request;

(f) The qualifying blood gas study may be performed while the client is on oxygen as long as the reported blood gas values meet the Group I or Group II criteria.

(3) Certification:

(a) A completed and signed CMN is required to receive payment for oxygen;

(b) The blood gas study must be the most recent study obtained within 30 days prior to the initial date, indicated in Section A of the CMN;

(c) There is an exception to the 30-day test requirement for clients who were started on oxygen while enrolled in a DMAP health maintenance organization (HMO) and transition to fee-for-service. For those clients, the blood gas study does not have to be obtained 30 days prior to the Initial Date, but must be the most recent qualifying test obtained while in the HMO;

(d) The client must be seen and evaluated by the treating practitioner within 30 days prior to the date of Initial Certification.

(e) Initial CMN is required for any of the following situations:

(A) With the first claim to DMAP for home oxygen, (even if the client was on oxygen prior to becoming eligible for DMAP coverage;

(B) When there has been a change in the client's condition that has caused a break in medical necessity of at least 60 days plus whatever days remain in the rental month during which the need for oxygen ended;

(C) When an initial CMN does not meet coverage criteria and the client was subsequently retested and meets coverage criteria;

(D) When a Group I client with a length of need less than or equal to 12 months was not retested prior to a revised certification/recertification, but a qualifying study was subsequently performed;

(E) When the client initially qualified in Group II, repeat blood gas studies were not performed between the 61st and 90th day of coverage, but a qualifying study was subsequently performed;

(F) When there was a change of DMEPOS provider due to an acquisition and the previous provider did not file a recertification when it was due and the requirements for the recertification were not met when it was due;

(G) When the equipment is replaced in the following situations:

(i) The reasonable useful lifetime of prior equipment has been reached; or

(ii) Irreparable damage, theft or loss of the originally dispensed equipment:

(I) Irreparable damage refers to a specific accident or a natural disaster (e.g., fire, flood); and

(II) Irreparable damage does not refer to wear and tear over time;

(f) For initial CMN of replacement equipment described in (3)(e)(G):

(A) Repeat blood gas testing is not required. Enter the most recent qualifying value and test date. This test does not have to be within 30 days prior to the Initial Date. It could be the test result reported on the most recent prior CMN;

(B) There is no requirement for a practitioner visit that is specifically related to the completion of the CMN for replacement equipment;

(g) Recertification CMN is required in the following situations:

(A) Group I — 12 months after initial certification (i.e., with the thirteenth month's claim);

(B) Group II — 3 months after initial certification (i.e., with the fourth month's claim);

(C) Recertification following initial certification done in section (3)(e)(A & B):

(i) For clients initially meeting Group I criteria, the most recent qualifying blood gas study prior to the thirteenth month of therapy must be reported on the recertification CMN;

(ii) For clients initially meeting Group II criteria, the most recent blood gas study that was performed between the 61st and 90th day following initial certification must be reported on the recertification CMN. If a qualifying test is not obtained between the 61st and 90th day of home oxygen therapy but the client continues to use oxygen and a test is obtained at a later date, if that test meets Group I or II criteria, coverage would resume beginning with the date of that test;

(iii) For clients initially meeting Group I or II criteria, the client must be seen and re-evaluated by the treating practitioner 90 days prior to the date of any recertification. If the practitioner visit is not obtained within the 90-day window but the client continues to use oxygen and the visit is obtained at a later date, coverage would resume beginning with the date of that visit;

(h) Recertification following replacement equipment described in (3)(e)(G):

(A) Repeat testing is not required. Enter the most recent qualifying value and test date. This test does not have to be within 30 days prior to the Initial Date. It could be the test result reported on the most recent prior CMN;

(B) There is no requirement for a practitioner visit that is specifically related to the completion of the CMN for replacement equipment;

(i) The DMEPOS provider must submit a revised CMN in the following circumstances. DMAP does not require a practitioner visit in these situations. Submission of a revised CMN does not change the recertification schedule specified elsewhere:

(A) When the prescribed maximum flow rate changes from one of the following categories to another. In this situation, the blood gas study must be the most recent study obtained within 30 days prior to the initial date:

(i) Less than 1 liter per minute (LPM);

(ii) 1-4 LPM;

(iii) Greater than 4 LPM;

(B) If the change is from less than 1 LPM or 1-4 LPM to greater than 4 LPM, a repeat blood gas study with the client on 4 LPM must be performed within 30 days prior to the start of the greater than 4 LPM flow. In this situation, the blood gas study must be the most recent study obtained within 30 days prior to the initial date;

(C) When the length of need expires – if the practitioner-specified less than lifetime length of need on the most recent CMN. In this situation, the

blood gas study must be the most recent study obtained within 30 days prior to the initial date;

(D) When a portable oxygen system is added subsequent to initial certification of a stationary system. In this situation, DMAP does not require a repeat blood gas study unless the initial qualifying study was performed during sleep, in which case a repeat study must be performed while the client is awake or during exercise (within 30 days of revised date);

(E) When a stationary system is added subsequent to initial certification of a portable system. In this situation, DMAP does not require a repeat blood gas study. A revised CMN does not need to be submitted with claims but must be kept on file by DMEPOS provider;

(F) When there is a new treating practitioner but the oxygen order is the same. In this situation, DMAP does not require a repeat blood gas study. The revised certification does not have to be submitted with the claim;

(G) If there is a new DMEPOS provider and that provider does not have the prior CMN. In this situation, DMAP does not a repeat blood gas study. The revised certification does not have to be submitted with the claim;

(H) If the indications for a revised CMN are met at the same time that a recertification CMN is due, file the CMN as a recertification CMN.

(4) Portable Oxygen Systems:

(a) A portable oxygen system may be covered if the client is mobile within the home and the qualifying blood gas study was performed while at rest (awake) or during exercise. If the only qualifying blood gas study was performed during sleep, portable oxygen is not covered;

(b) If coverage criteria are met, a portable oxygen system is usually separately payable in addition to the stationary system. See exception in (5) below;

(c) If a portable oxygen system is covered, the DMEPOS provider must provide whatever quantity of oxygen the client uses; the reimbursement is the same, regardless of the quantity of oxygen dispensed.

(5) Liter flow greater than 4 LPM:

(a) DMAP will pay a higher allowance for a stationary system for a flow rate of greater than 4 LPM only when:

(A) Basic oxygen coverage criteria have been met; and

(B) A blood gas study performed while the client is on 4 LPM meets Group I or II criteria;

(b) Payment is limited to the standard fee schedule allowance if a flow rate greater than 4 LPM is billed and the coverage criteria for the higher allowance are not met.

(c) If a client qualifies for additional payment for greater than 4 LPM of oxygen and also meets the requirements for portable oxygen:

(A) DMAP will pay for either the stationary system (at the higher allowance) or the portable system (at the standard fee schedule allowance for a portable system), but not both;

(B) In this situation, if both a stationary system and a portable system are requested for the same rental month, DMAP will not cover the portable oxygen system.

(6) Documentation Requirements: The DMEPOS provider must submit documentation which supports conditions of coverage as specified in this rule are met:

(a) A CMN which has been completed, signed, and dated by the treating practitioner:

(A) The CMN may act as a substitute for a written order if it is sufficiently detailed;

(B) The CMN for home oxygen is CMS Form 484 (DME form 484.03). Section B (order information), must be completed by the physician or the practitioner, not the DMEPOS provider. The DMEPOS provider may use Section C for a written confirmation of other details of the oxygen order, or the practitioner can enter the other details directly, such as the means of oxygen delivery (cannula, mask, etc.) and the specifics of varying oxygen flow rates and/or non-continuous use of oxygen;

(C) The ABG PO2 must be reported on the CMN if both an arterial blood gas and oximetry test were performed on the same day under the condition reported on the CMN (i.e., at rest/awake, during exercise, or during sleep);

(D) A report of the sleep study documenting the qualifying desaturation for clients who qualify for oxygen based only on a sleep oximetry study. The oxygen saturation value reported in question 1b of the Oxygen CMN must be the lowest value (not related to artifact) during the five minute qualifying period reported on the sleep oximetry study;

(b) The treating practitioner's signed and dated order for each item billed. Items billed before a signed and dated order has been received by the DMEPOS provider must be submitted with an EY modifier added to each affected HCPCS code.

(c) The following special instructions apply to replacement equipment for those situations described in (3)(e)(G):

(A) Initial date should be the date that the replacement equipment is initially needed. This is generally understood to be the date of delivery of the oxygen equipment;

(B) The recertification date should be 12 months following the initial date when the value on the initial CMN (for the replacement equipment) meets Group I criteria or 3 months following the initial date when the qualifying blood gas value on the initial CMN meets the Group II criteria. (Note: The initial date [for the replacement equipment] should also be entered on the recertification CMN.)

(C) Claims for the initial rental month (and only the initial rental month) must have the RA modifier (Replacement of DME item) added to the HCPCS code for the equipment when there is replacement due to reasonable useful lifetime or replacement due to damage, theft, or loss;

(D) Claims for the initial rental month must include a narrative explanation of the reason why the equipment was replaced and supporting documentation must be maintained in the DMEPOS provider's files;

(d) In the following situations, a new order must be obtained and kept on file by the DMEPOS provider, but neither a new CMN nor a repeat blood gas study are required:

(A) Prescribed maximum flow rate changes but remains within one of the following:

(i) Less than 1 LPM;

(ii) 1-4 LPM;

(iii) Greater than 4 LPM;

(B) Change from one type of stationary system to another (i.e., concentrator, liquid, gaseous);

(C) Change from one type of portable system to another (i.e., gaseous or liquid tanks, portable concentrator, transfilling system).

(7) Oxygen contents:

(a) The DMAP allowance for rented oxygen systems includes oxygen contents;

(b) Stationary oxygen contents (E0441, E0442) are separately payable only when the coverage criteria for home oxygen have been met and they are used with a client-owned stationary gaseous or liquid system respectively;

(c) Portable contents (E0443, E0444) are separately payable only when the coverage criteria for home oxygen have been met and:

(A) The client owns a concentrator and rents or owns a portable system; or

(B) The client rents or owns a portable system and has no stationary system (concentrator, gaseous, or liquid);

(C) If the criteria for separate payment of contents are met, they are separately payable regardless of the date that the stationary or portable system was purchased;

(d) Refer to Table 122-0203-2 for oxygen contents that may be reimbursable for dual-eligible clients.

(8) Oxygen accessory items:

(a) The allowance for rented systems includes, but is not limited to, the following accessories:

(A) Transtracheal catheters (A4608);

(B) Cannulas (A4615);

(C) Tubing (A4616);

(D) Mouthpieces (A4617);

(E) Face tent (A4619);

(F) Masks (A4620, A7525);

(G) Oxygen tent (E0455);

(H) Humidifiers (E0550, E0555, E0560);

(I) Nebulizer for humidification (E0580);

(J) Regulators (E1353);

(K) Stand/rack (E1355);

(b) The DMEPOS provider must provide any accessory ordered by the practitioner;

(c) Accessories are separately payable only when they are used with a client-owned system that was purchased prior to June 1, 1989. DMAP does not cover accessories used with a client-owned system that was purchased on or after June 1, 1989

(9) Billing for miscellaneous oxygen items:

(a) Only rented oxygen systems (E0424, E0431, E0434, E0439, E1390RR, E1405 RR, E1406RR, E1392RR) are considered for coverage;

(b) For gaseous or liquid oxygen systems or contents, report one unit of service for one month rental. Do not report in cubic feet or pounds;

(c) Use the appropriate modifier if the prescribed flow rate is less than 1 LPM (QE) or greater than 4 LPM (QF or QG). DMAP only accepts these

modifiers with stationary gaseous (E0424) or liquid (E0439) systems or with an oxygen concentrator (E1390, E1391). Do not use these modifiers with codes for portable systems or oxygen contents;

(d) Use Code E1391 (oxygen concentrator, dual delivery port) in situations in which two clients are both using the same concentrator. In this situation, this code must only be requested for one of the clients;

(e) For E1405 and E1406 (oxygen and water vapor enriching systems), products must be coded as published by the Pricing, Data Analysis and Coding (PDAC) Contractor by the Centers for Medicare and Medicaid Services;(f) Code E1392 describes a portable oxygen concentrator system. Use E1392 when billing DMAP for the portable equipment add-on fee for clients using lightweight oxygen concentrators that can function as both the client's stationary equipment and portable equipment. A portable concentrator:

(A) Weighs less than 10 pounds;

(B) Is capable of delivering 85 percent or greater oxygen concentration; and

(C) Is capable of providing at least two hours of remote portability at a 2 LPM order equivalency;

(g) Contact the PDAC for guidance on the correct coding of these items.

(10) **Table 122-0203-1**, Oxygen and Oxygen Equipment

(11) **Table 122-0203-2**, Oxygen Contents

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 37-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 40-2009, f. 12-15-09, cert. ef. 1-1-10

410-122-0660

Orthotics and Prosthetics

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover some orthotics and prosthetics for covered conditions;

(b) Use the current Healthcare Common Procedure Coding System (HCPCS) Level II Guide for current codes and descriptions;

(c) For adults, follow Medicare current guidelines for determining coverage;

(d) For clients under age 19, the prescribing practitioner must determine and document medical appropriateness;

(e) The hospital is responsible for reimbursing the provider for orthotics and prosthetics provided on an inpatient basis;

(f) Evaluations, office visits, fittings and materials are included in the service provided;

(g) Evaluations will only be reimbursed as a separate service when the provider travels to a client's residence to evaluate the client's need;

(h) L1500, L1510 and L1520 are not covered for a client residing in a nursing facility;

(i) See Division 129, Speech-Language Pathology, Audiology and Hearing Aid Services for rule information on tracheostomy speaking valves.

(2) Documentation Requirements:

(a) For services that require prior authorization (PA): Submit documentation for review which supports conditions of coverage as specified in this rule are met;

(b) For services that do not require PA: Medical records which support conditions of coverage as specified in this rule are met must be on file with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request.

(3) **Table 122-0660-1**: Codes requiring PA

(4) **Table 122-0660-2**: Exclusions of Coverage

[ED. NOTE: Tables referenced are available from the agency.]

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 40-2009, f. 12-15-09, cert. ef. 1-1-10

410-122-0662

Ankle-Foot Orthoses and Knee-Ankle-Foot Orthoses

(1) Indications and limitations of coverage and medical appropriateness: The Division of Medical Assistance Programs (DMAP) may cover some ankle-foot orthotics (AFOs) and knee-ankle-foot Orthotics (KAFOs) and related services for a covered condition, for this episode, when the covered device has not been billed to DMAP with a Current Procedure Terminology (CPT) code, Healthcare Common Procedure Coding System (HCPCS) code or diagnosis code by any other healthcare provider, and in addition specifically for:

(a) AFOs not used during ambulation: A static AFO (L4396) may be covered when either (A)-(E) are met or (F) is met:

(A) The client has a plantar flexion contracture of the ankle (ICD-9 diagnosis code 718.47) with dorsiflexion on passive range of motion testing of at least 10 degrees (i.e., a nonfixed contracture);

(B) There is a reasonable expectation of the ability to correct the contracture;

(C) The contracture is interfering or expected to interfere significantly with the client's functional abilities;

(D) The static AFO is used as a component of a therapy program that includes active stretching of the involved muscles and/or tendons;

(E) The pre-treatment passive range of motion is measured with a goniometer and an appropriate stretching program carried out by professional staff (in a nursing facility) or caregiver (at home) is documented in the client's treatment plan;

(F) The client has plantar fasciitis (ICD-9 diagnosis code 728.71);

(b) AFOs and KAFOs used during ambulation:

(A) AFOs described by codes L1900, L1902-L1990, L2106-L2116, L4350, L4360 and L4386 with weakness or deformity of the foot and ankle requiring stabilization fro medical reasons and with potential to benefit functionally;

(B) KAFOs described by codes L2000-L2038, L2126-L2136 and L4370 when conditions of coverage are met for an AFO and additional knee stability is required:

(C) AFOs and KAFOs that are molded-to-patient model, or custom-fabricated when basic coverage criteria for an AFO or KAFO are met and one of the following criteria is met:

(i) The client could not be fit with a prefabricated AFO;

(ii) The condition necessitating the orthotic is expected to be permanent or of longstanding duration (more than six months);

(iii) There is a need to control the knee, ankle or foot in more than one plane;

(iv) The client has a documented neurological, circulatory, or orthopedic status that requires custom fabricating over a model to prevent tissue injury;

(v) The client has a healing fracture that lacks normal anatomical integrity or anthropometric proportions;

(c) No more than one replacement interface (L4392) may be covered every six months for a covered static AFO;

(d) Evaluation of the client, measurement and/or casting and fitting of the orthotic are included in the allowance for the orthotic.

(e) Repairs/Replacement:

(A) Repairs to a covered orthotic due to wear or to accidental damage when necessary to make the orthotic functional. If the expense for repairs exceeds the estimated expense of providing another entire orthot, no payment will be made for the amount in excess;

(B) Replacement of a complete orthotic or component of an orthotic due to loss, significant change in the client's condition or irreparable accidental damage if the device is still medically appropriate and conditions of coverage are met;

(C) L4205 (Repair of orthotic device, labor component, per 15 minutes):

(i) May only bill for the actual time involved in the repair of an orthotic;

(ii) May not use this code for any labor involved in the evaluation, fabrication or fitting of a new or full replacement orthotic;

(iii) Use for the labor component of repair of a previously provided orthotic;

(D) Labor Allowance:

(i) Included in the replacement of an orthotic component coded with a specific L code;

(ii) Not included in the replacement of an orthotic component coded with L4210;

(E) Replacement items with specific HCPCS codes:

(i) Use L4392 and L4394 for replacement soft interfaces used with ankle contracture orthotics or foot drop splints;

(ii) Use L2999 (Lower extremity orthotics, not otherwise specified) for replacement components that do not have a specific HCPCS code;

(iii) Addition codes L4002 – L4130, L4392 for replacement components are not payable at initial issue of a base orthotic;

(f) The codes specified in this rule may be covered for a client residing in a nursing facility;

(g) Quantities of supplies greater than those described in the policy as the usual maximum amounts only when supported by documentation clearly and maximum amounts only when supported by documentation clearly and specifically explaining the medical appropriateness of the excess quantities.

(2) Exclusions: The following services are not covered;

(a) A static AFO and replacement interface for:

(A) A fixed contracture; or

(B) A foot drop without an ankle flexion contracture;

(C) When used solely for the prevention or treatment of a heel pressure ulcer;

(b) A component of a static AFO that is used to address positioning of the knee or hip;

(c) A foot drop splint/recumbent positioning device (L4398) or replacement interface (L4394) for a non-ambulatory client when used solely for the prevention or treatment of a pressure ulcer;

(d) An AFO or KAFO and any related addition for an ambulatory client when used solely for treatment of edema and/or prevention or treatment of a pressure ulcer;

(e) Walking boots used primarily to relieve pressure, especially on the sole of the foot or used solely for the prevention or treatment of a pressure ulcer;

(f) Elastic support garments (L1901);

(g) Socks (L2840, L2850) used in conjunction with orthotics;

(h) Replacement components (e.g., soft interfaces) that are provided on a routine basis, without regard to whether the original item is worn out;

(i) A foot pressure off-loading/supportive device (A9283)

(j) L coded additions to AFOs and KAFOs ((L2180-L2550, L2750-L2768, L2780-L2830) if either the coverage criteria for the base orthotic is not met or the specific addition is not medically appropriate.

(3) Coding Guidelines:

(a) A prefabricated orthotic is one that is manufactured in quantity without a specific client in mind. A prefabricated orthotic may be trimmed, bent, molded (with or without heat), or otherwise modified for use by a specific client (i.e., custom fitted). An orthotic that is assembled from prefabricated components is considered prefabricated. Any orthotic that does not meet the definition of a custom-fabricated orthotic is considered prefabricated;

(b) A custom-fabricated orthotic is individually made for a specific client starting with basic materials including, but not limited to, plastic, metal, leather, or cloth in the form of sheets, bars, etc. It involves substantial work such as cutting, bending, molding, sewing, etc. It may involve some prefabricated components. It involves more than trimming, bending, or making other modifications to a substantially prefabricated item;

(c) A molded-to-patient model orthotic is a particular type of custom-fabricated orthotic in that an impression of the specific body part is made (by means of a plaster cast, CAD-CAM technology, etc.). This impression is used to make a positive model (of plaster or other material) of the body part. The orthotic is then molded on this positive model;

(d) Ankle-foot orthotics extend well above the ankle (usually to near the top of the calf) and are fastened around the lower leg above the ankle. These features distinguish them from foot orthotics that are shoe inserts that do not extend above the ankle. A nonambulatory ankle-foot orthotic may be either an ankle contracture splint, night splint or a foot drop splint;

(e) A static AFO (L4396) is a prefabricated ankle-foot orthotic that has all of the following characteristics:

(A) Designed to accommodate either plantar fasciitis or an ankle with a plantar flexion contracture up to 45°;

(B) Applies a dorsiflexion force to the ankle;

(C) Used by a client who is minimally ambulatory or nonambulatory;

(D) Has a soft interface;

(f) A foot drop splint/recumbent positioning device (L4398) is a prefabricated ankle-foot orthotic that has all of the following characteristics:

(A) Designed to maintain the foot at a fixed position of 0° (i.e., perpendicular to the lower leg);

(B) Not designed to accommodate an ankle with a plantar flexion contracture;

(C) Used by a client who is nonambulatory;

(D) Has a soft interface.

(4) HCPCS Modifiers:

(a) EY — No physician or other licensed health care provider order for this item or service;

(b) GY — Item or service statutorily excluded or does not meet the definition of any Medicare benefit:

(A) If an AFO or a KAFO is used solely for the treatment of edema and/or for the prevention or treatment of a pressure ulcer, the GY modifier must be added to the base code and any related additional code;

(B) If a walking boot (L4360, L4386), static AFO (L4396) or foot drop splint/recumbent positioning device (L4398) is used solely for the prevention or treatment of a pressure ulcer, the GY modifier must be added to the base code and to the code for the replacement liner (L4392, L4394);

(C) When the GY modifier is added to a code there must be a short narrative statement indicating why the GY modifier was used – e.g., "used to prevent pressure ulcer" or "used to treat pressure ulcer" or "used to treat edema". This statement must be entered in the narrative field of an electronic claim or attached to a hard copy claim;

(c) KX — Requirements specified in the medical policy have been met. The provider must add a KX modifier to the AFO/KAFO base and additional codes only if all the coverage criteria of this policy have been met and evidence of such is retained in the provider's files;

(d) LT — Left Side; RT - Right Side:

(A)The right (RT) and left (LT) modifiers must be used with orthotic base codes, additions and replacement parts;

(B) When the same code for bilateral items (left and right) is billed on the same date of service, bill both items on the same claim line using the LTRT modifiers and 2 units of service.

(5) Documentation Requirements:

(a) L2999 is the only code in this rule that requires prior authorization (PA): For a PA request, submit documentation for review that supports conditions of coverage as specified in this rule are met, including the plan of care, if applicable;

(b) For services that do not require PA: Documentation from the medical record that supports conditions of coverage as specified in this rule are met must be kept on file with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider;

(c) Prior to billing for each new or full replacement item, the DMEPOS provider must first have received a completed written, signed and dated physician's order that includes:

(A) The treating diagnosis code that justifies the need for the orthotic device;

(B) Detailed description of the item including all options or additional features; The unique features of the base code plus every addition that will be billed on a separate claim line;

(d) For custom-fabricated orthotics, documentation must support the medical appropriateness of that type device rather than a prefabricated orthotic;

(e) For 2999:

(A) The request for PA must include the following information:

(i) A narrative description of the item (for custom fabricated items); or

(ii) The manufacturer's name and model name/number (for pre-fabricated items); and

(iii) Justification of medical appropriateness for the item;

(iv) For replacement components, a HCPCS code or the manufacturer's name and model name/number of the base orthotic.

(v) The manufacturer's name and model name/number must be entered in the narrative field of an electronic claim;

(f) Repair of orthotic devices:

(A) A physician's order is not required;

(B) A detailed description of the reason for the repair, part that is being repaired or replaced must be on file with the DMEPOS provider;

(C) The following information must be entered in the narrative field of an electronic claim:

(i) L4210 must include a description of each item that is billed;

(ii) L4205 must include an explanation of what is being repaired;

(D) All codes for repairs of orthotics billed with the same date of service must be submitted on the same claim;

(g) The provider must include the ICD-9 diagnosis code for the underlying condition on the claim for a static AFO (L4396) or replacement interface material (L4392);

(h) All codes for orthotics billed with the same date of service must be submitted on the same claim;

(i) When billing for quantities of supplies greater than those described in the policy as the usual maximum amounts, there must be documentation in the client's medical record supporting the medical appropriateness for the higher utilization;

(j) The client's medical record must support the medical appropriateness for items and all additions billed to DMAP and this documentation must be made available to DMAP on request.

(5) **Table 122-0662.**

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 40-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: 2009–11 legislative budget reductions for OHP Plus non-pregnant adult dental benefits.
Adm. Order No.: DMAP 41-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-123-1000, 410-123-1160, 410-123-1220, 410-123-1260
Subject: The Dental Services program administrative rules govern DMAP payment for services to certain clients. DMAP amended rules listed above to clarify budget reductions in the DMAP Dental Program as imposed by the Legislatively-approved budget (LAB), which includes the elimination or limitation of some procedures for Oregon Health Plan (OHP) Plus Benefit package non-pregnant adults (age 21 and over) and other limitations for Plus Benefit package clients. DMAP also amended rules for procedures discussed with the Health Services Commission's Dental Subcommittee to appropriately cover or limit procedures. DMAP also amended rules to clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance. DMAP clarified current OARs to help facilitate provider compliance with eligibility, service coverage and limitations, prior authorizations, and billing requirements. Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-123-1000
Eligibility, Providing Services and Billing

(1) Eligibility:

(a) Providers are responsible to verify client eligibility and must do so before providing any service or billing the Division of Medical Assistance Programs (DMAP) or any Oregon Health Plan (OHP) Prepaid Health Plan (PHP);

(b) DMAP will not pay for services provided to an ineligible client even if services were authorized. Refer to General Rules OAR 410-120-1140 (Verification of Eligibility) for details.

(2) Billing:

(a) Providers must follow DMAP rules in effect on the date of service. All DMAP rules are intended to be used in conjunction with the DMAP General Rules (chapter 410, division 120), the OHP Administrative Rules (chapter 410, division 141), Pharmaceutical Services Rules (chapter 410, division 121) and other relevant DMAP OARs applicable to the service provided, where the service is delivered, and the qualifications of the person providing the service including the requirement for a signed provider enrollment agreement;

(b) Third Party Resources: A third party resource (TPR) is an alternate insurance resource, other than DMAP, available to pay for medical/dental services and items on behalf of Medical Assistance Program clients. Any alternate insurance resource must be billed before DMAP or any OHP PHP can be billed. Indian Health Services or Tribal facilities are not considered to be a TPR pursuant to General Rules (OAR 410-120-1280);

(c) Fabricated Prosthetics: If a dentist or denturist provides an eligible client with fabricated prosthetics that require the use of a dental laboratory, and the fabrication extends beyond the client's DMAP eligibility, the dentist/denturist should use the date of final impression as the date of service, but also indicate the date of delivery. The date of delivery must be within 45 days of the date of the final impression. This is the only exception to General Rules (OAR 410-120-1280). All other services must be billed using the date the service was provided;

(d) Refer to OAR 410-123-1160 for information regarding dental services requiring prior authorization (PA).Refer to OAR 410-123-1100 for information regarding dental services that require providers to submit reports for review ("by report" - BR) prior to reimbursement;

(e) The client's records must include documentation to support the appropriateness of the service and level of care rendered;

(f) The Division of Medical Assistance Programs (DMAP) will only reimburse for dental services that are dentally appropriate as defined in OAR 410-123-1060;

(g) Refer to OAR 410 Division 147 for information about reimbursement for dental services provided through a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC);

(3) Treatment Plans: Being consistent with established dental office protocol and the standard of care within the community, scheduling of appointments is at the discretion of the dentist. The agreed upon treatment plan established by the dentist and patient will establish appointment sequencing. Eligibility for medical assistance programs does not entitle a client to any services or consideration not provided to all clients.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10

410-123-1160
Prior Authorization (PA)

(1) Division of Medical Assistance Programs (DMAP) PA requirements:

(a) For fee-for-service (FFS) dental clients, the following services require PA:

(A) Crowns (porcelain fused to metal, resin with metal);

(B) Crown repair;

(C) Retreatment of previous root canal therapy – anterior;

(D) Complete dentures;

(E) Immediate dentures;

(F) Partial dentures;

(G) Prefabricated post and core in addition to fixed partial denture retainer;

(H) Fixed partial denture repairs;

(I) Skin graft; and

(J) Orthodontics (when covered pursuant to OAR 410-123-1260);

(b) Hospital dentistry always requires PA, regardless of the client's enrollment status. Refer to OAR 410-123-1490 for more information;

(c) Oral surgical services require PA when performed in an Ambulatory Surgical Center (ASC) or an outpatient or inpatient hospital setting and related anesthesia. Refer to OAR 410-123-1260, Oral Surgery Services, and the current Medical Surgical Services administrative rule OAR 410-130-0200 for information;

(d) Maxillofacial surgeries may require PA in some instances. Refer to the current Medical Surgical Services administrative rule 410-130-0200, for information.

(2) DMAP does not require PA for outpatient or inpatient services related to life-threatening emergencies. The client's clinical record must document any appropriate clinical information that supports the need for the hospitalization.

(3) How to request PA:

(a) Submit the request to DMAP in writing. Refer to the Dental Services Supplemental Information for specific instructions and forms to use. Telephone calls requesting PA will not be accepted;

(b) Treatment justification: DMAP may request the treating dentist to submit appropriate radiographs or other clinical information that justifies the treatment:

(A) When radiographs are required they must be:

(i) Readable copies;

(ii) Mounted or loose;

(iii) In an envelope, stapled to the PA form;

(iv) Clearly labeled with the dentist's name and address and the client's name; and

(v) If digital x-ray, they must be of photo quality;

(B) Do not submit radiographs unless it is required by the Dental Services administrative rules or they are requested during the PA process.

(4) DMAP will issue a decision on PA requests within 30 days of receipt of the request. DMAP will provide PA for services when:

(a) The prognosis is favorable;

(b) The treatment is practical;

(c) The services are dentally appropriate; and

(d) A lesser-cost procedure would not achieve the same ultimate results.

(5) PA does not guarantee eligibility or reimbursement. It is the responsibility of the provider to check the client's eligibility on the date of service.

(6) For certain services and billings, DMAP will seek a general practice consultant or an oral surgery consultant for professional review to determine if a PA will be approved. DMAP will deny PA if the consultant decides that the clinical information furnished does not support the treatment of services.

(7) For managed care PA requirements:

(a) For services other than hospital dentistry, contact the client's DCO for PA requirements for individual services and/or supplies listed in the Dental Services administrative rules. DCOs may not have the same PA requirements for dental services as listed in this administrative rule;

(b) For hospital dentistry, refer to OAR 410-123-1490 for details regarding PA requirements.

Stat. Auth.: ORS 409.050, 414.051, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10

410-123-1220

Coverage according to the Prioritized List of Health Services

(1) This rule incorporates by reference the "Covered and Non-Covered Dental Services" document, dated January 1, 2010, located on the DHS Web site at www.dhs.state.or.us/policy/healthplan/guides/dental/main.html:

(a) The "Covered and Non-Covered Dental Services" document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Oregon Health Services Commission (HSC) Prioritized List of Health Services and the client's specific Oregon Health Plan benefit package;

(b) This document is subject to change if there are funding changes to the HSC Prioritized List.

(2) Changes to services funded on the HSC Prioritized List are effective on the date of the List change:

(a) The Division of Medical Assistance Programs (DMAP) administrative rules (Chapter 410-Division 123) will not reflect the most current HSC Prioritized List changes until they have gone through DMAP rule filing process;

(b) For the most current HSC Prioritized List, refer to the HSC Web site at www.oregon.gov/OHPPR/HSC/current_prior.shtml;

(c) In the event of an alleged variation between a DMAP-listed code and a national code, DMAP will apply the national code in effect on the date of request or date of service.

(3) Refer to OAR 410-123-1260 for information about limitations on procedures funded according to the HSC Prioritized List of Health Services. Examples of limitations include frequency and client's age.

(4) The HSC Prioritized List does not include or fund the following general categories of dental services and DMAP does not cover them for any client. Several of these services are considered "cosmetic" in nature (i.e., done for the sake of appearance):

(a) Desensitization;

(b) Implant and implant services;

(c) Mastique or veneer procedure;

(d) Orthodontia (except when it is treatment for cleft palate with cleft lip);

(e) Overhang removal;

(f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;

(g) Temporomandibular Joint Dysfunction treatment; and

(h) Tooth bleaching.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10

410-123-1260

Dental Exams, Diagnostic and Procedural Services

(1) GENERAL:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR 410 Division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(B) Providers must provide EPSDT services for eligible DMAP clients according to the following documents:

(i) The Dental Services administrative rules (OAR 410 Division123), for dentally appropriate services funded by the Prioritized List of Health Services; and

(ii) The "Oregon Health Plan (OHP) — Recommended Dental Periodicity Schedule," dated January 1, 2010. This rule incorporates by reference the OHP periodicity schedule posted on the DHS Web site at www.dhs.state.or.us/policy/healthplan/guides/dental/main.html;

(b) Restorative, periodontal and prosthetic treatments:

(A) Such treatments must be consistent with the prevailing standard of care, documentation must be included in the client's charts to support the treatment, and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result; or

(iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment (including porcelain fused to metal crowns) are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

(2) DIAGNOSTIC SERVICES:

(a) Exams:

(A) For children (under 19 years of age):

(i) DMAP will reimburse exams (billed as D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months;

(ii) DMAP will reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults (19 years of age and older) — DMAP will reimburse exams (billed as D0120, D0150, D0160, or D0180) by the same practitioner once every 12 months;

(C) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(D) DMAP only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, DMAP does not reimburse dental exams when furnished by a Dental Hygienist (with or without a limited access permit);

(b) Radiographs:

(A) DMAP will reimburse for routine radiographs once every 12 months;

(B) DMAP will reimburse bitewing radiographs for routine screening once every 12 months;

(C) DMAP will reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 — once;

(ii) D0230 — a maximum of five times;

(iii) D0270 — a maximum of twice, or D0272 once;

(E) DMAP will reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients must be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11- a minimum of 10 periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older - a minimum of 10 periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), DMAP will reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If DMAP determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(K) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

(3) PREVENTIVE SERVICES:

(a) Prophylaxis:

(A) For children (under 19 years of age) — Limited to twice every 12 months;

(B) For adults (19 years of age and older) — Limited to once every 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis – Adult) — Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis – Child) — Use for clients under 14 years of age;

(b) Topical Fluoride Treatment:

(A) For adults (19 years of age and older) — Limited to once every 12 months;

(B) For children (under 19 years of age) — Limited to twice every 12 months;

(C) For children under 7 years of age who have limited access to a dental practitioner, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(i) Bill DMAP directly regardless of whether the client is fee-for-service (FFS) or enrolled in a Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO);

(ii) Bill using a professional claim format with the appropriate CDT code (D1206 — Topical Fluoride Varnish);

(iii) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(D) Additional topical fluoride treatments may be available, up to a total of 4 treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc;

(c) Sealants:

(A) Are covered only for children under 16 years of age;

(B) DMAP limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

(d) Tobacco Cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco;

(iii) Assess the patient's current level of readiness to quit;

(iv) Assist patients, for example by providing self-help cessation materials, recommending tobacco cessation therapy products through the patient's primary care physician (e.g. nicotine patches, oral medications intended for tobacco cessation treatment and gum) and encouraging the setting of a quit date; and

(v) Arrange to follow up with patients at their next office visit and provide local tobacco-use cessation resources, if needed;

(B) DMAP allows a maximum of 10 services within a three-month period;

(C) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190;

(e) Space management:

(A) DMAP will cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;

(B) DMAP will not reimburse for replacement of lost or damaged removable space maintainers.

(4) RESTORATIVE SERVICES:

(a) Restorations — Amalgam and Composite:

(A) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(B) DMAP limits payment to the maximum restoration fee of four surfaces per tooth. Refer to the ADA CDT codebook for definitions of restorative procedures;

(C) Combine and bill one line per tooth using the appropriate code. For example, if tooth #30 has a buccal amalgam and a MOD amalgam, then bill MOD, B, using code D2161;

(D) DMAP will not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(E) DMAP reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(F) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(G) DMAP reimburses for posterior composite restorations at the same rate as amalgam restorations;

(H) DMAP limits payment for replacement of posterior composite restorations to once every five years;

(b) Crowns:

(A) Acrylic heat or light cured crowns (D2970) — allowed only for anterior permanent teeth;

(B) The following types of crowns are covered only for clients under 21 years of age or who are pregnant:

(i) Prefabricated plastic crowns (D2932) — allowed only for anterior teeth, permanent or primary;

(ii) Stainless steel crowns (D2930/D2931) — allowed only for posterior teeth, permanent or primary;

(iii) Prefabricated stainless steel crowns with resin window (D2933) — allowed only for anterior teeth, permanent or primary;

(C) Permanent crowns:

(i) Limited to teeth numbers 6-11, 22 and 27 only, if dentally appropriate;

(ii) Up to four (4) permanent crowns allowed in a seven-year period;

(iii) A replacement of a crown previously covered under OHP is included in the maximum limit of 4 permanent crowns, and would need to meet the criteria for a replacement crown;

(iv) Resin-based composite — D2710:

(I) Only allowed for clients at least 16 years and under 21 years of age or who are pregnant; and

(II) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(v) Porcelain fused to metal (PFM) – D2751 and D2752:

(I) Conditions listed above in this section (Permanent Crowns) have been met;

(II) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;

(III) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(IV) The dental practitioner submits radiographs to DMAP for review; history, diagnosis, and treatment plan may be requested. See OAR 410-123-1100 Services Reviewed by DMAP;

(V) The client has documented stable periodontal status with pocket depths within 1 – 3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;

(VI) The crown has a favorable long-term prognosis; and

(VII) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(D) The fee for the crown includes payment for preparation of the gingival tissue;

(E) DMAP limits payment for retention pins to four per tooth;

(F) Prefabricated post and core in addition to crowns (D2954 and D2957) is only covered for clients under 21 years of age or who are pregnant;

(G) DMAP covers crowns only when there is significant loss of clinical crown and no other restoration will restore function:

(i) DMAP will cover crowns if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(ii) The following is not covered:

(I) Endodontic therapy alone (with or without a post);

(II) Aesthetics (cosmetics);

(III) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(H) DMAP limits permanent crown replacement to once every seven years and all other crown replacement to once every five years per tooth and only when dentally appropriate. DMAP may make exceptions to this limitation for crown damage due to acute trauma, based on the following factors:

(i) Extent of crown damage;

(ii) Extent of damage to other teeth or crowns;

(iii) Extent of impaired mastication;

(iv) Tooth is restorable without other surgical procedures; and

(v) If loss of tooth would result in coverage of removable prosthetic.

(5) ENDODONTIC SERVICES:

(a) Pulp Capping:

(A) DMAP includes direct and indirect pulp caps in the restoration fee; no additional payment will be made for clients with the OHP Plus Benefit package;

(B) DMAP covers direct pulp caps as a separate service for clients with the OHP Standard Benefit package because restorations are not a covered benefit under this benefit package;

(b) Endodontic Therapy:

(A) Endodontic therapy (D3230, D3240, D3330) is covered only for clients under 21 years of age or who are pregnant;

(B) DMAP covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(c) Endodontic Retreatment and Apicoectomy/Periradicular Surgery:

(A) DMAP does not cover retreatment of a previous root canal or apicoectomy/periradicular surgery for bicuspid or molars;

(B) DMAP limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;

(d) DMAP does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(e) DMAP does not cover root canal therapy for third molars;

(f) DMAP covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(g) Apexification/Recalcification Procedures:

(A) DMAP limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/Recalcification procedures are covered only for clients under 21 years of age or who are pregnant.

(6) PERIODONTIC SERVICES:

(a) Surgical periodontal services (includes six months routine postoperative care):

(A) D4210 and D4211 – limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia;

(B) DMAP covers the following services only for clients under 21 years of age or who are pregnant:

(i) D4240, D4241, D4260 and D4261 — allowed once every three years unless there is a documented medical/dental indication;

(ii) D4245 and D4268;

(b) Non-surgical periodontal services:

(A) D4341 and D4342 — allowed once every two years. A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances. Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater;

(B) D4355 — allowed only once every 2 years;

(c) Other periodontal services — D4910 — limited to following periodontal therapy and allowed once every six months. For further consideration of more frequent periodontal maintenance benefits, office records must clearly reflect clinical indication, i.e., chart notes, pocket depths and radiographs;

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) DMAP will not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4260 (Osseous surgery, including flap entry and closure — four or more contiguous teeth or bounded teeth spaces per quadrant);

(F) D4261 (Osseous surgery, including flap entry and closure — one to three contiguous teeth or bounded teeth spaces per quadrant);

(G) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(H) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(I) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(J) D4910 (Periodontal maintenance).

(7) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) DMAP limits full dentures for non-pregnant clients age 21 and older to only those clients who are recently edentulous (extractions occurred within 3 months prior to making of denture);

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) DMAP will not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) The client must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) The dental practitioner must note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age or who are pregnant - DMAP will replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every ten years, but only when dentally appropriate;

(B) For non-pregnant clients 21 years of age and older - DMAP will not cover replacement of full dentures, but will cover replacement of partial dentures once every 10 years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO) enrollment status at the time client's last denture or partial was received. For example: a client

receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 2, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant replacement;

(f) DMAP limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for clients 21 years of age and older:

(A) A maximum of 4 times per year per arch for:

(i) Adjusting complete and partial dentures (D5410-D5422);

(ii) Replacing missing or broken teeth on a complete denture – each tooth (D5520);

(iii) Replacing broken tooth on a partial denture — each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of 2 times per year per arch for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Denture rebase procedures:

(A) Rebase should only be done if a reline will not adequately solve the problem. DMAP limits payment for rebase to once every three years;

(B) DMAP may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant rebasing;

(h) Denture reline procedures:

(A) DMAP limits payment for reline of complete or partial dentures to once every three years;

(B) DMAP may make exceptions to this limitation under the same conditions warranting replacement;

(C) Laboratory relines:

(i) Are not payable within five months after placement of an immediate denture; and

(ii) Are limited to once every three years;

(i) Interim partial dentures (D5820-D5821, also referred to as "flippers"):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) DMAP will reimburse for replacement of interim partial dentures once every 5 years, but only when dentally appropriate;

(j) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

(8) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Maxillofacial prosthetics are medical services. Refer to the "Covered and Non-Covered Dental Services" document and OAR 410-123-1220;

(b) Bill for maxillofacial prosthetics using the professional (CMS-1500, DMAP 505 or 837P) claim format:

(A) For clients receiving services through an FCHP or PCO, bill maxillofacial prosthetics to the FCHP or PCO;

(B) For clients receiving medical services through FFS, bill DMAP.

(9) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical, including such procedures performed in an ASC or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting (including an oral surgeon's office):

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD-9 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the HSC's Prioritized List of Health Services that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO, the DCO is responsible for payment of those services in the dental plan package;

(e) Oral surgical services performed in an Ambulatory Surgical Center (ASC) or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a FCHP, the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a PCO, the outpatient facility charge (including ASCs) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR Chapter 410 – Division 130 for more information;

(C) If a client is enrolled in a FCHP or a PCO, it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered;

(f) All codes listed as "by report" require an operative report;

(g) DMAP covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) DMAP does not cover surgical excisions of soft tissue lesions (D7410 — D7415;

(j) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(l) Include local anesthesia and routine post-operative care:

(A) DMAP limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(B) DMAP does not cover alveoloplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(C) DMAP covers alveoplasty not in conjunction with extractions (D7320) only for clients under 21 years of age or who are pregnant.

(10) ORTHODONTIA SERVICES:

(a) DMAP limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate with cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). DMAP will reimburse each phase individually (separately);

(f) DMAP will pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treat-

ment, or treatment is terminated for any reason, the orthodontist must refund to DMAP any unused amount of payment, after applying the following formula: Total payment minus $300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) DMAP will use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, DMAP will not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8999 — PA required.

(11) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(B) DMAP reimburses providers for general anesthesia or IV sedation as follows:

(i) D9220 or D9241: For the first 30 minutes;

(ii) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) DMAP reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation:

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers must submit to DMAP a copy of their permit to administer anesthesia, analgesia and/or sedation;

(F) For the purpose of Title XIX and Title XXI, DMAP limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(b) DMAP limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(c) Office visit for observation (D9430):

(A) Is covered only for clients under 21 years of age or who are pregnant; and

(B) DMAP reimburses a maximum of three visits per year;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(B) Bill DMAP or the FCHP/PCO for these codes using the professional claim format.

Stat. Auth.: ORS 409.050, 414.065, OL 732

Stats. Implemented: ORS 414.065, OL 732

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: January 2010 Age Guidelines for Brokerage child Transports.

Adm. Order No.: DMAP 42-2009

Filed with Sec. of State: 12-15-2009

Certified to be Effective: 1-1-10

Notice Publication Date: 11-1-2009

Rules Adopted: 410-136-0245

Subject: The Medical Transportation Services Program administrative rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP adopted 410-136-0245 to include in rule the age guidelines for OHP eligible children who may utilize medical transportation through a transportation brokerage and whose parent or guardian may request the child be transported to medical appointments without an attendant.

This rule is necessary to ensure that the safety and welfare of children is the primary objective in the coordination of child transports to medical appointments. Any guidelines set forth by the Oregon State Department of Human Services Child Welfare and Foster Care programs supersede this rule.

The parties who coordinate, schedule, and transport OHP eligible children to medical appointments may include but are not limited to transportation brokerages contracted with the State of Oregon and DMAP. DHS Child Welfare, Children, Adults and Families, and Seniors and People with Disabilities divisions also transport children to medical and non-medical appointments. For purposes of this proposed rule, age guidelines will be limited to transportation services coordinated through brokerages. DMAP will comply with DHS recommendations for age guidelines.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-136-0245

Child Transports

(1) The safety and welfare of children is the primary objective in the coordination, scheduling, and transporting of Oregon Health Plan eligible children to medical appointments. This rule defines the requirements for attendants during child transports:

(a) Eligible children under 12 years old must have an attendant while traveling to medical appointments;

(b) The requirements for having an attendant are specific to child transports provided by transportation brokerages.

(2) The parent or legal guardian is responsible for assuring that an attendant is available to accompany the child to and from a medical appointment.

(3) Guidelines for children in the custody of the Oregon State Department of Human Services (DHS) will be established and administered by the Child Welfare and Foster Care Divisions (DHS Child Foster Care). To the extent that their requirements are different from this rule, the DHS Child Foster Care requirements supersede this rule:

(a) DHS Children, Adults, and Families (CAF) Division will administer volunteer driver program guidelines for children under the care and custody of DHS for rides that are not coordinated by the transportation brokerage;

(b) Volunteer drivers who regularly transport children to medical services are subject to driver safety standards and criminal background checks set forth by CAF;

(c) Children and young adults with special physical or developmental needs must have an attendant, regardless of age;

(d) This rule does not apply to medical transportation that is provided by a local educational agency as part of school transportation;

(e) If a child requires secured transportation, the requirements of OAR 410-136-0240 apply in addition to the requirements of this rule.

(4) An attendant may be the mother, father, stepmother, stepfather, or legal guardian of the child. An attendant may also be a brother, sister, stepbrother, or stepsister of the child, who is at least 18 years or older, and authorized by the parent or legal guardian to be the attendant.

(5) Representatives of the transportation brokerage, or their contracted transportation providers, may require written authorization for the attendant from a child's parent or legal guardian.

(6) Transportation brokerages will not bill the Division of Medical Assistance Programs' (DMAP) additional charges when an attendant is required during transport.

(7) The appropriate attendant must accompany the eligible child from the pick-up location, to the destination, and on the return trip. The attendant must also remain with the child during their appointment. The attendant may not be accompanied by other persons unless they are authorized by the parent or legal guardian to also be in attendance or unless the other person is an eligible child traveling to the same location for a medical appointment.

(8) The transportation brokerage, under an intergovernmental agreement (IGA) with the state, authorizes, schedules, and coordinates medical transportation for eligible OHP+ children. The brokerage will ensure that transportation providers:

(a) Meet the requirements defined in the IGA;

(b) Complete contractually required criminal background and driving record checks for drivers;

(c) Monitor driver completion of required driver safety trainings.

(9) Child safety seats shall be provided and installed by the parent, guardian or adult caregiver for the child, as required by state law. If a parent fails to provide a child safety seat that is in compliance with state law, the provider cannot transport the child.

(10) Attendants are not required for non-emergent ambulance transports, unless an ambulance company provides the ride and bills it through a transportation brokerage as a wheelchair or stretcher trip. See OAR 410-136-0280, Required Documentation. For all other non-emergent ambulance rides, refer to requirements for an attendant under OAR 410-136-0080, Additional Client Transport.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110
Stats. Implemented: ORS 414.065, 414.019, 414.025
Hist.: DMAP 42-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Tuberculosis (TB) Targeted Case Management (TCM) program; Human Immunodeficiency Virus (HIV) program; rule consolidation.
Adm. Order No.: DMAP 43-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Adopted: 410-138-0390
Rules Amended: 410-138-0009, 410-138-0020, 410-138-0300, 410-138-0360, 410-138-0380, 410-138-0560, 410-138-0680
Rules Repealed: 410-138-0320, 410-138-0340, 410-138-0520, 410-138-0620, 410-138-0720, 410-138-0300(T), 410-138-0360(T), 410-138-0380(T), 410-138-0390(T)
Subject: These Targeted Case Management (TCM) Services administrative rules govern Division of Medical Assistance Program (DMAP) payments for services provided to certain eligible clients who have a documented HIV infection or a diagnosis of AIDS, whether symptomatic or asymptomatic. Having temporarily adopted 410-138-0390 and amended 410-138-0300, 410-138-0360 and 410-138-0380 to expand the defined target group of TCM-HIV clients and to expand the types of qualified TCM providers in Multnomah County, DMAP now permanently adopts these rules effective retroactively to January 1, 2009. Multnomah County is permitted to bill for service dates retroactive to January 1, 2009 in accordance with these rules.

Contingent upon and immediately upon receipt of CMS approval, DMAP will begin implementation to extend the HIV TCM program to other counties not yet participating.

DMAP permanently amended 410-138-0009, 410-138-0020, 410-138-0560 and 410-138-0680 and repealed rules listed above to consolidate "definitions" rules in various TCM programs, remove unnecessary definitions rules and correct references.

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

Please Note: *The rule filing caption including Tuberculosis (TB) Targeted Case Management (TCM) program, is carried over from the Notice of Proposed Rulemaking filed October 15, 2009, however, DMAP is not permanently filing TB TCM rules at this time.*
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-138-0009
Targeted Case Management — Services Not Covered

(1) Direct delivery of an underlying medical, educational, social or other service, to which the eligible client has been referred.

(2) Providing transportation to a service to which an eligible client is referred.

(3) Escorting an eligible client to a service.

(4) Providing child care so that an eligible client may access a service.

(5) Contacts with individuals who are not eligible for Medicaid, or who are Medicaid eligible but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care.

(6) Assisting an individual, who has not yet been determined eligible for Medicaid, to apply for or obtain this eligibility.

(7) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs.

(8) Activities for which third parties are liable to pay.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.085
Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

410-138-0020
Targeted Case Management Definitions

(1) Assessment — The act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager will gather information from family members, medical providers, social workers, and educators, if necessary.

(2) Care Plan — A Targeted Case Management Care Plan is a multidisciplinary plan, which contains a set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) Case Management — Services performed by a case manager to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18. Also see definition for "Targeted Case Management."

(4) Duplicate payments — Payments are considered "duplicate" if more than one entity is reimbursed for the same services to meet the same need for the same client.

(5) EI/ECSE Case manager (i.e., service coordinator) — An employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point of contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to obtain needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) identified in the eligible client's care plan in coordination with the client's IFSP.

(6) Early Intervention (EI) — A program designed to address the unique needs of a child age 0-3 years with a disability.

(7) Early Childhood Special Education (ECSE) — A program designed to address the unique needs of a child age 3-5 years with a disability.

(8) EI/ECSE — Early Intervention/Early Childhood Special Education services are services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA), from birth until they are eligible to attend public school, pursuant to the eligible child's Individualized Family Service Plan (IFSP).

(9) EI/ECSE Targeted Case Management program- as a service under the State plan, includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities to gain access to needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) in coordination with the eligible client's IFSP. EI/ECSE TCM Providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2710 EI/ECSE; and must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be sub-contractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client's free choice of providers. See definition for "eligible client".

(10) Eligible client — An individual who is deemed eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Department of Human Services (DHS) and eligible for case management services (including targeted case management services) as defined in the Medicaid State plan, at the time the services are furnished.

(11) Individualized Family Service Plan (IFSP) — A written plan of early childhood special education services, early intervention services, and other services developed in accordance with criteria established by the Oregon Department of Education for each child (ages birth to 5 years) eligible for IFSP services. The plan is developed to meet the needs of a child with disabilities in accordance with requirements and definitions in Oregon Administrative Rules, chapter 581, division 15.

(12) Medical Assistance Program — A program that provides and pays for health services for eligible Oregonians. The Oregon Medical Assistance Program includes TCM services provided to clients eligible

under the Oregon Health Plan (OHP) Title XIX, and the Children's Health Insurance Program (CHIP) Title XXI. The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP).

(13) Monitoring — Ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client's health care decision maker(s), family members, providers or other entities or individuals when the purpose of the contact is directly related to managing the eligible client's care to ensure the care plan is effectively implemented.

(14) Reassessment — Periodically re-evaluating the eligible client to determine whether or not medical, social, educational or other services continue to be adequate to meet the goals and objectives identified in the care plan. Reassessment decisions include those to continue, change or terminate TCM services. A reassessment must be conducted at least annually or more frequently if changes occur in an eligible client's condition; or when resources are inadequate or the service delivery system is non-responsive to meet the client's identified service needs.

(15) Referrals — Performing activities such as scheduling appointments that link the eligible client with medical, social, or educational providers, or other programs and services, and follow-up and documentation of services obtained.

(16) Targeted Case Management (TCM) Services — Case management services provided to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation). TCM services are available only to eligible clients. See definition for "Eligible client."

Stat. Auth.: ORS 409.010, 409.110
Stats. Implemented: ORS 409.010, 414.065
Hist: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

410-138-0300
Targeted Case Management Human Immunodeficiency Virus Program

(1) This rule is in effect for services rendered retroactive to January 1, 2009.

(2) The Targeted Case Management (TCM) Human Immunodeficiency Virus (HIV) administrative rules are to be used in conjunction with the Division of Medical Assistance Program's (DMAP) General Rules (chapter 410, division 120) and Targeted Case Management Rules 410-138-0005 through 410-138-0009.

(3) The Targeted Case Management (TCM) Human Immunodeficiency Virus (HIV) program is a medical assistance program operated by unit of government providers. Participation by providers is voluntary and subject to approval by the Department of Human Services and the Centers for Medicare and Medicaid Services. The TCM HIV program authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for Targeted Case Management Services Eligible for Federal Financial Participation.) The TCM program rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(4) The TCM HIV rules explain the Oregon Medicaid Program's policies and procedures for reimbursing HIV TCM services. This program improves access to needed medical, psychosocial, educational, and other services for Medicaid eligible clients in Multnomah County with symptomatic or asymptomatic HIV disease. Contingent upon and immediately upon receipt of CMS approval, DMAP will begin implementation to extend the TCM HIV program to other counties. Without targeted case management services an eligible client's ability to remain safely in their home may be at risk.

(5) TCM HIV program services include management of medical and non-medical services, which address physical, psychosocial, nutritional, educational, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM HIV case manager consistent with these rules. No direct care services are authorized as part of case management activities.

(6) Provision of TCM HIV services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available TCM HIV service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.085
Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

410-138-0360
Targeted Case Management Human Immunodeficiency Virus (HIV) Program - Provider Requirements

(1) This rule is in effect for services rendered retroactive to January 1, 2009.

(2) Targeted Case Management (TCM) HIV provider organizations must be unit of government providers. The providers must demonstrate the ability to provide all core elements of case management services including:

(a) Triage assessment and comprehensive assessment;

(b) Reassessment of the client's status and needs;

(c) Comprehensive care and service plan development;

(d) Referral and linking/coordination of services;

(e) Monitoring and follow-up of referral and related services.

(3) Program providers must demonstrate the following targeted case management experience and capacity:

(a) Coordination and linking of community resources as required by the target population;

(b) Demonstrated and documented experience providing services for the target population;

(c) Staffing levels sufficient to meet the case management service needs of the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs and is able to generate quarterly service utilization reports that can be used to monitor services rendered against claims submitted and paid. The service utilization reporting requirements are as follows:

(A) Report on the number of unduplicated clients receiving services during the reporting period;

(B) Report on the number of FTE case managers providing services during the reporting period;

(C) Report on the number of distinct case management activities performed during the reporting period (Triage Assessments, Comprehensive Assessments, Re-Assessments, Care Plan Development, Referral and Related Services, and Monitoring and Follow-Up) along with the total number of 15-minute increments associated with each activity category;

(f) The capacity to document and maintain individual case records in accordance with state and federal requirements, including HIPAA Privacy requirements applicable to Case Management Services, ORS 192.518 – 192.524, 179.505, and 411.320;

(g) A demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(h) Are enrolled as a unit of government TCM provider with the Department of Human Services (DHS) and meeting the requirements set forth in the provider enrollment agreement.

(4) Case managers must possess the following education and qualifications:

(a) A current active Oregon registered nurse (RN) license or Bachelor of Social Work, or other related health or human services degree from an accredited college or university; and

(b) Documented evidence of completing the Department of Human Services (DHS) HIV Care and Treatment designated HIV Case Manager training, and must participate in DHS on-going training for HIV case managers. The training must either be provided by DHS, or be approved by DHS and provided by the TCM provider organization.

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

410-138-0380
Targeted Case Management Rate Methodology, Billing Criteria and Codes — Human Immunodeficiency Virus (HIV) Program

(1) This rule is in effect for services rendered retroactive to January 1, 2009.

(2) This rule is to be used in conjunction with 410-138-0005 and General Rules (chapter 410, division 120).

(3) Providers shall only bill for allowable activities in the Targeted Case Management (TCM) HIV program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the activities listed below must occur in order to bill. The maximum number of 15- minute increments allowable per day is shown in parentheses:

(a) Assessment — Initial triage (maximum four 15- minute increments);

(b) Assessment — Comprehensive (maximum six 15- minute increments);

(c) Assessment — Reassessment (maximum four 15- minute increments);

(d) Development of a care plan (maximum nine 15- minute increments);

(e) Referral and related services (including follow-up) (maximum six 15- minute increments);

(f) Monitoring (including follow-up) (maximum three 15- minute increments).

(4) The maximum number of 15- minute units of service which can be performed and billed in any given calendar day (midnight to midnight) will be twenty four units (24 15- minute increments). The assumption is that no more than six hours would ever be provided to the same client, by the same case manager in any twenty four- hour calendar day. Documentation must be maintained of the number of 15 minute- units of service provided for each activity shown in (3) above.

(5) A unit of service can only be billed under one procedure code and one provider number:

(a) The procedure code to be used is "T1017";

(b) The provider must use diagnosis code "V08" or "042" for TCM HIV program services.

(6) Any place of service (POS) is valid.

(7) Prior authorization is not required.

(8) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM HIV services under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0020). DMAP will recover duplicate payments.

(9) DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

410-138-0390

Targeted Case Management Retroactive Payments — Human Immunodeficiency Virus (HIV) Program

(1) Providers may submit claims retroactively for services provided to the targeted population described in 410-138-0300 on or after January 1, 2009, if they meet the following criteria:

(a) Services were provided less than 12 months prior to the date of first claim submission, and were allowable services in accordance with 410-138-0380 and 410-138-0007;

(b) The maximum number of 15-minute increments billed does not exceed the maximum described in 410-138-0380;

(c) The case manager was appropriately licensed or certified, and met all current requirements for case managers at the time the service was provided, as described in 410-138-0360;

(d) Documentation regarding provider qualifications and the services that the provider retroactively claims must have been available at the time the services were performed;

(e) Providers must be able to meet the quarterly reporting requirements described in 410-138-0360, for all quarters in which billed services were provided.

(2) HIV TCM claims already paid by DMAP with a monthly rate may not be adjusted or resubmitted for the sole purpose of receiving a different rate.

(3) Prior payment of a monthly rate for a client will be considered payment in full for any case management services received by that client from any HIV TCM case manager during that month.

(4) DMAP will not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay (see also 410-138-0005).

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.085
Hist.: DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

410-138-0560

Rate Methodology, Billing Criteria and Codes — Pregnant Substance Abusing Women and Women with Young Children

(1) Providers can only bill for allowable activities in the PWWC Targeted Case Management Program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the activities listed below must occur in order to bill:

(a) Assessment;

(b) Development of a care plan;

(c) Referral (including follow up);

(d) Monitoring (including follow up).

(2) A unit of service can only be billed under one procedure code and one provider number:

(a) Providers must use procedure code "T2023" for Pregnant Substance Abusing Women with Young Children — TCM services. The maximum billing for the T2023 procedure code is one time per calendar month per eligible client;

(b) Providers must use diagnosis code "V6141" For Pregnant Substance Abusing Women with Young Children program — TCM services.

(3) Any place of service (POS) is valid.

(4) Prior authorization is not required.

(5) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0020). DMAP will recover duplicate payments.

(6) DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

410-138-0680

Cost Rate Methodology, Billing Criteria and Codes — Federally Recognized Tribal Governments in Oregon

(1) DMAP will not allow duplicate payments to other public agencies or private entities under other program authorities for Targeted Case Management (TCM) services under an eligible client's care plan. ("Duplicate payment" is defined in 410-138-0020). DMAP will recover duplicate payments. DMAP may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs. These case management services must be billed separately.

(2) Payment Methodology for Tribal TCM: For the purposes of these TCM rules, the amount of time in a "unit" equals one month. A unit includes at least one documented contact with the client (or other person acting on behalf of the client) and any number of documented contacts with other individuals or agencies identified through the case planning process.

(3) Payment for Tribal TCM services will be made using a monthly rate based on the total average monthly cost per client served by the TCM provider during the last fiscal year for which audited financial statements have been filed with the Department of Human Services (DHS). The costs used to derive the monthly Tribal TCM rate will be limited to the identified costs divided by the number of clients served. Tribal TCM provider costs for direct and related indirect costs that are paid by other federal or state programs must be removed from the cost pool. The cost pool must be updated, at a minimum, on an annual basis using a provider cost report. The rate is established on a prospective basis. In the first year, the rate will be based on estimates of cost and the number of clients served. For subsequent years, the rate will be based on actual eligible TCM costs from the previous year. A cost report must be submitted to DHS at the end of each state fiscal year (at a minimum), and will be used to establish a new rate for the following fiscal year.

(4) Billing criteria: Providers can only bill for allowable activities in the Tribal TCM program, that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, education, and other services. One or more of the activities listed below must occur in order to bill:

(a) Assessment;

(b) Development of a care plan;

(c) Referral (including follow up);

(d) Monitoring (including follow up).

(5) A unit of service can only be billed under one procedure code and one provider number:

(a) Providers must use procedure code "T1017" to bill for Federally Recognized Tribal Government TCM procedures. The maximum billing for the T1017 procedure code is one time per month per eligible client;

(b) Providers must use the appropriate diagnosis code and modifier for Federally Recognized Tribal Government TCM services.

(6) Any place of service (POS) is valid.

(7) Prior authorization is not required.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: 09–11 legislative budget reductions for OHP Plus non-pregnant adult vision benefits.
Adm. Order No.: DMAP 44-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-140-0050, 410-140-0140, 410-140-0160, 410-140-0200, 410-140-0260
Rules Repealed: 410-140-0115
Subject: The Visual Services program administrative rules govern DMAP payment for services to certain clients. DMAP amended the rules listed above to incorporate the 09-11 legislative budget reductions for OHP non-pregnant adult client vision benefit. This reduction is pending the Centers for Medicare and Medicaid (CMS) approval. Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-140-0050
Eligibility

(1) It is the responsibility of the provider to verify that the individual is eligible for Medical Assistance Program coverage (Title XIX or Title XXI) on the date of service and whether a managed care plan or the Division of Medical Assistance Programs (DMAP) is responsible for reimbursement. The provider assumes full financial risk in serving a person not confirmed as eligible for the service provided on the date(s) of service. Refer to General Rules 410-120-1140 (Verification of Eligibility) for specific details.

(2) Service eligibility verification:

(a) The provider must also verify if the client is eligible to receive vision services. The vision benefit is as follows:

(A) OHP Plus non-pregnant adults, 21 years and older: Visual services for the purpose of prescribing glasses/contact lenses, fitting fees, or glasses or contact lenses are not covered, except for those with the following diagnoses; aphakia, pseudoaphakia, congenital aphakia, keratoconus, cataracts, and congenital cataracts. Non-pregnant adults with the above diagnoses are subject to service limitations described in rule;

(B) OHP Plus pregnant women: Visual services for the purpose of prescribing glasses/contact lenses, fitting fees, glasses and contact lenses are limited to once every 24 months and as further described in rule;

(C) Children (birth through age 20): Visual services for the purpose of prescribing glasses/contact lenses, fitting fees, glasses and contact lenses are covered as described in rule and when documentation in the clinical record justifies the medical need;

(D) Standard Benefit Package: Visual services for the purpose of vision correction, including routine eye examinations, frames, lenses, contacts, vision aids, and orthoptic and/or pleoptic training (vision therapy) are not covered under the OHP Standard Benefit Package;

(E) The provider must verify from DMAP, the client's Fully Capitated Health Plan (FCHP) or Primary Care Organization (PCO), if the client has received these services within the limitation period;

(b) The provider must check the service being provided for any limitations;

(c) It is the provider's responsibility to maintain accurate and complete client records so that they are able to verify service eligibility. If a client is an established client, incomplete information through phone or electronic verification systems detailed in General Rules 410-120-1140 (Verification of Eligibility) does not absolve the provider's responsibilities of informing the client that their benefit of an eye exam for the purpose of prescribing glasses/contacts and the supply of glasses/contacts, has been exhausted; or that they are not eligible for vision services;

(d) FCHPs and PCO: If the client is enrolled in an FCHP or PCO, the provider must contact the FCHP/PCO to find out what their policy is and if the client is eligible for services. Some FCHP's/PCOs may decide to allow more frequent exams for the purpose of prescribing glasses/contacts and the supply of glasses/contacts. When calling the FCHP or PCO, the provider must inform the FCHP/PCO of the last date of service;

(e) Phone or electronic verification: Verify eligibility and the last date of service for glasses/contacts as detailed in General Rules 410-120-1140 (Verification of Eligibility);

(f) SWEEP Optical: DMAP and several FCHPs contract with SWEEP Optical to provide vision materials. Regardless of verification received via phone or electronic sources, SWEEP Optical will not fill orders for clients who do not have coverage or the vision benefit and/or have received services within the past 24 months. When this happens:

(A) If the client is currently a fee-for-service client with vision benefits (not enrolled in an FCHP or PCO), DMAP will not pay for another pair of glasses/contacts (except when client has had cataract surgery within the last 120 days). If the client is not an established client of the provider and the client is currently a fee-for-service client with vision benefits, DMAP will reimburse the provider for the exam only;

(B) If the client with vision benefits is currently enrolled in an FCHP/PCO that has a contract with SWEEP Optical and the client received glasses/contacts through DMAP fee-for-service or through a previous FCHP/PCO who had a contract with SWEEP Optical, SWEEP Optical will refuse to fill the order. It is the provider's responsibility to contact the client's FCHP/PCO and give them the last date of service. The current FCHP/PCO will then determine if they want to allow for an additional supply of glasses/contacts. If the client is an established client, regardless of incomplete information through phone or electronic verification systems or SWEEP Optical, it is the provider's responsibility to inform the FCHP/PCO of the last date of service;

(g) It is the provider's responsibility to verify eligibility for vision benefits and services prior to the initiation of the service. If any services are provided by SWEEP Optical and the client is not eligible, the provider is responsible for payment to SWEEP Optical (see the "Contracted Services" section of this guide). SWEEP Optical is prohibited by contract to sell materials and supplies for non-eligible clients at the State Contracted Price.

Stat. Auth.: ORS 409.050, 414.065, OL 732

Stats. Implemented: ORS 414.065, OL 732

Hist.: OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 11-2002, f. & cert. ef. 4-1-02; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10

410-140-0140
Ophthalmological Diagnostic and Treatment Services Coverage

(1) Ophthalmological diagnostic and treatment services are not limited for eligible adults (see 410-140-0050) except as directed by the administrative rules contained in the Division of Medical Assistance Programs' (DMAP) Visual Services program (chapter 410, division 140), DMAP General Rules (chapter 410, division 120) — Medical Assistance Benefits: Excluded Services and Limitations, and the Health Services Commission's (HSC) Prioritized List of Health Services (List) as follows:

(a) Coverage for diagnostic services and treatment for those services funded on the HSC List; and

(b) Coverage for diagnostic services only, for those conditions that fall below the funded portion of the HSC List; (The date of service determines the appropriate version of the General Rules and HSC List to determine coverage).

(2) Eligible adults (age 21 and over): Reimbursement for ophthalmological examinations for the purpose of prescribing glasses/contacts is limited to one complete examination which includes the refractive state every 24 months for adults. Diagnostic evaluations and examinations may be reimbursed more frequently if documentation in the physician's or optometrist's clinical record justifies the medical need.

(3) Ophthalmological intermediate and comprehensive exam services are not limited for medical diagnosis.

(4) If the client is assigned to a Primary Care Case Manager (PCCM) the provider must get a referral for a medical eye exam prior to the service being rendered.

(5) Frames and lenses for eligible adults age 21 and over are limited to once every 24 months. There is no coverage for glasses with a prescription that is equal to or less than +/-.25 diopters in both eyes.

(6) Children (birth through age 20): All ophthalmological examinations are covered when documentation in the clinical record justifies the medical need.

(7) Refractions: Determination of the refractive state is included in an ophthalmological examination and may not be billed as a separate service. The determination of the refractive state is limited to once every 24 months for eligible adults age 21 and over for the purpose of prescribing glasses/contacts. The refraction can be billed as a separate sole service, if the refraction is done as a stand alone service to follow a medical condition (such as, but not limited to, multiple sclerosis) and is not limited for medical diagnosis.

(8) General Ophthalmological Services: See Definitions under Ophthalmology section in the current CPT/HCPCS code book for definitions and examples of levels of service.

(9) New Client: A new client is one who has not received any professional services from the physician or another physician of the same specialty who belongs to the same group practice within the past three years:

(a) 92002 Ophthalmological services: Medical examination and evaluation with initiation of diagnostic and treatment program; intermediate, new client;

(b) 92004 Comprehensive, new client, one or more visits.

(10) Established Client: An established client is one who has received professional services from the physician or another physician of the same specialty who belongs to the same group practice within the past three years:

(a) 92012 Ophthalmological services: Medical examination and evaluation with initiation or continuation of diagnostic and treatment program; intermediate, established client;

(b) 92014 Comprehensive, established client, one or more visits.

(11) **Table 140-0140-1**.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.040, 409.050 & 409.110, OL 732

Stats. Implemented: ORS 414.065, OL 732

Hist.: AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 24-1984(Temp), f. & ef. 5-29-84; AFS 31-1984(Temp), f. 7-26-84, ef. 8-1-84; AFS 5-1985, f. & ef. 1-25-85; AFS 22-1987, f. 5-29-87, ef. 7-1-87; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0012; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0220; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; DMAP 20-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10

410-140-0160
Contact Lens Services

(1) Coverage for eligible adults (age 21 or older) as defined in Division of Medical Assistance Programs (DMAP) Visual Services Program administrative rules 410-140-0050, 410-120-1140, and 410-120-1210:

(a) Prior Authorization (PA) is required for contact lenses for adults, except for the medical condition of Keratoconus. See OAR 410-140-0040, Prior Authorization, for information on requesting prior authorization;

(b) Contact lenses for adults are covered only when one of the following conditions exists:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus-contacts for Keratoconus do not require PA;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism; or

(E) Aphakia;

(c) Prescription and fitting of either contact lenses or glasses is limited to once every 24 months for eligible adults. Replacement of contact lenses is limited to a total of two contacts every 12 months (or the equivalent in disposable lenses), and does not require PA;

(d) Corneoscleral lenses are not covered.

(2) Coverage for Children (birth through age 20):

(a) Contact lenses for children are covered when it is documented in the clinical record that glasses cannot be worn for medical reasons, including, but not limited to:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus-contacts for Keratoconus do not require PA;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism; or

(E) Aphakia;

(b) Replacement of contact lenses is covered when documented as medically appropriate in the clinical record, and does not require PA;

(c) Corneoscleral lenses are not covered.

(3) General Information regarding contact lens coverage:

(a) Contact lenses for clients not enrolled in a Fully Capitated Health Plan/Primary Care Organization must be billed to DMAP at the provider's acquisition cost. Acquisition cost is defined as the actual dollar amount paid by the provider to purchase the item directly from the manufacturer (or supplier) plus any shipping and/or postage for the item. Payment for contact lenses will be the lesser of the DMAP fee schedule or acquisition cost;

(b) The prescription for contact lenses includes specifying the optical and physical characteristics (such as power, size, curvature, flexibility, gas permeability);

(c) Fitting contact lenses includes instruction and training of the wearer and incidental revision of the lens during the training period;

(d) Follow-up of successfully fitted extended wear lenses is part of the general opthalmological service (such as office visits). Adaptation of contacts due to trauma or disease is not included as part of the general service. The client's record must show clear documentation of the trauma or disease to support additional reimbursement for follow-up visits;

(e) Contact lenses are not billed separately when used for treatment of disease (sometimes referred to as a corneal bandage lens rather than for vision correction). Use CPT code 92070 for fitting of contact lens for treatment of disease which includes the supply of lenses. See OAR 410-140-0140 (Table 140-0140-1).

(4) CPT Codes to use for contact lens services:

(a) 92310, Prescription of optical and physical characteristics of and fitting of contact lens, with medical supervision of adaptation; corneal lens, both eyes; except for aphakia. Does not include the cost of the contact lenses. Prior authorization is required for adults only; when using this code for Keratoconus, no PA is required for adults or children.

(b) 92311, corneal lens for aphakia, one eye. Does not include the cost of the contact lenses;

(c) 92312, corneal lens for aphakia, both eyes. Does not include the cost of the contact lenses;

(d) 92325, Modification of contact lens (separate procedure), with medical supervision of adaptation;

(e) V2510-Contact lens, gas permeable, spherical, per lens;

(f) V2511-Contact lens, gas permeable, toric or prism ballast, per lens;

(g) V2520-Contact lens, hydrophilic, spherical, per lens; and

(h) V2521-Contact lens, hydrophilic, toric or prism ballast, per lens.

Stat. Auth.: ORS 409.040, 409.050 & 414.065, OL 732

Stats. Implemented: ORS 414.065, OL 732

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0230; HR 37-1992, f. & cert. ef. 12-18-92; HR 5-1995, f. & cert. ef. 3-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 65-2004, f. 9-13-04, cert. ef. 10-1-04; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 20-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10

410-140-0200
Fitting and Repair

(1) Prescription of glasses, when required, is a part of general ophthalmological services (eye exams) and is not reported separately. It includes specification of lens type (monofocal, bifocal, trifocal), lens power, axis, prism, absorptive factor, impact resistance, and other factors.

(2) The fitting of glasses is a separate service. The fitting can be billed using only the codes listed in the attached table (410-0200). Fitting of glasses is covered only when glasses are provided by the contractor. Fitting includes measurement of anatomical facial characteristics, the writing of laboratory specifications, and the final adjustment of the spectacles to the visual axes and anatomical topography. The presence of a physician or optometrist is not required.

(3) Supply of frames and lenses is a separate service component; it is not part of the service of fitting spectacles.

(4) Fitting of either glasses or contact lenses is limited to once every 24 months for eligible adults (age 21 years and older), except when dispensing glasses within one year following corneal transplantation or within 120 days of cataract surgery. When billing for fitting within 120 days following cataract surgery, use an appropriate cataract diagnosis code, and document on the claim the date of the cataract surgery. When billing for

fitting within one year of corneal transplantation, document the date of surgery on the claim. (See OAR 410-140-0160 for information on coverage of contact lenses.) Fitting of glasses is not limited for children (birth through age 20) when documented in the patient's record as medically necessary.

(5) Use fitting codes 92340-92353 only when a complete pair of glasses is dispensed. Repair codes 92370 and 92371 must be used for billing when replacing parts and can only be used when the parts have been ordered through the contractor. A delivery invoice will be included with the parts order. Keep a copy of the delivery invoice in the client's records or document the delivery invoice number in the client's records.

(6) Fitting of spectacle mounted low vision aids, single element systems, telescopic or other compound lens systems is not covered.

(7) Periodic adjustment of frames (including tightening of screws) is included in the dispensing fee and is not covered.

(8) Either the date of order or date of dispensing may be used in the "Date of Service" field; however, glasses must be dispensed prior to billing the Division of Medical Assistance Programs (DMAP). Note: Providers may bill for a fitting or repair on undispensed glasses under the following conditions:

(a) Death of the client prior to dispensing;

(b) Client failure to pick up ordered glasses. Documentation in the client's record must show that serious efforts were made by the provider to contact the client.

(9) All frames have a limited warranty. Check specific frame styles for time limits. All defective frames must be returned to the contractor.

(10) **Table 140-0200**

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409, OL 732

Stats. Implemented: ORS 414.065, OL 732

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0250; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 56-2002, f. & cert. ef. 10-1-02; OMAP 60-2003, f. 9-5-03, cert. ef. 10-1-03; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10

410-140-0260

Purchase of Ophthalmic Materials

(1) The Division of Medical Assistance Programs (DMAP) contracts with SWEEP Optical to buy materials (i.e., frames, lenses, specialty frames, and miscellaneous items). Rates for materials are negotiated by the Oregon Department of Administrative Services. All frames, lenses and miscellaneous items filled into these frames are to be provided only by SWEEP Optical. It is the provider's responsibility to verify the client's eligibility for vision materials before ordering from SWEEP Optical. See OAR 410-140-0050.

(2) Contact lenses or glasses are limited to once every 24 months for eligible adults (see 410-140-0050). Replacement of contact lenses is limited to a total of two contacts every 12 months (or the equivalent in disposable lenses), and does not require PA; See OAR 410-140-0160 for information on coverage of contact lenses.

(3) One pair of additional glasses is covered within 120 days following cataract surgery. When ordering glasses from SWEEP Optical for post-cataract surgery, mark the appropriate box indicating surgery was performed within 120 days.

(4) The purchase of glasses for children (birth through age 20) is covered when it is documented in the physician/optometrist's clinical record as medically appropriate.

(5) Ophthalmic materials that are not covered include, but are not limited to the following:

(a) Two pair of glasses in lieu of bifocals or trifocals in a single frame;

(b) Hand-held, low vision aids;

(c) Nonspectacle mounted aids;

(d) Single lens spectacle mounted low vision aids;

(e) Telescopic and other compound lens system, including distance vision telescopic, nearvision telescopes, and compound microscopic lens systems;

(f) Extra or spare pairs of glasses or contacts;

(g) Anti-reflective lens coating;

(h) U-V lens;

(i) Progressive and blended lenses;

(j) Bifocals and trifocals segments over 28mm including executive;

(k) Aniseikonia lenses;

(l) Sunglasses.

(6) Contractor Services: All materials and supplies (except for contact lenses) must be provided by SWEEP Optical including any frames purchased that are not in the contract.

(7) Frames not included in the contract with SWEEP Optical may be purchased through SWEEP Optical if there is an unusual circumstance or medical need that prevents the client from using any of the existing frames or lenses. For example: A client has an unusually large head size that requires a custom frame or a larger frame than provided in the contract. This does not imply that a client can select a frame that is not included in the contract because the providers's office does not carry the full selection of contract frames or that the client does not approve of the selection.

(8) Frames purchased that are not included in the contract require prior authorization. The provider working with the client should make every attempt to determine what frame will work and provide that information in writing to DMAP.

(9) If providers need assistance with locating a frame to meet the client's need, you may contact SWEEP Optical's optician. Once the approval is granted, SWEEP Optical will order and process the glasses. Frames not included in the contract may exceed the limit of the required 7-10 calendar-day turn-around time frame.

(10) Scratch Coating is included in the lens service. Providers cannot charge scratch coating to DMAP, the Fully Capitated Health Plan or the client as a separate service.

(11) Prior Authorization (PA) for materials provided by SWEEP Optical:

(a) Materials that require PA must be medically necessary and include:

(A) Frames not in contract with SWEEP Optical (See Visual Services Supplemental Information for accessing frames catalog);

(B) Deluxe frames;

(C) Specialty lenses or lenses considered as "not otherwise classified" by HCPCS;

(b) If DMAP approves PA, DMAP will send Notice of PA to SWEEP Optical, who then must submit a copy of the PA approval and confirmation number to the requesting provider;

(c) After receiving PA approval, the provider will submit the prescription to SWEEP Optical to be filled.

(12) PA for contact lenses — PA is required for adults (except for the treatment of injury or disease, including Keratoconus).

(13) Limitations: The provider is responsible to submit to SWEEP Optical specific, appropriate written documentation required for each service. It is the provider's responsibility to maintain proper documentation of services provided to each client. SWEEP Optical is not responsible if DMAP determines the documentation in the client's record does not allow for the service as directed by the limitations indicated in the administrative rules. The following services no longer require PA but are subject to strict limitations:

(a) Frames and lenses for adults age 21 and over are limited to once every 24 months. Glasses with a prescription that is equal to or less than +/- .25 diopters in both eyes are not covered;

(b) Replacement of frame fronts and temples for frames not in the SWEEP Optical contract (See Visual Services Supplemental Information for accessing frames catalog): Limited to frames that were not included in contract that were purchased with proper prior approval or when a client has a medical condition that requires the use of a specialty temple;

(c) Tints and Photochromic lenses: Limited to clients with documented albinism and pupillary defects. Appropriate documentation must be submitted to SWEEP Optical by a physician or an optometrist. The physician or optometrist must select and submit the most appropriate ICD-9-CM code to SWEEP Optical;

(d) Other medically necessary items for a contract frame (i.e., cable temples, head-strap frame), when a client has a medical condition that requires the use of a specialty temple, nose pieces, head strap frame. Appropriate documentation must be submitted to SWEEP Optical by a physician or an optometrist;

(e) Nonprescription glasses: Limited to clients that do not require any correction in one eye and where there is blindness in one eye. The purpose of this exception is to offer maximum protection for the remaining functional eye. Appropriate documentation must be submitted to SWEEP Optical by a physician or an optometrist;

(f) High Index Lenses:

(A) Power is +/- 10 or greater in any meridian in either eye; or

(B) Prism diopters are 10 or more diopters in either lens;

(g) Polycarb lenses are limited to the following populations:

(A) Children (birth through age 20);

(B) Clients with developmental disabilities; and

(C) Clients who are blind in one eye and need protection for the other eye, regardless of whether a vision correction is required.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 414.065, OL 732
Stats. Implemented: ORS 414.065, OL 732
Hist.: AFS 55-1983, f. 11-15-83, ef. 12-1-83; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0011; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0280; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 56-2002, f. & cert. ef. 10-1-02; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 44-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Jan. '10 — Definitions; Complaint Procedures criteria; Notice of Action criteria; Billing and Payments criteria.
Adm. Order No.: DMAP 45-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-141-0000, 410-141-0261, 410-141-0263, 410-141-0264, 410-141-0405, 410-141-0420
Subject: The Oregon Health Plan (OHP or Managed Care) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP will amend rules listed above to update Definitions (410-141-0000), Complaint Procedures (410-141-0261), Notice of Action criteria (410-141-0263), Administrative Hearings typographical (410-141-0264), ENCC criteria (410-141-0405) and Billing and Payment criteria (410-141-0420).

Other text will be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0000
Definitions

(1) Action — In the case of a Prepaid Health Plan (PHP):

(a) The denial or limited authorization of a requested covered service, including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the Division of Medical Assistance Programs (DMAP);

(e) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For a DMAP member in a single Fully Capitated Health Plan (FCHP) or Mental Health Organization (MHO) Service Area, the denial of a request to obtain covered services outside of the FCHP or MHO's Participating provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(2) Addictions and Mental Health Division (AMH) – The DHS office responsible for the administration of the state's policy and programs for mental health, chemical dependency prevention, intervention, and treatment services.

(3) Administrative Hearing — A Department of Human Services (DHS) hearing related to an Action, including a denial, reduction or termination of benefits that is held when requested by the Oregon Health Plan (OHP) client or DMAP member. A hearing may also be held when requested by an OHP client or DMAP member who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(4) Advance Directive — A form that allows a person to have another person make health care decisions when he/she cannot make decisions and tells a doctor if the person does not want any life sustaining help if he/she is near death.

(5) Aged — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities Division (SPD) for receipt of medical assistance because of age.

(6) Americans with Disabilities Act (ADA) — Federal law promoting the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service, delivery and facility accessibility.

(7) Alternative Care Settings — Sites or groups of Practitioners that provide care to DMAP members under contract with the DMAP mMember's PHP. Alternative Care Settings include but are not limited to urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, and outpatient surgicenters.

(8) Ancillary Services — Those medical services under the OHP not identified in the definition of a Condition/Treatment Pair, but Medically Appropriate to support a service covered under the OHP Benefit Package. Ancillary Services and limitations are referenced in the General Rules Benefit Packages (410-120-1210), Exclusions (410-120-1200) and applicable individual program rules.

(9) Appeal — A request for review of an Action as defined in this rule.

(10) Automated Voice Response (AVR) — A DHS computer system that provides information on the current eligibility status of OHP clients and DMAP members by phone or by Web access.

(11) Blind — Individuals who meet eligibility criteria established by DHS' SPD for receipt of medical assistance because of a condition or disease that causes or has caused blindness.

(12) Capitated Services — Those covered services that a PHP or Primary Care Manager (PCM) agrees to provide for a Capitation Payment under a DMAP OHP Contract or agreement.

(13) Capitation Payment:

(a) Monthly prepayment to a PHP for the provision of all Capitated Services needed by OHP clients enrolled with the PHP;

(b) Monthly prepayment to a PCM to provide Primary Care Management Services for an OHP client enrolled with the PCM. Payment is made on a per OHP client, per month basis.

(14) Centers for Medicare and Medicaid Services (CMS) — The federal agency under the Department of Health and Human Services (DHHS), responsible for approving the waiver request to operate the OHP Medicaid Demonstration Project.

(15) CFR— Code of Federal Regulations.

(16) Chemical Dependency Organization (CDO) — PHP that provides and coordinates chemical dependency outpatient, intensive outpatient and opiate substitution treatment services as Capitated Services under the OHP. All Chemical Dependency services covered under the OHP are covered as capitated services by the CDO.

(17) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the "Chemical Dependency Placement, Continued Stay, and Discharge Criteria."

(18) Children's Health Insurance Program (CHIP) — A Federal and State funded portion of the Medical Assistance Program established by Title XXI of the Social Security Act and administered in Oregon by DHS' DMAP (see Medical Assistance).

(19) Children Receiving Children, Adults and Families (CAF) Child Welfare or Oregon Youth Authority (OYA) Services — Individuals who are receiving medical assistance under ORS 414.025(2)(f), (i), (j), (k) and (o), 418.034, and 418.187 to 418.970. These individuals are generally children in the care and/or custody of CAF, DHS, or OYA who are in placement outside of their homes.

(20) Claim — (1) a bill for services, (2) a line item of a service or (3) all services for one client within a bill.

(21) Client Enrollment Services (CES) — The DMAP unit responsible for adjustments to enrollments, retroactive Disenrollment and Enrollment of newborns.

(22) Clinical Record — The Clinical Record includes the medical, dental or mental health records of an OHP client or DMAP member. These records include the PCP's record, the inpatient and outpatient hospital records and the Exceptional Needs Care Coordinator (ENCC), Complaint and Disenrollment for cause records, that may reside in the PHP's administrative offices.

(23) Cold Call Marketing — Any unsolicited personal contact by a PHP with a potential member for marketing as defined in this rule.

(24) Comfort Care — The provision of medical services or items that give comfort and/or pain relief to an individual who has a Terminal Illness. Comfort care includes the combination of medical and related services designed to make it possible for an individual with Terminal Illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness. Comfort Care includes but is not limited to care provided through a hospice program (see Hospice rules), pain medication, and palliative services including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. Comfort Care includes nutrition, hydration and medication for disabled infants with life-threatening conditions not covered under Condition/Treatment Pairs. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable Comfort Care is provided consistent with Section 4751 OBRA 1990 — Patient Self Determination

Act and ORS 127 relating to health care decisions as amended by the Sixty-Seventh Oregon Legislative Assembly, 1993. Comfort Care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness with the intent to prolong life.

(25) Community Mental Health Program (CMHP) — The organization of all services for persons with mental or emotional disorders and developmental disabilities operated by, or contractually affiliated with, a local Mental Health Authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the DHS Addictions and Mental Health Division (AMH).

(26) Co-morbid Condition — A medical condition/diagnosis (i.e., illness, disease and/or disability) coexisting with one or more other current and existing conditions/diagnoses in the same patient.

(27) Community Standard — Typical expectations for access to the health care delivery system in the DMAP member's or PCM member's community of residence. Except where the Community Standard is less than sufficient to ensure quality of care, DMAP requires that the health care delivery system available to DMAP members in PHPs and to PCM members take into consideration the Community Standard and be adequate to meet the needs of DMAP and PCM members.

(28) Condition/Treatment Pair — Diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9-CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the DHS AMH Medicaid Procedure Codes and Reimbursement Rates, which, when paired by the Health Services Commission, constitute the line items in the Prioritized List of Health Services. Condition/Treatment Pairs may contain many diagnoses and treatments. The Condition/Treatment Pairs are referred to in OAR 410-141-0520.

(29) Continuing Treatment Benefit — A benefit for OHP clients who meet criteria for having services covered that were either in a course of treatment or were scheduled for treatment on the day immediately prior to the date of conversion to an OHP Benefit Package that doesn't cover the treatment.

(30) Co-payment — The portion of a covered service that a DMAP member must pay to a provider or a facility. This is usually a fixed amount that is paid at the time one or more services are rendered.

(31) Contract — The Contract between the State of Oregon, acting by and through its DHS, DMAP and an FCHP, Dental Care Organization (DCO), Physician Care Organization (PCO), or a CDO, or between AMH and an MHO for the provision of covered services to eligible DMAP members for a Capitation Payment. A contract may also be referred to as a Service Agreement.

(32) Corrective Action or Corrective Action Plan — A DMAP initiated request for Contractor or a Contractor initiated request for subcontractor to develop and implement a time specific plan, that is acceptable to DMAP, for the correction of DMAP identified areas of noncompliance, as described in Exhibit H, Encounter Data Minimum Data Set Requirements and Corrective Action, Schedule 4, Pharmacy Data Requirements and Corrective Action, and in Exhibit B, Part VI, Section 2, Sanctions.

(33) Covered Services — Are Medically Appropriate health services that are funded by the Legislature and described in ORS 414.705 to 414.750; OAR 410-120-1210; OAR 410-141-0120; OAR 410-141-0520; and OAR 410-141-0480; except as excluded or limited under OAR 410-141-0500 and rules in Chapter 410, Division 120.

(34) Dentally Appropriate — Services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the OHP member or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a DMAP member.

(35) Dental Care Organization (DCO) — A PHP that provides and coordinates capitated dental services. All dental services covered under the OHP are covered as Capitated Services by the DCO; no dental services are paid by DMAP on a Fee-for-Service (FFS) basis for OHP clients enrolled with a DCO provider.

(36) Dental Case Management Services — Services provided to ensure that eligible DMAP members obtain dental services including a comprehensive, ongoing assessment of the dental and medical needs related to dental care of the DMAP member plus the development and implementation of a plan to ensure that eligible DMAP members obtain Capitated Services.

(37) Dental Emergency Services — Dental services may include, but are not limited to the treatment of severe tooth pain, unusual swelling of the face or gums, and avulsed tooth consistent with OAR 410-123-1060.

(38) Dental Practitioner — A Practitioner who provides dental services to DMAP members under an agreement with a DCO, or is a FFS Practitioner. Dental Practitioners are licensed and/or certified by the state in which they practice, as applicable, to provide services within a defined scope of practice.

(39) Department of Human Services (DHS) — The Department or DHS or any of its programs or offices means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Division of Medical Assistance Programs or DMAP is used in contract or in administrative rule, it shall mean the Division of Medical Assistance Programs (DMAP). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMH). Wherever the former Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in Contract or in rule, it shall mean the Public Health Division (PHD).

(40) Diagnostic Services — Those services required to diagnose a condition, including but not limited to radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(41) Disabled — Individuals who meet eligibility criteria established by the DHS' SPD for receipt of Medical Assistance because of a disability.

(42) Disenrollment — The act of discharging an OHP Client from a PHP's or PCM's responsibility. After the effective date of Disenrollment an OHP Client is no longer required to obtain Capitated Services from the PHP or PCM, nor be referred by the PHP for Medical Case Managed Services or by the PCM for PCM Case Managed Services.

(43) Division of Medical Assistance Programs (DMAP) — The division of DHS responsible for coordinating Medical Assistance Programs, including the OHP Medicaid Demonstration, in Oregon and CHIP. DMAP writes and administers the state Medicaid rules for medical services, contracts with providers, maintains records of client eligibility and processes and pays DMAP providers.

(44) DMAP Member – An OHP client enrolled with a PHP.

(45) Emergency Medical Condition — a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An "Emergency Medical Condition" is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a Health Care Professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210 (3) (f) (B))

(46) Emergency Services — covered services furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an Emergency Medical Condition. Emergency Services include all inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that no material deterioration of the patient's condition is likely to result from, or occur during, discharge of the DMAP member or transfer of the DMAP member to another facility.

(47) Enrollment — OHP clients, subject to OAR 410-141-0060, become DMAP members of a PHP or PCM members of a PCM that contracts with DMAP to provide Capitated Services. An OHP client's Enrollment with a PHP indicates that the DMAP member must obtain or be referred by the PHP for all Capitated Services and referred by the PHP for all Medical Case Managed Services subsequent to the effective date of Enrollment. An OHP client's Enrollment with a PCM indicates that the PCM member must obtain or be referred by the PCM for preventive and

primary care and referred by the PCM for all PCM Case Managed Services subsequent to the effective date of Enrollment.

(48) Enrollment Area — Client Enrollment is based on the cClient's residential address and zip code. The address is automatically assigned a county code or Federal Information Processing Standard (FIPS) code by the system, which indicates to the DHS worker that PHPs are in the area.

(49) Enrollment Year — A twelve-month period beginning the first day of the month of Enrollment of the OHP client in a PHP and, for any subsequent year(s) of continuous Enrollment, beginning that same day in each such year(s). The Enrollment Year of OHP clients who re-enroll within a calendar month of Disenrollment shall be counted as if there were no break in Enrollment.

(50) End Stage Renal Disease (ESRD) — End stage renal disease is defined as that stage of kidney impairment that appears irreversible and requires a regular course of dialysis or kidney transplantation to maintain life. In general, 5% or less of normal kidney function remains. If the person is 36 or more months post-transplant, the individual is no longer considered to have ESRD.

(51) Exceptional Needs Care Coordination (ENCC) — A specialized case management service provided by FCHPs to DMAP members identified as aged, blind, disabled or who have complex medical needs. consistent with OAR 410-141-0405. ENCC includes:

(a) Early identification of those DMAP members who are aged, blind, disabled or who have complex medical needs;

(b) Assistance to ensure timely access to providers and Capitated Services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of Capitated Services and discharge planning; and

(e) Aid with coordinating community support and social service systems linkage with medical care systems, as necessary and appropriate.

(52) Family Health Insurance Assistance Program (FHIAP) — A program in which the State subsidizes premiums in the commercial market for uninsured individuals and families with income below 185% of the Federal Poverty Level (FPL). FHIAP is funded with federal and states funds through Title XIX, XXI or both.

(53) Family Planning Services — Services for clients of childbearing age (including minors who can be considered sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(54) Fee-for-Service (FFS) Health Care Providers — Health care providers who bill for each service provided and are paid by DMAP for services as described in DMAP provider rules. Certain services are covered but are not provided by PHPs or by PCMs. The client may seek such services from an appropriate FFS provider. PCMs provide primary care services on a FFS basis and may refer PCM members to specialists and other providers for FFS care. In some parts of the state, the State may not enter into contracts with any managed care providers. OHP clients in these areas will receive all services from FFS providers.

(55) FPL — Federal Poverty Level.

(56) Free-Standing Mental Health Organization (MHO) — The single MHO in each county that provides only mental health services and is not affiliated with an FCHP for that service area. In most cases this "carve-out" MHO is a county CMHP or a consortium of CMHPs, but may be a private behavioral health care company.

(57) Fully Capitated Health Plan (FCHP) — PHPs that contract with DMAP to provide Capitated Services under the OHP. The distinguishing characteristic of FCHPs is the coverage of hospital inpatient services.

(58) Fully Dual Eligible — For the purposes of Medicare Part D coverage, Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by DHS for full medical assistance coverage, including those not enrolled in a Medicare Part D plan.

(59) Grievance – A DMAP member's or representative's expression of dissatisfaction to Contractor or to a participating provider about any matter other than an Action.

(60) Grievance System —The overall system that includes Complaints and Appeals handled at the PHP level and access to the state fair hearing process. Possible subjects for Grievances include, but are not limited to, the quality of care or services provided and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the DMAP member's rights.

(61) Health Care Professionals — Persons with current and appropriate licensure, certification, or accreditation in a medical, mental health or dental profession, which include but are not limited to: Medical Doctors (including Psychiatrists), Dentists, Osteopathic Physicians, Psychologists, Registered Nurses, Nurse Practitioners, Licensed Practical Nurses, Certified Medical Assistants, Licensed Physicians Assistants, Qualified Mental Health Professionals (QMHPs), and Qualified Mental Health Associates (QMHAs), Dental Hygienists, Denturists, and Certified Dental Assistants. These professionals may conduct health, mental health or dental assessments of DMAP members and provide Screening Services to OHP clients within their scope of practice, licensure or certification.

(62) Health Insurance Portability and Accountability Act (HIPAA) of 1996 — HIPAA is a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(63) Health Plan New/Noncategorical Client (HPN) — A person who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet eligibility requirements in OAR 461-136-1100(2), in addition to all other OHP eligibility requirements to become an OHP client.(64) Health Services Commission — An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be served.

(65) Hospice Services — A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare and/or accredited by the Oregon Hospice Association, is listed in the Hospice Program Registry, and has a valid provider agreement.

(66) Hospital Hold — A Hospital Hold is a process that allows a hospital to assist an individual admitted to the hospital for an inpatient hospital stay to secure a date of request when the individual is unable to apply for the OHP due to inpatient hospitalization. OHP clients shall be exempted from mandatory enrollment with an FCHP if clients become eligible through a Hospital Hold process and are placed in the adults/couples category.

(67) Indian Health Care Provider – An Indian Health Program or an Urban Indian Organization.

(68) Indian Health Program – An Indian Health Service facility, any federally recognized tribe or tribal organization or any tribe 638 FQHC enrolled with DHS as an American Indian/Alaska Native (AI/AN) provider.

(69) Line Items — Condition/Treatment Pairs or categories of services included at specific lines in the Prioritized List of Services developed by the Health Services Commission for the OHP Medicaid Demonstration Project.

(70) Local and Regional Allied Agencies include the following: local Mental Health Authority; CMHPs; local DHS offices; Commission on Children and Families; OYA; Department of Corrections; Housing Authorities; local health departments, including WIC Programs; local schools; special education programs; law enforcement agencies; adult and juvenile criminal justices; developmental disability services; chemical dependency providers; residential providers; state hospitals, and other PHPs.

(71) Marketing — Any communication from a PHP to an OHP client not enrolled in that PHP which can reasonably be interpreted as an attempt to influence the OHP client:

(a) To enroll in that particular PHP;

(b) To either disenroll or not to enroll with another PHP.

(72) Marketing Materials — Any medium produced by, or on behalf of, a PHP that can reasonably be interpreted as intended for marketing as defined in this rule.

(73) Medicaid — A federal and state funded portion of the Medical Assistance Program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by DHS.

(74) Medical Assistance Program — A program for payment of health care provided to eligible Oregonians. Oregon's Medical Assistance Program includes Medicaid services including the OHP Medicaid Demonstration, and SCHIP. The Medical Assistance Program is administered and coordinated by DMAP, a division of DHS.

(75) Medical Care Identification — The preferred term for what is commonly called the "medical card" That is the size of a business card and issued to Medical Assistance Program clients.

(76) Medical Case Management Services — Services provided to ensure that DMAP members obtain health care services necessary to maintain physical and emotional development and health. Medical Case Management Services include a comprehensive, ongoing assessment of medical and/or dental needs plus the development and implementation of a

plan to obtain needed medical or dental services that are Capitated Services or non-capitated services, and follow-up, as appropriate, to assess the impact of care.

(77) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, 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 OHP client 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 a DMAP member or PCM member in the PHP's or PCM's judgment.

(78) Medicare — The federal health insurance program for the Aged and Disabled administered by CMS under Title XVIII of the Social Security Act.

(79) Medicare Advantage— An organization approved by CMS to offer Medicare health benefits plans to Medicare beneficiaries.

(80) Mental Health Assessment — The determination of a DMAP member's need for mental health services. A Qualified Mental Health Professional collects and evaluates data pertinent to a member's mental status, psychosocial history and current problems through interview, observation and testing.

(81) Mental Health Case Management — Services provided to DMAP member's who require assistance to ensure access to benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the DMAP member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring DMAP member's to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services. ENCC Services are separate and distinct from Mental Health Case Management.

(82) Mental Health Organization (MHO) — A PHP under contract with AMH that provides mental health services as Capitated Services under the OHP. MHOs can be FCHPs, CMHPs or private behavioral organizations or combinations thereof.

(83) National Provider Identifier (NPI) – A federally directed provider number mandated for use on Health Insurance Portability and Accountability Act (HIPAA) transactions; individuals, provider organizations and subparts of provider organizations that meet the definition of health care providers (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(84) Non-Capitated Services — Those OHP-covered services paid for on a FFS basis and for which a capitation payment has not been made to a PHP.

(85) Non-Covered Services — Services or items for which the Medical Assistance Program is not responsible for payment. Services may be covered under the Oregon Medical Assistance Program, but not covered under the OHP. Non-covered services for the OHP are identified in:

(a) OAR 410-141-0500;

(b) Exclusions and limitations described in OAR 410-120-1200; and

(c) individual provider administrative rules.

(86) Non-Participating Provider — A provider who does not have a contractual relationship with the PHP, i.e. is not on their panel of providers.

(87) Ombudsman Services — Services provided by DHS to Aged, Blind and Disabled OHP clients by DHS Ombudsman Staff who may serve as the OHP client's advocate whenever the OHP client, representative, a physician or other medical personnel, or other personal advocate serving the OHP client, is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider under the OHP. Ombudsman Services include response to individual complaints about access to care, quality of care or limits to care; and response to complaints about OHP systems.

(88) Oregon Health Plan (OHP) — The Medicaid and State Children's Health Insurance (SCHIP) Demonstration Project which expands Medicaid and SCHIP eligibility to eligible OHP clients. The OHP relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(89) Oregon Health Plan (OHP) Plus Benefit Package — A benefit package available to eligible OHP clients as described in OAR 410-120-1210.

(90) Oregon Health Plan (OHP) Standard Benefit Package — A benefit package available to eligible OHP clients who are not otherwise eligible for Medicaid (including families, adults and couples) as described in OAR 410-120-1210.

(91) Oregon Health Plan (OHP) client — An individual found eligible by DHS to receive services under the OHP. The OHP categories eligible for enrollment are defined as follows:

(a) Temporary Assistance to Needy Families (TANF) are OHP clients categorically eligible with income under current eligibility rules;

(b) SCHIP — children under one year of age who have income under 185% FPL and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) Adults under 100% of the FPL are OHP Clients who are pregnant women with income under 100% of FPL;

(d) PLM Adults over 100% of the FPL are OHP clients who are pregnant women with income between 100% and 185% of the FPL;

(e) PLM children under one year of age have family income under 133% of the FPL or were born to mothers who were eligible as PLM Adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through eighteen years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(h) OHP Adults and Couples are OHP clients aged 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP Families are OHP clients, aged 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) Recipients are OHP clients who are eligible by virtue of their eligibility under the Oregon General Assistance program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare Eligibles are OHP clients with concurrent Medicare eligibility with income under current eligibility rules;

(l) AB/AD without Medicare Eligibles are OHP clients without Medicare with income under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare Eligibles are OHP clients with concurrent Medicare Part A or Medicare Parts A & B eligibility with income under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare Eligibles are OHP clients without Medicare with income under current eligibility rules;

(p) CAF Children are OHP clients who are children with medical eligibility determined by CAF or OYA receiving OHP under ORS 414.025(2)(f), (I), (j), (k) and (o), 418.034 and 418.187 to 418.970. These individuals are generally in the care and/or custody of CAF or OYA who are in placement outside of their homes.

(92) Oregon Youth Authority (OYA) — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(93) Participating Provider — An individual, facility, corporate entity, or other organization which supplies medical, dental, chemical dependency services, or mental health services or medical and dental items and that has agreed to provide those services or items to DMAP members under an agreement or contract with a PHP and to bill in accordance with the signed agreement or contract with a PHP.

(94) PCM Case Managed Services include the following: Preventive Services, primary care services and specialty services, including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, Rural Health Clinics (RHC), Migrant and Community Health Clinics, Federally Qualified Health Centers (FQHC), County Health Departments, Indian Health Service Clinics and Tribal Health Clinics, CMHPs, MHOs; inpatient hospital services; and outpatient hospital services except laboratory, X-ray, and maternity management services.

(95) PCM Member — An OHP client enrolled with a PCM.

(96) PHP Coordinator — the DHS DMAP employee designated by DMAP as the liaison between DMAP and the PHP.

(97) Physician Care Organization (PCO) — PHP that contracts with DMAP to provide partially capitated health services under the OHP. The distinguishing characteristic of a PCO is the exclusion of inpatient hospital services.

(98) Post Hospital Extended Care Benefit — A 20-day benefit for non- Medicare DMAP members enrolled in a FCHP who meet Medicare criteria for a post-hospital skilled nursing placement.

(99) Post Stabilization Services — covered services, related to an Emergency Medical Condition that is provided after a DMAP member is stabilized in order to maintain the stabilized condition or to improve or resolve the DMAP member's condition.

(100) Potential DMAP member — An OHP Client who is subject to mandatory Enrollment in managed care, or may voluntarily elect to enroll in a managed care program, but is not yet enrolled with a specific PHP.

(101) Practitioner — A person licensed pursuant to State law to engage in the provision of health care services within the scope of the Practitioner's license and/or certification.

(102) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with DMAP and/or AMH on a case managed, prepaid, capitated basis under the OHP. PHPs may be DCOs, FCHPs, MHOs, PCOs or CDOs.

(103) Preventive Services — Those services as defined under Expanded Definition of Preventive Services for OHP Clients in OAR 410-141-0480, and OAR 410-141-0520.

(104) Primary Care Management Services — Primary Care Management Services are services provided to ensure PCM members obtain health care services necessary to maintain physical and emotional development and health. Primary Care Management Services include a comprehensive, ongoing assessment of medical needs plus the development, and implementation of a plan to obtain needed medical services that are preventive or primary care services or PCM Case Managed Services and follow-up, as appropriate, to assess the impact of care.

(105) Primary Care Manager (PCM) — A physician (MD or DO), nurse practitioner, physician assistant; or naturopath with physician backups, who agrees to provide Primary Care Management Services as defined in rule to PCM members. PCMs may also be hospital primary care clinics, RHCs, Migrant and Community Health Clinics, FQHCs, County Health Departments, Indian Health Service Clinics or Tribal Health Clinics. The PCM provides Primary Care Management Services to PCM members for a Capitation Payment. The PCM provides preventive and primary care services on a FFS basis.

(106) Primary Care Dentist (PCD) — A Dental Practitioner who is responsible for supervising and coordinating initial and primary dental care within their scope of practice for DMAP members. PCDs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(107) Primary Care Provider (PCP) — A Practitioner who has responsibility for supervising and coordinating initial and primary care within their scope of practice for DMAP members. PCPs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(108) Prioritized List of Health Services — The listing of Condition and Treatment Pairs developed by the Health Services Commission for the purpose of implementing the OHP Demonstration Project. See OAR 410-141-0520, for the listing of Condition and Treatment Pairs.

(109) Professional Liability Insurance — Professional Liability Insurance Is coverage under the Federal Tort Claims Act (the "FTCA") if Contractor is deemed covered under the FTCA, and to the extent the FTCA covers Contractor's professional liability under this Contract

(110) Proof of Indian Heritage — Proof of Native American and/or Alaska Native descent as evidenced by written identification that shows status as an "Indian" in accordance with the Indian Health Care Improvement Act (P.L. 94-437, as amended). This written proof supports his/her eligibility for services under programs of the Indian Health Service — services provided by Indian Health Service facilities, tribal health clinics/programs or urban clinics. Written proof may be a tribal identification card, a certificate of degree of Indian blood, or a letter from the Indian Health Service verifying eligibility for health care through programs of the Indian Health Service.

(111) Provider — An individual, facility, institution, corporate entity or other organization which supplies medical, dental or mental health services or medical and dental items.

(112) Provider Taxonomy Codes: is a standard administrative code set, as defined under HIPAA in federal regulations at 45 CFR 162, for identifying the provider type and area of specialization for all providers.

(113) Quality Improvement — Quality improvement is the effort to improve the level of performance of a key process or processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality Improvement (as used in these rules) includes the goals of quality assurance, quality control, quality planning and quality management in health care where "quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge."

(114) Representative — A person who can make OHP related decisions for OHP clients who are not able to make such decisions themselves. A Representative may be, in the following order of priority, a person who is designated as the OHP client's health care representative, a court-appointed guardian, a spouse, or other family member as designated by the OHP client, the Individual Service Plan Team (for developmentally disabled clients), a DHS case manager or other DHS designee.

(115) Rural — A geographic area is 10 or more map miles from a population center of 30,000 people or less.

(116) Seniors and People with Disabilities Division (SPD) — The division within DHS responsible for providing services such as:

(a) Assistance with the cost of long-term care through the Medicaid Long Term Care Program and the Oregon Project Independence (OPI) Program;

(b) Cash assistance grants for persons with long-term disabilities through GA and the Oregon Supplemental Income Program (OSIP); and

(c) Administration of the federal Older Americans Act.

(117) Service Area — The geographic area the PHP has identifiedin their Contract or Agreement with DHS, to provide services under the OHP.

(118) Stabilize — No material deterioration of the Emergency Medical Condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility.

(119) Terminal Illness — An illness or injury in which death is imminent irrespective of treatment, where the application of life-sustaining procedures or the artificial administration of nutrition and hydration serves only to postpone the moment of death.

(120) Triage — Evaluations conducted to determine whether or not an emergency condition exists, and to direct the DMAP member to the most appropriate setting for Medically Appropriate care.

(121) Urban — A geographic area is less than 10 map miles from a population center of 30,000 people or more.

(122) Urgent Care Services — Covered Services that are Medically Appropriate and immediately required in order to prevent a serious deterioration of an DMAP member's health that results from an unforeseen illness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(123) Valid Claim:

(a) An invoice received by the PHP for payment of covered health care services rendered to an eligible client that:

(A) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(B) Has been received within the time limitations prescribed in these Rules.

(b) A Valid Claim does not include a Claim from a provider who is under investigation for fraud or abuse, or a Claim under review for Medical Appropriateness. A Valid Claim is synonymous with the federal definition of a Clean Claim as defined in 42 CFR 447.45(b).

(124) Valid Pre-Authorization — A request received by the PHP for approval of the provision of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000. f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 13-2002, f. & cert. ef. 4-1-02; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 23-2006, f. 6-12-06,

cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10

410-141-0261
PHP Complaint Procedures

DMAP may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) A grievance (see definition) procedure applies only to those situations in which the Division of Medical Assistance Programs (DMAP) member (see definition) or their respresentative (see definition) expresses concern or dissatisfaction about any matter other than an "Action." PHPs shall have written procedures to acknowledge the receipt, disposition and documentation of each grievance from DMAP members. The PHP's written procedures for handling grievances, shall, at a minimum:

(a) Address how the PHP will accept, process and respond to each grievance from a DMAP member or their respresentative, including:

(A) Acknowledgment to the DMAP member or respresentative of receipt of each grievance;

(B) Ensuring that DMAP members who indicate dissatisfaction or concern are informed of their right to file a grievance and how to do so;

(C) Ensuring that each grievance is transmitted timely to staff having authority to act upon it;

(D) Ensuring that each grievance is investigated and resolved in accordance with these rules; and

(E) Ensuring that the Practitioner(s) or staff person(s) who make decisions on the grievance must be persons who are:

(i) Not involved in any previous level of review or decision-making; and

(ii) Who are health care professionals who have appropriate clinical expertise in treating the DMAP member's condition or disease if the grievance concerns denial of expedited resolution of an Appeal or if the grievance involves clinical issues:

(b) Describe how the PHP informs DMAP members, both orally and in writing, about the PHP's grievance procedures;

(c) Designate the PHP staff member(s) or a designee who will be responsible for receiving, processing, directing, and responding to grievances;

(d) Include a requirement for grievances to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(2) The PHP must provide DMAP members with any reasonable assistance in completing forms and taking other procedural steps related to filing and disposition of a grievance. This includes, but is not limited to, providing interpreter services and toll free phone numbers that have adequate TTY/TTD and interpreter capabilities.

(3) The PHP shall assure DMAP members that grievances are handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The PHP shall safeguard the DMAP member's right to confidentiality of information about the grievance as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning a DMAP member's grievance is kept confidential, consistent with appropriate use or disclosure as treatment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any Practitioner whose services, items or quality of care is alleged to be involved in the grievance have a right to use this information for purposes of the PHP resolving the grievance, for purposes of maintaining the log required in OAR 410-141-0266, and for health oversight purposes, without a signed release from the DMAP member;

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the DMAP member to authorize a release of information regarding the grievance to other individuals as needed for resolution. Before any information related to the grievance is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the grievance file. Copies of the form for obtaining the release of information shall be included in the PHP's written process.

(4) The PHPs procedures shall provide for the disposition of grievances within the following timeframes:

(a) The PHP must resolve each grievance, and provide notice of the disposition, as expeditiously as the DMAP member's health condition requires, within the timeframes established in this rule;

(b) For standard disposition of grievances and notice to the affected parties, within 5 working days from the date of the PHP's receipt of the grievance, the PHP must either:

(A) Make a decision on the grievance and notify the DMAP member; or

(B) Notify the DMAP member in writing that a delay in the PHP's decision of up to 30 calendar days from the date the grievance was received by the PHP is necessary to resolve the grievance. The PHP shall specify the reasons the additional time is necessary.

(5) The PHP's decision about the disposition of a grievance shall be communicated to the DMAP member orally or in writing within the timeframes specified in (4) of this rule:

(a) An oral decision about a grievance shall address each aspect of the DMAP member's grievance and explain the reason for the PHP's decision;

(b) A written decision must be provided if the grievance was received in writing. The written decision on the grievance shall review each element of the DMAP member's grievance and address each of those concerns specifically, including the reasons for the PHP's decision.

(6) All grievances made to the PHP's staff person designated to receive grievances shall be entered into a log and addressed in the context of Quality Improvement activity (OAR 410-141-0200) as required in OAR 410-141-0266.

(7) All grievances that the DMAP member chooses to resolve through another process, and that the PHP is notified of, shall be noted in the grievance log.

(8) DMAP members who are dissatisfied with the disposition of a grievance may present their grievance to the Governors Advocacy Office.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10

410-141-0263
Notice of Action by a Prepaid Health Plan

DMAP may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) When a PHP (or authorized practitioner (see definition) acting on behalf of the PHP) takes or intends to take any Action, including but not limited to denials or limiting prior authorizations of a requested covered service(s) in an amount, duration, or scope that is less than requested, or reductions, suspension, discontinuation or termination of a previously authorized service, or any other Action, the PHP (or authorized practitioner acting on behalf of the PHP) shall mail a written client (see definition) Notice of Action in accordance with section (2) of this rule to the Division of Medical Assistance Programs (DMAP) member (see definition) within the timeframes specified in subsection (3) of this rule.

(2) The written client Notice of Action must be a DMAP approved format and it must be used for all denials of a requested covered service(s), reductions, discontinuations or terminations of previously authorized services, denials of claims payment, or other Action. The client Notice of Action must meet the language and format requirements of 42 CFR 438.10(c) and (d) and shall inform the DMAP member of the following:

(a) Relevant information shall include, but is not limited to, the following:

(A) Date of client Notice of Action;

(B) PHP name;

(C) PCP/PCD name;

(D) DMAP member's name and ID number;

(E) Date of service or item requested or provided;

(F) Who requested or provided the item or service; and

(G) Effective date of the Action;

(b) The Action the PHP or its participating provider (see definition) has taken or intends to take;

(c) Reasons for the Action, with enough specificity to clearly explain the actual reason for the denial, including but not limited to the following reasons:;

(A) The item requires pre-authorization and it was not pre-authorized;

(B) The service or item is received in an emergency care setting and does not qualify as an Emergency Service under the prudent layperson standard;

(C) The person was not a DMAP member at the time of the service or is not a DMAP member at the time of a requested service; and

(D) The Provider is not on the PHP's panel and prior approval was not obtained (if such prior authorization would be required under the Oregon Health Plan Rules):

(d) A reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Action pursuant to

subsection (b) of this section, in compliance with the notice requirements in ORS 183.415(2)(c);

(e) The DMAP member's right to file an Appeal with the PHP and how to exercise that right as required in OAR 410-141-0262;

(f) The DMAP member's right to request a DMAP Administrative Hearing and how to exercise that right. A copy of a Hearing Request Form (DHS 443) and Notice of Hearing Rights (DMAP 3030) must be attached to the Notice of Action;

(g) The circumstances under which expedited Appeal resolution is available and how to request it;

(h) The DMAP member's right to have benefits continue pending resolution of the Appeal, how to request that benefit(s) be continued, and the circumstances under which the DMAP Member may be required to pay the costs of these services; and

(i) The telephone number to contact the PHP for additional information.

(3) The PHP or practitioner acting on behalf of the PHP must mail the Notice of Action within the following time frames:

(a) For termination, suspension, or reduction of previously authorized OHP covered services(see definition), the following time frames apply:

(A) The notice must be mailed at least 10 calendar days before the date of Action, except as permitted under subsections (B) or (C) of this section;

(B) The PHP (or authorized practitioner acting on behalf of the PHP) may mail a notice not later than the date of Action if:

(i) The PHP or practitioner receives a clear written statement signed by the DMAP member that he or she no longer wishes services or gives information that requires termination or reduction of services and indicates that he or she understands that this must be the result of supplying the information;

(ii) The DMAP member has been admitted to an institution where he or she is ineligible for covered services from the PHP;

(iii) The DMAP member's whereabouts are unknown and the post office returns PHP or practitioner's mail directed to him or her indicating no forwarding address;

(iv) The PHP establishes the fact that another State, territory, or commonwealth has accepted the DMAP member for Medicaid services;

(v) A change in the level of medical or dental care is prescribed by the DMAP member's PCP or PCD; or

(vi) The date of Action will occur in less than 10 calendar days, in accordance with 42 CFR 483.12(a)(5)(ii), related to discharges or transfers and long-term care facilities:

(C) The PHP may shorten the period of advance notice to 5 calendar days before the date of the Action if the PHP has facts indicating that an Action should be taken because of probable fraud by the DMAP member. Whenever possible, these facts should be verified through secondary sources:

(b) For denial of payment, at the time of any Action affecting the claim;

(c) For standard prior authorizations that deny a requested service or that authorize a service in an amount, duration, or scope that is less than requested, the PHP must provide Notice of Action as expeditiously as the DMAP member's health condition requires and within 14 calendar days following receipt of the request for service, except that:

(A) The PHP may have a possible extension of up to 14 additional calendar days if the DMAP member or the provider requests the extension; or if the PHP justifies (to DMAP upon request) a need for additional information and how the extension is in the DMAP member's interest;

(B) If the PHP extends the timeframe, in accordance with subsection (A) of this section, it must give the DMAP member written notice of the reason for the decision to extend the timeframe and inform the DMAP member of their right to file a grievance if he or she disagrees with that decision. The PHP must issue and carry out its prior authorization determination as expeditiously as the DMAP member's health condition requires and no later than the date the extension expires:

(d) For prior authorization decisions not reached within the timeframes specified in subsection (c) of this section, (which constitutes a denial and is thus an adverse Action), on the date that the timeframes expire;

(e) For expedited prior authorizations, within the timeframes specified in OAR 410-141-0265.

[Publications: Publications referenced are available from the agency.]

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

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10

410-141-0264
Administrative Hearings

DMAP may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) An individual who is or was a Division of Medical Assistance Programs (DMAP) member (see definition) at the time of the Notice of Action is entitled to an Administrative Hearing by DMAP if a PHP has denied requested services, payment of a claim, or terminates, discontinues or reduces a course of treatment, or any other Action.

(a) If the DMAP member initiates an Administrative Hearing directly with DMAP, the decision in the Notice of Action is the document that will trigger the right to request a state administrative hearing:

(b) If the DMAP member requests an Administrative Hearing after receiving a Notice of Appeal Resolution, the decision in the Notice of Appeal Resolution is the document that will trigger the right to request a state administrative hearing:

(c) Client (see definition) Administrative Hearings are governed by OAR 410-120-1860, 410-120-1865, and this rule.

(2) A written hearing request must be received by the Hearings Unit at DMAP not later than the 45th day following the date of the Notice of Action, or if the hearing request was initiated after an Appeal, not later than the 45th day following the Notice of Appeal Resolution.

(3) If, at the DMAP member's request, the PHP continued or reinstated services while an Appeal was pending, the benefits must be continued pending the Administrative Hearing until one of the following occurs:

(a) The DMAP member withdraws the request for an Administrative Hearing;

(b) Ten calendar days pass after the PHP mails the Notice of Appeal Resolution, providing the resolution of the Appeal against the DMAP member, unless the DMAP member within the 10-day timeframe, has requested a DMAP Administrative Hearing with continuation of benefits until the DMAP Administrative Hearing decision is reached;

(c) A final order is issued in a DMAP Administrative Hearing adverse to the DMAP Member; or

(d) The time period or service limits of a previously authorized service have been met.

(4) The DMAP representative (see definition) shall review the Administrative Hearing request, documentation related to the Administrative Hearing issue, and computer records to determine whether the claimant or the person for whom the request is being made is or was a DMAP member at the time the Action was taken, and whether the hearing request was timely.

(5) PHPs shall immediately transmit to DMAP any Administrative Hearing request submitted on behalf of a DMAP member, including a copy of the DMAP member's Notice of Action and, if applicable, Notice of Appeal Resolution.

(6) If the DMAP member files a request for an Administrative Hearing with DMAP, DMAP will send a copy of the hearing request to the PHP.

(7) PHPs shall review an Administrative Hearing Request, which has not been previously received or reviewed as an Appeal, using the PHP's Appeal process as follows:

(a) The Appeal shall be reviewed immediately and shall be resolved, if possible, within 16 calendar days, pursuant to OAR 410-141-0262;

(b) The PHP's Notice of Appeal Resolution shall be in writing and shall be provided to the DMAP member.

(8) When an Administrative Hearing is requested by a DMAP member, the PHP shall cooperate with providing relevant information required for the hearing process to DMAP, as well as the results of the review by the PHP of the Appeal and the Administrative Hearing request, and any attempts at resolution by the PHP.

(9) Information about DMAP Members used for Administrative Hearings is handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the HIPAA Privacy Rules, and other applicable federal and state confidentiality laws and regulations. DMAP will safeguard the DMAP member's right to confidentiality of information used in the Administrative Hearing as follows:

(a) DMAP, the DMAP member and their representative, the PHP and any practitioner (see definition) whose authorization, treatment, services, items, or request for payment is involved in the Administrative Hearing have a right to use this information for purposes of resolving the Administrative Hearing without a signed release from the DMAP member. DMAP may also use this information, pursuant to OAR 410-120-1360(4),

for health oversight purposes, and for other purposes authorized or required by law. The information may also be disclosed to the Office of Administrative Hearings and the Administrative Law Judge assigned to the Administrative Hearing, and to the Court of Appeals if the DMAP member seeks judicial review of the final order;

(b) Except as provided in subsection (a), DMAP will ask the DMAP member to authorize a release of information regarding the Administrative Hearing to other individuals. Before any information related to the Administrative Hearing is disclosed under this subsection, DMAP must have an authorization for release of information documented in the Administrative Hearing file.

(10) The hearings request (DHS 443), along with the Notice of Appeal Resolution, shall be referred to the Office of Administrative Hearings and the hearing will be scheduled.

(a) The parties to the Administrative Hearing shall include the PHP, as well as the DMAP member and his or her representative, or the representative of a deceased DMAP member's estate;

(b) The procedures applicable to the Administrative Hearing shall be conducted consistent with OAR 410-120-1860 and 410-120-1865;

(c) A final order should be issued or the case otherwise resolved by DMAP ordinarily within 90 calendar days from the earlier of the following: the date the DMAP member requested a PHP appeal (not including the number of days the DMAP member took to subsequently file for a DMAP Administrative Hearing) or the date the DMAP member filed for direct access to a DMAP Administrative Hearing. The final order is the final decision of DMAP.

(11) If the final resolution of the Administrative Hearing is adverse to the DMAP member, that is, if the final order upholds the PHP's Action, the PHP may recover the cost of the services furnished to the DMAP member while the Administrative Hearing is pending, to the extent that they were furnished solely because of the requirements of this section, and in accordance with the policy set forth in 42 CFR 438.420.

(12) The PHP must promptly correct the Action taken up to the limit of the original request or authorization, retroactive to the date the Action was taken, if the hearing decision is favorable to the DMAP member, or DMAP and/or the PHP decides in the DMAP member's favor before the hearing even if the DMAP member has lost eligibility after the date the Action was taken:

(a) If the PHP, or a DMAP hearing decision reverses a decision to deny, limit, or delay services that were not furnished while the Administrative Hearing was pending, the PHP must authorize or provide the disputed services promptly, and as expeditiously as the DMAP member's health condition requires;

(b) If the PHP, or the DMAP hearing decision reverses a decision to deny authorization of services, and the DMAP member received the disputed services while the Administrative Hearing was pending, the PHP must pay for the services in accordance with DMAP policy and regulations in effect when the request for services was made by the DMAP member.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10

410-141-0405
Oregon Health Plan Fully Capitated Health Plan and Physician Care Organization Exceptional Needs Care Coordination (ENCC)

DMAP may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule. Fully Capitated Health Plans (FCHPs) and Physician Care Organizations (PCOs) provide Exceptional Needs Care Coordination (ENCC) under the Oregon Health Plan:

(1) FCHPs and PCOs shall make available ENCC services as defined in OAR 410-141-0000, Definitions, for all Capitated Services;

(2) FCHPs and PCOs shall make ENCC services available to DMAP members (see definition) or DMAP member's representative (see definition) identified as aged, blind, disabled or who have complex medical needs at the request of a DMAP member or DMAP member's representative, a physician, other medical personnel serving the DMAP member, or the DMAP member's agency case manager;

(3) FCHPs and PCOs shall make Exceptional Needs Care Coordinators available for training, Regional OHP meetings and case conferences involving DMAP members or DMAP member's representative identified as aged, blind, disabled or who have complex medical needs in all their Service Areas;

(4) FCHP and PCO staff who coordinate or provide ENCC services shall be trained to and exhibit skills in communication with and sensitivity to the unique health care needs of people who are aged, blind, disabled or who have complex medical needs. FCHPs and PCOs shall have a written position description for the staff member(s) responsible for managing ENCC services and for staff who provide ENCC services;

(5) FCHPs and PCOs shall have written policies that outline how the level of staffing dedicated to ENCC is determined;

(6) FCHPs and PCOs shall make ENCC services available to DMAP members identified as aged, blind, disabled or who have complex medical needs during normal office hours, Monday through Friday. Information on ENCC services shall be made available when necessary to a DMAP member's representative during normal business hours, Monday through Friday;

(7) FCHPs and PCOs shall provide the aged, blind, disabled or who have complex medical needs DMAP member or DMAP member's representative who requests ENCC services with an initial response by the next working day following the request, as appropriate;

(8) FCHPs and PCOs shall periodically inform all of their practitioners (see definition) and the practitioner's staff of the availability of ENCC services, provide training for medical office staff on ENCC services and other support services available for serving the aged, blind, disabled or who have complex medical l needs DMAP members or DMAP member's representative; FCHPs and PCOs shall assure that the ENCCs name(s) and telephone number(s) are made available to both agency staff and DMAP members or DMAP member's representative;

(9) FCHPs and PCOs shall have written procedures that describe how they will respond to ENCC requests;

(10) FCHPs and PCOs shall make ENCC services available to coordinate the provision of covered services to aged, blind, disabled or who have complex medical needs to DMAP members or DMAP member's representative who exhibit inappropriate, disruptive or threatening behaviors in a practitioner's office;

(11) Exceptional Needs Care Coordinators shall document ENCC services in DMAP member medical records as appropriate and/or in a separate DMAP ember case file.

Stat. Auth.: ORS 409.010, 414.050, 409.110, 414.065
Stats. Implemented: ORS 414.725
Hist.: HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10

410-141-0420
Oregon Health Plan Prepaid Health Plan Billing and Payment Under the Oregon Health Plan

DMAP may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) All billings for Oregon Health Plan Clients to Prepaid Health Plans (PHPs) and to Division of Medical Assistance Programs (DMAP) shall be submitted within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable DMAP billing rules. Submissions shall be made to PHPs within the four (4) month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive Enrollments;

(c) Medicare is the primary payor;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of Provider to certify the DMAP member's (see definition) eligibility); or

(e)Third Party Resource (TPR). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payor of last resort and is not considered an alternative resource or TPR.

(2) Providers must be enrolled with DMAP to be eligible for Fee-for-Service (FFS) payment by DMAP. Mental health Providers, except Federally Qualified Health Centers, must be approved by the Local Mental Health Authority (LMHA) and the Addictions and Mental Health Division (AMH) before enrollment with DMAP. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider Enrollment.

(3) Providers, including mental health providers (see definition), do not have to be enrolled with DMAP to be eligible for payment for services by PHPs except that providers who have been excluded as Medicare/Medicaid providers by DMAP, CMS or by lawful court orders are ineligible to receive payment for services by PHPs

(4) Providers shall verify, before rendering services, that the DMAP member is eligible for the Medical Assistance Program on the date of service and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of Covered Services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payor before rendering services. Providers shall inform DMAP members of any charges for non-covered services (see definition) prior to the services being delivered.

(5) Capitated Services:

(a) PHPs receive a Capitation Payment to provide services to DMAP members. These services are referred to as Capitated Services;

(b) PHPs are responsible for payment of all Capitated Services. Such services should be billed directly to the PHP, unless the PHP or DMAP specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain Capitated Services.

(6) Payment by the PHP to providers for Capitated Services is a matter between the PHP and the provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv)The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with Appeal rights to the DMAP member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of Valid Pre-Authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Pre-authorizations for prescription drugs must be completed and the pharmacy notified within 24 hours. If a pre-authorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify providers of such determination within 2 working days of receipt of the request;

(C) For expedited prior authorization requests in which the provider indicates, or the PHP determines, that following the standard timeframe could seriously jeopardize the DMAP member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the DMAP member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days time period by up to 14 calendar days if the DMAP member requests an extension, or if the PHP justifies to DMAP a need for additional information and how the extension is in the DMAP member's interest.

(D) For all other pre-authorization requests, PHPs shall notify providers of an approval, a denial or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14-day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies (to DMAP upon request) the need for additional information and how the delay is in the interest of the DMAP member. The PHP shall make a determination as the DMAP member's health condition requires, but no later than the expiration of the extension.

(b) Claims Payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with Appeal rights to the DMAP member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of Valid Claims within 45 calendar days of receipt and at least 99% of Valid Claims within 60 calendars days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the DMAP member may be financially responsible. Such notice shall be provided to the DMAP member and the treating provider within 14 calendar days of the final determination. The notice to the DMAP member shall be a DMAP or AMH approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (DMAP 3030) shall be attached. The notice to the provider shall include the reason for the denial;

(D) PHPs shall not require providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved providers to bill Medicare;

(F) PHPs shall not deny payment of Valid Claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the DMAP member's Clinical Record;

(G) PHPs shall not delay nor deny payments because a Co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for Covered Services the DMAP member receives within the PHP, for authorized referral care, and for Urgent Care Services or Emergency Services the DMAP member receives from non-participating providers (see definition). FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care DMAP members receive from non-participating providers;

(d) FCHPs and PCOs shall pay transportation, meals and lodging costs for the DMAP member and any required attendant for out-of-state services (as defined in General Rules) that the FCHP and PCO has arranged and authorized when those services are available within the state, unless otherwise approved by DMAP;

(e) PHPs shall be responsible for payment of covered services (see definition) provided by a non-participating provider that were not pre-authorized if the following conditions exist:

(A) It can be verified that the participating provider (see definition) ordered or directed the covered services to be delivered by a non-participating provider; and

(B) The covered service was delivered in good faith without the pre-authorization; and

(C) It was a covered service that would have been pre-authorized with a participating provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to non-participating providers (providers enrolled with DMAP that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other services:

(a) DMAP members enrolled with PHPs may receive certain services on a DMAP FFS basis. Such services are referred to as non-capitated Services (see definition);

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by DMAP on a DMAP FFS basis. Before providing services, providers should contact the PHPs identified on the DMAP Member's Medical Care Identification or, for some mental health services, the CMHP. Alternatively, the provider may call the DMAP Provider Services Unit to obtain information about coverage for a particular service and/or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate DMAP administrative rules and supplemental information, including rates and billing instructions;

(d) Providers shall bill DMAP directly for non-capitated services in accordance with billing instructions contained in the DMAP administrative rules and supplemental information;

(e) DMAP shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and DMAP administrative rules and supplemental information;

(f) DMAP will not pay a provider for provision of services for which a PHP has received a Capitation Payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of DMAP, AMH, nor a PHP except as provided for in DMAP administrative rules and supplemental information (e.g., Capitated Services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP or PCO would make for the same service(s) furnished by a Provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of covered services is limited by OAR 410-141-0500, Excluded Services and Limitations for OHP Clients.

(9) OHP Clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client/per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide Primary Care access, and management services for Preventive Services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. DMAP payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM managed services are covered services that shall be billed directly to DMAP in accordance with billing instructions contained in the DMAP administrative rules and supplemental information;

(d) DMAP shall pay at the DMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate DMAP administrative rules and supplemental information.

(10) All OHP Clients who are enrolled with a PCO receive inpatient hospital services on a DMAP FFS basis:

(a) May receive services directly from any appropriately enrolled DMAP Provider;

(b) All services shall be billed directly to DMAP in accordance with FFS billing instructions contained in the DMAP administrative rules and supplemental information;

(c) DMAP shall pay at the DMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate DMAP administrative rules and supplemental information.

(11) OHP Clients who are not enrolled with a PHP receive services on a DMAP FFS basis:

(a) Services may be received directly from any appropriate enrolled DMAP provider;

(b) All services shall be billed directly to DMAP in accordance with billing instructions contained in the DMAP administrative rules and supplemental information;

(c) DMAP shall pay at the DMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate DMAP administrative rules and supplemental information.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.110, 414.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 9-2007, f. 6-14-07, cert. ef. 6-29-07; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Jan '10 — Update recognized mental health professionals and clarify reasonable costs. Removal of OAR 410-146-0340.
Adm. Order No.: DMAP 46-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-146-0021, 410-146-0085, 410-146-0240
Rules Repealed: 410-146-0340

Subject: The American Indian/Alaska Native (AI/AN) Services program administrative rules govern DMAP payment for services to certain clients. DMAP amended rules listed above to include all recognized mental heath professionals, and to clarify reasonable costs. As a continued effort to make administrative rules more efficient, DMAP deleted rule 410-146-0340 and placed the information in the AI/AN Supplemental Information document used in conjunction with rules. This information does not need to be in rule.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-146-0021
American Indian/Alaska Native (AI/AN) Provider Enrollment

(1) This rule outlines the Division of Medical Assistance Programs (DMAP) requirements for IHS and Tribal 638 clinics to enroll as AI/AN providers. Refer also to OAR 410-120-1260 Provider Enrollment.

(2) An IHS or Tribal 638 clinic that operates a retail pharmacy, provides durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); or provides targeted case management (TCM) services, must enroll separately as a pharmacy, DMEPOS and/or TCM provider. Refer to OAR 410 Division 121, Pharmaceutical; OAR 410 Division 122, DMEPOS; and OAR 410 Division 138, TCM for specific information.

(3) To enroll with DMAP as an AI/AN provider, a health center must be one of the following:

(a) An Indian Health Service (IHS) direct health care services facility established, operated, and funded by IHS; or

(b) A Tribally-owned and operated facility funded by Title I or V of the Indian Self Determination and Education Assistance Act (Public Law 93-638, as amended) and is referenced throughout these rules as a "Tribal 638" provider;

(A) A Tribal 638 facility that under Self-Determination, contracts with IHS under Title I to have the administrative control, operation, and funding for health programs transferred to AI/AN tribal governments;

(B) A Tribal 638 facility that under Self-Determination has a compact with IHS under Title V and assumes autonomy for the provision of the tribe's own health care services.

(4) Eligible IHS and Tribal 638 providers who want to enroll with DMAP as an AI/AN provider must submit the following information:

(a) Completed DHS provider enrollment forms with attachments as required in OAR 407-0120-0300 through -0320;

(b) A Tribal facility must submit documentation verifying they are a 638 provider:

(A) A letter from IHS, applicable-Area Office or Central Office, indicating that the facility (identified by name and address) is a 638 facility;

(B) A written assurance from the Tribe that the facility (identified by name and site address) is owned or operated by the Tribe or a Tribal organization with funding directly obtained under a 638 contract or compact. A copy of the relevant provision of the Tribe's current 638 contract or compact must accompany the written assurance;

(c) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker, psychiatric nurse practitioner, licensed professional counselor or licensed marriage and family therapist is providing mental health services. Refer to OAR 309-012-0130 through 309-012-0220, Certificates of Approval for Mental Health Services; 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; 309-032-0950 through 309-032-1080, Standards for Community Treatment Services for Children; and 309-039-0500 through 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(d) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR 415 Division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(e) A list of all Prepaid Health Plan (PHP) contracts;

(f) A list of all practitioners contracted with or employed by the IHS or Tribal 638 Facility including names, legacy DMAP provider numbers, National Provider Identifier (NPI) numbers and associated taxonomy codes; and

(g) A list of all clinics affiliated or owned by the IHS or Tribal 638 Facility including business names, legacy DMAP provider numbers, National Provider Numbers (NPI) and associated taxonomy codes.

Stat. Auth.: 409.050, 404.110, 414.065; Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 62-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 46-2009, f. 12-15-09, cert. ef. 1-1-10

10-146-0085
DMAP Encounter and Recognized Practitioners

(1) AI/AN DMAP-enrolled providers will bill services, items and supplies to the Division of Medical Assistance Programs (DMAP) and will be reimbursed for services that meet the criteria of a valid encounter in Sections (5) through (7) of this rule and are limited to DMAP Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act. Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act are not reimbursed by DMAP.

(2) AI/AN providers reimbursed according to a cost-based rate under the Prospective Payment System (PPS) are directed to Oregon Administrative Rule (OAR) 410-147-0120 DMAP Encounter and Recognized Practitioners.

(3) AI/AN providers reimbursed according to the IHS rate are subject to the requirements of this rule.

(4) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) and Qualified Medicare Beneficiary (QMB) only clients are not billed according to encounter criteria and not reimbursed at the IHS encounter rate. Refer to OARs 410-120-1210 Medical Assistance Benefit Packages and Delivery System.

(5) For the provision of services defined in Titles XIX and XXI, and provided through an IHS or Tribal 638 facility, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. Section (7) of this rule outlines limitations for telephone contacts that qualify as encounters.

(6) An encounter includes all services, items and supplies provided to a client during the course of an office visit, and "incident-to" services (except as excluded in section (15) of this rule). The following services are inclusive of the visit with the core provider meeting the criteria of a reimbursable valid encounter and are not reimbursed separately:

(a) Drugs or medication treatments provided during the clinic visit, with the exception of contraception supplies and medications as costs for these items are excluded from the IHS encounter rate calculation. Refer to OAR 410-146-0200 Pharmacy;

(b) Medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace); and

(c) Venipuncture for laboratory tests.

(7) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and OAR 410-130-0190, Tobacco Cessation. See also OAR 410-120-1200(2)(y). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(8) The following services may be Medicaid-covered services according to an Oregon Health Plan (OHP) client's benefit package as a stand alone service; however, when furnished as a stand-alone service are not reimbursable:

(a) Case management services for coordinating care for a client;

(b) Sign language and oral interpreter services;

(c) Supportive rehabilitation services including, but not limited to, environmental intervention, supported employment, or skills training and activity therapy to promote community integration and job readiness.

(9) AI/AN providers may provide certain services, items and supplies that are prohibited from being billed under the health centers provider enrollment and that require separate enrollment. Refer to OAR 410-146-0021(2) American Indian/Alaska Native (AI/AN) Provider Enrollment. These services include:

(a) Durable medical equipment, prosthetics, orthotics or medical supplies (e.g. diabetic supplies) (DMEPOS) not generally provided during the course of a clinic visit. Refer to OAR 410 Division 122, DMEPOS;

(b) Prescription pharmaceutical and/or biologicals not generally provided during the clinic visit must be billed to DMAP through the pharmacy program. Refer to OAR 410 Division 121, Pharmaceutical Services;

(c) Targeted case management (TCM) services. Refer to OAR 410 Division 138, TCM for specific information.

(10) Client contact with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit. For exceptions to this rule, refer to OAR 410-146-0086 for reporting multiple encounters.

(11) For claims that require a procedure and diagnosis code the provider must bill as instructed in the appropriate DMAP program rules and must use the appropriate HIPAA procedure Code Set established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. Refer to OARs 410-120-1280 Billing and 410-146-0040 ICD-9-CM Diagnosis Codes and CPT/HCPCs Procedure Codes.

(12) Services furnished by AI/AN enrolled providers that may meet the criteria of a valid encounter are (Refer to individual program administrative rules for service limitations.):

(a) Medical (OAR 410 Division 130);

(b) Diagnostic: DMAP covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, DMAP will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-146-0140);

(d) Dental - Refer to OAR 410-146-0380 and OAR 410 Division 123;

(e) Vision (OAR 410 Division 140);

(f) Physical Therapy (OAR 410 Division 131);

(g) Occupational Therapy (OAR 410 Division 131);

(h) Podiatry (OAR 410 Division 130);

(i) Mental Health (OAR 309 Division 16);

(j) Alcohol, Chemical Dependency, and Addiction services (OAR 415 Divisions 50 and 51). Requires a letter or licensure of approval by the Addictions and Mental Health Division (AMH). Refer to OAR 410-146-0021 (4)(c) and (d);

(k) Maternity Case Management (OAR 410-146-0120);

(l) Speech (OAR 410 Division 129);

(m) Hearing (OAR 410 Division 129);

(n) DMAP considers a home visit for assessment, diagnosis, treatment or Maternity Case Management (MCM) as an encounter. DMAP does not consider home visits for MCM as Home Health Services;

(o) Professional services provided in a hospital setting;

(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and DMAP Administrative Rules.

(13) The following practitioners are recognized by DMAP:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed Physician Assistants;

(c) Nurse Practitioners;

(d) Registered nurses -- may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by DMAP in this section and who is authorized to independently diagnose and treat according to OAR 851 Division 45);

(e) Nurse Midwives;

(f) Dentists;

(g) Dental Hygienists who hold a Limited Access Permit (LAP) — may provide dental hygiene services without the supervision of a dentist in certain settings. See the section on Limited Access Permits, ORS 680.200 and OAR 818-035- 0065 through OAR 818-035-0100 for more information;

(h) Pharmacists;

(i) Psychiatrists;

(j) Licensed Clinical Social Workers;

(k) Clinical psychologists;

(l) Acupuncturists (refer to OAR 410 Division 130 for service coverage and limitations);

(m) Licensed Professional Counselor;

(n) Licensed Marriage and Family Therapist; and

(o) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(A) Their individual provider's certification or license; or

(B) A clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH). Refer to OAR 410-146-0021 sections (4)(c) and (d).

(14) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (including drugs and biologicals) furnished on a part-time or intermittent basis to home-bound AI/AN clients residing on tribal land and any other ambulatory services covered by

DMAP are also reimbursable as permitted within the clinic's scope of services (see OAR 410-146-0080).

(15) DMAP reimburses the following services fee-for-service outside of the IHS all-inclusive encounter rate and according to the physician fee schedule:

(a) Laboratory and/or radiology services;

(b) Contraception supplies and medications. Refer to OAR 410-146-0200 Pharmacy;

(c) Administrative medical examinations and report services (See OAR 410 Division 150); and

(d) Death with Dignity services (See OAR 410-130-0670).

(16) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances DMAP will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing DMAP. Refer to OAR 410-120-1140 Verification of Eligibility.

(17) When a Provider receives a payment from any source prior to the submission of a claim to DMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field. Refer to OARs 410-120-1280 Billing and 410-120-1340 Payment.

Stat. Auth.: 409.050, 404.110 & 414.065; Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42 USC1396a(bb) & 1396d (United States Code 42, Ch. 7, Subch. 19). Public Law 93-638. Sec. 1603 of Title 25.

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-2005, f. 3-11-05, cert. ef. 4-1-05; Renumbered from 410-146-0080, DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 21-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 46-2009, f. 12-15-09, cert. ef. 1-1-10

410-146-0240
Transportation

(1) The Division of Medical Assistance Programs (DMAP) may reimburse American Indian/Alaska Native (AI/AN) providers for medically appropriate sedan car or wheelchair van transportation services to Oregon Health Plan (OHP) AI/AN clients who receive medical services through an AI/AN provider. (Refer to OAR 410 Division 136, Medical Transportation).

(2) Federal regulations in 42 CFR 431.53 require the State to ensure necessary transportation for Medicaid recipients to and from providers. The AI/AN provider must ensure that:

(a) The service to be provided is the most cost-effective method that meets the medical needs of the client; and

(b) The service to be provided at the point of origin and/or destination is a DMAP Medicaid-covered service according to a client's Oregon Health Plan (OHP) benefit package.

(c) In addition, AI/AN OHP clients may be transported to the nearest Tribal Health facility, and are not restricted to the nearest (non-tribal) facility able to meet the client's medical needs.

(3) For the purpose of this rule the most "cost effective" method is a transportation service that cannot, in the judgment of DHS, be provided through a less expensive alternative while meeting the medical needs of the client. Reimbursement by DMAP to an AI/AN provider will not exceed the most cost-effective method and is the lesser of:

(a) The providers costs for furnishing transportation services; or

(b) The amount reimbursed by DMAP to non-emergency transportation providers under OAR 410 Division 136 Medical Transportation Program.

(4) DMAP reimburses transportation services fee-for-service, and outside of the IHS encounter rate, when the AI/AN provider meets the following conditions:

(a) The AI/AN provider owns or leases the sedan car or wheelchair van; and

(b) The individual providing the service is an employee of the AI/AN provider.

(5) AI/AN providers do not need to enroll separately as a transportation provider if they furnish either sedan car or wheelchair van transportation. As used in this rule transportation services by AI/AN providers are defined as follows:

(a) Sedan car transport: Transportation provided by a 4-door sedan or mini-van motor vehicle having a seating capacity of not less than 4 and not more than 7 passengers;

(b) Wheelchair van transport: Transportation provided by a wheelchair lift equipped vehicle for a client who uses a wheelchair. Transportation is generally a "door to door" service. At times, an individual being transported must be picked up inside their residence and taken inside their destination (escort by the driver);

(6) Under the following conditions, an AI/AN provider is required to separately enroll with DMAP as a provider of medical transportation services:

(a) The AI/AN provider serves all clients as a whole, and does not limit services to the AI/AN community (e.g. Native American clients);

(b) The AI/AN provider owns and operates a taxi service; or

(c) The AI/AN provider owns and operates an ambulance service.

(7) Non-emergency ambulance, air ambulance, commercial air, bus, or train are not reimbursed under this rule to AI/AN providers and requires advance arrangement and prior authorization (PA) through the local Seniors and People with Disabilities Division (SPD) or Children, Adults and Families (CAF) branch office.

(8) For all claims submitted to DMAP, the provider records must contain completed documentation (pertinent to the service provided) that includes but is not limited to:

(a) Trip information including:

(A) Date of service;

(B) If one way, round trip, or three-way and if transportation needs are ongoing;

(C) Physical address of the point of origin, e.g., client address, Nursing Home name and address, etc.;

(D) Number of actual patient miles traveled; and

(E) Physical address and name of the destination point, e.g., hospital name, doctor name, address, etc.;

(b) Client information including:

(A) Client name;

(B) ID number; and

(C) Medical assistance needs (e.g. for example, requires wheelchair, walker, cane, needs assistance, requires portable oxygen, etc.); and

(c) Justification for extra attendant beyond one if wheelchair van;

(9) All required documentation must be retained in the provider files for the period of time specified in the General Rules (OAR 410 Division 120).

(10) Medical transportation services must be billed in the professional claim format using the billing instructions and procedure codes in this rule and in conjunction with OAR 147 Division 136 Medical Transportation Program.

(11) Additional Client Transport. If two or more Medicaid clients are transported by the same mode (e.g., wheelchair van) at the same time, DMAP will reimburse at the full base rate for the first client and one-half the appropriate base rate for each additional client. If two or more DMAP clients are transported by mixed mode (e.g., wheelchair van and ambulatory) at the same time, DMAP will reimburse at the full base rate for the highest mode for the first client and one-half the base rate of the appropriate mode for each additional client. Reimbursement will not be made for duplicated miles traveled. If more than one client is transported from a single pickup point to different destinations or from different pickup points to the final destination the total mileage may be billed. The first 10 miles is included in the Base Rate and should be included in the total number of miles on the CMS-1500 (OAR 410-136-0080, Additional Client Transport).

(12) Tribal facility owned/leased Sedan car:

(a) S0215 — Non-emergency transportation; mileage, per mile;

(b) Not eligible for base rate or extra attendant reimbursement;

(13) Tribal facility owned/leased Wheelchair Car/Van. DMAP reimbursement of the first ten miles of a transport is included in the payment for the base rate. A service from point of origin to point of destination (one-way) is considered a "transport."

(14) Tribal facility owned/leased wheelchair van:

(a) If a client is able to transfer from wheelchair to car/van, DMAP will not make payment for wheelchair services for transportation of ambulatory (capable of walking) clients (e.g. base rate, extra attendant);

(b) Wheelchair Van — Bill using the following procedure codes:

(A) A0130 — Non-emergency transportation, wheelchair car/van base rate;

(B) S0209 — Wheelchair Van, ground mileage, per statute mile;

(C) T2001 — Extra Attendant (each).

(15) When billing transportation services use the appropriate place of service (POS) codes and modifiers as listed in the Medical Transportation Services Supplemental Information guidebook to indicate the type of transportation service, and point(s) of origin and destination.

(16) DMAP may recoup such payments if, on subsequent review, it is found that the provider did not comply with DMAP Administrative Rules.

Non-compliance includes, but is not limited to, failure to adequately document the service and the need for the service.

Stat. Auth.: 409.050, 404.110, 414.065; Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42USC1396a(bb, 1396d (United States Code 42, Ch. 7, Sub. 19). Public Law 93 -638. Sec. 1603 of Title 25
Stats. Implemented: ORS 414.065
Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 14-2002, f. & cert. ef. 4-1-02; OMAP 59-2002, f. & cert. ef. 10-1-02; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 46-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Jan '10 — Update recognized mental health professionals and clarify reasonable costs. Removal of OAR 410-147-0620.
Adm. Order No.: DMAP 47-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 410-147-0120, 410-147-0320, 410-147-0400
Rules Repealed: 410-147-0620
Subject: The Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) Services program administrative rules govern DMAP payment for services to certain clients. DMAP amended rules listed above to include all recognized mental heath professionals, and to clarify reasonable costs. As a continued effort to make administrative rules more efficient, DMAP deleted rule 410-147-0620 and placed the information in the FQHC/RHC Supplemental Information document used in conjunction with rules. This information does not need to be in rule.

Other text may be revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0120
DMAP Encounter and Recognized Practitioners

(1) Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) services billed to the Division of Medical Assistance Programs (DMAP) are reimbursed according to the Prospective Payment System (PPS) when the service(s) meet the criteria of a valid encounter as defined in Sections (2) through (4) of this rule. Reimbursement is limited to DMAP Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act. Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act are not reimbursed by DMAP.

(2) For the provision of services defined in Titles XIX and XXI and provided through an FQHC or RHC, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. Section (4) of this rule outlines limitations for telephone contacts that qualify as encounters.

(3) An encounter includes all services, items and supplies provided to a client during the course of an office visit (except as excluded in Sections (6) and (12) of this rule) and those services considered "incident-to." These services are inclusive of the visit with the core provider meeting the criteria a valid encounter and reimbursed at the PPS all-inclusive encounter rate. These services include:

(a) Drugs or medication treatments provided during a clinic visit are inclusive of the encounter, with the exception of contraception supplies and medications as costs for these items are excluded from the PPS encounter rate calculation. Refer to OAR 410-147-0280 Drugs and 410-147-0480 Cost Statement (DMAP 3027) Instructions;

(b) Medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace) are inclusive of an office visit;

(c) Laboratory and/or radiology services (even if performed on another day);

(d) Venipuncture for lab tests. DMAP does not deem a visit for lab test only to be a clinic encounter;

(4) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and 410-130-0190, Tobacco Cessation. See also OAR 410-120-1200(2) (y)(A) and (B). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(5) Extended care services furnished under a contract between a county Community Mental Health Program (CMHP) of the FQHC and Addictions and Mental Health Division (AMH) are reimbursed outside of the PPS. Extended care services are those services provided under licensure requirements found in OAR 309-032-0720 through 0830 and 309-035-0100 through 0600 and receive reimbursement under the terms and conditions of OAR 309-016-0000 through 0450.

(6) Some DMAP Medicaid-covered services are not reimbursable when furnished according to Oregon Health Plan (OHP) client's benefit package as a stand alone service. Although costs incurred for furnishing these services are inclusive of the PPS all-inclusive rate calculation, visits where these services were furnished as a stand alone service were excluded from the denominator for the PPS rate calculation, Refer to OAR 410-147-0480, Cost Statement (DMAP 3027) Instructions. The following services when furnished as a stand-alone service are not reimbursable:

(a) Case management services, including case management by a Primary Care Manager (PCM) as defined in OHP Administrative Rules (OAR 410-141-0700) and previously provided under a PCM contract;

(b) Sign language and oral interpreter services;

(c) Supportive rehabilitation services including, but not limited to, environmental intervention, supported housing and employment, or skills training and activity therapy to promote community integration and job.

(7) FQHCs and RHCs may provide certain services, items and supplies that are prohibited from being billed under the health centers provider enrollment, and requires separate enrollment. Refer to OAR 410-147-0320(1)(b) Federally Qualified Health Center (FQHC)/Rural Health Clinics (RHC) Enrollment. These services:

(a) Durable medical equipment, prosthetics, orthotics or medical supplies (e.g. diabetic supplies) (DMEPOS) not generally provided during the course of a clinic visit. Refer to OAR chapter 410 division 122, DMEPOS;

(b) Prescription pharmaceutical and/or biologicals not generally provided during the clinic visit must be billed to DMAP through the pharmacy program. Refer to OAR 410 Division 121, Pharmaceutical Services;

(c) Targeted case management (TCM) services. Refer to OAR chapter 410 division 138, TCM for specific information.

(8) Client contact with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single encounter. For exceptions to this rule, refer to OAR 410-147-0140 for reporting multiple encounters.

(9) Providers are advised to include all services that can appropriately be reported using a procedure code on the claim and bill as instructed in the appropriate DMAP program rules and must use the appropriate HIPAA procedure Code Set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims that require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code that most accurately describes the Client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual Provider rules. Refer to OARs 410-120-1280 Billing and 410-147-0040 ICD-9-CM Diagnosis and CPT/HCPCs Procedure Codes,

(10) FQHC and RHC services that may meet the criteria of a valid encounter are (Refer to individual program administrative rules for service limitations.):

(a) Medical (OAR 410 Division 130);

(b) Diagnostic: DMAP covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, DMAP will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-147-0220);

(d) Dental — Refer to OAR 410-147-0125, and OAR chapter 410 division 123;

(e) Vision (OAR chapter 410 division 140);

(f) Physical Therapy (OAR chapter 410 division 131);

(g) Occupational Therapy (OAR chapter 410 division 131);

(h) Podiatry (OAR chapter 410 division 130);

(i) Mental Health (OAR chapter 309 division 16);

(j) Alcohol, Chemical Dependency, and Addiction services (OAR 415 Divisions 50 and 51). Requires a letter or licensure of approval by the Addictions and Mental Health Division (AMH). Refer to OAR 410-147-0320(3)(j) and (5)(i);

(k) Maternity Case Management (OAR 410-147-0200);

(l) Speech (OAR chapter 410 division 129);

(m) Hearing (OAR chapter 410 division 129);

(n) DMAP considers a home visit for assessment, diagnosis, treatment or Maternity Case Management (MCM) as an encounter. DMAP does not consider home visits for MCM as Home Health Services;

(o) Professional services provided in a hospital setting; and

(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and DMAP Administrative Rules.

(11) The following practitioners are recognized by DMAP:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed Physician Assistants;

(c) Dentists;

(d) Dental Hygienists who hold a Limited Access Permit (LAP) -- may provide dental hygiene services without the supervision of a dentist in certain settings. See the section on Limited Access Permits, ORS 680.200 and OAR 818-035-0065 through 818-035-0100 for more information;

(e) Pharmacists;

(f) Nurse Practitioners;

(g) Nurse Midwives;

(h) Other specialized nurse practitioners;

(i) Registered nurses — may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by DMAP in this section and who is authorized to independently diagnose and treat according to OAR 851 Division 45);

(j) Psychiatrists;

(k) Licensed Clinical Social Workers;

(l) Clinical psychologists;

(m) Acupuncturists (refer to OAR 410 Division 130 for service coverage and limitations);

(n) Licensed professional counselor;

(o) Licensed marriage and family therapist; or

(p) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(i) Their individual provider's certification or license; or

(ii) A clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH). Refer to OAR 410-147-0320(3) and (5).

(12) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound clients (limited to areas in which the Secretary has determined that there is a shortage of home health agencies -- Code of Federal Regulations 42 § 405.2417), and any other ambulatory services covered by DMAP are also reimbursable as permitted within the clinic's scope of services (see OAR 410-147-0020).

(13) FQHCs and RHCs may furnish services that are reimbursed outside of the PPS all-inclusive encounter rate and according to the physician fee schedule. These services include:

(a) Administrative medical examinations and report services (See OAR chapter 410 division 150);

(b) Death with Dignity services (See OAR 410-130-0670);

(c) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) clients. (See OAR 410-120-1210, 461-135-1070 and 410-130-0240);

(d) Services provided to Qualified Medicare Beneficiary (QMB) only clients. Refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System. Specific billing information is located in the FQHC and RHC Supplemental Information billing guide;

(14) OAR 410-120-1210 describes the OHP benefit packages and delivery system. Most OHP clients have prepaid health services, contracted for by the Department of Human Services (DHS) through enrollment in a Prepaid Health Plan (PHP). Non-PHP-enrolled clients, receive services on an "open card" or "fee-for-service" (FFS) basis.

(a) DMAP is responsible for making payment for services provided to open card clients. The provider will bill DMAP the clinic's encounter rate for Medicaid-covered services provided to these clients according to their OHP benefit package. Refer to 410-147-0360, Encounter Rate Determination.

(b) A PHP is responsible to provide, arrange and make reimbursement arrangements for covered services for their DMAP members. Refer to OAR 410-120-0250, and OAR chapter 410 division 141, OHP Administrative Rules governing PHPs. The provider must bill the PHP directly for services provided to an enrolled client. See also OAR 410-147-0080, Prepaid Health Plans, and OAR 410-147-0460, PHP Supplemental Payment. Clinics must not bill DMAP for PHP-covered services provided to eligible OHP clients enrolled in PHPs. Exceptions include:

(i) Family planning services provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060); and

(ii) HIV/AIDS prevention provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060).

(15) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances DMAP will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing DMAP. Refer to OAR 410-120-1140 Verification of Eligibility.

(16) When a Provider receives a payment from any source prior to the submission of a claim to DMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field. See OARs 410-120-1280 Billing and 410-120-1340 Payment.

Stat. Auth.: ORS 409.050 & 414.065; Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Hist.: HR 13-1993, f. & cert. ef. 71-1-93; HR 7-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0390; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0150; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 22-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 47-2009, f. 12-15-09, cert. ef. 1-1-10

410-147-0320

Federally Qualified Health Center (FQHC)/Rural Health Clinics (RHC) Enrollment

(1) This rule outlines the Division of Medical Assistance Programs (DMAP) enrollment requirements for Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC). Refer also to OARs governing provider enrollment 410-120-1260 and 407-0120-0320.

(a) For outpatient health programs or facilities operated by an American Indian tribe under the Indian Self-Determination Act (Public Law 93-638), providers should refer to the program rules for American Indian/Alaska Native (AI/AN) Services, OAR 410 Division 146, for enrollment details;

(b) An FQHC or RHC that operates a retail pharmacy, provides durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS), or provides targeted case management (TCM) services, must enroll separately as a pharmacy, DMEPOS and/or TCM provider. Refer to OAR chapter 410 division 121, Pharmaceutical; OAR chapter 410 division 122, DMEPOS; and OAR chapter 410 division 138, TCM for specific information.

(c) A county Community Mental Health Program (CMHP) furnishing Extended Care services under contract with DHS Addictions and Mental Health Division should refer to OAR 309-032-0720 through 0830 and OAR 309-035-0100 through 0600 for licensure requirements and 309-016-0000 through 0450 for reimbursement requirements.

(2) To enroll with DMAP as an FQHC, a health center must comply with one of the following:

(a) Receive Public Health Service (PHS) grant funds under the authority of Section 330;

(b) Have received FQHC Look-Alike designation from the Centers for Medicare and Medicaid Services (CMS), based on the recommendation of the Health Resources and Services Administration (HRSA)/Bureau of Primary Health Care (BPHC); or

(c) Be an Urban Indian Health Program (UIHP) clinic (under Title V of the Indian Health Care Improvement Act, Public Law 94-437). In the Omnibus Reconciliation Act (OBRA) of 1993, Title V programs were added to the list of specific programs automatically eligible for FQHC designation.

(3) Eligible FQHCs who want to enroll with DMAP as an FQHC, and receive reimbursement under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed DHS provider enrollment forms with attachments as required in OARs 407-0120-0300 through -0320;

(b) National Provider Identifier (NPI) number and associated taxonomy code(s) obtained for the FQHC with the provider enrollment form. OAR 407-0120-0320(10);

(c) Completed Cost Statement(s) (DMAP 3027):

(A) One each for medical, dental and mental health (including addiction, alcohol and chemical dependency). See also OAR 410-147-0360;

(B) One for each FQHC-designated site, unless specifically exempted in writing by DMAP to file a consolidated cost report. See also OAR 410-147-0340 Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC)/Provider Numbers;

(d) Completed copy of the grant proposal submitted to HRSA/BPHC detailing the clinic's service and geographic scope;

(e) Copy of the HRSA Notice of Grant Award Authorization for Public Health Services Funds under Section 330, or a copy of the letter from CMS designating the facility as a "Look Alike" FQHC;

(f) A copy of the clinic's trial balance. See OAR 410-147-0500, Total Encounters for Cost Reports;

(g) Audited financial statements. Refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations";

(h) Depreciation schedules;

(i) Overhead cost allocation schedule;

(j) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker, psychiatric nurse practitioner, licensed professional counselor or licensed marriage and family therapist is providing mental health services. Refer to OAR 309-012-0130 through OAR 309-012-0220, Certificates of Approval for Mental Health Services; OAR 309-032-0525 through OAR 309-032-0605, Standards for Adult Mental Health Services; OAR 309-032-0950 through OAR 309-032-1080, Standards for Community Treatment Services for Children; and OAR 309-039-0500 through OAR 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(k) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR 415 Division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(l) A list of all Prepaid Health Plan (PHP) contracts;

(m) A list including names and NPI numbers of individual practitioners enrolled with DMAP and contracted with or employed by the FQHC; and

(n) A list including business names, addresses and facility NPI numbers for all DMAP-enrolled clinics affiliated or owned by the FQHC including any clinics that do not have FQHC status.

(4) For enrollment with DMAP as an RHC, a clinic must:

(a) Be designated by CMS as an RHC.

(b) Maintain Medicare certification and be in compliance with all Medicare requirements for certification.

(5) Eligible RHCs who want to enroll with DMAP as an RHC, and be eligible for payment under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed DHS provider enrollment forms with attachments as required in OARs 407-0120-0300 through -0320;

(b) National Provider Identifier (NPI) number and any associated taxonomy codes obtained for the RHC with the provider enrollment form. OAR 407-0120-0320(10);

(c) Copy of Medicare's letter certifying the clinic as an RHC;

(d) Medicare Cost Report for RHC or completed Cost Statement(s) (DMAP 3027). See also OAR 410-147-0360. Complete a cost statement for each RHC-designated site, unless specifically exempted in writing by DMAP to file a consolidated cost report. See also OAR 410-147-0340:

(A) DMAP will accept an uncertified Medicare Cost Report;

(B) If the clinic's Medicare Cost Report, provided to DMAP, does not include all covered Medicaid costs provided by the clinic, the clinic must submit additional cost information. DMAP will include these costs when determining the PPS encounter rate;

(C) An RHC can submit the Cost Statement (DMAP 3027) as a substitute to the Medicare Cost Report.

(e) A copy of the clinic's trial balance. See OAR 410-147-0500, Total Encounters for Cost Reports (only if completing Cost Statement DMAP 3027);

(f) Audited financial statements. Refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations" (only if completing Cost Statement DMAP 3027);

(g) Depreciation schedules (only if completing Cost Statement DMAP 3027);

(h) Overhead cost allocation schedules (only if completing Cost Statement DMAP 3027);

(i) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker, psychiatric nurse practitioner, licensed professional counselor or licensed marriage and family therapist is providing mental health services. Refer to OAR 309-012-0130 through 309-012-0220, Certificates of Approval for Mental Health Services; 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; 309-032-0950 through 309-032-1080, Standards for Community Treatment Services for Children; and 309-039-0500 through 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(j) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR chapter 415 division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(k) A list of all Prepaid Health Plan (PHP) contracts;

(l) A list including names and NPI numbers of individual practitioners enrolled with DMAP and contracted with or employed by the RHC; and

(m) A list including business names, addresses and facility NPI numbers for all DMAP-enrolled clinics affiliated or owned by the RHC including any clinics that do not have RHC status.

(6) The FQHC/RHC Program Manager, upon receipt of the required items as listed in Section (3) of this rule for FQHCs and Section (5) of this rule for RHCs, will review all documents for compliance with program rules, completeness and accuracy.

(7) DMAP prohibits an established, enrolled FQHC or RHC that adds or opens a new clinic site from submitting claims for services rendered at the new site under their FQHC or RHC DMAP enrollment, and according to the PPS encounter rate, prior to DMAP's acknowledgment. An FQHC or RHC is required to immediately submit to the attention of the FQHC/RHC Program Manager, DMAP:

(a) For FQHCs only, a copy of the recent HRSA Notice of Grant Award including the new site under the main FQHC's scope;

(b) For RHCs only, a copy of Medicare's letter certifying the new clinic as an RHC;

(c) A recent list of all Prepaid Health Plan (PHP) contracts; and

(d) A recent list of names and NPI numbers for all individual practitioners enrolled with DMAP and contracted with or employed by the new FQHC or RHC site.

(8) If an established and enrolled RHC or FQHC changes ownership, the new owner must submit:

(a) Cost Statement (DMAP 3027) or Medicare Cost Report within 30 days from the date of change of ownership to have a new PPS encounter rate calculated; or in writing, a letter advising adoption of the PPS encounter rate calculated under the former ownership. Refer to OAR 410-147-360(13) for more information;

(b) Notice of a change in tax identification number;

(c) A recent list of all Prepaid Health Plan (PHP) contracts;

(d) A recent list of names and NPI numbers for all individual practitioners enrolled with DMAP and contracted with or employed by the FQHC or RHC; and

(f) A recent list including business names, addresses, NPI numbers and associated taxonomy codes for all DMAP-enrolled clinics affiliated or owned by the FQHC or RHC including any clinics that do not have FQHC or RHC status.

(9) FQHCs that are involved with a sub-recipient must provide documentation. Sub-recipient contracts with an FQHC must enroll as an FQHC and submit the same required documentation as outlined under the enrollment sections of this rule.

Stat. Auth.: ORS 409.050, 409.110, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 13-1993, f. & cert. ef. 7-1-93; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0010; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 47-2009, f. 12-15-09, cert. ef. 1-1-10

410-147-0400

Compensation for Outstationed Outreach Activities

(1) This rule provides reasonable compensation for activities directly related to the receipt and initial processing of applications for individuals, including low-income pregnant women and children, to apply for Medicaid at outstation locations other than state offices.

(2) A Federally Qualified Health Center (FQHC) must have a current Outreach Agreement with the State of Oregon, Department of Human Services (DHS), Division of Medical Assistance Programs (DMAP) to be eligible for compensation under this rule.

(3) ''Initial processing'' includes the following activities:

(a) Taking applications;

(b) Assisting applicants in completing the application;

(c) Providing information as outlined in the DHS/DMAP Outreach Agreement's statement of work;

(d) Obtaining required documentation to complete processing of the application;

(e) Ensuring that the information contained on the application form is complete; and

(f) Conducting any necessary interviews.

(4) "Initial processing" does not include evaluating the information contained on the application and the supporting documentation or making a determination of eligibility or ineligibility.

(5) At locations that are infrequently used by the designated low-income eligibility groups, DMAP may use the following resources:

(a) Volunteers, provider or contractor employees; or

(b) Its own eligibility staff, or

(c) Telephone assistance by:

(A) The FQHC as outlined in Section (8); or

(B) Prominently displaying a notice that includes the telephone number for the state OHP Application Center or the local branch office that applicants may call for assistance.

(6) Eligible FQHCs may be able to receive reasonable compensation for outreach activities performed by Outstationed Outreach Workers (OSOW) that is equal to 100% of direct costs:

(a) DMAP will calculate an OSOW rate based on reasonable direct costs described in Section (11) of this rule, and reported by a clinic according to Section (7) of this rule;

(b) DMAP will add the OSOW to the clinic's current base medical Prospective Payment System (PPS) encounter rate.

(7) Changes to OSOW compensation applied to the PPS encounter rate:

(a) Clinics must submit to DMAP a cost statement for the preceding fiscal year no earlier than October 1, and no later than October 31, of each year for DMAP review and approval of the clinic's OSOW direct costs;

(b) Any change to the OSOW rate, based on the October cost statement submission, will be effective January 1 of the following year;

(c) If DMAP determines that the OSOW rate is inflated, the clinics OSOW rate will be adjusted effective immediately.

(8) Clinic locations with limited operating hours, or that limit access to the general public during their regular operating hours must calculate the actual time an OSOW meets face-to-face with the general public for receipt and the initial processing of applications. For example, if a clinic employs an OSOW at a satellite school-based health center (SBHC), and the SBHC can only be accessed by the general public outside of the school's normal hours of operation, use the percent of time an OSOW is available to meet face-to-face with potential applicants when reporting compensation as outlined in Section (11)(c) of this rule.

(a) Clinics must display a notice in a prominent place that advises potential applicants when an OSOW will be available;

(b) The notice must include a telephone number that applicants may call for assistance.

(9) For staff employed by a clinic and performing outreach activities at less than full time, the clinic must calculate the percent of time spent performing OSOW services and maintain adequate documentation to support the percentage of time claimed. The percent must be used to calculate personnel expenses incurred by an FQHC as outlined in Section (10)(c) of this rule and that are directly attributed to outreach activities performed by the employee. Outreach activities:

(a) May include assisting individuals with completing applications for other DHS-administered programs where eligibility is determined by staff at local branch offices;

(b) Does not include assisting individuals with applying for non-DHS-administered programs.

(10) A clinic is prohibited from claiming reimbursement for costs associated with personnel positions where 100% of costs were included in the FQHC's Prospective Payment System (PPS) encounter rate calculation;

(11) Direct cost expenses allowed for OSOW reimbursement:

(a) Travel expenses incurred by the FQHC for DMAP training on OSOW activities;

(b) Phone bills, if a dedicated line. Otherwise an estimate of telephone usage and resulting costs;

(c) Personnel costs for OSOWs:

(A) Wages will be the lesser of:

(i) Reported wages by the FQHC; or

(ii) Wages paid by the State of Oregon to an employee of the state providing enrollment assistance to clients applying for the Oregon Health Plan;

(B) Taxes;

(C) Fringe benefits provided to OSOW;

(D) Premiums paid by the FQHC for private health insurance.

(d) Reasonable equipment necessary to perform outreach activities. Do not include expenses for replacing equipment if the original cost of the equipment was reported on the cost statement when the clinic's initial PPS encounter rate was calculated;

(e) Rent or space costs. Do not include rent or space costs if 100% of facility costs were reported on the cost statement when the clinic's initial PPS encounter rate was calculated;

(f) Reasonable office supplies necessary to perform outreach activities; and

(g) Postage.

(12) DMAP excludes indirect costs relating to OSOW activities from calculation of the OSOW rate. Excluded indirect costs include and are not limited to the following:

(a) Any costs included in the initial calculation of a clinic's Prospective Payment System (PPS) encounter rate;

(b) Contracted interpretation services;

(c) Administrative overhead costs;

(d) Supervision costs; and

(e) Operating expenses including utilities, building maintenance and repair, and janitorial services.

(13) A Public Health Department designated as an FQHC or a School Based Health Center (SBHC) within the scope of an FQHC designation cannot participate in the Medicaid Administrative Claiming (MAC) program.

(14) If a clinic fails to submit the OSOW budget by November 1 of the required year, a clinic may not be eligible for compensation of OSOW costs as of January 1 for the coming year.

Stat. Auth.: ORS 409.050, 414.065; Other Authority: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations, and 42 CFR § 435.904

Stats. Implemented: ORS 414.065

Hist.: HR 13-1993, f. & cert. ef. 71-1-93; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0330; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 47-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Program eliminated on January 1, 2010; repeal of all administrative rules.
Adm. Order No.: DMAP 48-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Repealed: 410-149-0000, 410-149-0020, 410-149-0040, 410-149-0060, 410-149-0080
Subject: The Senior Prescription Drug Assistance Program administrative rules govern the Division of Medical Assistance Programs' administration of a drug discount card to enrollees in the program. The Senior Prescription Drug Assistance Program administrative rules govern the Division of Medical Assistance Programs' administration of a drug discount card to enrollees in the program. ORS 414.432 established the Senior Prescription Drug Assistance Program. This program is eliminated on January 1, 2010, as a result of 2009 Legislation. The program was not effective to provide relief to applicants in their purchase of prescription drugs, and there are no clients in the program. Also, better options exist, such as Medicare Part D and the Oregon Prescription Drug Program.
Rules Coordinator: Darlene Nelson—(503) 945-6927

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Rule Caption: Removal of Administrative Examination Billing and Procedural Tables.
Adm. Order No.: DMAP 49-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009

Rules Amended: 410-150-0080
Rules Repealed: 410-150-0120, 410-150-0160, 410-150-0240
Subject: The Administrative Examinations program administrative rules assist DMAP in providing payment for services to certain clients. DMAP removed certain billing tables and procedure code tables designated for DHS field operation procedures for the Administrative Examination and Report rules and placed these tables in the agency Worker Guide. These tables in rule are not necessary to assist providers in completing examinations requested nor in preparing claims for administrative evaluations and reports.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-150-0080
Billing Instructions for Administrative Examinations

(1) Medical and ancillary services providers must bill on a CMS -1500.

(2) Hospital services must be billed on a DMAP approved form.

(3) Copies of records by a copy service provider must be billed on a CMS -1500.

(4) Send the examination or copies of the reports to the branch office shown on the DMAP 729.

(5) For Administrative Examination billing, the following are required on the appropriate billing form:

(a) The procedure code specified on the DMAP 729;

(b) The description as it appears on the DMAP 729;

(c) The correct type of service (TOS) per Procedure Code Tables; and

(d) The diagnosis V68.89.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 27-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 67-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 49-2009, f. 12-15-09 cert. ef. 1-1-10

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Department of Human Services, Public Health Division
Chapter 333

Rule Caption: Establishment of the Oregon POLST (Physician Orders for Life-Sustaining Treatment) Registry.
Adm. Order No.: PH 12-2009
Filed with Sec. of State: 12-3-2009
Certified to be Effective: 12-3-09
Notice Publication Date: 11-1-2009
Rules Adopted: 333-270-0010, 333-270-0020, 333-270-0030, 333-270-0040, 333-270-0050, 333-270-0060, 333-270-0070, 333-270-0080
Subject: The Department of Human Services, Public Health Division is permanently adopting Oregon Administrative Rules, chapter 333, division 270 that will establish the Oregon POLST Registry, including the Oregon POLST Registry Advisory Committee. The purpose of the registry is to collect and disseminate POLST information to help ensure that medical treatment preferences for individuals nearing the end of the individuals' life are honored. The intent of the new rules is to require physicians, nurse practitioners, and physician assistants to submit or cause to be submitted, POLST forms signed on or after December 3, 2009.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-270-0010
Purpose

(1) These rules establish a registry (the Oregon POLST Registry) within the Oregon Health Authority for the collection of POLST forms and the dissemination of information from POLSTs to help ensure that medical treatment preferences for individuals nearing the end of the individual's life are honored.

(2) The Registry may be operated and maintained by a contractor of the Authority.

Stat. Auth: OL 2009, Ch. 595, Sec.1184
Stats. Implemented: OL 2009, Ch. 595, Sec.1184
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

333-270-0020
Scope and Applicability

(1) The requirements for submitting a POLST form or a revocation in OAR 333-270-0040 apply to POLST forms signed on or after December 3, 2009.

(2) The Authority is not responsible for and these rules do not:

(a) Prescribe the content or form of a POLST;

(b) Provide for the dissemination of POLST forms;

(c) Provide POLST teaching resources;

(d) Provide for educating the public about POLST; or

(e) Provide training for health care professionals about POLST.

(3) The Authority and the POLST Registry Advisory Committee may cooperate with organizations and agencies active in POLST issues to help carry out the activities described in section (2) of this rule.

(4) The Registry shall accept POLST forms signed by a physician, nurse practitioner, or physician assistant:

(a) Licensed in Oregon at the time the POLST form information is entered into the Registry; or

(b) Permitted to practice in Oregon under ORS 677.060(1) or 678.031(1).

(5) A person who is the subject of the POLST form (meeting the requirements defined below) need not be a resident of Oregon in order for the form to be included in the Registry.

(6) A more recently executed POLST form automatically voids a previous POLST form.

Stat. Auth: OL 2009, Ch. 595, Sec.1184
Stats. Implemented: OL 2009, Ch. 595, Sec.1184
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

333-270-0030
Definitions

As used in OAR chapter 333, division 270:

(1) "Ambulance service" has the meaning given that term in ORS 682.025.

(2) "Authority" means the Oregon Health Authority.

(3) "Authorized user" means a person authorized by the Authority to provide information to or receive information from the Registry.

(4) "Hospice program" has the meaning given that term in ORS 443.850.

(5) "Hospital" has the meaning given that term in ORS 442.015.

(6) "Life-sustaining treatment" means any medical procedure, pharmaceutical, medical device or medical intervention that maintains life by sustaining, restoring or supplanting a vital function. "Life-sustaining treatment" does not include routine care necessary to sustain patient cleanliness and comfort.

(7) "Long term care facility" means nursing facilities, assisted living and residential care facilities and adult foster homes licensed under OAR chapter 411, divisions 85, 54, and 50, or facilities federally funded to care for veterans.

(8) "Non-transporting emergency services agency" means any individual, partnership, corporation, association, governmental agency or unit or other entity that uses certified first responders or EMTs to provide emergency care or non-emergency care in the out-of-hospital environment to persons who are ill or injured, but does not transport patients to a hospital.

(9) "Nurse practitioner" has the meaning given that term in ORS 678.010; and means a nurse practitioner permitted to practice in a federal facility pursuant to ORS 678.031(1).

(10) "Patient" means the person who is the subject of the POLST form.

(11) "Personal representative" has the meaning given that term in ORS 192.519.

(12) "Physician" has the meaning given that term in ORS 677.010.

(13) "Physician assistant" has the meaning given that term in ORS 677.495.

(14) "POLST" means a Physician Order for Life-Sustaining Treatment signed by a physician, nurse practitioner or physician assistant.

(15) "POLST form" means a form, prescribed by the Oregon Health & Science University that contains a POLST, and any revision of the POLST.

(16) "Registry" means the Oregon POLST Registry authorized by Oregon Laws 2009, chapter 595, sec. 1184.

(17) "Revocation" means the cancellation of a POLST form in any written form.

Stat. Auth: OL 2009, Ch. 595, Sec. 1182, 1184
Stats. Implemented: OL 2009, Ch. 595, Sec.1184
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

333-270-0040
Submission of POLST Forms

(1) Physicians, nurse practitioners, and physician assistants are required to submit or cause to be submitted:

(a) Completed POLST forms they have signed, unless the patient has opted out of the Registry; and

(b) Revocations of which they are aware.

(2) Any person may submit a completed POLST form or revocation to the Registry, regardless of when the POLST form was completed.

(3) In order for a POLST form to be considered complete, the form (and any supporting documentation) shall include, but is not limited to:

(a) The patient's full name;

(b) The patient's date of birth;

(c) Orders related to cardiopulmonary resuscitation;

(d) The legible, printed name and the signature of the physician, nurse practitioner or physician assistant; and

(e) The date the order was signed.

(4) If a POLST form is submitted and determined to be incomplete, the Registry will notify the submitter that the form is incomplete, describe the missing information, and request that the form be resubmitted once it is complete.

(5) A POLST form submitted under this rule may be submitted by fax or mail. If the Registry develops a secure method of accepting POLST forms electronically, POLST forms may be submitted electronically.

(6) The Registry shall record in the Registry records, as soon as reasonably possible after receipt of the POLST form, the following:

(a) The information from a POLST form described in subsections (3)(a) through (e) of this rule; and

(b) Instructions if any, regarding medical interventions, use of antibiotics, and artificially administered nutrition.

(7) If a revocation is submitted to the Registry, that patient's POLST form shall be removed as soon as reasonably possible from the active Registry database. The Registry shall retain the POLST form for documentation, program evaluation and research purposes.

(8)(a) The first time a physician, nurse practitioner, or physician assistant submits a POLST form to the Registry, the Registry shall verify that the physician, nurse practitioner, or physician assistant is licensed, in Oregon, or is otherwise permitted to practice under ORS 677.060(1) or ORS 678.031(1).

(b) Verification of licensure status under this section is not necessary for POLST forms signed before December 3, 2009.

(9) The Registry shall notify, in writing, a patient, or a patient's personal representative if known, and the health care provider who signed the POLST form or revocation when the Registry has received a POLST form or revocation. The notification required by this section only applies if the POLST form or revocation contains contact information for the patient, patient's personal representative, and health care provider. The notification shall inform the person to contact the Registry if any of the information on the POLST form or revocation is incorrect.

(10) Notification under section (9) of this rule shall be documented by the Registry and the documentation shall include the date of notification and who was notified.

(11) A person reporting information to the Registry in good faith is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the reporting of information to the Registry.

(12) The Registry or any contractor that operates and maintains the Registry is not responsible for:

(a) Verifying the accuracy of the information on a POLST form or revocation submitted to the Registry, except as specified in section (8) of this rule; or

(b) Actions taken pursuant to information that was fraudulently submitted to the Registry.

NOTE: Practitioners may obtain POLST forms by contacting the Oregon Health and Science University, at: polst@ohsu.edu, or visiting www.POLST.org

Stat. Auth: OL 2009, Ch. 595, Sec. 1184
Stats. Implemented: OL 2009, Ch. 595, Sec.1184, 1189
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

333-270-0050
Access to the Registry

(1) Registry staff, including its Emergency Communications Center staff, shall have access to POLST Registry information as needed to perform Registry functions. Registry staff and the Authority shall have access to Registry information as needed to conduct program evaluation.

(2) The following persons are authorized to contact the Registry's Emergency Communication Center and obtain information about a patient currently being treated:

(a) A licensed health care provider working in or for:

(A) A hospital emergency department or acute care unit where a patient is admitted;

(B) A licensed ambulance service; or

(C) A non-transporting emergency services agency.

(b) A staff person calling on behalf of a person described in subsection (a) of this section.

(3) The Registry shall release to a person described in section (1) of this rule, by phone:

(a) Whether the patient being treated has a POLST form recorded in the Registry, and if so;

(b) The POLST orders.

(4) The following persons, facilities, or programs are authorized to contact the Registry's office to determine whether a patient being treated by that person, at that facility, or by that program has a POLST form recorded in the Registry, whether the form is current, and the POLST orders:

(a) A physician, nurse practitioner or physician assistant who signed and submitted a POLST form to the Registry;

(b) Licensed or accredited:

(A) Long term care facilities;

(B) Hospice programs; or

(C) Hospitals.

(c) A patient's health care professional.

(d) A staff person calling on behalf of a person described in subsection (a) or (c) of this section.

(5) A patient or a patient's personal representative may contact the Registry to determine if that patient has a POLST form, whether the form is current, and the POLST order.

(a) The Registry shall request that a patient verify certain information in the Registry to ensure that the patient is who he or she purports to be, prior to the release of any Registry information.

(b) The Registry shall require a patient's personal representative to provide proof of the personal representative's identity and authority to act on behalf of the patient, and if necessary and legally required, provide an Authorization for the Release of Information that meets HIPAA requirements, prior to releasing information.

(6) The Registry may, in its discretion, require that a person described in section (2) or (4) of this rule provide proof of his or her identity, authority, licensing status, or need for the information prior to releasing any information from the Registry

(7) The Registry may provide the information requested under section (4) or (5) of this rule by fax, mail, or electronically, but may not release information over the phone.

(8) A person acting on information obtained from the Registry in good faith is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to acting on information obtained from the Registry.

(9) A person who requests information from the Registry who does not have the authority to obtain the information, or obtains information from the Registry for fraudulent reasons may be subject to a civil penalty of $500 per violation.

Stat. Auth: OL 2009, Ch. 595, Sec. 1182, 1184
Stats. Implemented: OL 2009, Ch. 595, Sec.1184, 1189
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

333-270-0060
Confidentiality of Registry Information

(1) Registry information may only be released to:

(a) Persons and facilities described in OAR 333-270-0050 or 333-270-0080; and

(b) Authorized researchers.

(2) Registry information may only be released for the purposes specified in OAR 333-270-0050 or 333-270-0080.

(3) All information collected or developed by the Registry that identifies or could be used to identify a patient, health care provider or facility is confidential and is not subject to civil or administrative subpoena or to discovery in a civil action, including but not limited to a judicial, administrative, arbitration or mediation proceeding.

(4) Only the minimum amount of information needed to accomplish the intended purposes shall be released under this rule.

Stat. Auth: OL 2009, Ch. 595, Sec. 1182, 1184
Stats. Implemented: OL 2009, Ch. 595, Sec.1184, 1188
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

333-270-0070
POLST Registry Advisory Committee

(1) The POLST Registry Advisory Committee is composed of individuals meeting the requirements in Oregon Laws 2009, chapter 595, section 1186 and committee members are appointed by the director of the Authority.

(2) The Committee shall:

(a) Meet at least four times per year;

(b) Advise the Authority regarding the implementation, operation, and evaluation of the Registry;

(c) Consult with the Authority in drafting rules on the implementation, operation, and evaluation of the Registry; and

(d) Review proposals from researchers to access Registry information and advise the Authority on whether access should be granted.

(3) The Authority shall provide appropriate staff support for the Committee.

Stat. Auth: OL 2009, Ch. 595, Sec. 1184, 1186
Stats. Implemented: OL 2009, Ch. 595, Sec.1184, 1186
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

333-270-0080
Access to Registry Information by Researchers

(1) The Authority may approve the release of Registry information to qualified researchers for appropriate research projects if an institutional review board has approved the research in accordance with 45 CFR Part 46.

(2) A researcher's application shall be reviewed by the POLST Registry Advisory Committee prior to release of information. Such request to the Authority for release of information may be made on a standard POLST Data Request Form or by such other manner approved by the Authority.

(3) If a researcher is permitted access to information in the Registry, the researcher shall agree, in writing, to maintain the confidentiality of the information received from the Registry, provided that this shall not limit aggregation, de-identification and other use and disclosure of such information for appropriate research purposes.

(4) Any Registry information released to a researcher under this rule may be de-identified by the Registry before release if deemed by the Authority as appropriate and reasonable under the circumstances.

Stat. Auth: OL 2009, Ch. 595, Sec. 1184
Stats. Implemented: OL 2009, Ch. 595, Sec.1184
Hist.: PH 12-2009, f. & cert. ef. 12-3-09

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

Rule Caption: Medicaid Nursing Facilities.
Adm. Order No.: SPD 15-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 11-1-2009
Rules Amended: 411-070-0000, 411-070-0005, 411-070-0010, 411-070-0025, 411-070-0027, 411-070-0029, 411-070-0033, 411-070-0035, 411-070-0040, 411-070-0043, 411-070-0080, 411-070-0110, 411-070-0125, 411-070-0130, 411-070-0300, 411-070-0350, 411-070-0359, 411-070-0415, 411-070-0417, 411-070-0430, 411-070-0442, 411-070-0452, 411-070-0470
Rules Repealed: 411-070-0005(T), 411-070-0442(T)
Subject: The Department of Human Services, Seniors and People with Disabilities Division is permanently amending the Medicaid Nursing Facility rules in OAR chapter 411, division 070 to:

• Permanently implement House Bill 2126 (2009 Regular Session) by amending the methodology for establishing nursing facility rates for the 2009–2011 biennium;

• Clarify which nursing facility financial statements are used for rebasing;

• Authorize an add-on to comply with certified nursing assistant staffing levels; and

• Address general housekeeping matters.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-070-0000
Purpose

The purpose of these rules is to control payment for nursing facility services provided to Medicaid residents.

Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0000 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0005
Definitions

As used in OAR chapter 411, division 070, the definitions in OAR 411-085-0005 and the following definitions apply:

(1) "Accrual Method of Accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Active Treatment" means the implementation of an individualized care plan developed under and supervised by a physician and other qualified mental health professionals that prescribes specific therapies and activities.

(3) "Activities of Daily Living" means activities usually performed in the course of a normal day in an individual's life such as eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(4) "Addictions and Mental Health (AMH) Division" means the Division, within the Department of Human Services, responsible for addictions and mental health services.

(5) "Alternative Services" mean individuals or organizations offering services to persons living in a community other than a nursing facility or hospital.

(6) "Area Agency on Aging (AAA)" means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors and individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(7) "Basic Flat Rate Payment" and "Basic Rate" means the statewide standard payment rate for all long term services provided to a Medicaid resident of a nursing facility except for services reimbursed through another Medicaid payment source. The "Basic Rate" is the bundled payment rate unless the resident qualifies for the complex medical add-on rate (in addition to the basic rate) or the bundled pediatric rate (instead of the basic rate).

(8) "Capacity" means licensed nursing beds multiplied by number of days in operation.

(9) "Case Manager" means a Department of Human Services or Area Agency on Aging employee who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan and monitors the services delivered.

(10) "Cash Method of Accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for them.

(11) "Categorical Determinations" mean the provisions in the Code of Federal Regulations {42 CFR 483.130} for creating categories that describe certain diagnoses, severity of illness, or the need for a particular service that clearly indicates that admission to a nursing facility is normally needed or that the provision of specialized services is not normally needed.

(a) Membership in a category may be made by the evaluator only if existing data on the individual is current, accurate, and of sufficient scope.

(b) An individual with mental illness or developmental disabilities may enter a nursing facility without PASRR Level II evaluation if criteria of a categorical determination are met as described in OAR 411-070-0043(2)(a)-(2)(c).

(12) "Certification" and "Certification for the Categorical Determination of Exempted Hospital Discharge" means that the attending physician has written orders for the individual to receive skilled services at the nursing facility.

(13) "Certified Program" means a hospital, private agency, or an Area Agency on Aging certified by the Department of Human Services to con-

duct private admission assessments in accordance with ORS 410.505 through 410.530.

(14) "Change of Ownership" means a change in the individual or legal organization that is responsible for the operation of a nursing facility. Change of ownership does not include changes that are merely changes in personnel, e.g., a change of administrators. Events that change ownership include but are not limited to the following:

(a) The form of legal organization of the owner is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The title to the nursing facility enterprise is transferred to another party;

(c) The nursing facility enterprise is leased or an existing lease is terminated;

(d) Where the owner is a partnership, any event occurs which dissolves the partnership;

(e) Where the owner is a corporation, it is dissolved, merges with another corporation that is the survivor, or consolidates with one or more other corporations to form a new corporation; or

(f) The facility changes management via a management contract.

(15) "Compensation" means the total of all benefits and remuneration, exclusive of payroll taxes and regardless of the form, provided to or claimed by an owner, administrator, or other employee. Compensation includes but is not necessarily limited to:

(a) Salaries paid or accrued;

(b) Supplies and services provided for personal use;

(c) Compensation paid by the facility to employees for the sole benefit of the owner;

(d) Fees for consultants, directors, or any other fees paid regardless of the label;

(e) Key man life insurance;

(f) Living expenses, including those paid for related persons; or

(g) Gifts for employees in excess of federal Internal Revenue Service reporting guidelines.

(16) "Complex Medical Add-On Payment" and "Medical Add-On" means the statewide standard supplemental payment rate for a Medicaid resident of a nursing facility whose service is reimbursed at the basic rate if the resident needs one or more of the medication procedures, treatment procedures, or rehabilitation services listed in OAR 411-070-0091, for the additional licensed nursing services needed to meet the resident's increased needs.

(17) "Continuous" means more than once per day, seven days per week. Exception: If only skilled rehabilitative services and no skilled nursing services are required, "continuous" means at least once per day, five days per week.

(18) "Costs Not Related to Resident Services" means costs that are not appropriate or necessary and proper in developing and maintaining the operation of a nursing facility. Such costs are not allowable in computing reimbursable costs. Costs not related to resident services include, for example, cost of meals sold to visitors, cost of drugs sold to individuals who are not residents, cost of operation of a gift shop, and similar items.

(19) "Costs Related to Resident Services" mean all necessary costs incurred in furnishing nursing facility services, subject to the specific provisions and limitations set out in these rules. Examples of costs related to resident services include nursing costs, administrative costs, costs of employee pension plans, and interest expenses.

(20) "CPI" means the consumer price index for all items and all urban consumers.

(21) "Day of Admission" means an individual being admitted, determined as of 12:01 a.m. of each day, for all days in the calendar period for which an assessment is being reported and paid. If an individual is admitted and discharged on the same day, the individual is deemed present on 12:01 a.m. of that day.

(22) "Department" or "DHS" means the Department of Human Services.

(23) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(24) "Direct Costs" mean costs incurred to provide services required to directly meet all the resident nursing and activity of daily living service needs. Direct costs are further defined in OAR 411-070-0359 and 411-070-0465. Examples: The person who feeds food to the resident is directly meeting the resident's needs, but the person who cooks the food is not. The person who is trained to meet the resident's needs incurs direct costs whereas the person providing the training is not. Costs for items that are capitalized or depreciated are excluded from this definition.

(25) "Division of Medical Assistance Programs (DMAP)" means a Division, within the Department of Human Services, responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan Medicaid demonstration, the State Children's Health Insurance Program, and several other programs.

(26) "DRI Index" means the "HCFA or CMS Nursing Home Without Capital Market Basket" index, which is published quarterly by DRI/McGraw - Hill in the publication, "Global Insight Health Care Cost Review".

(27) "Exempted Hospital Discharge" for PASRR means an individual seeking temporary admission to a nursing facility from a hospital as described in OAR 411-070-0043(2)(a).

(28) "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Department of Human Services as a nursing facility. A nursing facility also means a Medicaid certified nursing facility only if identified as such.

(29) "Fair Market Value" means the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

(30) "Generally Accepted Accounting Principles" mean the accounting principles approved by the American Institute of Certified Public Accountants.

(31) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired, or the excess of the price paid for an asset over its fair market value.

(32) "Historical Cost" means the actual cost incurred in acquiring and preparing a fixed asset for use. Historical cost includes such planning costs as feasibility studies, architects' fees, and engineering studies. Historical cost does not include "start-up costs" as defined in this rule.

(33) "Hospital-Based Facility" means a nursing facility that is physically connected and operated by a licensed general hospital.

(34) "Indirect Costs" mean the costs associated with property, administration, and other operating support (real property taxes, insurance, utilities, maintenance, dietary (excluding food), laundry, and housekeeping). Indirect costs are further described in OAR 411-070-0359 and OAR 411-070-0465.

(35) "Individual" means a person who receives or expected to receive nursing facility services.

(36) "Interrupted-Service Facility" means an established facility recertified by the Department of Human Services following decertification.

(37) "Level I" means a component of the federal PASRR requirement. Level I refers to the identification of individuals who are potential nursing facility admissions who have indicators of mental illness or developmental disabilities {42 CFR 483.128(a)}.

(38) "Level II" means a component of the federal PASRR requirement. Level II refers to the evaluation and determination of whether nursing facility services and specialized services are needed for individuals with mental illness or developmental disability who are potential nursing facility admissions, regardless of the source of payment for the nursing facility service {42 CFR 483.128(a)}. Level II evaluations include assessment of the individual's physical, mental, and functional status {42 CFR 483.132}.

(39) "Level of Care Determination" means an evaluation of the intensity of a person's health service needs. The level of care determination may not be used to require that the person receive services in a nursing facility.

(40) "Medicaid Occupancy Percentage" means the total Medicaid bed days divided by total resident days.

(41) "Medical Add-On" or "Complex Medical Add-On Payment" has the meaning provided in section (16) of this rule.

(42) "Mental Illness" means a major mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM IV-TR) limited to schizophrenic, paranoid and schizoaffective disorders, bipolar (manic-depressive), and atypical psychosis. "Mental Illness" for pre-admission screening means having both a primary diagnosis of a major mental disorder (schizophrenic, paranoid, major affective and schizoaffective disorders, or atypical psychosis) and treatment related to the diagnosis in the past two years. Diagnoses of dementia or Alzheimers are excluded.

(43) "Mental Retardation" means significantly sub-average general intellectual functioning defined as IQ's under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional. The adaptive behavior must be directly related to the issues of mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(a) Mild mental retardation is used to describe the degree of retardation when intelligence test scores are 50 to 69. Individuals with IQ's in the 70 to 75 range may be considered as having mental retardation if there is significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(b) Moderate mental retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe mental retardation is used to describe the degree of retardation when intelligence test scores are 20 to 34.

(d) Profound mental retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(44) "Necessary Costs" mean costs that are appropriate and helpful in developing and maintaining the operation of resident facilities and activities. Necessary costs are usually costs that are common and accepted occurrences in the field of long term nursing services.

(45) "New Admission" for PASRR purposes means an individual admitted to any nursing facility for the first time. It does not include individuals moving within a nursing facility, transferring to a different nursing facility, or individuals who have returned to a hospital for treatment and are being admitted back to the nursing facility. New admissions are subject to the PASRR process {42 CFR 483.106(b)(1), (3), (4)}.

(46) "New Facility" means a nursing facility commencing to provide services to individuals.

(47) "Nursing Aide Training and Competency Evaluation Program (NATCEP)" means a nursing assistant training and competency evaluation program approved by the Oregon State Board of Nursing pursuant to ORS chapter 678 and the rules adopted pursuant thereto.

(48) "Nursing Facility Financial Statement (NFFS)" means Form SPD 35, or Form SPD 35A (for hospital-based facilities), and includes an account number listing of all costs to be used by all nursing facility providers in reporting to the Department of Human Services for reimbursement.

(49) "Occupancy Rate" means total resident days divided by capacity.

(50) "Ordinary Costs" mean costs incurred that are customary for the normal operation.

(51) "Oregon Medical Professional Review Organization (OMPRO)" means the organization that determines level of services, need for services, and quality of services.

(52) "Pediatric Rate" means the statewide standard payment rate for all long term services provided to a Medicaid resident under the age of 21 who is served in a pediatric nursing facility or a self-contained pediatric unit.

(53) "Perquisites" mean privileges incidental to regular wages.

(54) "Personal Incidental Funds" mean resident funds held or managed by the licensee or other person designated by the resident on behalf of a resident.

(55) "Placement" means the location of a specific place where health services can be adequately provided to meet the service needs.

(56) "Pre-Admission Screening (PAS)" means the assessment and determination of a potential Medicaid-eligible individual's need for nursing facility services, including the identification of individuals who can transition to community-based service settings and the provision of information about community-based alternatives. This assessment and determination is required when potentially Medicaid-eligible individuals are at risk for admission to nursing facility services. PAS may include the completion of the federal PASRR Level I requirement {42 CFR, Part 483, (C)-(E)}, to identify individuals with mental illness or mental retardation or developmental disabilities.

(57) "Pre-Admission Screening and Resident Review (PASRR)" means the federal requirement, {42 CFR, Part 483, (C)-(E)}, to identify individuals who have mental illness or developmental disabilities and determine if nursing facility service is required and if specialized services are required. PASRR includes Level I and Level II functions.

(58) "Prior Authorization" means the local Seniors and People with Disabilities Division/Area Agency on Aging office participates in the development of proposed nursing facility care plans to assure that the facility is the most suitable service setting for the individual. Nursing facility reimbursement is contingent upon prior-authorization.

(59) "Private Admission Assessment (PAA)" means the assessment that is conducted for non-Medicaid residents as established by ORS 410.505 to 410.545 and OAR chapter 411, division 071, who are potential admissions to a Medicaid-certified nursing facility. Service needs are evaluated and information is provided about long-term service choices. A component of private admission assessment is the federal PASRR Level I requirement, {42 CFR, Part 483.128(a)}, to identify individuals with mental illness or developmental disabilities.

(60) "Provider" means an entity, licensed by the Seniors and People with Disabilities Division, responsible for the direct delivery of nursing facility services.

(61) "Reasonable Consideration" means an inducement that is equivalent to the amount that would ordinarily be paid for comparable goods and services in an arms-length transaction.

(62) "Related Organization" means an entity that is under common ownership or control with, or has control of, or is controlled by the contractor. An entity is deemed to be related if it has 5 percent or more ownership interest in the other. An entity is deemed to be related if it has capacity derived from any financial or other relationship, whether or not exercised, to influence directly or indirectly the activities of the other.

(63) "Resident" means a person who receives nursing facility services.

(64) "Resident Days" mean the number of occupied bed days.

(65) "Resident Review" means a review conducted by the Addictions and Mental Health Division for individuals with mental illness or by the Seniors and People with Disabilities Division for individuals with developmental disabilities who are residents of nursing facilities. The findings of the resident review may result in referral to PASRR Level II {42 CFR 483.114}.

(66) "Restricted Fund" means a fund in which the use of the principal or principal and income is restricted by agreement with or direction by the donor to a specific purpose. Restricted fund does not include a fund over which the owner has complete control. The owner is deemed to have complete control over a fund that is to be used for general operating or building purposes.

(67) "Seniors and People with Disabilities (SPD) Division" means the Division, within the Department of Human Services, responsible for the administration of community-based care and nursing facility services to eligible individuals.

(68) "Specialized Services for Mental Illness" means mental health services delivered by an interdisciplinary team in an inpatient psychiatric hospital for treatment of acute mental illness.

(69) "Specialized Services for Mental Retardation or Developmental Disabilities" means:

(a) For individuals with mental retardation or developmental disabilities under age 21, specialized services are equal to school services; and

(b) For individuals with mental retardation or developmental disabilities over age 21, specialized services mean:

(A) A consistent and ongoing program that includes participation by the individual in continuous, aggressive training and support to prevent loss of current optimal function;

(B) Promotes the acquisition of function, skills, and behaviors necessary to increase independence and productivity; and

(C) Is delivered in community-based or vocational settings at a minimum of 25 hours a week.

(70) "Start-Up Costs" mean one-time costs incurred prior to the first resident being admitted. Start-up costs include administrative and nursing salaries, utility costs, taxes, insurance, mortgage and other interest, repairs and maintenance, training costs, etc. Start-up costs do not include such costs as feasibility studies, engineering studies, architect's fees, or other fees that are part of the historical cost of the facility.

(71) "Supervision" means initial direction and periodic monitoring of performance. Supervision does not mean that the supervisor is physically present when the work is performed.

(72) "These Rules" mean the rules in OAR chapter 411, division 070.

(73) "Title XVIII" and "Medicare" means Title XVIII of the Social Security Act.

(74) "Title XIX," "Medicaid," and "Medical Assistance" means Title XIX of the Social Security Act.

(75) "Uniform Chart of Accounts (Form SPD 35)" means a list of account titles identified by code numbers established by the Department of Human Services for providers to use in reporting their costs.

[ED. NOTE: Forms referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0010, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0010
Conditions for Payment

Nursing facilities must meet the following conditions in order to receive payment under Title XIX (Medicaid):

(1) CERTIFICATION.

(a) The facility must be in compliance with Title XIX federal certification requirements.

(b) Except as provided in section (1)(c) of this rule, all beds in the facility must be certified as nursing facility beds.

(c) A facility choosing to discontinue compliance with section (1)(b) of this rule may elect to gradually withdraw from Medicaid certification but must comply with all of the following:

(A) Notify SPD in writing within 30 days of the certification survey that it elects to gradually withdraw from the Medicaid Program;

(B) Request Medicaid reimbursement for any resident who resided in the facility, or who was eligible for right of return under OAR 411-088-0050 or right of readmission under OAR 411-088-0060, on the date of the notice required by this rule. If it appears the resident may be eligible within 90 days, such request may be initiated;

(C) Retain certification for any bed occupied by or held for any resident who is found eligible for Medicaid until the bed is vacated by:

(i) The death of the resident; or

(ii) The transfer or discharge of the resident pursuant to the transfer rules in OAR chapter 411, division 088.

(D) All Medicaid recipients exercising rights of return or readmission under the transfer rules must be permitted to occupy a Medicaid certified bed; and

(E) Notify in writing all persons applying for admission subsequent to notification of gradual withdrawal that, should the person later become eligible for Medicaid assistance, that reimbursement would not be available in that facility.

(2) CIVIL RIGHTS, MEDICAID DISCRIMINATION.

(a) The facility must meet the requirements of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

(b) The facility must not discriminate based on source of payment. The facility must not have different standards of transfer or discharge for Medicaid residents except as required to comply with this rule.

(c) The facility must accept Medicaid payment as payment in full. The facility must not require, solicit, or accept payment, the promise of payment, a period of residence as a private pay resident, or any other consideration as a condition of admission, continued stay, or provision of care or service from the resident, relatives, or any one designated as a "responsible party".

(d) No applicant may be denied admission to a facility solely because no family member, relative, or friend is willing to accept personal financial liability for any of the facility's charges.

(e) The facility may not request or require a resident, relative, or "responsible party" to waive or forego any rights or remedies provided under state or federal law, rule, or regulation.

(3) PROVIDER AGREEMENT, FACILITY PAYMENT.

(a) The facility must sign a formal provider agreement with SPD.

(b) The facility must file a NFFS with SPD within 90 days after the end of its fiscal year.

(c) The facility must bill SPD in accordance with established rules and guidelines.

Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0020, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 12-1986, f. 9-26-86, ef. 10-1-86; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 17-1991(Temp), f. & cert. ef. 9-13-91; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0025
Basic Flat Rate Payment (Basic Rate)

(1) PAYMENT. SPD may authorize payment at the basic rate if a Medicaid resident requires daily, intermittent licensed nurse observation and continuous nursing care and has a physician's order for nursing facility care. When determining the payment rate, SPD shall consider the stability of the medical condition, the health care needs of the individual, and the individual's ability to maintain themselves in a less restrictive setting. An individual who qualifies for reimbursement at the basic rate must:

(a) Have chronic medical problems that are stabilized but not cured and have a need for supervision in a structured environment to maintain or restore stability and prevent deterioration;

(b) Require assistance for a combination of health care needs either because of a physical or psycho-social disabling condition; or

(c) Have insufficient personal and community resources available to provide for either section (1)(a) or (1)(b) of this rule.

(2) DOCUMENTATION. The professional nursing staff of the nursing facility must keep sufficient documentation in the resident's clinic record to justify the basic rate payment determination in accordance with these rules and must make it available to SPD upon request.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 22-1978, f. & ef. 6-1-78; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0040, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 8-1982, f. & ef. 6-30-82; SSD 8-1989(Temp), f. & cert. ef. 6-1-89; SSD 2-1990(Temp), f. & cert. ef. 1-10-90; SSD 8-1990, f. & cert. ef. 3-1-90; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0027
Complex Medical Add-On Payment Authorization

(1) PAYMENT. SPD may authorize payment for a complex medical add-on (in addition to the basic rate) when the resident requires one or more of the treatments, procedures, and services listed in OAR 411-070-0091, for the additional licensed nursing services needed to meet the resident's increased needs.

(2) AUTHORIZATION. For a Medicaid resident whose condition or service needs meet the complex medical add-on criteria listed in OAR 411-070-0091, the complex medical add-on may be effective from the date the resident's condition or service needs meets the complex medical add-on criteria to the last date the resident's condition or service needs continues to meet the complex medical add-on criteria.

(a) Initial Authorization — The facility must submit documentation to SPD's Complex Medical Add-On Coordinator for initial authorization of the complex medical add-on, using SPD's Complex Medical Add-On Procedure Code(s), to provide justification that the resident's service needs meet complex medical add-on criteria.

(b) Continued Payment — SPD may continue to pay the complex medical add-on only as long as the resident's needs meet one or more of the treatments, procedures, and services listed in OAR 411-070-0091 and the facility maintains the required documentation.

(3) DOCUMENTATION. The licensed nursing staff of the nursing facility must keep sufficient documentation pertinent to the qualified complex medical add-on procedure code(s) in the resident's clinical record to justify the complex medical add-on payment determination in accordance with these rules (refer to OAR 411-070-0091) and must make it available to SPD upon request.

(4) COMPLEX MEDICAL ADD-ONS PROHIBITED. SPD may not provide complex medical add-on payments for a facility with a waiver that allows a reduction of eight or more hours per week from required licensed nurse staffing hours.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 20-1990, f. & cert. ef. 10-4-90; SSD 21-1990(Temp), f. & cert. ef. 10-5-90; SSD 6-1991, f. & cert. ef. 3-25-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0029
Pediatric Rate

(1) The pediatric rate shall be for those facilities meeting the criteria established in OAR 411-070-0452 as pediatric nursing facilities or as self-contained pediatric units.

(2) The pediatric rate shall constitute the total rate payable by SPD on behalf of the individual.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0033
Post Hospital Extended Care Benefit

(1) The post hospital extended care benefit (OAR 410-120-1210(3)(a)(F)) is an Oregon Health Plan benefit that consists of a stay of up to 20 days in a nursing facility to allow discharge from hospitals.

(2) The post hospital extended care benefit must be prior authorized by pre-admission screening for individuals not enrolled in managed care.

(3) To be eligible for the post hospital extended care benefit, the individual must meet all of the following:

(a) Be receiving Oregon Health Plan Plus or Standard, Fee-for-Service benefits;

(b) Not be Medicare eligible;

(c) Have a medically-necessary, qualifying hospital stay consisting of:

(A) A DMAP-paid admission to an acute-care hospital bed, not including a hold bed, observation bed, or emergency room bed.

(B) The stay must consist of three or more consecutive days, not counting the day of discharge.

(d) Transfer to a nursing facility within 30 days of discharge from the hospital;

(e) Need skilled nursing or rehabilitation services on a daily basis for a hospitalized condition meeting Medicare skilled criteria that may be provided only in a nursing facility meaning:

(A) The individual would be at risk of further injury from falls, dehydration, or nutrition because of insufficient supervision or assistance at home;

(B) The individual's condition would require daily transportation to hospital or rehabilitation facility by ambulance; or

(C) It is too far to travel to provide daily nursing or rehabilitation services in the individual's home.

(4) The individual may qualify for another 20 day post-hospital extended care benefit only if the individual has been out of a hospital and has not received skilled nursing care for 60 consecutive days in a row and meets all the criteria in this rule.

(5) Individuals eligible for the 20 day post-hospital extended care benefit are not eligible for long term care nursing facility or home and community-based waiver services unless the individual meets the eligibility criteria in OAR 411-015-0100 or 411-320-0020(28).

Stat. Auth.: ORS 409, 410.070 & 414.065
Stats. Implemented: 410.070 & 414.065
Hist.: SPD 4-2005, f. & cert. ef. 4-19-05; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0035
Complex Medical Add-On Notification, Effective Dates and Administrative Review

(1) NOTIFICATION. The nursing facility must notify SPD's Complex Medical Add-On Coordinator by completing SPD's Weekly Add-On Report to request authorization for complex medical add-on procedure code(s) (Refer to OAR 411-070-0091). SPD shall assign the facility a weekly report due date. The facility must accurately report, on a weekly basis, all of the following complex medical activity for the seven days prior to the report's due date (excluding weekends, state holidays, and any business day the offices of the state of Oregon are closed by the Governor or the Governor's designee):

(a) Admission of any Medicaid resident whose condition or service needs meet the criteria for a complex medical add-on procedure code(s). This includes a readmission or return of a Medicaid resident following a leave of absence from the nursing facility whose needs meet add-on criteria.

(A) The nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's condition or service needs meets the complex medical add-on criteria.

(B) Following a resident's return from a leave of absence, the nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's return if their condition or service needs meet a complex medical add-on procedure code(s).

(C) If the nursing facility fails to add the resident to the next weekly report filed, or files the report more than two working days after it is due, SPD shall adjust the requested effective add-on date and pay the complex medical add-on from the date of notification only.

(D) For a resident whose condition or service needs meet a complex medical add-on procedure code(s), the complex medical add-on is effective only until the last date the resident's condition or need continues to meet complex medical add-on procedure code(s) criteria.

(b) A Medicaid resident whose condition or service needs change and now meets the criteria for a complex medical add-on procedure code(s).

(A) The nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's condition or service needs meets the complex medical add-on criteria.

(B) If the nursing facility fails to add the resident to the next weekly report filed, or files the report more than two working days after it is due, SPD shall adjust the requested effective add-on date and pay the complex medical add-on from the date of notification only.

(C) For a resident whose condition or service needs meet a complex medical add-on procedure code(s), the complex medical add-on is effective only until the last date the resident's condition or need continues to meet complex medical add-on procedure code(s) criteria.

(c) A Medicaid resident whose condition or service needs continue to meet the criteria for a complex medical add-on procedure code(s), only if that same complex medical add-on procedure code(s) has been approved or is pending approval by SPD's Complex Medical Add-On Coordinator. The facility must add these residents to the "existing" section of the next weekly report filed after the resident's condition or service needs has been approved or is pending approval.

(d) Discontinuation of a complex medical add-on procedure code(s) for a resident whose condition or service needs no longer meet the criteria for the complex medical add-on procedure code(s). This includes residents on a leave of absence from the nursing facility. The nursing facility must add these residents to the "discontinued" section of the next weekly report filed after the last date the resident's condition or service needs continues to meet the complex medical add-on procedure code(s) criteria.

(2) NOTIFICATION FOR EMERGENT MEDICAL OR SURGICAL PROBLEMS AND EMERGENT BEHAVIOR PROBLEMS.

(a) For a resident with an emergent medical or surgical problem or an emergent behavior problem, the nursing facility must contact SPD's Complex Medical Add-On Coordinator the next working day following the emergent medical, surgical, or behavior problem for pre-authorization of complex medical add-on.

(b) If the nursing facility fails to contact SPD in a timely manner, SPD shall pay the complex medical add-on from the date of notification only.

(c) For a resident whose condition or service needs change by an emergent medical, surgical, or behavior problem, the complex medical add-on is effective only until the last date the resident's condition or need continues to meet complex medical add-on procedure code(s) criteria.

(3) ADMINISTRATIVE REVIEW. If a provider disagrees with the decision of SPD's Complex Medical Add-On Coordinator to make or deny an adjustment in the complex medical add-on payment for a Medicaid resident, the provider may request from SPD an administrative review of the decision. The provider must submit its request for review in writing within 30 days of receipt of the notice to make or deny the adjustment. The provider must submit documentation, as requested by SPD, to substantiate its position. SPD shall notify the provider in writing of its informal decision within 45 days of SPD's receipt of the provider's request for review. SPD's informal decision shall be an order in other than a contested case and subject to review pursuant to ORS 183.484.

(4) OVERPAYMENT FOR COMPLEX MEDICAL ADD-ONS. SPD shall collect monies that were overpaid to a facility for any period SPD determines the resident's condition or service needs did not meet the criteria for the complex medical add-on, or determines the facility did not maintain the required documentation.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0050 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1983, f. 10-19-83, ef. 11-1-83; SSD 8-1985, f. 6-13-85, ef. 6-15-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0040
Client Screening, Assessment and Review

(1) INTRODUCTION. All individuals who are candidates for admission to a Medicaid-certified nursing facility must be assessed to evaluate their service needs and preferences and must receive information about community-based, alternative services, and resources that can meet the individual's service needs and are safe, least restrictive, and potentially less costly than comparable nursing facility services.

(2) PRE-ADMISSION SCREENING. A pre-admission screening (PAS) as defined in OAR 411-070-0005 is required for potentially Medicaid eligible individuals who are at risk for nursing facility services.

(a) PAS includes:

(A) An assessment;

(B) The determination of an individual's service eligibility for Medicaid-paid long term care or post-hospital extended care services in a nursing facility;

(C) The identification of individuals who can transition to community-based service settings;

(D) The provision of information about community-based services and resources to meet the individual's needs; and

(E) Transition planning assistance as needed.

(b) PAS is conducted in conjunction with the individual and any representative designated by the individual.

(c) The PAS assessment shall be conducted by a case manager or other qualified SPD or AAA representative using SPD's Client Assessment and Planning System (CA/PS) tool, and other standardized assessment tools and forms approved by SPD.

(d) A PAS may be completed based on information obtained by phone or fax only to authorize Title XIX post-hospital benefits in a nursing facility when short-term nursing facility services are needed. A face-to-face assessment including the discussion of alternative community-based services and resources shall be completed within seven days of the initial, short term nursing facility service approval.

(e) Payment for nursing facility services may not be authorized by SPD until PAS has established that nursing facility services are required based on the individual's service needs and Medicaid financial eligibility has been established.

(3) PRIVATE ADMISSION ASSESSMENT. A private admission assessment (PAA) is required for individuals with private funding who are referred to Medicaid-certified nursing facilities established by ORS 410.505 through ORS 410.545 and OAR chapter 411, division 071.

(4) PRE-ADMISSION SCREENING AND RESIDENT REVIEW. A pre-admission screening and resident review (PASRR) as described in OAR 411-070-0043 is required for individuals, regardless of payment source, with either mental illness or developmental disabilities who need nursing facility services.

(5) RESIDENT REVIEW. Title XIX regulations require utilization review and quality assurance reviews of Medicaid residents in nursing facilities. The reviews carried out by the authorized utilization review organization must meet these requirements:

(a) Staff associated with SPD are required to maintain service plans on all SPD residents in nursing facilities. The frequency of their service plan update shall vary depending on such factors as the resident's potential for transition to home or community-based care and federal or state requirements for resident review.

(b) Authorized representatives of SPD or the authorized utilization review organization must have immediate access to SPD residents and to facility records. "Access" to facility records means the right to personally read charts and records to document continuing eligibility for payment, quality of care, or alleged abuse. SPD or the authorized utilization review organization representative must be able to make and remove copies of charts and records from the facility's property as required to carry out the above responsibilities.

(c) SPD or the authorized utilization review organization representatives must have the right to privately interview any SPD residents and any facility staff in carrying out the above responsibilities.

(d) SPD or the authorized utilization review organization representatives must have the right to participate in facility staffings on SPD residents.

Stat. Auth.: ORS 410.535, 410.070 & 414.065
Stats. Implemented: ORS 410.070, 414.065 & 410.535
Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0060 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 2-1983, f. 3-4-83, ef. 4-1-83; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0043
Pre-Admission Screening and Resident Review (PASRR)

(1) INTRODUCTION. PASRR was mandated by Congress as part of the Omnibus Budget Reconciliation Act of 1987 and is codified in Section 1919(e)(7) of the Social Security Act. Final regulations are contained in 42 CFR, Part 483, subparts C through E. The purpose of PASRR is to prevent the placement of individuals with mental illness or mental retardation or developmental disabilities in a nursing facility unless their medical needs clearly indicate that they require the level of service provided by a nursing facility. Categorical determination, as described in section (2) of this rule, are groupings of individuals with mental illness or developmental disabilities who may be admitted to a nursing facility without a PASRR Level II evaluation.

(2) CATEGORICAL DETERMINATIONS.

(a) Exempted hospital discharge:

(A) The individual is admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital; or

(B) The individual is admitted to the nursing facility directly from a hospital after receiving care as an observation-status; and

(C) The individual requires nursing facility services for the condition for which he or she received care in the hospital; and

(D) The individual's attending physician has certified before admission to the facility that the individual is likely to require nursing facility services for 30 days or less.

(b) End of life care for terminal illness. The individual is admitted to the nursing facility to receive end of life care and the individual has a life expectancy of six months or less.

(c) Emergency situations with nursing facility admission not to exceed seven days unless authorized by AAA or SPD staff.

(A) The individual requires nursing facility level of service; and

(B) The emergency is due to unscheduled absence or illness of the regular caregiver; or

(C) Nursing facility admission is the result of protective services action.

(3) PASRR includes three components.

(a) PASRR LEVEL I. PASRR Level I is a screening process that is conducted prior to nursing facility admission for all individuals applying as new admissions to a Medicaid certified nursing facility regardless of the individual's source of payment. The purpose of the screening is to identify indicators of mental illness or mental retardation or developmental disabilities that may require further evaluation {42 CFR 483.128} or if categorical determinations, as described in section (2) of this rule, which verify that the nursing facility service is required.

(A) PASRR Level I screening is performed by AAA/SPD authorized staff, private admission assessment (PAA) programs, professional medical staff working directly under the supervision of the attending physician, or by organizations designated by DHS.

(B) Documentation of PASRR Level I screening is completed using a SPD-designated form.

(C) If there are no indicators of mental illness or mental retardation or developmental disabilities or if the individual belongs to a categorically determined group, the individual may be admitted to a nursing facility subject to all other relevant rules and requirements.

(D) If PASRR Level I screening determines that an individual has indicators of mental illness and no categorical determinations are met, then the individual cannot be admitted to a nursing facility. The Level I assessor must contact AMHD and request a PASRR Level II evaluation.

(E) If PASRR Level I screening determines that an individual has indicators of mental retardation or developmental disabilities and no categorical determinations are met, then the individual cannot be admitted to a nursing facility. The Level I assessor must contact SPD and request a PASRR Level II evaluation.

(F) Except as provided in section (3)(a)(F)(ii) of this rule, nursing facilities must not admit an individual without a completed and signed PASRR Level I screening form in the individual's resident record.

(i) Completion of the PASRR Level I form under sections (3)(a)(A) through (3)(a)(F) of this rule does not constitute prior authorization of payment. Nursing facilities must still obtain prior authorization from the local AAA or SPD office as required in OAR 411-070-0035.

(ii) A nursing facility may admit an individual without a completed and signed PASRR Level I form in the resident record provided the facility has received verbal confirmation from the Level I assessor that the screening has been completed and a copy of the PASRR Level I form will be sent to the facility as soon as is reasonably possible.

(iii) The original or a copy of the PASRR Level I form must be retained as a permanent part of the resident's clinical record and must accompany the individual if he or she transfers to another nursing facility.

(b) PASRR LEVEL II. PASRR Level II is an evaluation and determination of whether nursing facility service and specialized services are needed for an individual who has been identified through the PASRR Level I screening process with indicators of mental illness or mental retardation or developmental disabilities who does not meet categorical determination criteria {42 CFR 483.128}.

(A) Individual's identified with indicators or mental illness or mental retardation or developmental disabilities as a result of PASRR Level I screening are referred for PASRR Level II evaluation and determination.

(B) PASRR Level II evaluations and determinations are conducted by AMHD for individuals with mental illness or by SPD for individuals with mental retardation or developmental disabilities.

(C) PASRR Level II evaluations result in a determination of an individual's need for nursing facility services and specialized services {42 CFR 483.128-136} consistent with federal regulations established by the Social Security Act, Section 1919(e)(7)(C).

(D) Pursuant to 42 CFR 483.130(l), the written determination must include the following findings:

(i) Whether a nursing facility level of services is needed;

(ii) Whether specialized services are needed;

(iii) The placement options that are available to the individual consistent with these determinations; and

(iv) The rights of the individual to appeal the determination.

(E) The PASRR Level II evaluation report must be sent to the individual or their legal representative, the individuals attending physician, and the admitting or retaining nursing facility. In the case of an individual being discharged from the hospital, the discharging hospital must receive a copy of the PASRR evaluation report as well {42 CFR 483.128 (l)(1)-(3)}.

(F) Denials of nursing facility service are subject to appeal {OAR 137-003, 461-025 & 42 CFR Subpart E}.

(c) RESIDENT REVIEW. Resident reviews are conducted by AMHD for individuals with indicators of mental illness or SPD for individuals with mental retardation or developmental disabilities who are residents of nursing facilities. Based on the findings of the resident review, a PASRR Level II may be requested. {42 CFR 483.114}.

(A) All residents of a Medicaid certified nursing facility may be referred for resident review when symptoms of mental illness develop.

(i) Resident review for individuals with indicators of mental illness that require further evaluation must be referred to the local Community Mental Health Program who shall determine eligibility for PASRR Level II evaluations.

(ii) The resident review form, part A, must be completed by the nursing facility. The resident review must be performed in conjunction with the comprehensive assessment specified by the AMHD, in accordance with OAR 411-086-0060.

(B) All individuals identified as having mental retardation or developmental disabilities through the PASRR Level I screening process that are admitted to a nursing facility must receive a resident review. A resident review must be conducted within seven days if the nursing facility admission is due to an emergency situation {OAR 411-070-0043(2)(c)(A)-(C)}, within 20 days if the nursing facility admission is due to other categorical determinations {OAR 411-070-0043(2)(a)-(b)}, and annually, or as dictated by changes in resident's needs or desires.

(i) The resident review must be completed by SPD or designee.

(ii) The resident review must be completed using forms designated by SPD.

(4) SPECIALIZED SERVICES.

(a) Specialized services for individuals with mental illness are not provided in nursing facilities. Individuals with mental illness who are determined to need specialized services as a result of PASRR Level II evaluation and determination must be referred to another setting.

(b) Specialized services for individuals with mental retardation or developmental disabilities under age 21 are equal to school services and must be based on the Individualized Education Plan.

(c) Specialized services for individuals with mental retardation or developmental disabilities over age 21 are not provided in nursing facilities. Individuals with mental retardation or developmental disabilities over age 21 that are determined to need specialized services as a result of PASRR Level II evaluation and determination must be referred to another setting.

(5) RESPITE CARE. Respite care in nursing facilities for individuals with mental illness, mental retardation, or developmental disabilities is approved under the following conditions:

(a) For individuals with mental illness, a nursing facility admission for respite care must be authorized by AMHD and for individuals with mental retardation or developmental disabilities, a nursing facility admission for respite care must be authorized by SPD Central Office;

(b) Nursing facility respite stay must be limited to no more than a total of 56 respite days within a calendar year although SPD may grant exceptions to this limit at its discretion;

(c) Nursing facility level of service must be required to meet a severe medical condition that excludes care needs due to mental illness, mental retardation, or developmental disabilities; and

(d) There must not be a viable community care setting available that is appropriate to meet the individual's respite care needs as determined by section (5)(a) of this rule.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070, 535 & 414.065

Hist.: SSD 5-1989(Temp), f. & cert. ef. 4-20-89; SSD 15-1989, f. & cert. ef. 10-20-89; SSD 3-1994, f. 4-29-94, cert. ef. 5-1-94; SDSD 1-1998, f. 1-30-98, cert. ef. 2-1-98; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0080

Out-of-State Rates

Out-of-state facilities in areas contiguous to Oregon shall be paid for eligible individuals who are receiving temporary care while alternative placement in Oregon is being located. Payment shall be made at the facility's Medicaid rate established by the state in which the facility is located, or the maximum rate paid to Oregon nursing facilities for a comparable payment level, whichever is less. The maximum rate for out-of-state purposes is Oregon's basic rate plus the complex medical add-on, if determined to be appropriate, or the pediatric rate, if warranted. The facility must submit a copy of the Assurance and Compliance (HHS 690), certifying its compliance with the Civil Rights Act of 1964. The facility must also submit their current approved nursing facility Medicaid rate to SPD. An Oregon resident shall be returned to Oregon when proper placement may be made and it is feasible to do so.

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

Stat. Auth.: ORS 414.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0130, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0110

Temporary Absence from Facility (Bedhold)

(1) SPD does not pay for holding a resident's bed when the individual is absent from the facility.

(2) Personal incidental funds or payment from an individual's family may be used to hold a facility bed if there are no vacancies in the facility to which other residents of the same sex may be admitted and if there is no duplicate payment from SPD. Personal incidental funds may only be used if the resident so chooses.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0190 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 4-1982(Temp), f. 4-26-82, ef. 5-1-82; SSD 8-1982, f. & ef. 6-30-82; SSD 10-1986, f. & ef. 7-1-86; SSD 13-1986(Temp), f. & ef. 10-13-86; SSD 1-1987, f. & ef. 4-13-87; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 9-1995, f. 8-31-95, cert. ef. 9-1-95; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0125

Medicare, (Title XVIII)

SPD shall pay on behalf of eligible individuals the coinsurance rate established under Medicare, Part A, Hospital Care, for care rendered from the 21st day through the 100th day of care in a Medicare certified nursing facility. SPD shall pay the appropriate rate as described in these rules for care beyond the 100th day. Payment shall be subject to documentation required for the rate.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0220 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 7-1989, f. & cert. ef. 5-1-89; SSD 4-1990(Temp), f. 1-12-90, cert. ef. 1-15-90; SSD 14-1990, f. 6-29-90, cert. ef. 7-1-90; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0130
Medicaid Payment in Hospitals

(1) SWING BED ELIGIBILITY. To be eligible to receive a Medicaid payment under this rule, a hospital must:

(a) Have approval from the Centers for Medicare and Medicaid Services (CMS) to furnish skilled nursing facility services as a Medicare swing-bed hospital;

(b) Have a Medicare provider agreement for acute care; and

(c) Have a current signed provider agreement with SPD to receive Medicaid payment for swing-bed services.

(2) NUMBER OF BEDS.

(a) A critical access hospital (CAH) not located within a 30 mile geographic radius of a licensed nursing facility as of March 13, 2007 may receive Medicaid payment for up to 20 residents at one time. The CAH must maintain at least five beds or twice the average acute care daily census, whichever is greater, for exclusive acute care use.

(b) Other hospitals receiving payment for Medicaid services under this rule may not receive Medicaid payment for more than a total of five residents at one time. In addition, the residents must have a documented need for and receive services that meet the complex medical add-on requirements outlined in OAR 411-070-0091.

(c) If circumstances change so that a CAH receiving payment for Medicaid services pursuant to section (2)(b) of this rule meets the criteria set out in section (2)(a) of this rule after March 13, 2007, the CAH may petition SPD for authorization to receive such payment pursuant to section (2)(a) of this rule. SPD shall evaluate all available long-term care resources within a 30 mile geographic radius of the CAH and the amount of unmet long-term care need in the same area and determine if the CAH shall be authorized to receive payment pursuant to section (2)(a) of this rule.

(3) SERVICES PROVIDED. The daily Medicaid rate shall be for the services outlined in OAR 411-070-0085 (Bundled Rate).

(4) COMPLIANCE WITH MEDICAID REQUIREMENTS. Hospitals receiving Medicaid payment for swing-bed services must comply with federal and SPD rules and statutes that affect long-term care facilities as outlined in the facility's provider agreement with SPD.

(5) ADMISSION OF INDIVIDUALS. Prior to determination of Medicaid payment eligibility in the swing bed, the case manager must determine there is no nursing facility bed available to the individual within a 30 mile geographic radius of the hospital. For the purpose of this rule, "available bed" means a bed in a nursing facility that is available to the individual at the time the placement decision is made.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 7-1988, f. & ef. 7-1-88; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 1-2007, f. 3-12-07. & cert. ef. 3-13-07; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0300
Filing of Financial Statement

(1) The provider must file annually with the SPD, Financial Audit Unit, the Nursing Facility Financial Statement (NFFS) covering actual costs based on the facility's fiscal reporting period for the period ending June 30. A NFFS must be filed for other than a year only when necessitated by termination of a provider agreement with SPD, or by a change in ownership, or when directed by SPD. Financial reports containing up to 15 months of financial data shall be accepted for the reasons above or with SPD's permission prior to filing.

(2) The NFFS is due within three months of the end of the fiscal reporting period, change of ownership, or withdrawal from the program.

(a) The report must be postmarked on or before the due date to be considered timely.

(b) A one month extension may be obtained if a written request for an extension is postmarked prior to the expiration of the original three months. SPD shall respond in writing to these requests.

(c) When a NFFS is not postmarked within three months, or within four months if an extension under section (2)(b) of this rule was obtained, a penalty shall be assessed and collected. The amount of the penalty shall be $5 per licensed nursing facility bed per day for each State of Oregon business day the NFFS is late. The total penalty must not exceed $50,000 per fiscal reporting period. For purposes of this section, the number of licensed nursing facility beds shall be the number licensed on the last day of the fiscal reporting period that the facility failed to submit its report.

(d) SPD may assess interim penalties and deduct the amount of the interim penalties from the next Medicaid payment payable to the facility. Each interim penalty must be the amount of the penalty that has accrued under section (2)(c) of this rule to the date of assessment, and has not already been assessed as an interim penalty.

(e) A facility may request an informal conference or contested case hearing pursuant to ORS 183.413 through 183.470 within 30 days of receiving a letter from SPD informing the facility of assessment of an interim penalty or a penalty under this rule. OAR 411-070-0435 applies to such requests and sets forth the procedures to be followed. If no request for an informal conference or contested case hearing is made within 30 days of receiving such a letter, the interim penalty or penalty becomes final in all respects, including liability for payment of and the amount of the interim penalty or penalty.

(3) Improperly completed or incomplete Nursing Facility Financial Statements shall be returned to the facility for proper completion.

(4) FORMS.

(a) Form SPD 35 is a uniform cost report to be used by all nursing facility providers, except those that are hospital based.

(b) Form SPD 35A is a uniform cost report to be used by all nursing facility providers that are hospital based.

(c) Forms SPD 35 and SPD 35A must be completed in accordance with the Medicaid Nursing Facility Services Provider Guide and Audit Manual.

(5) If a provider knowingly or with reason to know files a report containing false information, such action constitutes cause for termination of its agreement with SPD. Providers filing false reports may be referred for prosecution under applicable statutes.

(6) Each required NFFS must be signed by a company or corporate officer or a person designated by the corporate officers to sign. If the NFFS is prepared by someone other than an employee of the provider, the individual preparing the NFFS must also sign and indicate his or her status with the provider.

(7) Facilities with fewer than 1000 Medicaid resident days during a twelve-month reporting period or fewer than 2.74 Medicaid resident days per calendar day, for facilities with reporting periods of less than a year, are not required to submit a SPD 35 or SPD 35A, but must submit a letter to SPD's Financial Audit Unit indicating they will not be submitting a financial statement. This letter is due the same day the financial statement would have been due.

(8) A NFFS must be filed annually by each facility for the fiscal reporting period that ends June 30. The NFFS filed for the period that ends June 30 is required to cover actual costs during the previous state fiscal year from July 1 through June 30.

[ED. NOTE: Forms referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0300 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 8-1988, f. & cert. ef. 7-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0350
Management Fees

Management fees are an allowable expense if they are necessary, reasonable, non-duplicative of facility personnel and functions, and documented by a binding contract with a non-related party defining the items, services, and activities provided. If the administrator or assistant administrator is supplied as part of the contract, the rules governing their compensation in these rules apply. Documentation demonstrating that the services were actually performed is required. Management fees paid to a related organization are subject to the rules governing related parties (OAR 411-070-0335), chain operations (OAR 411-070-0340), and allocation of home office costs (OAR 411-070-0345). The allowable salary paid to the administrator and assistant administrator is included in the total facility management fee calculation. Total management fees for allowable management and supervisory services may not exceed the limits established for the administrator and the assistant administrator in OAR 411-070-0315 plus $5,000 allowable for other management fees per year.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0350 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1986, f. & ef. 7-1-86; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0359
Allowable Costs

(1) ALLOWABLE COSTS. Allowable costs are the necessary costs incurred for the customary and normal operation of a facility, to the extent that they are reasonable and related to resident services.

(a) Accounting, Auditing, and Data Processing — The costs of recording, summarizing, and reporting the results of operations are allowable.

(b) Advertising — Help wanted advertising and the expense related to the alphabetical listing in the yellow pages of a phone directory are allowable.

(c) Allowable Workers Compensation Dividends (Refunds) or Billings of the nursing facility are those dated in the fiscal reporting period.

(d) Auto and Travel Expense — Expense of maintenance and operation of a vehicle and travel expense related to resident services are reimbursable. The allowance for mileage reimbursement must not exceed the amount determined reasonable by the Internal Revenue Service for the period reported. Allowable out-of-state travel is restricted to Washington, Idaho, and Northern California, no farther south than San Francisco. One out of state/contiguous area trip per year for two employees shall be allowed, as long as it relates to resident services.

(e) Bad Debts — Bad debts related to Title XIX recipients are allowable.

(f) Bank and Finance Charges — Charges for routine maintenance of accounts are allowable.

(g) Communications — Charges for routine telephone service, including pagers, and cable television fees, are allowable.

(h) Compensation of Owners — Owner's compensation in accordance with OAR 411-070-0330 is allowable.

(i) Consultant Fees — Consultant fees are allowable provided they meet the criteria as outlined in OAR 411-070-0320.

(j) Criminal Records Checks — Costs of criminal records checks of facility employees if mandated by federal or state law are allowable.

(k) Depreciation and Amortization — Depreciation schedules on buildings and equipment must be maintained. Depreciation expense is not allowable for land. Lease-hold improvements may be amortized. Depreciation and amortization must be calculated on a straight-line basis and prorated over the estimated useful life of the asset. Effective July 1, 2003, these costs must be reported in accordance with OAR 411-070-0365, 411-070-0375, and 411-070-0385.

(l) Education and Training — Registration, tuition, and book expense associated with education and training of personnel is allowed provided it is related to resident services. The costs associated with training and certifying nurse aides are not allowable for inclusion in the annual NFFS. These costs are reimbursed separately by SPD per OAR 411-070-0470.

(m) Employee Benefits — Employee benefits that are made available to all employees, are for the primary use of the employees, are generally considered by the industry as reasonable and important benefits to provide for employees, are not taxable as wages, and are allowable to the extent of employer participation.

(n) Food — Food products and supplements used in food preparation are allowable.

(o) Home Office Costs — Home office costs are allowable in accordance with OAR 411-070-0345.

(p) Insurance — Premiums for insurance on assets or for liability purposes, including vehicles, are allowable to the extent that they are related to resident services. Self-insurance costs are allowable only when expense is actually incurred.

(q) Interest — Interest on debt related to the provision of resident services is an allowable expense, except on or after July 1, 1984, interest expense related to that portion of the acquisition price of a long-term facility that exceeds the depreciable basis (OAR 411-070-0375) will not be reimbursable.

(r) Legal Fees — Legal fees directly related to resident services are allowable. Legal fees related to non-allowable costs are not allowable. Legal fees claimed as related to resident services must be explained and listed on Schedule A. Fees related to legal and administrative actions to resolve a disagreement with the state shall be allowable if the action is resolved in the provider's favor, and the judge or hearings officer does not order the state to pay the provider's legal fees.

(s) Licenses, Dues, and Subscriptions — Fees for facility licenses, dues in professional associations, and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff professional use are allowable.

(t) Linen and Bedding — Linen and bedding costs for the facility are allowable.

(u) Management Fees — Management fees are allowable provided they meet the criteria for OAR 411-070-0350.

(v) Postage and Freight — Postage expense is considered an office supply cost. Freight must be posted to the same account as the item purchased.

(w) Property Costs — Costs related to purchase or lease of a facility are to be reported in Accounts 452 through 459 and 461.

(x) Purchased Services — Services that are received under contract arrangements are reimbursable to the extent that they are related to resident services and the sound conduct and operation of the facility.

(y) Rent or Lease Payments — Payments for the lease or rental of land, buildings, and equipment are to be reported. Payments for lease agreements entered into with a related party are limited to the lower of actual costs or the lease payments.

(z) Repairs and Maintenance — Costs of maintenance and minor repairs are allowable when related to the provision of resident services.

(aa) Salaries (Except Owners and Related Parties) — Salaries and wages of all employees engaged in resident service activities or overall operation and maintenance of the facility, including support activities of home offices and regional offices, are allowable.

(bb) Supplies — Cost of supplies used in resident services or providing services related to resident services are allowable.

(cc) Taxes — Property taxes on assets used in rendering resident services are allowable. Long term facility taxes paid on resident days are allowable, effective July 1, 2003.

(dd) Utilities — Costs for facility heating, lighting, water-sewer, and garbage provisions are allowable.

(ee) Utilization Review — Costs incurred for utilization review are Medicare related and are not allowable for Medicaid reimbursement.

(2) EXCEPTIONS. Exceptions to the items listed in section (1) of this rule must be approved in writing to be allowable. Exceptions shall not be granted for the following items:

(a) Amortization of non-competitive agreement;

(b) Goodwill;

(c) Federal and other governmental income taxes;

(d) Penalties and fines;

(e) Costs of services and items otherwise reimbursable through DMAP, other third party payors (see section (3) of this rule), or the resident's personal funds;

(f) The cost related to the functioning of Corporate Boards of Directors;

(g) Advertising for purposes of soliciting potential residents, except for listings in the yellow pages (see section (1)(b) of this rule);

(h) The cost of salaries and supplies devoted to religious activities; or

(i) Gifts and contributions.

(3) THIRD PARTY PAYORS. The purpose of this section is to assure that facilities are not paid twice, once through the Medicaid bundled rate and again through a third party payor, for providing a service. This section includes both allowed and non-allowed costs.

(a) Facilities must bill third party payors for nursing facility services whenever payment from a third party payor is or may be available. Examples of such payors are Medicare, Veterans Administration, insurance companies, or a private resident when the items are not included in the basic rate.

(b) Failure to bill or collect from third party payors whenever appropriate may not cause these expenses to be considered allowable.

(c) The cost of services incurred for therapy services performed by non-employee therapists are reimbursable through a third party payor or DMAP and are non-allowable on the NFFS.

(d) The cost of supplies and equipment medically necessary in the performance of therapy services that are reimbursable through a third party payor or DMAP, are non-allowable on the NFFS.

Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070 & 414.065
Hist.: SSD 5-1985, f. & ef. 5-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 4-1992, f. & cert. ef. 6-24-92; SSD 13-1992, f. 12-31-92, cert. ef. 1-1-93; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0415
Offset Income

(1) Income is offset against expenses unless specifically excluded in section (2) of this rule. If an adjustment is for a revenue producing activity representing a non-allowable cost, the revenue must be offset against the appropriate expense if the revenue is less than 2 percent of the total provider expense (sum of cost areas). Where the revenue is greater than 2 percent of the total provider expense (sum of cost areas), costs must be allocated to this area as described in OAR 411-070-0430, Allocation Methods.

(2) Income items that may not be offset are:

(a) Ancillary income and charges for routine services or supplies that are included in the bundled rate but charged to other residents (except as required in OAR 411-070-0359(3));

(b) Grants, unless designated for paying a specific operating cost; and

(c) Donations, unless designated for paying a specific operating cost.

(3) Revenue received for pediatric residents shall be offset against expenses. These revenues may not be subject to the 2 percent limitation established in section (1) of this rule. The revenue shall be offset against cost centers in the same ratio as reported by the facility in accordance with OAR 411-070-0452.

(4) Mental health revenues received from local governments to provide extra care to Medicaid residents must be reported in SPD Account 819, directly offset against the related expense and explained on Schedule A.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0410 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 5-1985, f. & ef. 5-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0417
Treatment of Complex Medical Add-Ons

(1) The complex medical add-on reflects the additional costs of providing skilled nursing services for certain residents due to their needs.

(2) The complex medical add-on is added to the basic rate.

(3) When calculating per resident day care compensation cost, the treatment of the complex medical add-on is as follows:

(a) The allowable care compensation costs for both the basic rate and the complex medical add-on are divided by total basic rate resident days.

(b) Revenue from the complex medical add-on received for eligible individuals is divided by the number of Medicaid basic rate resident days.

(c) The per resident day amounts computed in section (3)(a) of this rule are reduced by the per Medicaid resident day amounts computed in section (3)(b) of this rule. The result is defined as care compensation per resident day and shall be used in determining the prospective base rate.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0430
Allocation Methods

(1) The provider must use the allocation methods designated on the NFFS: COST — ALLOCATION METHOD

(a) Property — Resident Days or Square Footage;

(b) Administrative and General — Resident Days;

(c) Other Operating Support — Resident Days;

(d) Food — Resident Days;

(e) Direct Care Compensation — Actual Cost or Resident Days;

(f) Direct Care Supplies — Actual Cost or Resident Days.

(2) Where costs are related to non-nursing facility activities, the provider must use an appropriate allocation method to reasonably and accurately allocate these costs (see OAR 411-070-0415). For residential care facility individuals, the facility must use resident days for all areas except direct care compensation and direct care supplies and property. The direct care compensation and direct care supplies allocation must be actual costs incurred. The property allocation method may be based on either resident days or on square footage and must be designated on the NFFS.

(3) Square footage must be used to allocate property costs to pediatric units as defined in OAR 411-070-0452.

(4) Actual payroll for the pediatric unit must be used as the basis for allocating direct care compensation to pediatric units.

(5) If SPD determines that for a provider it is more reasonable and accurate to use a different allocation method than specified in sections (1) and (2) of this rule, then such allocation method must be used.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 29-1978, f. 7-28-78, ef. 8-1-78; Renumbered from 461-017-0425 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 10-1986, f. & ef. 7-1-86; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0442
Per Diem Rate Setting For the Rate Period Beginning July 1, 2003 Calculation of the Basic Rate and Complex Medical Add-on Rate

(1) The rates are determined for the first year of each biennium, the rebasing year, and the second year of each biennium, the non-rebasing year.

(a) The Rebasing Year.

(A) The basic rate is based on the statements received by SPD by September (or postmarked by October 31, if an extension of filing has been approved by SPD) for the fiscal reporting period ending on June 30 of the previous even-numbered year. For example, for the biennium beginning July 1, 2003, statements for the period ending June 30, 2002 are used. SPD desk reviews or field audits these statements and determines the allowable costs for each nursing facility. The costs include both direct and indirect costs. The costs and days relating to pediatric beds are excluded from this calculation. SPD shall only use financial reports of facilities that have been in operation for at least 180 days and are in operation as of June 30 of even numbered years for biennial rebasing.

(B) For the 2009 rebasing period only, SPD shall limit the administrative and property cost components as follows:

(i) Administrative and general costs per facility, less provider tax and employee benefits, equals the lesser of the facility's allowable cost or the 50th percentile over all facilities; and

(ii) Allowable property expenses shall be limited by the Medicaid occupancy percentage when the facility has an occupancy rate of less than 60 percent.

(C) For each facility, its allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, less the costs of its self-contained pediatric unit (if any) is inflated from the mid-point of its fiscal reporting period to the mid-point of the first year of the biennium, hereafter referred to as the base year (e.g., for the biennium beginning July 1, 2003, the base year is the fiscal period ending June 30, 2004) by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(D) For each facility, its allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, per Medicaid day is determined using the allowable costs as inflated and resident days, excluding pediatric days as reported in the statement.

(E) The facilities are ranked from highest to lowest by the facility's allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, per Medicaid day.

(F) The basic rate will be determined by ranking the allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, per Medicaid day by facility and identifying the allowable cost per day at the applicable percentage. If there is no allowable cost per day at the applicable percentage, the basic rate is determined by interpolating the difference between the allowable costs per day that are just above and just below the applicable percentage to arrive at a basic rate at the applicable percentage.

(i) The applicable percentage for the period beginning July 1, 2003 through June 30, 2005 is at the 63rd percentile.

(ii) The applicable percentage for the period beginning July 1, 2005 through June 30, 2007 is at the 70th percentile.

(iii) The applicable percentage for the period beginning July 1, 2007 is at the 63rd percentile.

(b) The Non-Rebasing Year. On July 1 of each non-rebasing year, the basic flat rate shall be inflated by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(2) The complex medical add-on rate is 40 percent of the basic rate for the rebasing year and the non-rebasing year.

(3) SPD shall add a standard payment to fund implementation of certified nursing assistant staffing requirements contained in OAR 411-086-0100 in accordance with the Legislatively Adopted Budget.

Stat. Auth.: ORS 410.070 & 414.065
Stats. Implemented: ORS 410.070, 414.065, OL 2003 ch 736, OL 2007 ch. 780, OL 2009 chapter 827
Hist.: SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0452
Pediatric Nursing Facilities

(1) PEDIATRIC NURSING FACILITY.

(a) A pediatric nursing facility is a licensed nursing facility at least 50 percent of whose residents entered the facility before the age of 14 and all of whose residents are under the age of 21.

(b) A nursing facility that meets the criteria of section (1)(a) of this rule shall be reimbursed as follows:

(A) The pediatric rate is a prospective rate and is not subject to settlement. SPD shall only use financial reports of facilities that have been in operation for at least 180 days and are in operation as of June 30 of even numbered years for biennial rebasing.

(B) The facility specific pediatric cost per resident day shall be inflated by the annual change in the DRI Index as measured in the previous 4th quarter. The Oregon Medicaid pediatric days are multiplied by the inflated facility specific cost per resident day for each pediatric facility. The totals are summed and divided by total Oregon Medicaid days to establish the weighted average cost per pediatric resident day. The rebase relationship percentage (90.18%), determined in the implementation of the flat rate system in 1997, is applied to the weighted average cost to determine the pediatric rate.

(C) On July 1 of each non-rebasing year after 1999, the pediatric rate shall be increased by the annual change in the DRI Index, as measured in the previous 4th quarter. Beginning in 2001 rate rebasing shall occur in alternate years. Rebasing of pediatric nursing facility rates shall be calculated using the method described in section (1)(b)(B) of this rule.

(c) Even though pediatric facilities shall be reimbursed in accordance with section (1)(b) of this rule, pediatric facilities must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements.

(2) LICENSED NURSING FACILITY WITH A SELF-CONTAINED PEDIATRIC UNIT.

(a) A nursing facility with a self-contained pediatric unit is a licensed nursing facility that provides services for pediatric residents (individuals under the age of 21) in a separate and distinct unit within or attached to the facility with staffing costs separate and distinct from the rest of the nursing facility. All space within the pediatric unit must be used primarily for purposes related to the services of pediatric residents and alternate uses must not interfere with the primary use.

(b) A nursing facility that meets the criteria of section (2)(a) of this rule shall be reimbursed for its pediatric residents served in the pediatric unit at the per diem rate described in section (1)(b) of this rule commencing on July 1, 1999.

(c) Licensed nursing facilities with a self-contained pediatric unit must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements and must file a separate attachment, on forms prescribed by SPD, related to the costs of the self-contained pediatric unit.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 4-1988, f. & cert. ef. 6-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 6-1996, f. & cert. ef. 7-1-96; SDSD 10-1999, f.11-30-99, cert.ef. 12-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

411-070-0470
Nursing Assistant Training and Competency Evaluation Programs Cost Reports

(1) COST REPORT REQUIRED. Medicaid certified nursing facilities must file a Nursing Assistant Training and Competency Evaluation Program (NATCEP) cost report (Form SDS 451) quarterly with SPD's Financial Audit Unit that meets the following standards:

(a) A NATCEP cost report is due and must be postmarked by the last day of the calendar quarter subsequent to the quarter that it covers (or postmarked the first business day after the quarter if the last day of the quarter is a Sunday or holiday). The cost report must identify all costs incurred and related revenues (not including NATCEP payments from SPD) received during the reporting period. If a facility fails to file a report postmarked as described, NATCEP reimbursement must be reduced by 3 percent for each business day the report is past due until received.

(b) A cost report must:

(A) Be submitted on a form provided by SPD.

(B) Include actual costs incurred and paid by the facility. SPD may not reimburse a facility prospectively.

(C) Include all revenue (not including NATCEP payments from SPD) received by the facility for conducting nurse aide training. All revenue must be used to offset the costs incurred and paid in the period.

(D) Include appropriate documentation to support each specific area identified for payment by the state. For example, invoices for equipment purchases or to reimburse contract trainers, time sheets for qualified facility training staff, evidence an aide paid for NATCEP and was reimbursed by the facility as specified in section (2) of this rule. Failure to provide required documentation shall result in the form being rejected and returned to the facility.

(E) Include all appropriate NATCEP costs and revenues only. NATCEP costs, including costs disallowed, must not be reimbursed as part of the facility's bundled rate. However, NATCEP costs, revenues, and reimbursement must be included on the facility's annual NFFS.

(F) Include only true and accurate information. If a facility knowingly or with reason to know files a report containing false information, such action must constitute cause for termination of the facility's provider agreement with SPD. Providers filing false reports may be referred for prosecution under applicable statutes.

(2) CHARGING OF FEES PROHIBITED. The nursing facility must not charge a trainee any fee for participation in NATCEP or for any textbooks or other materials required for NATCEP if the trainee is employed by or has an offer of employment from a nursing facility on the date on which the NATCEP begins.

(3) FEES PAID BY EMPLOYER.

(a) All charges and materials required for NATCEP and fees for nursing assistant certification must be paid by the nursing facility if it offered employment at the facility on the date training began.

(b) If a nursing assistant who is not employed by a Medicaid certified facility and does not have an offer of employment by a Medicaid nursing facility on the date on which the NATCEP began becomes employed by, or receives an offer for employment from, a nursing facility within twelve months after completing a NATCEP, the employing facility must reimburse the nursing assistant on a monthly basis for any NATCEP fees paid (including any fees for textbooks or other required course materials) by the nursing assistant. Evidence the nursing assistant paid for training must include the graduation certificate from the school and receipt of payment.

(c) Such reimbursement must be calculated on a pro rata basis. The reimbursement must be determined by dividing the cost paid by the nursing assistant by 12 and multiplying by the number of months during this 12-month period in which the aide worked for the facility. The facility must claim the appropriate pro rata amount on each report it submits not to exceed the lesser of 12 months or the total number of months the nursing assistant was employed at that facility. The facility must submit evidence provided by the nursing assistant of the training costs incurred at an approved training facility.

(4) REIMBURSEMENT BY SPD. SPD shall reimburse the facility for the Medicaid portion of the costs described in this section unless limited by the application of section (5). This portion is calculated by multiplying the eligible costs paid by the facility by the percentage of resident days that are attributable to Medicaid residents during the reporting period. SPD's payment to the facility for the NATCEP cost is in addition to payments based upon the facility's bundled rate.

(a) Employee Compensation. Reimbursement for trainer hours must not exceed 1 1/3 times the number of hours required for certification. A facility may claim reimbursement for the portion of an employee's compensation attributable to nurse aide training if:

(A) The employee meets the qualifications of 42 CFR 483.152 and OAR chapter 851, division 061;

(B) The employee directly conducts training or testing in a certified program;

(C) The employee's compensation, including benefits, is commensurate with other RN compensation paid by the facility;

(D) The employee's total compensated hours do not exceed 40 in any week during which NATCEP reimbursement is claimed;

(E) No portion of the claimed reimbursement is for providing direct care services while assisting in the training of nurse aides if providing direct care services is within the normal duties of the employee; and

(F) The facility provides SPD with satisfactory documentation to support the methodology for allocating costs between facility operation and NATCEP.

(b) Training Space and Utilities. Costs associated with space and utilities are eligible only if the space and utilities are devoted 100 percent to the NATCEP. The facility must provide documentation satisfactory to SPD to support the need for, and use of, the space and utilities.

(c) Textbooks and Course Materials. A portion of the cost of textbooks and materials is eligible if textbooks and materials are used primarily for NATCEP. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must provide satisfactory documentation supporting the NATCEP need for and percentage of use of textbooks and materials.

(d) Equipment. A portion of the cost of equipment is eligible if used primarily for NATCEP. However, equipment purchased for $500 or more per item must be prior approved by SPD to qualify for reimbursement. The portion reimbursable is equal to the percentage of use attributable to NATCEP. "Primarily" means more than 50 percent. The facility must provide satisfactory documentation supporting the NATCEP need for and percentage of use of the equipment. Disposition of equipment and software purchased in whole or in part under the Title XIX Medicaid Program must meet the requirements of the facility's provider agreement.

(e) Certification Fees. Nursing assistant certification and recertification fees paid to the Oregon State Board of Nursing for facility employees are eligible.

(f) Reimbursement for CNAs. Reimbursement provided to nursing assistants pursuant to section (3) of this rule is eligible. The training must have occurred at an approved training center, including nursing facilities in Oregon or other states.

(g) Contract Trainers. Payment for nurse aide certification classes provided under contract by persons who meet the qualifications of 42 CFR 483.152 is eligible for reimbursement. For this purpose, either the facility or the contractor must be certified for NATCEP. Allowable contract trainer payments shall be limited to the lesser of actual cost or the salary calculation described in section (4)(a) of this rule.

(h) Ineligible Costs — Trainee Wages. Wages paid to nursing assistants in training are not eligible for NATCEP reimbursement, but may be claimed as part of the daily reimbursement costs.

(i) Reimbursement for Combined Classes. If two or more Medicaid certified facilities cooperate to conduct nurse aide training, SPD shall not reimburse any participating facility for the combined training class until all participating facilities have filed a cost report. For a combined class, SPD shall apportion reimbursement to participating facilities pro rata based on the number of students enrolled at the completion of the first 30 hours of classroom training or in any other equitable manner agreed to by the participating facilities. However, when cooperating facilities file separate NATCEP cost reports, nothing in this section authorizes SPD to deny or limit reimbursement to a facility based on a failure to file or a delay in filing by a cooperating facility.

(5) Notwithstanding section (4) of this rule, SPD shall calculate the 80th percentile of the Medicaid portion of reported NATCEP costs per trainee completing the training. If a facility's Medicaid portion exceeds the 80th percentile of costs, SPD shall evaluate the facility's NATCEP costs to determine whether its costs are necessary due to compelling circumstances including but not limited to:

(a) Rural or isolated location of the training facility;

(b) Critical individual care need;

(c) Shortage of nursing assistants available in the local labor market; or

(d) Absence or inadequacy of other training facilities or alternative training programs, e.g., community college certification programs.

(6) If, under the analysis in section (5) of this rule, SPD finds that a facility's NATCEP costs are justified, SPD shall reimburse the reported costs pursuant to section (4) of this rule. However, if, under the analysis in section (5) of this rule, SPD finds that a facility's NATCEP costs are not justified, SPD shall reimburse the reported costs pursuant to section (4) of this rule but limited by the cost plateau.

(7) RECORDKEEPING, AUDIT, AND APPEAL.

(a) The facility must maintain supportive documentation for a period of not less than three years following the date of submission of the NATCEP cost report. This documentation must include records in sufficient detail to substantiate the data reported. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved. The records must be maintained in a condition that can be audited.

(b) SPD shall analyze by desk review each timely filed and properly completed NATCEP cost report. All cost reports are also subject to field audit at the discretion of SPD. The facility shall be notified in writing of the amount to be reimbursed and of any adjustments to the cost statement. Settlement of any amounts due to SPD must be made within 30 days of the date of notification to the facility.

(c) A facility is entitled to an informal conference and contested case hearing pursuant to ORS 183.413 through 183.470, as described in OAR 411-070-0435, to protest the reimbursement amount or the adjustment. If no request for an informal conference or contested case hearing is made within 30 days, the decision becomes final.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070
Hist.: SSD 8-1992, f. 7-29-92, cert. ef. 8-1-92; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2009, f. 11-30-09, cert. ef. 12-1-09

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Rule Caption: Homecare Workers Enrolled in the Client-Employed Provider Program.
Adm. Order No.: SPD 16-2009(Temp)
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 12-1-09 thru 5-30-10
Notice Publication Date:
Rules Amended: 411-031-0040
Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-031-0040 to reflect the 2009–2011 Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union (SEIU), Local 503, Oregon Public Employees Union (OPEU).
Rules Coordinator: Christina Hartman—(503) 945-6398

411-031-0040
Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider shall be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider shall be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) EMPLOYMENT RELATIONSHIP. The relationship between the provider and the client is that of employee and employer.

(2) CLIENT-EMPLOYER JOB DESCRIPTIONS. Each client-employer is responsible for creating and maintaining a job description for the potential employee in coordination with the services authorized by the case manager.

(3) HOMECARE WORKERS LIABILITIES. The only benefits available to homecare workers are those negotiated in the 2009-2011 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union and as provided in Oregon Revised Statute. This agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare workers are not state employees.

(4) CLIENT-EMPLOYER ABSENCES. When a client-employer is absent from the home due to an illness or medical treatment and is expected to return to the home within a 30 day period, a live-in provider, that is the only live-in provider for that client, may be retained to ensure his or her presence upon the client-employer's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal pay providers are not eligible for payment during a client absence.

(5) SELECTION OF HOMECARE WORKER. The client-employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The client-employer has the right to employ any individual who successfully meets the provider enrollment standards described in section (8) of this rule. The SPD/AAA office determines whether the employee meets minimum qualifications to provide the authorized services paid by SPD.

(6) EMPLOYMENT AGREEMENT. The client-employer retains the full right to establish the employer-employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. SPD may not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and homecare worker have been formally notified in writing that payment by SPD is authorized.

(7) TERMS OF EMPLOYMENT. The terms of the employment relationship are the responsibility of the client-employer to establish at the time of hire. These terms of employment include dismissal or resignation notice,

work scheduling, and absence reporting as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) PROVIDER ENROLLMENT.

(a) Enrollment Standards. A homecare worker must meet all of the following standards to be enrolled with the SPD's Client-Employed Provider Program:

(A) The homecare worker must maintain a drug-free work place.

(B) The homecare worker must be "approved" following a criminal records check as defined in OAR 407-007-0210.

(C) The homecare worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The homecare worker's U.S. employment authorization must be verified.

(E) The homecare worker must be 18 years of age or older. SPD Central Office may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homecare worker who is at least sixteen years of age.

(F) The homecare worker must complete an orientation as described in section (8)(e) of this rule.

(b) SPD/AAA may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge, or ability to adequately or safely provide services;

(D) The applicant lacks the ability or willingness to maintain client-employer confidentiality;

(E) The applicant has an unacceptable criminal record;

(F) The applicant is not 18 years of age;

(G) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other Federal Health Care Programs; or

(H) SPD/AAA has information that enrolling the applicant as a homecare worker may put vulnerable clients at risk.

(c) Criminal Records Rechecks. Criminal records rechecks shall be conducted at least every other year from the date the homecare worker is enrolled. SPD/AAA may conduct a recheck more frequently based on additional information discovered about the homecare worker, such as possible criminal activity or other allegations.

(A) When a homecare worker is approved without restrictions following a criminal records check fitness determination, the approval must meet the homecare worker enrollment requirement statewide whether the qualified entity is a state-operated SPD office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Criminal records check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against the homecare worker, a new fitness determination is conducted resulting in a change in approval status;

(ii) Approval under probationary status has ended following a final fitness determination, as defined in OAR 407-007-0210 and described in OAR 407-007-0320; or

(iii) The approval has ended because DHS has inactivated or terminated the homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior criminal records check approval for another DHS provider type is inadequate to meet criminal records check requirements for homecare worker enrollment.

(d) Limited Enrollment.

(A) SPD/AAA may approve a limited enrollment for a provider as an exclusive homecare worker based on the applicant's personal choice to provide services only to specific family members, friends, or neighbors. To remove exclusive homecare worker status and be designated as a career homecare worker, a homecare worker must complete a new application and criminal records check and be approved by SPD/AAA.

(B) SPD/AAA may approve a limited enrollment for a provider as a restricted homecare worker to provide services to specific individuals. To remove restricted homecare worker status and be designated as a career homecare worker, the applicant must complete a new application and criminal records check and be approved by SPD/AAA.

(i) After conducting a weighing test as described in OAR chapter 407, division 007, SPD/AAA may approve a homecare worker with prior criminal records under a restricted enrollment to provide services to only specific individuals who are family members, neighbors, or friends.

(ii) Based on the applicant's lack of skills, knowledge, or abilities, SPD/AAA may approve an applicant as a restricted homecare worker to provide services only to specific individuals who are family members, neighbors, or friends.

(iii) Based on an exception to the age requirements for provider enrollment approved by SPD Central Office as described in section (8)(a)(E) of this rule, a homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(C) Applicants who choose to provide services only to family, friends, or neighbors, shall only be approved for limited enrollment as a restricted homecare worker when:

(i) The applicant has a potentially disqualifying criminal records check that following a weighing test he or she would be denied as a career homecare worker;

(ii) The applicant lacks the skills, knowledge, or abilities to be approved as a career homecare worker; or

(iii) The applicant is at least 16 years of age and has been approved by SPD Central Office for an exception to the age requirements for provider enrollment as described in section (8)(a)(E) of this rule.

(e) Homecare Worker Orientation. Homecare workers must participate in an orientation arranged through a SPD/AAA office. The orientation must occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a homecare worker fails to complete an orientation within 90 days of provider enrollment, their provider number shall be inactivated and any authorization for payment of services shall be discontinued.

(f) A homecare worker's provider enrollment may be inactivated when:

(A) The homecare worker has not provided any paid services to any client in the last 12 months;

(B) The homecare worker fails to complete a criminal records check authorization or provide fingerprints in accordance with the criminal records check, when requested by SPD/AAA;

(C) The homecare worker informs SPD/AAA they will no longer be providing homecare worker services in Oregon;

(D) The provider fails to participate in a homecare worker orientation arranged through an SPD/AAA office within 90 days of provider enrollment; or

(E) A complaint is being investigated against a homecare worker who, at the time, is not providing any paid services to clients.

(9) PAID LEAVE.

(a) Live-In Homecare Workers. Irrespective of the number of clients served, SPD shall authorize one 24 hour period of leave each month, when a live-in homecare worker or spousal pay provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in homecare worker shall receive a proportional share of that 24 hour period of leave authorization. A prorated share of the 24 hours shall be allocated proportionately to each live-in when there is more than one live-in provider per client.

(A) Accumulation and Usage for Live-In Providers. A provider may not accumulate more than 144 hours of accrued leave. The employer, homecare worker, and case manager shall coordinate the timely use of these hours. Live-in homecare workers must take vacation leave in 24 hour increments or in hourly increments of at least four but not more than 12 hours. Accrued leave must be taken while employed as a live-in.

(B) The Right to Retain Live-In Paid Leave. The homecare worker retains the right to access earned paid leave when terminating employment with one employer, so long as the homecare worker is employed with another employer as a live-in within one year of termination.

(C) Transferability of Live-In Paid Leave. Live-in homecare workers who convert to hourly or separate from live-in service and return as an hourly homecare worker within one year from the last date of live-in services shall be credited with their unused hours of leave up to a maximum of 32 hours.

(D) Cash Out of Paid Leave.

(i) DHS shall pay live-in homecare workers 50 percent of all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced 50 percent with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may only be paid up to the amount of remaining unused paid leave.

(iii) Effective November 6, 2009, a live-in homecare worker providing live-in services seven days per week for one client-employer may submit a request for payment of 100 percent of unused paid leave if:

(I) The live-in homecare worker's client-employer is no longer eligible for in-home services described in OAR chapter 411, division 030; and

(II) The live-in homecare worker does not have alternative residential housing.

(iv) If a request for payment of 100 percent of unused paid leave based on sections (9)(a)(D)(iii)(I) and (9)(a)(D)(iii)(II) of this rule is granted, the homecare's paid leave balance is reduced to zero.

(b) Hourly Homecare Workers. On July 1st of each year, active homecare workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) shall be credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) shall be credited with 16 hours of paid time off. One 16 hour block of paid leave shall be credited to each eligible homecare worker, irrespective of the number of clients they serve. Such leave may not be cumulative from biennium to biennium.

(A) Utilization of Hourly Paid Leave.

(i) Such time off must be utilized in one eight hour block subject to authorization. If the homecare worker's normal workday is less than eight hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(ii) Hourly homecare workers may take unused paid leave when their employer is temporarily unavailable for the homecare worker to provide services.

(B) Limitations of Hourly Paid Leave. Homecare workers may not be compensated for paid leave unless the time off work is actually taken except as noted in section (9)(b)(D) of this rule.

(C) Transferability of Hourly Paid Leave. An hourly homecare worker who transfers to work as a live-in homecare worker (within the biennium that their hourly leave is earned) shall maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(D) Cash Out of Paid Leave.

(i) DHS shall pay hourly providers for all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced to zero with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may not be paid if paid leave has already been cashed out.

(10) SPD FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) Direct Service Payments. SPD shall make payment to the provider on behalf of the client for all in-home services. This payment shall be considered full payment for the services rendered under Title XIX. Under no circumstances is the homecare worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to homecare workers for the same services covered by Oregon's Title XIX Home and Community Based Services Waiver is prohibited.

(b) Timely Submission of Claims. In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) Ancillary Contributions.

(A) Federal Insurance Contributions Act (FICA). Acting on behalf of the Client-Employer, SPD shall apply any applicable FICA regulations and shall:

(i) Withhold the homecare worker-employee contribution from payments; and

(ii) Submit the client-employer contribution and the amounts withheld from the homecare worker-employee to the Social Security Administration.

(B) Benefit Fund Assessment. The Workers' Benefit Fund pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. SPD calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the client-employer, SPD shall:

(i) Deduct the homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collect the client-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submit the client and homecare worker's contributions to the Workers' Benefit Fund.

(C) SPD shall pay the employer's share of the unemployment tax.

(d) Ancillary Withholdings. For purposes of section (10)(d) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) SPD shall deduct from the homecare worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with SPD to pay the actual administrative costs of the deductions.

(C) SPD shall pay the deducted amount monthly to the designated labor organization.

(e) State and Federal Income Tax Withholding.

(A) SPD shall withhold state and federal income taxes on all payments to homecare workers, as indicated in the Home Care Commission's Collective Bargaining Agreement with the Service Employee's International Union.

(B) Homecare workers must complete and return a current Internal Revenue Service W-4 form to the local office. SPD shall apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) HOMECARE WORKER EXPENSES SECONDARY TO PERFORMANCE OF DUTIES.

(a) Providers may be reimbursed at $0.485 cents per mile effective October 1, 2007 when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the DHS, Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan shall be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) BENEFITS. Workers' compensation as defined in Oregon Revised Statute and health insurance are available to eligible homecare workers as defined in the 2009-2011 Home Care Commission's Bargaining Agreement with the Service Employee's International Union. In order to receive homecare worker services, the client-employer must provide written authorization and consent to SPD for the provision of workers' compensation insurance for their employee.

(13) OVERPAYMENTS.

(a) An overpayment is any payment made to a homecare worker by SPD that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

(A) Administrative error overpayment. Occurs when SPD failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) Provider error overpayment. Occurs when SPD overpays the homecare worker due to a misunderstanding or unintentional error.

(C) Fraud overpayment. "Fraud" means taking actions that may result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). SPD shall determine, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit shall determine when a Medicaid fraud allegation shall be pursued for prosecution.

(c) Overpayments are recovered as follows:

(A) Overpayments shall be collected prior to garnishments, such as child support, Internal Revenue Service back taxes, and educational loans.

(B) Administrative or provider error overpayments shall be collected at no more than 5 percent of the homecare worker's gross wages.

(C) SPD shall determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as homecare workers, shall have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050 & 410.090

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

Hist.: SPD 17-2004, f. 5-28-04, cert.ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 18-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 4-29-08; SPD 6-2008, f. 4-28-08, cert. ef. 4-29-08; SPD 16-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10

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Rule Caption: Supported Living Services for Individuals with Developmental Disabilities.
Adm. Order No.: SPD 17-2009
Filed with Sec. of State: 12-9-2009
Certified to be Effective: 12-9-09
Notice Publication Date:
Rules Renumbered: 309-041-0550 to 411-328-0550, 309-041-0560 to 411-328-0560, 309-041-0570 to 411-328-0570, 309-041-0580 to 411-328-0580, 309-041-0590 to 411-328-0590, 309-041-0600 to 411-328-0600, 309-041-0610 to 411-328-0610, 309-041-0620 to 411-328-0620, 309-041-0630 to 411-328-0630, 309-041-0640 to 411-328-0640, 309-041-0650 to 411-328-0650, 309-041-0660 to 411-328-0660, 309-041-0670 to 411-328-0670, 309-041-0680 to 411-328-0680, 309-041-0690 to 411-328-0690, 309-041-0700 to 411-328-0700, 309-041-0710 to 411-328-0710, 309-041-0715 to 411-328-0715, 309-041-0720 to 411-328-0720, 309-041-0730 to 411-328-0730, 309-041-0740 to 411-328-0740, 309-041-0750 to 411-328-0750, 309-041-0760 to 411-328-0760, 309-041-0770 to 411-328-0770, 309-041-0780 to 411-328-0780, 309-041-0790 to 411-328-0790, 309-041-0800 to 411-328-0800, 309-041-0805 to 411-328-0805, 309-041-0810 to 411-328-0810, 309-041-0820 to 411-328-0820, 309-041-0830 to 411-328-0830
Subject: The Department of Human Services, Seniors and People with Disabilities Division is renumbering the supported living services rules for individuals with developmental disabilities from OAR 309-041-0550 through OAR 309-041-0830 to OAR chapter 411, division 328.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-328-0550
Statement of Purpose, Mission Statement, and Statutory Authority

(1) Purpose. These rules prescribe standards by which the Mental Health and Developmental Disability Services Division approves programs that provide supported living services for individuals with developmental disabilities.

(2) Mission Statement. The overall mission of the Office of Developmental Disability Services is to provide support services that enhance the quality of life of persons with developmental disabilities.

(a) Supported living services are a key element in the service delivery system and are critical to achieving this mission.

(b) The goal of supported living is to assist individuals to live in their own homes, in their own communities.

(c) The term "Supported Living" refers to a service which provides the opportunity for persons with developmental disabilities to live in the residence of their choice within the community with recognition that needs and preferences may change over time. Levels of support are based upon individual needs and preferences as defined in the Individual Support Plan. Such services may include up to 24 hours per day of paid supports which are provided in a manner that protects individuals' dignity.

(d) The service provider is responsible for developing and implementing policies and procedures and/or plans that ensure that the requirements of this rule are met.

(e) In addition, the service provider must ensure services comply with all applicable local, state and federal laws and regulations.

(f) The purpose of this rule is to ensure that the service provider meets basic management, programmatic, health and safety, and human rights regulations for those individuals receiving supported living services funded by the Mental Health and Developmental Disability Services Division.

(3) Statutory Authority. These rules are authorized by ORS 430.041(1) and carry out the provisions of ORS 430.021(4) and 430.630(2)(c).

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0550 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0560
Definitions

As used in these rules, the following definitions apply:

(1) "Abuse of an adult" as defined in OAR 309-040-0200 to 309-040-0290 includes but is not limited to:

(a) Any death caused by other than accidental or natural, or means occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or service provider, or other staff and the adult. Sexual exploitation also includes failure of staff to discourage sexual advances towards staff by individuals served. For situations other than those involving an employee, service provider, or other staff and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Failure to act/neglect that causes or has significant potential to cause physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to the failure by a service provider or staff to provide an adult with adequate food, clothing, shelter, medical care, supervision, a safe environment or other services or supports necessary to maintain health and well-being, or through condoning or permitting abuse of an adult by any other person. However, no person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(f) Verbal mistreatment by subjecting an adult to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation and threatening injury or withholding of services or supports, including implied or direct threat of termination of services. It is not considered verbal mistreatment, however, in situations where the consequence for noncompliance may result in the termination of services, if agreed upon by the ISP team;

(g) Placing restrictions on an individual's freedom of movement by seclusion in a locked room under any condition, restriction to an area of the residence or from access to ordinarily accessible areas of the residence, unless arranged for and agreed to on the individual's support plan;

(h) Using restraints without written physician's order, or unless an individual's actions present an imminent danger to himself/herself or others, and in such circumstances until other appropriate action is taken by medical, emergency or police personnel or unless arranged for and agreed to on the ISP;

(i) Financial exploitation which may include, but is not limited to: unauthorized rate increases; staff borrowing from or loaning money to individuals; witnessing wills in which the program is beneficiary; and/or adding the program's name to the individual's bank account(s) or other personal property without approval of the individual or his/her legal guardian and notification of the ISP Team; and

(j) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, comingling an individual's personal funds with program and/or another individual's funds, or the program becoming an individual's guardian or conservator.

(2) "Abuse investigation and protective services" means an investigation as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administration of medication" means the act of a staff member, who is responsible for the individual's care, of placing a medication in, or on, an individual's body.

(4) "Adult" means a person 18 years or older with developmental disabilities for whom services are planned and provided.

(5) "Advocate" means a person other than staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(6) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(7) "Annual ISP meeting" means an annual meeting, coordinated by a case manager of the community mental health program, which is attended by the individual served, agency representatives who provide service to the individual, the guardian, if any, relatives of the individual and/or other

persons, such as an advocate, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an Individual Support Plan.

(8) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide residential services for individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(9) "Case manager" means an employee of the community mental health program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(10) "Certificate" means a document issued by the Mental Health and Developmental Disability Services Division to a provider of supported living services which certifies that the provider is eligible to receive State funds for these services.

(11) "Choice" means the individual's expression of preferences of activities and services through verbal, sign language or other communication method.

(12) "Community mental health program" or "CMHP" means the organization of all services for individuals with mental or emotional disturbances, developmental disabilities or chemical dependency, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Mental Health and Developmental Disability Services Division.

(13) "Complaint investigation" means an investigation of any allegation which has been made to a proper authority that the service provider has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(14) "Controlled substance" means any drug classified as Schedules 1 through 5 under the Federal Controlled Substance Act.

(15) "Developmental disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy and/or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification shall be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiencies, 1983 Revision. Mental retardation is synonymous with mental deficiency.

(16) "Director" means the individual responsible for administration of the supported living program and provision of support services for individuals.

(17) "Division" means the Mental Health and Developmental Disability Services Division.

(18) "Entry" means the admission to a Division funded service.

(19) "Exit" means either termination or transfer from one Division funded program to another. Exit from a program does not include transfer within a program.

(20) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(21) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(22) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(23) "Independence" is defined as the extent to which persons with mental retardation or developmental disabilities, with or without staff assistance, exert control and choice over their own lives.

(24) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(25) "Individual profile" means a written profile that describes the individual entering into supported living. The profile may consist of materials and/or assessments generated by the service provider or other related agencies, consultants, family members, and/or advocates.

(26) "Individual Support Plan" or "ISP" means a written plan of support and training services for an individual covering a 12-month period which addresses the individual's support needs and the service provider's program plan. This written plan of training and support services was formally referred to as Individual Habilitation Plan (IHP).

(27) "Individual Support Plan Team" or "ISP team" means a team composed of the individual, the case manager, the individual's legal guardian, representatives of all current service providers, and advocate or others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership shall be determined by the ISP team members.

(28) "Integration" (defined in ORS 427.005) means that persons with mental retardation or other developmental disabilities live in the community and use the same community resources that are used by and available to other members of the community; and participate in the same community activities other community members participate in, and have contact with other community members.

(29) "Legal representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by a court to make decisions about services for the individual.

(30) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any individual.

(31) "Needs meeting" means a process in which the ISP team defines the supports an individual will need to live in his/her own home, and makes a determination as to the feasibility of creating such services. The information generated in this meeting(s) or discussion(s) shall be used by the supported living provider to develop the individual's transition plan.

(32) "Office of Developmental Disability Services" or "DD Office" means the Office of Developmental Disability Services of the Mental Health and Developmental Disability Services Division.

(33) "Personal futures planning" means an optional planning process for describing a desirable future for a person with developmental disabilities. The planning process generally occurs around major life transitions (e.g. moving into a new home, graduation from high school, marriage, etc.). This process helps determine activities, supports and resources which will best create a desirable future for the individual.

(34) "Physical restraint" means restricting the movement of an individual or restricting the movement or normal function of a portion of the individual's body.

(35) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(36) "Protection" means the necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and/or to safeguard an individual's person, property and funds as possible.

(37) "Psychotropic medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(38) "Self-administration of medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his/her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(39) "Service provider" means a public or private community agency or organization that provides recognized mental health or developmental disability service(s) and is approved by the Division or other appropriate agency to provide these service(s). For the purpose of this rule "provider" or "Program" is synonymous with "service provider."

(40) "Significant other" means a person selected by the individual to be his/her friend.

(41) "Staff" means a paid employee responsible for providing support services to individuals and whose wages are paid in part or in full with funds contracted through the Developmental Disability Services Office.

(42) "Support" means those services that assist an individual maintaining or increaseing his or her functional independence, achieving

community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(43) "Supported living" refers to a service which provides the opportunity for persons with developmental disabilities to live in a residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want for as long as they desire, with a recognition that needs and desires may change over time.

(44) "Transfer" means movement of an individual from one type of service to another administered by the same service provider.

(45) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and the time when the individual's ISP is developed and approved by the ISP team. The plan shall include a summary of the services necessary to facilitate adjustment to supported living, ensure health and safety, and the assessments and/or consultations necessary for the ISP development.

(46) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0560 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0570
Issuance of Certificate

(1) Certificate required. No person or governmental unit acting individually or jointly with any other person or governmental unit shall establish, conduct, maintain, manage or operate a supported living program without being certified.

(2) Not transferable. Each certificate is issued only for the supported living program and persons or governmental units named in the application and shall not be transferable or assignable.

(3) Terms of certificate. Each certificate is issued for a maximum of two years.

(4) Service provider review. As part of the certificated renewal process, the service provider shall conduct a self-evaluation based upon the requirements of this rule.

(a) The service provider shall document the self-evaluation information on forms provided by the DD Office;

(b) The service provider shall develop and implement a plan of improvement based upon the findings of the self-evaluation; and

(c) The service provider shall submit these documents to the local CMHP with a copy to the DD Office.

(5) DD Office review. The DD Office shall conduct a review of the service provider prior to the issuance of a certificate.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0570 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0580
Application for Initial Certificate and Certificate Renewal

(1) Form. The application shall be on a form provided by the Division and shall include all information requested by the Division.

(2) Initial application. The applicant shall identify the number of individuals to be served.

(3) Renewal application. To renew certification, the service provider shall make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal, no increase in the number of individuals to be served shall be certified unless specifically approved by the Division.

(4) Renewal application extends expiration date. Filing of an application for renewal at least 30 days but not more than 120 days prior to the expiration date of the existing certificate extends the effective date until the Division or its designee takes action upon such application.

(5) Incomplete or incorrect information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application may result in denial, revocation or refusal to renew the certificate.

(6) Demonstrated capability. Prior to issuance or renewal of the certificate the applicant must demonstrate to the satisfaction of the Division that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(7) Separate certificates. Separate certificates are required when the service provider delivers services in multiple counties to the extent that contracts with each different county are required.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0580 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0590
Certification Expiration, Termination of Operations, Certificate Return

(1) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a supported living program shall expire on the expiration date specified on the certificate.

(2) Termination of operation. If a supported living program operation is discontinued, the certificate terminates automatically on the date the operation is discontinued.

(3) Return of certificate. Each certificate in the possession of the program shall be returned to the Division immediately upon suspension, revocation or termination.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0590 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0600
Change of Ownership, Legal Entity, Legal Status, Management Corporation

(1) Notice of pending change in ownership, legal entity, legal status or management corporation. The program shall notify the Division in writing of any pending change in the program's ownership or legal entity, legal status or management corporation.

(2) New certificate required. A new certificate shall be required upon change in a program's ownership/legal entity or legal status. The program shall submit a certificate application at least 30 days prior to change in ownership/legal entity or legal status.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0600 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0610
Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule shall allow the following types of investigations and inspections:

(a) Quality assurance, certificate renewal and onsite inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) Inspections and investigations by the Division, its designee or proper authority. All inspections and investigations shall be performed by the Division, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule shall be:

(a) Open to inspection and investigation by the Division, its designee or proper authority; and

(b) Submitted to the Division within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Division and/or its designee has determined to initiate an investigation, the service provider shall not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions shall be taken.

(6) The Division or its designee shall complete an Abuse Investigation and Protective Services Report according to OAR 309-040-0260(1). The report shall include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse and/or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation by the Division, its designee, or a law enforcement agency, a service provider may conduct an investigation without further Division approval to determine if any other personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 309-040-0260(1), the sections of the report which are public records and not exempt from disclosure under the public records law shall be provided to the appropriate service provider(s). The service provider shall implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) Plan of improvement. A plan of improvement shall be submitted to the CMHP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0610 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0620
Alternative Methods, Variances

(1) Criteria for a variance. Variances may be granted to a service provider if the service provider lacks the resources needed to implement the standards required in this rule, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules or if there are other extenuating circumstances.

(2) Variance application. The service provider requesting a variance shall submit, in writing, an application to the CMHP which contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(3) Community Mental Health Program review. The CMHP shall forward signed documentation to the Division within 30 days of receipt of the request for variance indicating its position on the proposed variance.

(4) Office of Developmental Disability Services review. The Assistant Administrator or designee of the DD Office shall approve or deny the request for a variance.

(5) Notification. The DD Office shall notify the provider and the CMHP of the decision. This notice shall be sent within 30 days of the receipt by the DD Office with a copy to other relevant sections of the Division.

(6) Appeal. Appeal of the denial of a variance request shall be made in writing to the Administrator of the Division, whose decision shall be final.

(7) Duration of variance. The duration of the variance shall be determined by the DD Office.

(8) Written approval. The provider may implement a variance only after written approval from the Division.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0620 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0630
Health: Medical Services

(1) Confidentiality. All individuals' medical records shall be kept confidential as described in OAR 309-041-0730(1).

(2) Sufficient oversight and guidance. Individuals shall receive sufficient oversight and guidance by the program to ensure that their health and medical needs are adequately addressed.

(3) Written health and medical supports. Written health and medical supports shall be developed as required by the individual's ISP team and integrated into the transition plan or ISP. The plan shall be based on a review or identification of the individual's health and medically related support needs and preferences, and updated annually or as significant changes occur.

(4) Written policies and procedures. The program shall have and implement written policies and procedures which maintain and/or improve the physical health of individuals. Policies and procedures shall address early detection and prevention of infectious disease; emergency medical intervention; treatment and documentation of illness and health care concerns; obtaining, administering, storing and disposing of prescription and non-prescription drugs including self administration; and confidentiality of medical records.

(5) Primary physician or health care provider. The provider shall ensure each individual has a primary physician whom he or she has chosen from among qualified providers.

(6) Secondary physician/clinic. Provisions shall be made for a secondary physician/clinic in the event of an emergency.

(7) Medical evaluation. The program shall ensure that individuals have a medical evaluation by a physician no less often than every two years or as recommended by a physician. Evidence of the evaluation shall be placed in the individual's record and shall address:

(a) Current health status;

(b) Changes in health status;

(c) Recommendations, if any, for further medical intervention;

(d) Any remedial and corrective action required and when such actions were taken;

(e) Statement of restrictions on activities due to medical limitations; and

(f) A review of medications, treatments, special diets and therapies prescribed.

(8) Medical profile. Provider, before entry, shall obtain the most complete medical profile available, including:

(a) The results of a physical exam made within 90 days prior to entry;

(b) Findings of a TB test made within two weeks of entry;

(c) Results of any dental evaluation;

(d) A record of immunizations;

(e) Status of Hepatitis B screening;

(f) A record of known communicable diseases and allergies; and

(g) A summary of the individual's medical history including chronic health concerns.

(9) Written physician's order. The provider shall ensure that all medications, treatments, and therapies shall:

(a) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered to or self-administered by the individual unless otherwise indicated by the ISP team in the written health and medical support section of the ISP or transition plan.

(b) Be followed per written orders.

(10) PRN/Psychotropic medication prohibited. PRN orders shall not be allowed for psychotropic medication.

(11) Drug regimen. The drug regimen of each individual on prescription medication shall be reviewed and evaluated by a physician or physician designee, no less often than every 180 days unless otherwise indicated by the ISP Team in the written health and medical support section of the ISP or transition plan.

(12) Administering prescribed medications and treatments with assistance. All prescribed medications and treatments shall be self-administered unless contraindicated by the ISP team. For individuals who require assistance in the administration of their own medications, the following shall be required:

(a) That the ISP Team has recommended that the individual be assisted with taking their medication;

(b) That there is a written training program for the self-administration of medication unless contraindicated by the ISP Team; and

(c) That there is a written record of medications and treatments, that document physician's orders are being followed.

(13) Independent in medication administration. For individuals who independently self-administer medications, there shall be a plan for the periodic monitoring and/or review of medications on each individual's ISP.

(14) Use of prosthetic devices. The program shall assist individuals with the use of prosthetic devices as ordered.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0630 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0640
Health: Dietary

(1) Identifying amount of support and guidance. The service provider shall be responsible for identifying the amount of support and guidance required to ensure that individuals are provided access to a nutritionally adequate diet.

(2) Written dietary supports. Written dietary supports shall be developed as required by the individual's ISP team and integrated into the transition plan or ISP. The plan shall be based on a review and identification of the individual's dietary service needs and preferences, and updated annually or as significant changes occur.

(3) Dietary policies and procedures. The program shall have and implement policies and procedures related to maintaining adequate food supplies, meal planning, preparation, service, and storage.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0640 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0650
Health: Physical Environment

(1) Maintained. All floors, walls, ceilings, windows, furniture and fixtures shall be maintained.

(2) Water and sewage. The water supply and sewage disposal shall meet the requirements of the current rules of the Oregon Health Division governing domestic water supply.

(3) Kitchen and bathroom. Each residence shall have:

(a) A kitchen area for the preparation of hot meals; and

(b) A bathroom containing a properly operating toilet, handwashing sink and bathtub or shower.

(4) Adequately heated and ventilated. Each residence shall be adequately heated and ventilated.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; Renumbered from 309-041-0650 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0660
Safety: General

(1) Employing means for protecting health and safety. The service provider shall employ means for protecting individuals health and safety which:

(a) Are not unduly restrictive;

(b) May include risks, but do not inordinately affect an individual's health, safety and welfare; and

(c) Are used by other individuals in the community.

(2) Written safety supports. Written safety supports shall be developed as required by the individual's ISP team and integrated into the transition plan or ISP. The plan shall:

(a) Be based on a review and identification of the person's safety needs and preferences;

(b) Be updated annually or as significant changes occur; and

(c) Identify how the individual will evacuate his/her residence, specifying at a minimum, routes to be used and the level of assistance needed.

(3) Policies and procedures related to safety, emergencies and disasters. The program shall have and implement policies and procedures that provide for the safety of individuals and for responses to emergencies and disasters.

(4) Smoke detectors. An operable smoke detector shall be available in each bedroom and in a central location on each floor.

(5) Fire extinguisher. An operable class 2A10BC fire extinguisher shall be easily accessible in each residence.

(6) First aid supplies. First aid supplies should be available in each residence.

(7) Emergency fire procedures. The need for emergency evacuation procedures and documentation thereof shall be assessed and determined by the individual's ISP team.

(8) Flashlight. An operable flashlight shall be available in each residence.

(9) Adaptations required for sensory or physically impaired. The service provider shall provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(10) Square footage requirement for bedrooms. Bedrooms shall meet minimum space requirements (single 60 square feet, double 120 square feet with beds located three feet apart).

(11) Window openings. Sleeping rooms shall have at least one window readily openable from the inside without special tools that provides a clear opening through which the individual can exit.

(12) Availability of emergency information. Emergency telephone numbers shall be available at each individual's residence as follows:

(a) The telephone numbers of the local fire, police department and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the Director or designee, emergency physician and other persons to be contacted in case of an emergency.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0660 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0670
Safety: Personnel

(1) Basic personnel policies and procedures. The program shall have in place personnel policies and procedures which address suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an alleged perpetrator in an abuse investigation. The program shall also have in place personnel policies and procedures which address disciplinary and/or termination of employment when the allegation of abuse has been substantiated.

(2) Mandatory abuse reporting personnel policies and procedures. Any employee of a private agency which contracts with a CMHP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status shall be made at least annually to all employees on forms provided by the Division. All employees shall be provided with a Division-produced card regarding abuse reporting status and abuse reporting.

(3) Director qualifications. The program shall be operated under the supervision of a Director who has minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or six years of experience, including supervision, in the field of developmental disabilities or a social service/mental health field.

(4) Staff qualifications. Any staff who supervise individuals shall be at least 18 years of age and capable of performing the duties of the job as described in a current job description which he/she signed and dated.

(5) Personnel files and qualifications records. The program shall maintain a personnel file for each staff person. In addition, the program shall maintain the following for each staff person in a file available to the Division or its designee for inspection:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training on individual profiles and transition plan or ISP;

(c) Documentation that CPR and first aid certification were obtained from a recognized training agency within three months of employment and are kept current;

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of a criminal record clearance by the Division;

(f) Written documentation of a TB test within two weeks of hire; and

(g) Written documentation of employee notification of mandatory abuse reporter status; and

(h) Written documentation of any substantiated abuse allegations; and

(i) Written documentation of any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0670 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0680
Safety: Staffing Requirements

(1) On-call staff. The program shall provide responsible persons or agency, on-call and available to individuals by telephone at all times.

(2) General staffing requirements. The program shall provide staff appropriate to the number and needs of individuals served as specified in each individual's support plan.

(3) Contract requirements for support staff ratios. Each program shall meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; Renumbered from 309-041-0680 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0690
Safety: Individual Summary Sheets

Current record. A current record shall be maintained by the program for each individual receiving services. The record shall include:

(1) The individual's name, current address, home phone number, date of entry into the program, date of birth, sex, marital status, social security number, social security beneficiary account number, religious preference, preferred hospital, where applicable the number of the Disability Services Office (DSO) or the Multi-Service Office (MSO) of the Seniors and People with Disabilities Division (SPD), guardianship status; and

(2) The name, address and telephone number of:

(a) The individual's legal representative, family, advocate, or other designated contact person;

(b) The individual's preferred physician, secondary physician and/or clinic;

(c) The individual's preferred dentist;

(d) The individual's day program, or employer, if any;

(e) The individual's case manager; and

(f) Other agency representatives providing services to the individual.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0690 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0700
Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual shall be placed in the individual's record. Such description shall include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review and follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression or unusual incident.

(2) Sent to case manager. Copies of all unusual incident (as defined by OAR 309-041-0560(45)) reports shall be sent to the case manager within five working days of the incident.

(3) Immediate notification of allegations of abuse and abuse investigations. The program shall notify the CMHP immediately of an incident or allegation of abuse falling within the scope of 309-041-0560(1)(a) through (d). When an abuse investigation has been initiated, the CMHP shall ensure that either the case manager or the program shall also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification. In the case of a serious illness, injury or death of an individual, the program shall immediately notify:

(a) The individual's legal guardian or conservator, parent, next of kin, designated contact person and/or other significant person;

(b) The Community Mental Health Program; and

(c) Any other agency responsible for the individual.

(5) Missing person notification. In the case of an individual who is missing beyond the timeframes established by the ISP team, the program shall immediately notify:

(a) The individual's designated contact person;

(b) The individual's guardian, if any, or nearest responsible relative;

(c) The local police department; and

(d) The Community Mental Health Program.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0700 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0710
Safety: Vehicles and Drivers

(1) Vehicles operated to transport individuals. Service providers that own or operate vehicles that transport individuals shall:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain insurance coverage on the vehicles and all authorized drivers; and

(d) Carry in vehicles a fire extinguisher and first aid kit.

(2) Drivers. Drivers operating vehicles to transport individuals must meet applicable Department of Motor Vehicles requirements.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0710 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0715
Rights: Financial

(1) Written individual financial supports. Written individual financial supports shall be developed as required by the individual's ISP team and integrated into the transition plan or ISP. The plan shall be based on a review and identification of the individual's financial support needs and preferences, and be updated annually or as significant changes occur.

(2) Financial policies and procedures. The program shall have and implement written policies and procedures related to the oversight of the individual's financial resources.

(3) Reimbursement to individual. The program shall reimburse to the individual any funds that are missing due to theft and/or mismanagement on the part of any staff of the program, and/or of any funds within the custody of the program that are missing. Such reimbursement shall be made within 10 working days of the verification that funds are missing.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0715 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0720
Rights: General

(1) Abuse prohibited. Any adult as defined at 309-041-0560(4) or any individual as defined at 309-041-0560(23) shall not be abused nor shall abuse be condoned by an employee, staff or volunteer of the program.

(2) Policies and procedures. The program shall have and implement written policies and procedures which protect individual's rights and encourage and assist individuals to understand and exercise these rights. These policies and procedures shall at a minimum provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens;

(b) Adequate food, housing, clothing, medical and health care, supportive services and training;

(c) Visits to and from family members, friends, advocates, and when necessary legal and medical professionals;

(d) Private communication, including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical/mechanical restraints;

(h) Freedom from unauthorized personal restraints;

(i) Freedom to choose whether or not to participate in religious activity;

(j) The opportunity to vote and training in the voting process if desired;

(k) Expression of sexuality, to marry and to have children;

(l) Access to community resources, including recreation, agency services, employment and alternatives to employment programs, educational opportunities and health care resources;

(m) Transfer of individuals within a program;

(n) Individual choice that allows control and ownership of their personal affairs;

(o) Appropriate services which promote independence, dignity and self-esteem and are also appropriate to the age and preferences of the individual;

(p) Individual choice to consent to or refuse treatment; and

(q) Individual choice to participate in community activities.

(3) Notification of policies and procedures. The program shall inform each individual and parent/guardian/advocate orally and in writing of its

rights policy and procedures and a description of how to exercise them at entry to the program and, in a timely manner, as changes occur.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0720 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0730
Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules shall be considered "providers" as defined in ORS 179.505(1), and all of ORS 179.505 shall be applicable.

(2) For the purposes of disclosure from nonmedical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0730 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0740
Rights: Grievances

(1) Policies and procedures. The program shall implement written policies and procedures for individuals' grievances. These policies and procedures shall, at a minimum, provide for:

(a) Receipt of grievances from individual(s) or others acting on his/her behalf. If the grievance is associated in any way with abuse or the violation of the individual's rights, the recipient of the grievance shall immediately report the issue to the program's director or designee and the CMHP;

(b) Investigation of the facts supporting or disproving the grievance;

(c) Taking appropriate actions on grievances within five working days following receipt of the grievance;

(d) Submission to the program's director. If the grievance is not resolved it shall be submitted to the program's director for review. Such review shall be completed and a written response provided within 15 days;

(e) Submission to the Community Mental Health Program. If the grievance is not resolved by the program's director it shall be submitted to the Community Mental Health Program for review. Such review shall be completed and a written response provided within 30 days;

(f) Submission to the Administrator. If the grievance is not resolved by the Community Mental Health Program, it may be submitted to the Administrator for review. Such review shall be completed and a written response provided within 45 days of submission. The decision of the Administrator or designee shall be final; and

(g) Documentation of each grievance and its resolution in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation shall include a statement that disciplinary action was taken.

(2) Copies of all grievances to case manager. Copies of the documentation on all grievances shall be sent by the program to the case manager within 15 working days of initial receipt of the grievance.

(3) Notification of policy and procedures. The program shall inform each individual and parent/guardian/advocate orally and in writing at entry to the program and as changes occur in the program's grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0740 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0750
Rights: Personalized Plans

(1) Team process. The decision to support an individual so that he/she can live in and maintain his/her own home requires significant involvement from the individual and his/her ISP team. In supported living, this process is characterized by a series of team meetings or discussions to determine what personalized supports the individual will need to live in his/her home, a determination as to the feasibility of creating such supports, and the development of a written plan which describes services the individual will receive upon entry into supported living.

(2) Needs meeting. Prior to moving into his/her own home, the ISP team shall meet to discuss the individual's projected service needs in a needs meeting. This meeting shall:

(a) Review information related to the individual's health and medical, safety, dietary, financial, social, leisure, staff, mental health and behavioral support needs and preferences;

(b) Include any potential providers, the individual and other ISP team members;

(c) Result in a written list of supports and services needed; and

(d) Discuss the selection of potential providers based on list of support and services needed.

(3) Transition plan. The provider will be required to spend time getting to know the individual personally before working on the development of the transition plan. The individual, provider, and other ISP team members shall participate in an entry meeting prior to the initiation of services. The outcome of this meeting shall be a written transition plan which shall take effect upon entry and shall:

(a) Address the individual's health and medical, safety, dietary, financial, staffing, mental health and behavioral support needs and preferences as required by the ISP team;

(b) Indicate who is responsible for providing the supports described in the plan;

(c) Be based on the list of supports identified in the needs meeting and other assessments and/or consultation required by the ISP team; and

(d) Be in effect and available at the site until the ISP is developed and approved by the ISP team.

(4) Individual support team membership. The team shall include the individual, the case manager, the individual's legal guardian, representatives of all current service providers, the provider who will provide supported living services, and advocate or others determined appropriate by the individual receiving services.

(5) Individual support plan. A copy of each individual's Individual Support Plan shall be developed and approved by the ISP team within 90 days of entry and shall be available at the individual's home within 30 days of development and approval. The plan shall:

(a) Be based on a review and identification of the individual's service needs and preferences;

(b) Include a summary of the services related to the individual's health and medical, safety, dietary, financial and mental health and behavioral needs and preferences as determined by the ISP team;

(c) Identify who is responsible for providing the services and supports described in the plan; and

(d) Be updated as significant changes occur and/or at least annually.

(6) Distribution of ISP document. The case manager shall ensure distribution of a copy of the ISP to all team members within 30 calendar days of the ISP team meeting.

(7) Individual Profile. The program shall develop a written profile which describes the individual. This information shall be used in training new staff. The profile shall be completed within 90 days of entry. The profile shall include information related to the individual's history or personal highlights, lifestyle and activity choices and preferences, social network/significant relationships, and other information that helps describe the individual.

(8) Profile composition. The profile shall be composed of written information generated by the program. It may include reports of assessments or consultations; historical or current materials developed by the CMHP, training centers, and/or nursing homes; material/pictures from the family and/or advocates; newspaper articles; and other relevant information.

(9) Profile maintained. The profile shall be maintained at the service site and updated as significant changes occur.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0750 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0760
Rights: Behavior Intervention

(1) Written policy. The service provider shall have and implement a written policy concerning behavior intervention procedures. The service provider shall inform the individual and his/her legal guardian of the behavior intervention policy and procedures at the time of entry and as changes occur.

(2) Implementation of a program to alter an individual's behavior. A decision to implement a program to alter an individual's behavior shall be made by the ISP team and the program shall be described fully in the individual's ISP. The program shall:

(a) Emphasize the development of the functional alternative behavior and positive approaches and positive behavior intervention;

(b) Use the least intervention possible;

(c) Ensure that abusive or demeaning intervention shall never be used; and

(d) Be evaluated by the service provider through timely review of specific data on the progress and effectiveness of the procedure.

(3) Documentation requirements. Documentation regarding the behavior program shall include:

(a) Documentation that the individual, the guardian, and ISP team are fully aware of and consent to the program in accordance with the ISP process as defined in the Case Management Services Rule OAR 309-041-0420;

(b) Documentation of all prior programs used to develop an alternative behavior; and

(c) A functional analysis of the behavior which has been completed prior to developing the behavior program by a trained staff member and/or consultant. This written record shall include:

(A) A clear, measurable description of the behavior to include frequency, duration, intensity and severity of the behavior;

(B) A clear description of the need to alter the behavior;

(C) An assessment of the meaning of the behavior, which includes the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of medical conditions;

(iii) The result of environmental causes; or

(iv) The result of other factors;

(d) A description of the conditions which precede the behavior in question;

(e) A description of what appears to reinforce and maintain the behavior; and

(f) A clear and measurable procedure which will be used to alter the behavior and develop the functional alternative behavior.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0760 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0770
Rights: Physical Restraints

(1) Circumstances when physical restraint allowed. The service provider shall only employ physical restraint:

(a) As part of an Individual Support Plan that meets 309-041-0760 of this rule;

(b) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(2) Staff training. Staff members who need to apply restraint as part of an individual's ongoing training program shall be trained by a Division approved trainer. Documentation verifying such training shall be maintained in his/her personnel file.

(3) Physical restraints in emergency situations. Physical restraints in emergency situations shall:

(a) Be only used until the individual is no longer a threat to self or others;

(b) Be authorized by the program's director or designee, or physician;

(c) Be authorized within one hour of application of restraint;

(d) Result in the immediate notification of the individual's case manager or CMHP designee; and

(e) Prompt an ISP meeting, initiated by the service provider, if used more than three times in a six month period.

(4) Avoid physical injury. Physical restraint shall be designed to avoid physical injury to the individual or others, and to minimize physical and psychological discomfort.

(5) Incident report. All use of physical restraint shall be documented in an incident report. The report shall include:

(a) The name of the individual to whom the restraint is applied;

(b) The date, type and length of time, of restraint application;

(c) The name and position of the person authorizing the use of the restraint;

(d) The name of the staff member(s) applying the restraint; and

(e) Description of the incident.

(6) Copy to CMHP. A copy of the incident report shall be forwarded within five working days of the incident to the Community Mental Health Program.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0770 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0780
Rights: Psychotropic Medications and Medications for Behavior

(1) Requirements. Psychotropic medications and medications for behavior shall be:

(a) Prescribed by physician through a written order; and

(b) Included on the individual's ISP.

(2) Balancing test. The use of psychotropic medications and medications for behavior shall be based on a physician's decision that the harmful effects without the medication clearly outweigh the potentially harmful effects of the medication. Service providers must present the physician with a full and clear written description of the behavior and symptoms to be addressed, as well as any side effects observed, to enable the physician to make this decision.

(3) Monitoring and review. Psychotropic medications and medications for behavior shall be:

(a) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences; and

(b) Reviewed to determine the continued need and/or lowest effective dosage in a carefully monitored program.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0780 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0790
Entry, Exit and Transfer: General

(1) Qualifications for Division funding. All individuals considered for Division-funded services shall:

(a) Be referred by the Community Mental Health Program;

(b) Be determined to have a developmental disability by the Division or its designee; and

(c) Not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment or other forms of discrimination under applicable state or Federal law.

(2) Information required for entry meeting. The program shall acquire the following information prior to an entry ISP meeting:

(a) Written documentation that the individual has been determined to have a developmental disability;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device and adjusting water temperature;

(c) A brief written history of any medical conditions or behavioral challenges;

(d) Information related to the individual's lifestyle, activities, and other choices and preferences;

(e) Documentation of the individual's financial resources;

(f) Documentation from a physician of the individual's current physical condition, including a written record of any current or recommended medications, treatments, diet and aids to physical functioning;

(g) Documentation of any guardian or conservator, or any other legal restriction on the rights of the individual, if applicable; and

(h) A copy of the most recent ISP, if applicable.

(3) Entry meeting. An entry ISP team meeting shall be conducted prior to the initiation of services to the individual. The findings of the entry meeting shall be recorded in the individual's file and include at a minimum:

(a) The name of the individual proposed for service;

(b) The date of the meeting;

(c) The date determined to be the date of entry;

(d) Documentation of the participants at the meeting;

(e) Documentation of the pre-entry information required by OAR 309-041-0790(2)(a-h);

(f) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(g) Documentation of the proposed transition plan as defined in the Case Management Services Rule OAR 309-041-0405(42) for services to be provided if the decision was made to serve.

(4) Exit meeting. Each individual considered for exit shall have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting shall be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent an exit from services (unless the individual is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services for the individual after the exit.

(5) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the program under the following conditions:

(a) The individual and his/her guardian requests an immediate removal from the program; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(6) Transfer meeting. A decision to transfer an individual within a service provider shall be made by the ISP team. Findings of the ISP team shall be recorded in the individual's file and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call(s);

(c) Documentation of the participants included in the meeting or telephone call(s);

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternative considered, including transfer;

(f) Documentation of the reasons why any preferences of the individual, legal representative and/or family members cannot be honored;

(g) Documentation of a majority agreement of the participants regarding the decision; and

(h) The written plan for services to the individual after transfer.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0790 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0800
Rights: Entry, Exit and Transfer: Appeal Process

(1) Procedures. In cases where the individual and parent/guardian/advocate object to or the ISP team cannot reach majority agreement regarding an admission refusal, a request to exit the program, or a transfer within a program, an appeal may be filed by any member of the ISP team.

(a) In the case of a refusal to admit, the slot shall be held vacant but the payment for the slot shall continue.

(b) In the case of request to exit or transfer, the individual shall continue to receive the same services received prior to the appeal until the appeal is resolved.

(2) Appeal to the County. All appeals must be made in writing to the Community Mental Health Program Director or his/her designee for decision using the county's appeal process. The Community Mental Health Program Director or designee shall make a decision within 30 working days of receipt of the appeal and notify the appellant of the decision in writing.

(3) Appeal to Mental Health and Developmental Disability Services Division. The decision of the Community Mental Health Director may be appealed by the individual, his/her parent, guardian, advocate or the provider by notifying the Office of Developmental Disability Services in writing within ten working days of receipt of the county's decision.

(a) A committee shall be appointed by the Administrator or the Administrator's designee in the Office of Developmental Disability Services every two years and shall be composed of a Division representative, a residential service representative and a DD case management representative;

(b) In case of a conflict of interest, as determined by the Administrator or designee, alternative representatives will be temporarily appointed by the Administrator or designee to the committee;

(c) The committee will review the appealed decision and make a written recommendation to the Administrator or designee within 45 working days of receipt of the notice of appeal;

(d) The Administrator or designee shall make a decision on the appeal within ten working days after receipt of the recommendation from the committee; and

(e) If the decision is for admission or continued placement and the provider refuses admission or continued placement, the funding for the slot may be withdrawn by the contractor.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0800 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0805
Individual/Family Involvement

Policy needed. The program shall have a policy that addresses:

(1) Opportunities for the individual to participate in decision regarding the operation of the program;

(2) Opportunities for families, guardians, and/or significant others of the individuals served by the program to interact; or

(3) Opportunities for individuals, families, guardians, and significant others to participate on the Board or on committees of the program or to review policies of the program that directly affect the individuals served by the program.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0805 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0810
Program Management

(1) Non-discrimination. The program shall comply with all applicable state and federal statutes, rules and regulations in regard to non-discrimination in employment practices.

(2) Prohibition against retaliation. A community program or service provider shall not retaliate against any staff who reports in good faith suspected abuse or retaliate against the adult with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. Adverse action means only those actions arising solely from the filing of an abuse report. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

(A) Discharge or transfer from the community program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the community program or the resident(s) served by the program.

(3) Documentation requirements. All entries required by this rule, unless stated otherwise, shall:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated and signed by the person(s) making the entry; and

(d) Be maintained for no less than three years.

(4) Dissolution of program. Prior to the dissolution of a program, a representative of the governing body or owner shall notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individuals' records.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0810 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0820
Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) Conditions. The Division may deny, revoke or refuse to renew a certificate when it finds the program, the program's director, or any person holding five percent or greater financial interest in the program:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized and fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance; or

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an on-site review of the service site by the Division for the purpose of investigation or certification); or

(c) Has demonstrated a failure to comply with applicable laws relating to safety from fire; or

(d) Has been convicted of a felony; or

(e) Has been convicted of a misdemeanor associated with the operation of a residential program; or

(f) Falsifies information required by the Division to be maintained or submitted regarding care of individuals, supported living program finances or individuals' funds; or

(g) Has been found to have permitted, aided or abetted any illegal act which has had significant adverse impact on individual health, safety or welfare.

(2) Immediate suspension of certificate. In any case where the Division finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Division may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(3) Notice of certificate revocation or denial. Following a Division finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individual is jeopardized, or that one or more of the events listed in section (1) of this rule has occurred, the Division may issue a notice of certificate revocation, denial or refusal to renew.

(4) Informal process. Following the notice issued pursuant to section (3) of this rule, the Division shall provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice.

(5) Hearing. Following issuance of a notice of certificate revocation, denial or refusal to renew, the Division shall provide the opportunity for a hearing pursuant to OAR 309-041-0830.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0820 by SPD 17-2009, f. & cert. ef. 12-9-09

411-328-0830
Hearings

(1) Hearings rights. An applicant for a certificate, or certificate holder, upon written notice from the Division of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the Contested Case Provisions of ORS Chapter 183.

(2) Request for hearing. Upon written notification by the Division of revocation, denial or refusal to renew a certificate, pursuant to OAR 309-041-0830(1), the applicant/certified program shall be entitled to a hearing in accordance with ORS Chapter 183 within 60 days of receipt of notice. The request for a hearing shall include an admission or denial of each factual matter alleged by the Division and shall affirmatively allege a short plain statement of each relevant, affirmative defense the applicant/certified program may have.

(3) Hearing rights under OAR 309-041-0820(2). In the event of a suspension pursuant to OAR 309-041-0820(2) and during the first 30 days after the suspension of a certificate, the certified program shall be entitled to a fair hearing within 10 days after its written request to the Division for a hearing regarding certificate suspension. Any hearing requested after the end of the 30 days period following certificate suspension shall be treated as a request for hearing under OAR 309-041-0830(2).

(4) Issue at hearing on denial or revocation pursuant to OAR 309-041-0820(1)(a). The issue at a hearing on certification, denial, revocation, suspension or refusal to renew a certificate pursuant to OAR 309-041-0820(1)(a) is limited to whether the program was/is in compliance at the end of the 30 calendar days following written notice of non-compliance.

Stat. Auth.: ORS 430.041(1)
Stats. Implemented: ORS 430.021(4) & ORS 430.630(2)(c)
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0830 by SPD 17-2009, f. & cert. ef. 12-9-09

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Department of Justice
Chapter 137

Rule Caption: Amends the administrative rules relating to legal sufficiency review of state contracts.
Adm. Order No.: DOJ 14-2009
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 11-1-2009
Rules Amended: 137-045-0010, 137-045-0015, 137-045-0020, 137-045-0030, 137-045-0035, 137-045-0050, 137-045-0052, 137-045-0060, 137-045-0070

Subject: Rules concerning the Attorney General's review of state contracts for legal sufficiency are being amended to clarify and reduce review requirements. The amendments confirm that legal sufficiency approval of interstate and international agreements satisfies the Attorney General's review requirements under ORS 190.430 and ORS 190.490. They also exempt interstate and international agreements from review under ORS 190.430 and .490 if the agreements are exempt from legal sufficiency review. They raise the threshold for required review of public contracts for legal sufficiency from $100,000 to $150,000. They clarify at what time legal sufficiency approval must be obtained for grants. They clarify the requirement to obtain authorization before releasing procurement documents and allow Assistant Attorneys General to waive the requirement. They expand the authority of Assistant Attorneys General to specify how contracts may be amended so that the amendments are exempt from later review, adjust exemptions to align with the increase in legal sufficiency threshold, delete the exemption for expired public contracts that are reinstated under the Department of Administrative Services rules (although other exemptions applicable to amendments reinstating such contracts continue to apply) and expand changes to provisions in exempt forms that may be pre-approved by the Attorney-in-Charge of the Business Transactions Section. Defined terms are clarified and examples are added to the definitions of "agency contract administration" and "variable delivery contract." Finally, the time for preparing the report of emergency is modified from "within" to "no later than" 10 business days after execution of a contract. Regarding the exemptions of classes of contracts from the requirements of ORS 291.047 granted by these rules, the Attorney General determines that the degree of risk assumed by state agencies under such contracts is not materially reduced by legal review of individual contracts within the class.
Rules Coordinator: Carol Riches—(503) 378-5987

137-045-0010
Definitions

The following definitions apply to all Oregon Administrative Rules contained in OAR chapter 137, division 045:

(1) "Agency" means "State agency" as defined in ORS 291.045.

(2) "Agency Contract Administration" means an action undertaken by an Agency in accordance with the terms of a Public Contract that has been approved for legal sufficiency if required, or is exempt from legal sufficiency approval, and does not change the Public Contract. Agency Contract Administration does not include an assignment of rights or delegation of duties under a Public Contract to a third party. Examples of Agency Contract Administration include, but are not limited to, actions that result in:

(a) A notice to proceed, the exercise of an option, or any other exercise of a contractual right, whereby the Agency causes a Public Contract to be implemented in accordance with its terms; and

(b) A purchase order, work order or similar ordering instrument issued under a binding contract such as a Requirements Contract or Variable Delivery Contract.

(3) "Architectural and Engineering Services Contract" means a Public Contract for architectural, engineering and land surveying services as defined in ORS 279C.100(2) or related services as defined in 279C.100(6).

(4) "Assistant Attorney General" means a person appointed by the Attorney General under ORS Chapter 180 as an Assistant Attorney General or as a Special Assistant Attorney General and who is authorized in writing by the Chief Counsel, General Counsel Division, to review and approve Public Contracts for legal sufficiency. Such authorization may be limited by the Public Contract type and amount.

(5) "Attorney in Charge, Business Transactions Section" means the Assistant Attorney General the Attorney General appoints as Attorney in Charge of the Business Transactions Section, General Counsel Division, Department of Justice or an alternate designated by the Chief Counsel, General Counsel Division.

(6) "Attorney General" means the Attorney General of the State of Oregon.

(7) "Chief Counsel, General Counsel Division" means the Assistant Attorney General the Attorney General appoints as Chief Counsel of the General Counsel Division, Department of Justice or an alternate designated by the Attorney General.

(8) "Emergency" means circumstances that create a substantial risk of loss, damage to property, interruption of services or threat to public health or safety that require prompt execution of a Public Contract to deal with the risk.

(9) "Federal Cooperative Agreement" means a Public Contract under which an Agency receives money or property from a federal agency for the purpose of supporting or stimulating an Agency program or activity and substantial involvement is expected between the federal agency and the Agency when carrying out the program or activity contemplated in the agreement. A Federal Cooperative Agreement does not include a procurement contract under 31 U.S.C. section 6303.

(10) "Grant" means:

(a) A Public Contract under which an Agency receives money, property or other value from a grantor for the purpose of supporting or stimulating an Agency program or activity, and in which no substantial involvement by grantor is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions; or

(b) A Public Contract under which an Agency provides money, property or other value to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by Agency is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions.

(11) "Information Technology Contract" means a Public Contract for the acquisition, disposal, repair, maintenance or modification of hardware, software, or services for data processing, office automation, or Telecommunications.

(12) "Interagency Agreement" means any agreement solely between state officers, boards, commissions, departments, institutions, branches or agencies of this state.

(13) "Intergovernmental Agreement" means any agreement between an Agency and a unit of local government of this state, the United States, a United States governmental agency, an American Indian tribe or an agency of an American Indian tribe and includes Interstate Agreements and International Agreements.

(14) "International Agreement" means any agreement between an Agency and a nation or a public agency in any nation other than the United States.

(15) "Interstate Agreement" means any agreement between an Agency and a unit of local government or state agency of another state.

(16) "Last Reviewed Contract" means a Public Contract that has been approved for legal sufficiency, and includes all amendments that were effective prior to an amendment that has been approved for legal sufficiency.

(17) "Non-Negotiable Public Contract" means a Public Contract that is a preprinted form of contract comprised of terms and conditions offered to an Agency for acceptance without a commercially reasonable opportunity to negotiate and that is attached to or included with products that are available to the public for purchase at retail, through the mail or direct sales. Examples of a Non-Negotiable Public Contract may include a shrink-wrapped or click-wrapped license agreement attached to or included with a packaged or electronic copy of computer software.

(18) "Personal Services Contract" means a contract whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a contract for the services of an accountant, physician or dentist, educator, consultant (including a provider under an Architectural and Engineering Services Contract), broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(19) "Price Agreement" means an agreement for the procurement of goods or services at a set price or prices, or at a price or prices established using a method prescribed by the agreement, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing obligation to provide goods or services with no guarantee of a minimum or maximum additional purchase. Price Agreements are sometimes referred to as flexible services agreements, agreements to agree, master agreements or retainer agreements.

(20) "Procurement Document" means an invitation to bid, request for proposals, request for quotes, or other similar document, including, when available, the anticipated Public Contract, and including addenda that modify the anticipated Public Contract. The following are not Procurement Documents unless they invite offers from prospective contractors: a request for information, a request for qualifications, a prequalification of bidders or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Procurement Document that an Assistant Attorney General authorized for release, or an addendum that modifies only Technical Specifications, is not a Procurement Document.

(21) "Public Contract" means any contract, including any amendments, entered into by an Agency for the acquisition, disposition, purchase, lease, sale or transfer of rights of real or personal property, public improvements, or services, including any contract for repair or maintenance. An Intergovernmental Agreement entered into for any of the foregoing actions is a Public Contract. An Interagency Agreement is not a Public Contract. Agency Contract Administration is not a Public Contract.

(22) "Public Improvement Contract" means any Public Contract for construction, reconstruction, or major renovation on real property by or for an Agency.

(23) "Requirements Contract" means a Public Contract that requires that all of the purchaser's requirements for the goods or services specified in the Public Contract for the period of time, or for the project(s) specified in the Public Contract, shall be purchased exclusively from the seller.

(24) "Statement of Work" means all provisions of a Public Contract that specifically describe the services or work to be performed or goods to be delivered by either the contractor, its subcontractor(s), or the Agency, as applicable, including any related Technical Specifications, deadlines, or deliverables.

(25) "Technical Specifications" with respect to equipment, materials and goods, means descriptions of dimensions, composition and manufacturer and quantities and units of measurement that describe quality, performance, and acceptance requirements. With respect to services, "Technical Specifications" means quantities and units of measurement that describe quality, performance and acceptance requirements.

(26) "Telecommunications" means 1-way and 2-way transmission of information over a distance by means of electromagnetic systems, electro-optical systems, or both.

(27) "Variable Delivery Contract" means a Public Contract that, during its term, uses purchase orders, work orders or similar ordering instruments to provide for incremental delivery of the amount of goods or services, or both, that is specified in the Public Contract. A Variable Delivery Contract identifies goods or services by any method that is both commercially reasonable and in accordance with industry standards, including but not limited to, Technical Specifications, time of delivery, place of delivery, manufacturer, form of delivery, or any combination of the foregoing.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.045, 291.047 & 291.049

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0015

Legal Sufficiency Approval

(1) Legal sufficiency approval pursuant to this rule does not affect any other applicable review or approval requirement, except that legal sufficiency approval of a Public Contract that is an Interstate Agreement or an International Agreement satisfies requirements for Attorney General review under ORS 190.430 and ORS 190.490, as applicable.

(2) The Attorney General, through Assistant Attorneys General, provides legal sufficiency approval of a Public Contract solely for the benefit of Agencies, to determine compliance with this rule. Approval of a Public Contract for legal sufficiency is based upon the individual determination by the Assistant Attorney General reviewing the Public Contract and does not preclude the State of Oregon from later asserting any legally available claim or defense arising from or relating to the Public Contract.

(3) Approval of a Public Contract for legal sufficiency must be noted in written form by the Assistant Attorney General reviewing the Public Contract and must be either affixed directly to the Public Contract or set forth in a separate correspondence that identifies the Public Contract with particularity. An Assistant Attorney General may approve Public Contracts as a group if they are substantially in the same form, are substantially for the same purpose and have the same expiration date if the Assistant Attorney General identifies the manner in which individual contracts within the group may vary.

(4) Sections (4) and (5) are adopted to provide guidance to Agencies regarding criteria used for, and factors excluded from, the Attorney General's legal sufficiency approval of Public Contracts. Except as provid-

ed in section (5) of this rule, approval for legal sufficiency means that the reviewing Assistant Attorney General finds that:

(a) The Public Contract has been reduced to written form;

(b) The subject matter, promised performance and consideration of the Public Contract are within the Agency's statutory authority;

(c) The Public Contract, on its face, contains all the essential elements of a legally binding contract, such as a description of consideration (money, performance, or forbearance) when consideration is required;

(d) The Public Contract, on its face, complies with federal and State of Oregon statutes and administrative rules regulating the Public Contract, and that all provisions required by Oregon law to be incorporated have been included;

(e) The Public Contract includes or requires, as required by Oregon law, execution of any certification;

(f) The Public Contract, on its face, does not violate any State of Oregon constitutional limitation or prohibition, such as by creating unlawful "debt" under section 7, Article XI, of the Oregon Constitution, or impermissibly binding a future Legislative Assembly to fund the Public Contract, or any federal constitutional provision;

(g) The Statement of Work or comparable provisions and business or commercial terms are sufficiently clear and definite under the circumstances to be enforceable; and

(h) The Public Contract allows the Agency, if appropriate, to terminate the Public Contract, declare defaults, and pursue its rights and remedies.

(5) Approval for legal sufficiency does not include:

(a) Consideration of facts or circumstances that are not apparent on the face of the Public Contract, unless the Assistant Attorney General reviewing the Public Contract has actual knowledge of those facts or circumstances;

(b) A determination that the individual signing the Public Contract on behalf of the Agency possesses lawful authority to do so;

(c) A determination that the technical provisions used in the Public Contract that are particular to a profession, trade or industry reflect the Agency's intentions, are appropriate to further the Agency's stated objectives or are sufficiently clear and definite to be enforceable;

(d) A determination that the Public Contract is a good business deal for the Agency, weighing relative risks and benefits, although the Assistant Attorney General reviewing the Public Contract may provide advice regarding significant risks and issues in any particular transaction. The Agency is responsible for risk assessment and the decision whether to proceed with a Public Contract despite exposure to risks;

(e) A determination that any particular remedy, whether or not expressly set forth in the Public Contract, will be available to the Agency. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the availability of specific remedies;

(f) A determination that the Public Contract complies with grant conditions or federal funding requirements or contains terms or assurances required under a grant or federal funding program. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the compliance with grant conditions, federal funding requirements, or required assurances; or

(g) A stylistic or grammatical review, including spelling, punctuation and the like, unless such errors create ambiguity or otherwise are substantive. The Assistant Attorney General reviewing the Public Contract may address matters of this nature as time allows; however, these matters are primarily the responsibility of the Agency submitting a Public Contract for review.

(h) A determination that, except for setting off amounts owed under the Public Contract, the Agency will have court-enforceable damages, specific performance, or setoff remedies under a Public Contract with another sovereign in the event the sovereign fails to comply with the contract's terms unless the Assistant Attorney General determines in a separate writing that any such remedies are available to the Agency.

Stat. Auth.: ORS 291.045(7)
Stats. Implemented: ORS 291.045 & 291.047
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 5-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 3-13-00; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0020
Mixed Contracts

A mixed Public Contract requires the contractor to render certain services and also to provide the Agency with other kinds of services, goods or products. Classification of a mixed Public Contract as a Personal Services Contract, Architectural and Engineering Services Contract, Information Technology Contract, or other kind of Public Contract is determined by the mixed Public Contract's predominant purpose. A mixed Public Contract's predominant purpose is determined by whether the majority of the amounts paid or received under the mixed Public Contract will be for a particular kind of service (personal, architectural, engineering, land surveying or related services, information technology, or other kinds of service) or for the acquisition of goods or products. An Assistant Attorney General shall defer to the reasonable classification of Public Contract type by the Department of Administrative Services for Public Contracts subject to Department of Administrative Services statutes and rules.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.045, 291.047 & OL 1997, Ch. 869
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0020(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0030
Review of Public Contracts

(1) Except as described in section (2), before a Public Contract is binding on the State of Oregon, and before any service may be performed or payment may be made under the Public Contract, the Attorney General must approve for legal sufficiency in accordance with these rules:

(a) Any Public Contract calling for or providing for payment in excess of $150,000.

(b) An amendment to a Public Contract described in subsection (1)(a).

(c) An amendment that makes the amended Public Contract subject to legal sufficiency approval under subsection (1)(a).

(2) The legal sufficiency approval requirement described in section (1) does not apply to Public Contracts that are exempt from legal sufficiency approval under these division 045 rules.

(3) For purposes of determining whether a Public Contract exceeds the amounts set forth in section (1), a Public Contract calls for or provides for payments in excess of the applicable amount if one of the following applies:

(a) The Public Contract expressly provides that the Agency will make or receive payments in money, services or goods over the term of the Public Contract with a value that will, in aggregate, exceed the applicable threshold, whether or not the total amount or value of the payments is expressly stated. For purposes of this subsection, when an agency is lending money, and the only payment to the Agency is in money, "payments" receivable by the Agency mean principal, only.

(b) The Public Contract expressly provides for a guaranteed maximum price or a maximum not to exceed amount payable or receivable by the Agency with a value that exceeds the applicable threshold.

(c) Based on historical or other data available to the contracting Agency at the time of entering into the Public Contract, the contracting Agency determines that the value of payments in money, services or goods to be made or received by the Agency under the Public Contract will likely exceed the applicable threshold.

(4) An Agency shall not fragment or segregate transactions for purposes of circumventing the legal sufficiency approval requirement.

(5) A program or activity of a recipient of a Grant that is financed by the Grant does not constitute a service performed under a Public Contract for purposes of this rule.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.047
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0030(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0035
Review of Anticipated Public Contract

(1) Except as provided in this rule, if an Agency expects the resulting Public Contract to require legal sufficiency approval, the Agency must also submit to the Attorney General any associated Agency Procurement Documents for review of the anticipated Public Contract. The Agency must obtain authorization from an Assistant Attorney General to release the Procurement Documents before the Agency releases them. These requirements may be waived in writing by an Assistant Attorney General if the Assistant Attorney General determines that the resulting Public Contract is legally sufficient and resolicitation of the Public Contract would not materially reduce the risk to the State.

(2) Review of the anticipated Public Contract includes determining what law applies to the procurement and applying that law to the procure-

ment documents to determine whether the procurement process complies with applicable law and Agencies' reasonable interpretations of their own rules. The reviewing attorney is not required to inquire into facts concerning the procurement process that are not apparent on the face of the documents. The reviewing attorney may require changes to the Procurement Documents that are necessary for compliance with applicable law. If the reviewing attorney determines that nothing in the Procurement Documents, or otherwise apparent to the attorney, would prevent approval of the anticipated Public Contract for legal sufficiency, the attorney shall authorize release of the Procurement Documents. The attorney may condition an authorization to release Procurement Documents as necessary for compliance with these rules. Authorization to release the Procurement Documents does not ensure subsequent legal sufficiency approval of the Public Contract contemplated by the procurement and any accepted response. Authorization to release includes a determination that the solicitation process on the face of the Procurement Documents complies with applicable statutes or rules.

Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.047
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0050
Exemptions from Legal Sufficiency Approval Based on Risk Assessment

The Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts within the types of Public Contracts listed below. The Attorney General exempts from the legal sufficiency approval requirement under ORS 291.047 the Public Contracts falling within the types of Public Contracts listed below:

(1) Adoption Assistance Agreements. A document of understanding between the Department of Human Services and adoptive parents of a special needs child as defined under title IV-E at section 473(c) of the Social Security Act.

(2) Amendments to Contracts Other than Public Improvement and Loan Contracts. A written amendment to a Public Contract that is not a Public Improvement or loan Contract, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only one or more of the following, and related payment obligations as necessary:

(A) The Statement of Work to require the contractor to provide additional or fewer goods, services or other work within the general scope of the Last Reviewed Contract.

(B) The expiration date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery, or price.

(C) Any provisions as specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract, based on the Assistant Attorney General's finding that the degree of risk assumed by the Agency will not be materially reduced by legal review and approval of the provisions.

(c) The aggregate increase in payments scheduled to be made by the Agency, or the aggregate decrease in payments scheduled to be received by the Agency, under the amendment, and all prior amendments exempted from the legal sufficiency approval requirement under this section subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) $150,000; or

(B) Any limits specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract, based on the Assistant Attorney General's finding that the degree of risk assumed by the Agency will not be materially reduced by legal review and approval of the provisions.

(3) Amendments to Public Improvement Contracts.

(a) A written change order or other amendment to a Public Improvement Contract, other than a construction manager/general contractor contract, as provided in subsection (b) or a design-build contract or an energy savings performance contract as provided in subsection (c) of this section, if all of the following apply:

(A) The Public Improvement Contract being amended was approved for legal sufficiency.

(B) The change order or other amendment is within the general scope of the Public Improvement Contract.

(C) The change order or other amendment is implemented in accordance with the provisions of the Public Improvement Contract governing change orders and other types of amendments.

(D) The change order or other amendment modifies only one or both of the following and related payment obligations as necessary:

(i) The Statement of Work so as to require the contractor to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract;

(ii) The substantial completion date, the final completion date, or interim milestone dates of the Public Improvement Contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; price.

(E) Any increase in Agency payments under the change order or other amendment does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that change order or other amendment, and all prior change orders or other amendments subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(b) An amendment to a CM/GC contract (as defined in OAR 137-049-0610) that complies with either subsection (A) or (B) below, whether the amendment is in the form of a change order or other amendment:

(A) The amendment is made before construction services have been authorized under the CM/GC contract and complies with all of the following:

(i) The CM/GC contract being amended was approved for legal sufficiency.

(ii) The amendment is implemented in accordance with the provisions of the CM/GC contract governing change orders and other amendments.

(iii) The amendment modifies only one or more of the following and related payment obligations as necessary:

(1) The Statement of Work so as to require the CM/GC to provide additional or fewer materials, equipment, or pre-construction services within the general scope of the Last Reviewed Contract.

(2) The substantial completion date, the final completion date, or interim milestone dates of the CM/GC contract; Technical Specifications; time, place, quantity or form of delivery of services; or price.

(iv) Any increase in Agency payments under the amendment does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that amendment and all prior amendments subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(B) The amendment is made after construction services have been authorized under the CM/GC contract and complies with all of the following:

(i) The CM/GC contract being amended was approved for legal sufficiency.

(ii) The amendment is implemented in accordance with the provisions of the CM/GC contract governing change orders and other types of amendments.

(iii) The amendment is not the first amendment that authorizes construction services under the CM/GC contract.

(iv) The amendment does not establish the guaranteed maximum price ("GMP") under the CM/GC contract.

(v) The amendment modifies only one or both of the following and related payment obligations as necessary.

(1) The Statement of Work so as to require the CM/GC to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract.

(2) The substantial completion date, the final completion date, or interim milestone dates of the CM/GC contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; or the price.

(vi) The amendment does not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than $500,000.

(vii) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than ten percent (10%).

(c) An amendment to a Design-Build contract (as defined in OAR 137-049-0610), or an amendment to an Energy Savings Performance Contract (as defined in ORS 279A.010(1)(g)) that is in the construction phase, whether the amendment is in the form of a change order or a conventional amendment, if all of the following apply:

(A) The contract being amended was approved for legal sufficiency.

(B) The amendment is implemented in accordance with the provisions of the Design-Build or Energy Savings Performance Contract governing change orders and other types of amendments.

(C) The amendment modifies only one or both of the following and related payment obligations as necessary:

(i) The Statement of Work so as to require the Design/Builder or Energy Savings Performance Contract contractor, as applicable, to provide additional or fewer materials, tools, equipment, labor or professional or non-professional services within the general scope of the Last Reviewed Contract;

(ii) The substantial completion date, the final completion date, or interim milestone dates of the contract; Technical Specifications; time, place, quantity or form of delivery of materials, tools, equipment or services; or the price.

(D) The amendment does not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than $500,000 or five percent (5%), whichever is less.

(E) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the contract price (whether a GMP, fixed price, lump sum or other price) established under the Last Reviewed Contract by more than $500,000 or ten percent (10%), whichever is less.

(d) For purposes of this rule, "change order" means a mutually agreed upon change order or a unilateral construction change directive or similar instruction issued by the Agency or its authorized representative to the contractor requiring a change in the work within the general scope of a Public Improvement Contract and issued under the provisions of the Public Improvement Contract governing the implementation, addition, reduction or other revisions to the work and, if applicable, adjusting the contract price or contract time for the changed work.

(4) Bonds and Confirmation Statements.

(a) A Public Contract entered into, issued or established in connection with the issuance of a bond or other borrowing of the State of Oregon, including an interest rate exchange agreement and any associated confirmation statement, if the Oregon State Treasurer has issued or authorized the bond or other borrowing obligation to which the Public Contract relates and if bond counsel appointed in accordance with applicable law has issued an approving opinion for the benefit or use of purchasers of the bond or other borrowing with respect to the enforceability of the bond or other borrowing upon closing of the transaction.

(b) A confirmation statement associated with an Agency's investment-related interest rate or currency swap agreement or other investment transaction, if the agreement under which the confirmation statement arises has been approved for legal sufficiency or is exempt from legal sufficiency approval.

(5) Employment Agreements. Employment agreements; collective bargaining agreements negotiated under applicable federal or state laws, including collective bargaining agreements entered into pursuant to ORS 410.612; or notices of appointment provided in accordance with OAR chapter 580, division 021. Agreements with third-party providers of temporary services are not exempt.

(6) Federal Contracts. A contract with a federal agency consisting substantially of provisions prescribed in Federal Acquisition Regulations or federal agency supplemental acquisition clauses (48 CFR), except a contract allowed under Section 211 of the federal E-Government Act of 2002.

(7) Federal Cooperative Agreements. A Federal Cooperative Agreement.

(8) Federal Grants. A grant from a federal agency under which an Agency is the grantee, provided that the Agency has a grants coordinator.

(9) Federal Pass-Through Grants. A grant under which an Agency passes through to another recipient all or a portion of the money or property received by the Agency under a grant from a federal agency, provided that:

(a) The Agency does not add to or modify the federal grant except as necessary to provide for proper administration; and

(b) The grant contains a clause substantially in the following form: "The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay to grantor."

(10) Foster Care Agreements. An agreement between the Department of Human Services or the Oregon Youth Authority and a foster parent for the provision of foster care to an individual under the age of 21, or a youth placed with the Department of Human Services or Oregon Youth Authority pursuant to ORS 419C.478.

(11) Home Care Services Agreements. An agreement for the provision of and payment for home care services as defined in ORS 410.600(6).

(12) Membership Agreements. A Public Contract that calls for the payment of dues or fees in consideration of membership of individual officers, employees or agents of the State of Oregon in a club, institution, or association in which the State of Oregon acquires no ownership interest.

(13) Non-Negotiable Public Contracts. A Non-Negotiable Public Contract.

(14) Prescribed Contracts. A Public Contract that is in the form prescribed in Procurement Documents and any conditions on authorization for release under OAR 137-045-0035. Prescribed Contracts do not vary from the form prescribed in Procurement Documents other than to fill in blanks in the form, as is commonly done with invitations to bid for goods and services other than personal services.

(15) Purchase Order Contracts. A Public Contract formed by a purchase order, work order or a similar ordering instrument for the purchase of goods or services under a Price Agreement, provided that the Price Agreement was approved by an Assistant Attorney General and the ordering instrument complies with any conditions of the approval.

(16) Settlement Agreements. Agreements settling disputed claims, provided that they do not have the effect of amending Public Contracts that are subject to the legal sufficiency approval requirement.

(17) Amendments to Loan Contracts. A written amendment to a Public Contract solely for an Agency loan of money to another party that requires repayment to the Agency, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only:

(A) The description of the project being financed, but only to the extent that the modified project remains eligible for financing by the same source of funds as the project before modification; or

(B) Business terms in the Public Contract which:

(i) Except as provided in subsection (17)(c), do not increase or decrease the total principal repayment obligations under the Public Contract;

(ii) Change the interest rate or payment due dates, except for the final maturity date; or

(iii) Describe the non-financial terms and conditions of performance, such as performance start or completion dates for the project being financed or job creation or retention requirements.

(c) The aggregate increase in the loan amount under the amendment or the aggregate decrease in principal payments scheduled to be received by the Agency, and all prior amendments exempted from the legal sufficiency approval requirement subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) $150,000; or

(B) Any particular amounts specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract.

(18) Personal Services Contracts, Information Technology Contracts and Architectural and Engineering Services Contracts not calling for or providing for payment in excess of $150,000.

(19) Technology Transfer and Related Agreements. Agreements that govern the transfer of tangible research materials between Oregon University System ("OUS") and another organization, agreements with a predominant purpose to grant a license to OUS intellectual property and related agreements. Related agreements are agreements to manage interests in OUS intellectual property, agreements to combine management of interests in OUS intellectual property with management of interests in intellectual property from other parties, agreements that transfer ownership of intellectual property between OUS and other parties, agreements governing revenue sharing from licensing, and confidentiality agreements regarding intellectual property.

Stat. Auth.: ORS 291.047

Stats. Implemented: ORS 291.047(4)

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0050(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 2-2009(Temp), f. & cert. ef. 2-26-09 thru 8-25-09; DOJ 10-2009, f. 7-2-09, cert. ef. 7-6-09; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0052
Exemptions from ORS 190.430 and ORS 190.490 review

Contracts that are exempt from legal sufficiency review under ORS 291.047 or OAR chapter 137, division 045 are also exempt from the Attorney General review requirements under ORS 190.430 and 190.490.

Stat. Auth. ORS 190.430 & 190.490
Stats. Implemented: ORS 190.430 & 190.490
Hist.: DOJ 10-2009, f. 7-2-09, cert. ef. 7-6-09; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0060
Class Exemptions Based on Attorney General's Pre-Approval

The Attorney General may exempt Public Contracts falling within a class from the legal sufficiency approval requirement. The Attorney General delegates to the Attorney in Charge, Business Transactions Section, the authority to exempt Public Contracts falling within a class, and to otherwise act on behalf of the Attorney General, in accordance with this rule.

(1) An Agency requesting an exemption for Public Contracts falling within a class must submit a written exemption request to the Attorney in Charge, Business Transactions Section, for approval. The exemption request must be signed by an executive officer of the Agency who is responsible for oversight of Public Contracts and must be accompanied by:

(a) A statement that the exemption request is made pursuant to this rule;

(b) Citation to the requesting Agency's statutory authority for procuring and entering into the Public Contracts within the class;

(c) A description of the nature of the business transacted with the Public Contracts within the class;

(d) A description of the circumstances in which the Public Contracts within the class will be used;

(e) Samples of form Public Contracts used for the Public Contracts within the class and any form of amendment to be used in connection with the Public Contracts within the class;

(f) A description of the Agency's internal contract approval process and signatures required for the Public Contracts within the class; and

(g) A statement by the Agency that:

(A) The nature of the business transacted under Public Contracts within the class is substantially the same from transaction to transaction; and

(B) The form of Public Contract and any form of amendment submitted in accordance with OAR 137-045-0060(1)(e) do not vary from transaction to transaction, other than one or more of the following and related payment obligations, as necessary: the expiration date or project completion date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery; price; or other provisions as specified in the statement; and

(C) The Agency will not modify the form of Public Contract and any form of amendment, other than as specifically provided for in OAR 137-045-0060(1)(g)(B) above, without review and approval for legal sufficiency by the Attorney General, nor will the Agency use such Public Contract other than in transactions described in the exemption request; and

(h) Any other information that the Attorney General or the Attorney in Charge, Business Transactions Section, requests in connection with the exemption request.

(2) If the Attorney General has determined that the degree of risk assumed by an Agency is not materially reduced by legal review and approval of individual Public Contracts falling within a class reviewed by the Attorney General in accordance with section (1) of this rule, the Attorney General will provide the Agency a written exemption, subject to any terms, conditions or limitations the Attorney General deems appropriate, including but not limited to, the duration of the exemption, restrictions on the use of the submitted forms of Public Contract, form of purchase order or similar instrument or any form of amendment.

(3) The Attorney General may at any time review an exemption granted under section (2) of this rule. The Attorney General may revoke or modify such exemption at any time upon written notice to the Agency that it is in the best interest of the State of Oregon that the exemption be revoked or modified. Revocation or modification of an exemption granted under this rule shall not affect the validity of Public Contracts entered into under the exemption prior to the revocation or modification.

Stat. Auth.: ORS 291.047(5)
Stats. Implemented: ORS 291.047(5)(a)
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0060(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

137-045-0070
Emergency Public Contract Exemption

(1) Upon the Agency's compliance with the procedures set forth in section (2), a Public Contract entered into in an Emergency is exempt from the legal sufficiency approval requirement.

(2) An executive officer of the Agency who is responsible for oversight of the Public Contract must prepare and sign a written report that contains:

(a) A concise summary of the circumstances that constitute the Emergency and the character of the risk of loss, damage, interruption of services or threat to public health or safety created or anticipated to be created by the Emergency circumstances;

(b) A statement of the reason or reasons why the prompt execution of the proposed Public Contract was required to deal with the risk created or anticipated to be created by the Emergency circumstances;

(c) A brief description of the services or goods to be provided under the Public Contract, together with its anticipated cost; and

(d) A brief explanation of how the Public Contract, in terms of duration, services or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances.

(3) The executive officer shall prepare and sign the written report no later than 10 business days after execution of the Public Contract. The Agency shall maintain a copy of the report in the Agency's Emergency Public Contract file. The Agency shall provide a copy of the report to the Attorney in Charge, Business Transactions Section within 30 days after preparing the report.

Stat. Auth.: ORS 291.047(5)
Stats. Implemented: ORS 291.047(5)(b)
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 14-2009, f. 12-1-09, cert. ef. 1-1-10

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Rule Caption: Amends the Attorney General's Model Public Contract Rules, Division 46, 47, 48 and 49.
Adm. Order No.: DOJ 15-2009
Filed with Sec. of State: 12-1-2009
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Subject: The rule changes amend the Attorney General's model public contract rules applicable to state and local contracting agencies.

Division 46 has been revised to address 2009 legislative changes affecting public procurements in general. For example, language has been added relating to contracting with disabled veterans. Division 46 has also been revised to clarify several defined terms.

Division 47 has been revised to address 2009 legislative changes affecting public procurements of goods and services, including implementation of HB 2867 (Oregon Laws 2009, chapter 880) requirements related to good cause for not requiring contractors to meet highest performance standards, and consequences of contractors failing to meet performance standards. Clarifications have been added to rules 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 are 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, and

Amendments to Contracts and Price Agreements. Division 47 has also been revised to simplify and clarify other provisions.

Division 48 has been revised to address 2009 legislative changes affecting public procurements of Architectural, Engineering and Land Surveying Services, and Related Services. Clarifications have been added to the rule dealing with Applicable Selection Procedures, Pricing Information, and Disclosure of Proposals to reflect the new conflicts of interest requirements imposed by Section 11 of HB 2867. The rule has been revised to increase the small estimated fee amount to $50,000. Division 48 has also been revised to clarify the use of the defined terms "Procurement" and "Consultant" and to simplify several provisions.

Division 49 has been revised to address 2009 legislative changes and make clarifications affecting public improvement and public works contracting. Revisions include: providing clarity regarding when the first-tier subcontractor disclosure form is required; legislative changes to the procurement requirements for determining an Offeror's responsibility; and legislative changes to the form and manner of withholding of retainage. Division 49 has also been revised to provide other clarifications to existing rules.

Rules Coordinator: Carol Riches—(503) 378-5987

137-046-0110

Definitions for the Model Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Administering Contracting Agency" has the meaning set forth in ORS 279A.200(1)(a) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) "Award" means, as the context requires, either identifying or the Contracting Agency's identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person and the completion of all Contract negotiations.

(4) "Bid" means a Written response to an Invitation to Bid.

(5) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(6) "Code" means the Public Contracting Code.

(7) "Competitive Range" means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0262 or 137-049-0650.

(8) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(9) "Contract Price" means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(10) "Contract Review Authority" means:

(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;

(b) For Local Contracting Agencies, the Local Contracting Agency's Local Contract Review Board determined as specified in ORS 279A.060; and

(c) Where specified by statute, the Director of the Oregon Department of Transportation.

(11) "Contractor" means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.

(12) "DBE Disqualification" means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.

(13) "Descriptive Literature" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(14) "Electronic Advertisement" means a Contracting Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Contracting Agency's Procurements made available over the Internet via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(15) "Electronic Offer" means a response to a Contracting Agency's Solicitation Document or Request for Quotes submitted to a Contracting Agency via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(16) "Electronic Procurement System" means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(17) "Invitation to Bid" or "ITB" means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.

(18) "Model Rules" means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065.

(19) "Offer" means a Written offer to provide Goods or Services in response to a Solicitation Document.

(20) "Offeror" means a Person who submits an Offer.

(21) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Offers.

(22) "Person" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) "Personal Services" as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. "Personal Services" as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS 279C.100.

(24) "Personal Services Contract" means:

(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency's Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or

(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(25) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(26) "Proposal" means a Written response to a Request for Proposals.

(27) "Recycled Materials" means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii).

(28) "Request for Qualifications" or "RFQ" means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(29) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(30) "Responsible" means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(31) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-

049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(32) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(33) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(34) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(35) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(36) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Quotes, or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(37) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(38) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-046-0210
Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) For purposes of ORS 279A.105, a subcontractor certified under 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The Contractor certifies in a Signed Writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture or provide the Goods or perform the Services or Personal Services under the Contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitute a substantial number.

(2) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

(3) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Contract pursuant to 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (b) and (c) of this Section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed DBE Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived the right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(d) Notice of DBE Disqualification. The Contracting Agency shall provide Written notice of the DBE Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.065, 200.075, 279A.065, 279A.105 & 279A.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0250
Source Selection

Methods of Source Selection; Feasibility Determination; Cost Analysis

(1) Except as permitted by ORS 279B.065 through 279B.085 and 279A.200 through 279A.225, a Contracting Agency shall Award a Contract for Goods or Services, or both based on Offers received in response to either competitive sealed Bids pursuant to 279B.055 or competitive sealed Proposals pursuant to 279B.060.

(2) Written Cost Analysis for Contracts for Services. Before conducting the Procurement of a Contract for Services that is subject to sections 2 to 4 of Oregon Laws 2009, chapter 880, a Contracting Agency must, in the absence of a determination under section 34 of that enactment that performing the services with the Contracting Agency's own personnel and resources is not feasible, conduct a Written cost analysis.

(3) Feasibility Determination for Contracts for Services. A Contracting Agency may proceed with the procurement of a Contract for Services without conducting a cost analysis under Oregon Laws 2009, chapter 880, section 3, if the Contracting Agency makes Written findings that one or more of the special circumstances described in Oregon Laws 2009, chapter 880, section 4, make the Contracting Agency's use of its own personnel and resources to provide the Services not feasible.

(4) Special Circumstances. The special circumstances identified in Oregon Laws 2009, section 4 that require a Contracting Agency to procure the Services by Contract include any circumstances, conditions or occurrences that would make the Services, if performed by the Contracting Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Contracting Agency.

(5) Written Cost Analysis under Section 3 of Oregon Laws 2009, chapter 880.

(a) Basic Comparison. The Written cost analysis must compare an estimate of the Contracting Agency's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, The Contracting Agency may proceed with the Procurement for Services only if it determines that the Contracting Agency would incur more cost in performing the Services with the Contracting Agency's own personnel than it would incur in procuring the Services from a Contractor. In making this determination, the cost the Contracting Agency would incur in procuring the Services from a Contractor includes the fair market value of any interest in equipment, materials or other assets the Contracting Agency will provide to the Contractor for the performance of the Services.

(b) Costs of Using Contracting Agency's Own Personnel and Resources. When estimating the Contracting Agency's cost of performing

the Services, the Contracting Agency shall consider cost factors that include:

(A) The salary or wage and benefit costs for the employees of the Contracting Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.

(C) The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(D) Any costs related to stopping and dismantling a project or operation because the Contracting Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(E) The miscellaneous costs related to performing the Services. These costs exclude the Contracting Agency's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Contracting Agency performed the Services.

(F) Oregon Laws 2009, chapter 880, section 3(1)(a) provides that an estimate of the Contracting Agency's costs of performing the Services includes the costs described in subsections (5)(b)(A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the cost to the Contracting Agency of performing the Services. For example, if the Contracting Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Contracting Agency may consider those actual costs in making its estimate.

(c) Costs a Potential Contractor Would Incur. When estimating the costs a potential Contractor would incur in performing the Services, the Contracting Agency shall consider cost factors that include:

(A) The average or actual salary or wage and benefit costs for Contractors and Contractor employees:

(i) Who work in the business or industry most closely involved in performing the Services; and

(ii) Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in subsection (5)(c) (A) and (B) of this rule over the expected duration of the Procurement.

(D) Oregon Laws 2009, chapter 880, section 3(1)(b) provides that an estimate of the costs a potential Contractor would incur in performing the Services includes the costs described in subsections (5)(c)(A) through (C) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the Contracting Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the Contracting Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Contracting Agency may consider what it actually paid out under a Contract for the same or similar Services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five years preceding the date of the cost estimate. The Contracting Agency must take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the Services.

(6) Decision Based on Cost Comparison. After comparing the difference between the costs estimated for the Contracting Agency to perform the Services under section (5)(b) and the estimated costs a potential Contractor would incur in performing the Services under section (25)(c), the Contracting Agency may proceed with the Procurement only if the Contracting Agency would incur more cost in performing the Services with the agency's own personnel and resources than it would incur in procuring the Services from a Contractor.

(7) Exception Based on Salaries or Wages and Benefits. If the sole reason that the costs estimated for the Contracting Agency to perform the Services under section (5)(b) exceed the estimated costs a potential Contractor would incur in performing the Services under section (25)(c) is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated under subsection (5)(c)(A) are lower than the salary or wage and benefit costs for employees of the Contracting Agency under subsection (5)(b)(A), then the Contracting Agency may not proceed with the Procurement.

(8) Exception Based on Lack of Contracting Agency Personnel and Resources; Reporting. In cases in which the Contracting Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Contracting Agency nevertheless may proceed with the Procurement if, at the time the Contracting Agency intends to conduct the Procurement, the Contracting Agency determines that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them. When a Contracting Agency conducts a Procurement under this section, the Contracting Agency must:

(a) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them and of the basis for the Contracting Agency's decision to proceed with the Procurement.

(b) If the Contracting Agency is a Local Contracting Agency, provide to its Local Contract Review Board, each calendar quarter, copies of each Written cost analysis and Written determination.

(c) If the Contracting Agency is a State Contracting Agency, provide to the Emergency Board, each calendar quarter, copies of each Written cost analysis and Written determination.

(d) If the Contracting Agency is a State Contracting Agency, prepare a request to the Governor for an appropriation and authority necessary for the State Contracting Agency to hire personnel and obtain resources necessary to perform the Services that are the subjects of the Written cost analyses and Written determinations within the time needed by the State Contracting Agency. The request to the Governor must include copies of the records submitted to the Emergency Board under subsection (8)(c) of this rule.

Stat. Auth.: ORS 279A.065, OL 2009, c 880, §§ 3, 4
Stats. Implemented: ORS 279B.050, OL 2009, c 880, § 2-4
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0255
Competitive Sealed Bidding

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in OAR 137-047-0300.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 5, the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and

(C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to OAR 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b).

(e) For Contracting Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions in the form of Contract provisions the Contracting Agency determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2009, ch. 880, sec. 5
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0260
Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in OAR 137-047-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference; and

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See OAR 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 6, the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency;

(C) If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall state the size of the Competitive Range in the Solicitation Document. However, the Contracting Agency may increase or decrease the number of Proposers in the Competitive Range in accordance with OAR 137-047-0262(1)(a)(B).

(D) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to OAR 137-047-0600(4)(d), the Contracting

Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable Preferences described in ORS 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, section 6, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under OAR 137-047-0550(3), but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2009, ch. 880, sec. 6
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0261
Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) Generally. A Contracting Agency may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers. A Contracting Agency may employ one or more or any combination of the procedures set forth in this rule for Competitive Range, multi-tiered and multistep Proposals.

(2) Solicitation Protest. Prior to the initial Closing, a Contracting Agency shall provide an opportunity to protest the solicitation under ORS 279B.405 and OAR 137-047-0730.

(3) Addenda Protest. A Contracting Agency may provide an opportunity to protest, pursuant OAR 137-047-0430, any Addenda issued pursuant to ORS 279B.060(6)(d).

(4) Exclusion Protest. A Contracting Agency may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in OAR 137-047-0720.

(5) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Contracting Agency that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

(6) Award Protest. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and OAR 137-047-0740. An Affected Proposer may protest, for any of the bases set forth in 137-047-0720(2), its exclusion from the Competitive Range or any phase of a multi-tiered or multistep sealed Proposal, or an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0262
Competitive Range; Discussions and Negotiations for Multi-tiered or Multistep Proposals

(1) Competitive Range. When a Contracting Agency's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency shall determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions with Proposers for the purpose of correcting deficiencies in Proposals under subsection 2 of this rule.

(B) The Contracting Agency may increase or decrease the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater or less than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-047-0720.

(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with section (1)(b) expires, or after the Contracting Agency has provided a

final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-047-0740 and ORS 279B.410.

(ii) After the protest period provided in accordance with OAR 137-047-0740 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence negotiations in accordance with section (3) of this rule with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.

(2) Discussions; Revised Proposals. If the Contracting Agency chooses to enter into discussions with and receive best and final Offers (See OAR 137-047-0262(4)) from all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers"), the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or written discussions with all "eligible Proposers" regarding their Proposals with respect to the provisions of the Request for Proposals that the Contracting Agency identified in the Request for Proposal as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Contracting Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (2), but need not conduct the same amount of discussions with each eligible Proposer. The Contracting Agency may terminate discussions with any eligible Proposer at any time. However, the Contracting Agency shall offer all eligible Proposers the same opportunity to discuss their Proposals with the Contracting Agency before the Contracting Agency notifies eligible Proposers of the date and time pursuant to section (4) that best and final Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(ii) Shall disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(6)(a)(B) or (C);

(iii) May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Request for Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular eligible Proposer;

(ii) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(iii) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section (4) of this rule to the eligible Proposers requesting best and final Offers.

(3) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers as follows:

(A) After initial determination of which Proposals are Responsive; or

(B) After initial determination of the Competitive Range in accordance with section (1) of this rule; or

(C) After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section (2) of this rule).

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of work;

(ii) The Contract Price as it is affected by negotiating the statement of work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.

(B) Terminating Negotiations. At any time during discussions or negotiations that the Contracting Agency conducts in accordance with sections (2) or (3) of this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(i) The eligible Proposer is not discussing or negotiating in good faith; or

(ii) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer in accordance with section (3)(b)(B) of this rule, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the process described in section (3) of this rule until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of discussions or negotiations with all eligible Proposers, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Contracting Agency has completed all rounds of discussions or negotiations.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposer's Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations under this section (3) shall be reduced to Writing.

(4) Best and Final Offers. If Contracting Agency requires best and final Offers, a Contracting Agency shall establish a common date and time by which eligible Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. All eligible Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct evaluations conducted as described in OAR 137-047-0600. The Contracting Agency shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0263
Multistep Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279B.060(6)(b)(G).

(2) Phased Process. Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and invites Proposers who submitted technically qualified Proposals in the first phase to submit competitive sealed price Proposals on the technical Proposers in the second phase. The

Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(3) Public Notice. Whenever a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion pursuant to 137-047-0720.

(4) Procedure for Phase One of Multistep Sealed Proposals.

(a) Form. Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposal shall state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the second phase from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria to be used in the evaluation of unpriced technical Proposals;

(D) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions of the unpriced technical Proposals;

(E) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal; and

(F) Whether Proposers excluded from the second phase have a right to protest the exclusion. Such information can be given or changed through Addenda.

(b) Addenda to the Request for Proposal. After receipt of unpriced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted unpriced technical Proposals.

(c) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(d) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Unpriced technical Proposals shall be categorized as:

(A) Qualified;

(B) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(C) Unqualified. The Contracting Agency shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The Contracting Agency may initiate phase two of the procedure if, in the Contracting Agency's opinion, there are sufficient qualified or potentially qualified unpriced technical Proposals to assure effective price competition in the second phase without technical discussions. If the Contracting Agency finds that such is not the case, the Contracting Agency shall issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in section (4)(e).

(e) Discussion of Unpriced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing of the second phase established by the Contracting Agency. Such submission may be made at the request of the Contracting Agency or upon the Proposer's own initiative.

(f) Notice of Unqualified Unpriced Technical Proposal. When the Contracting Agency determines a Proposer's unpriced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.

(g) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during phase one:

(A) Before unpriced technical Proposals are considered;

(B) After any discussions have commenced under section (4)(e) of this rule; or

(C) When responding to any Addenda to the Request for Proposal;

(D) In accordance with OAR 137-047-0470.

(5) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in OAR 137-047-0261 and 137-047-0262. If the Contracting Agency uses such methods of Contractor selection, it shall follow the procedures set forth in OAR 137-047-0261 and 137-047-0262.

(6) Procedure for Phase Two.

(a) Initiation. Upon the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals.

(b) Conduct. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except:

(A) As specifically set forth in this rule; and

(B) No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065, 279B.070
Stats. Implemented: ORS 279B.070
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0270
Intermediate Procurements

(1) Generally. For Procurements of Goods or Services greater than $5000 and less than or equal to $150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) Negotiations. A Contracting Agency may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the Contracting Agency.

(3) Amendments. A Contracting Agency may amend a Contract Awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total Contract Price to a sum that is greater than twenty-five percent (25%) of the original Contract Price.

Stat. Auth.: ORS 279A.065 & 279B.070
Stats. Implemented: ORS 279B.070
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0280
Emergency Procurements

A Contracting Agency may Award a Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances. However, for emergency Procurement of construction services, see 279B.080(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0300
Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) Advertising. A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Contracting Agency's Contract Review Authority has authorized the Contracting Agency to publish notice

of Solicitation Documents on the Contracting Agency's Electronic Procurement System.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with section 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with section 2(a) or (b) above and Closing be less then seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) Posting Advertisement for Offers. The Contracting Agency shall post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with OAR 137-047-0430.

Stat. Auth.: ORS 279A.065, 279B.055 & 279B.060
Stats. Implemented: ORS 279B.055 & 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0310
Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposers to propose alternative terms or conditions under OAR 137-047-0262, the Offeror's Offer includes any non-negotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279B.055 & 279B.60
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0470
Mistakes

(1) Generally. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Contracting Agency Treatment of Mistakes. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item, or a missing or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0550
Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions

(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

(3) A Contracting Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Contracting Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. A Contracting Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When a Contracting Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, a Contracting Agency may consider the terms and conditions in the Proposal evaluation process.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.015, 279B.120
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0600
Offer Evaluation and Award

(1) Contracting Agency Evaluation. The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 137-046-0310 for Nonresident Bidders.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Contracting Agency determines that one or more Bids are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Contracting Agency determines that one or more Proposals are identical under OAR 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in OAR 137-046-0300.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and OAR 137-046-0320.

(2) Clarification of Bids or Proposals. After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the Contracting Agency's sole discretion, needing clarification must be accorded such an opportunity. The Contracting Agency shall document clarification of any Bidder's Bid in the Procurement file.

(3) Negotiations.

(a) Bids. A Contracting Agency shall not negotiate with any Bidder. After Award of the Contract the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and OAR 137-047-0262. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with OAR 137-047-0800.

(4) Award.

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards — Bids.

(A) Notwithstanding subsection (4)(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards — Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & 279B.060
Stats. Implemented: ORS 279B.055 & 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0640
Rejection of an Offer

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 137-046-0210(4) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency; and

(v) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) Form of Business Entity. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100 & 279B.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0800
Amendments to Contracts and Price Agreements

(1) Generally. A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approval of the Special Procurement or the Contract, in that order. An amendment is not within the scope of the Procurement if the Agency determines that if it had described the changes to be made by the amendment in the Procurement Documents, it would likely have increased competition or affected award of the Contract.

(b) These Model Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if multiple Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than the longest term of any of the prior Contracts.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract Awarded as small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed the amount set forth in OAR 137-047-0265 for small Procurements or 137-047-0270 for intermediate Procurements.

(3) Price Agreements. A Contracting Agency may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0130
Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultants to perform Architectural, Engineering and Land Surveying Services, State Contracting Agencies and Local Contracting Agencies that are contracting with Consultants under the conditions listed in ORS 279C.110(2) shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). Contracting Agencies subject to this section (1) shall not solicit or use pricing policies and pricing

proposals, or other pricing information, to determine a Consultant's compensation, until after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) Contracting Agencies selecting Consultants to perform Related Services and Local Contracting Agencies selecting Consultants to perform Architectural, Engineering and Land Surveying Services for Contracts when the conditions under ORS 279C.110(2) do not exist, shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Bids, or 137-048-0200 (Direct Appointment Procedure) if the requirements of 137-048-0200(1) apply; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow either the provisions under OAR chapter 137, division 47 for obtaining and evaluating Proposals, or 137-048-0200 (Direct Appointment Procedure) if the requirements of 137-048-0200(1) apply. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing proposals, or other pricing information, submitted with a Proposal.

(3) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(4) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(5) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering and Land Surveying Services or Related Services:

(a) The term "competitive proposal", for purposes of ORS 279C.107 includes proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications).

(b) For purposes of proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, OAR 137-048-0200 proposals are not required to be open for public inspection until after the Contracting Agency has made the decision to begin contract negotiations with the selected consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agencies should open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency issues a notice of intent to award a contract.

(d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(6) As required by Oregon Laws 2009, chapter 880, section 11, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agencies may not:

(a) Procure the Personal Services identified in Oregon Laws 2009, chapter 880, section 11 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in Oregon Laws 2009, chapter 880, section 11 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(7) The requirements of Oregon Laws 2009, chapter 880, section 11 and section (6) of this rule apply in the following circumstances, except as provided in section (8) of this rule:

(a) The Procurement of Personal Services which a Contracting Agency requires for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering and Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of Oregon Laws 2009, chapter 880, section 11 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering and Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering and Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 79C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering and Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (7)(a) of this rule.

(8) The restrictions of Oregon Laws 2009, chapter 880, section 11 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of Oregon Laws 2009, chapter 880, section 11 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement.

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in OAR 137-049-0610. Provided, however, the restrictions of Oregon Laws 2009, chapter 880, section 11 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279C.100-279C.125, OL 2009, ch. 880, sec. 11
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0200
Direct Appointment Procedure

(1) Contracting Agencies may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Emergency. Contracting Agency finds that an Emergency exists; or

(b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed $50,000; or

(c) State Contracting Agencies — Continuation of Project With Intermediate Estimated Fee. For State Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed $150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The Estimated Fee to be made under the Contract does not exceed $150,000; and

(C) The State Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection, to select the Consultant for the earlier Contract; or

(d) State Contracting Agencies — Continuation of Project With Extensive Estimated Fee. For State Contracting Agencies where a Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed $150,000, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract must meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract;

(B) The State Contracting Agency used either the formal selection procedure under OAR 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection, to select the Consultant for the earlier Contract; and

(C) The State Contracting Agency makes written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency;

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(e) Local Contracting Agencies. For Local Contracting Agencies, the Architectural, Engineering and Land Surveying Services or Related Services to be performed under the Contract:

(A) Consist of or are related to Architectural, Engineering and Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering and Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Local Contracting Agency used a formal selection procedure described in rules applicable to Local Contracting Agency under either ORS 279.049 or 279A.065, whichever was in effect at the time Local Contracting Agency selected Consultant for the earlier Contract; or

(C) Consultant will be assisting Contracting Agency by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit or other form of action, whether legal, equitable, administrative or otherwise.

(2) Contracting Agencies may select Consultants for Contracts under this rule from the following sources:

(a) Contracting Agency's list of Consultants that is created under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering and Land Surveying Services or Related Services that Contracting Agency reasonably can identify under the circumstances.

(3) Contracting Agency shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C110 & 279C.115
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0210
Informal Selection Procedure

(1) Contracting Agencies may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $150,000.

(2) Contracting Agencies using the informal selection procedure shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering and Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering and Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) Anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) Date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Amount and type of resources and number of experienced staff Consultant has available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering and Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering and Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering and Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) Pricing policies and pricing proposals, or other pricing information, if the Contracting Agency is a Local Contracting Agency selecting a Consultant when the conditions under ORS 279C.110(2) do not exist.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP; and

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules.

(b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

(A) Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that Contracting Agency reasonably can locate that offer the desired Architectural, Engineering and Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and select the three highest ranked Proposers.

(3) If Contracting Agency does not cancel the RFP after it reviews and ranks each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(c) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

(4) Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(5) Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $150,000. Notwithstanding the foregoing, Contracting Agency may continue Contract negotiations with the Proposer selected under the informal selection procedure if Contracting Agency makes written findings that contracting with that Proposer will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency; and

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0220
Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering and Land Surveying Services or Related Services Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(13). Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom Contracting Agency may issue an RFP for some or all of the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ.

(a) Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering and Land Surveying Services or Related Services Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering and Land Surveying Services or Related Services Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ including Consultants' available resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering and Land Surveying Services or Related Services and references concerning past performance, and a copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(D) The number of Consultants' experienced staff available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(E) Consultants' approaches to Architectural, Engineering and Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(F) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(G) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(H) Consultants' pricing policies and pricing proposals, or other pricing information, if the Contracting Agency is a Local Contracting Agency and the conditions under ORS 279C.110(2) do not exist;

(I) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(J) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(K) Consultants' ability to assist a Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and

(L) Any other information Contracting Agency deems reasonable necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in architecture, engineering, or land surveying, Related Services, construction or Public Contracting. If Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFP.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, Contracting Agency shall establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, then:

(A) Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering and Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering and Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering and Land Surveying Services, or Related Services on comparable Projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have available to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering and Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, and meeting financial obligations;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering and Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP;

(xiii) Pricing policies and pricing proposals, or other pricing information, if the Contracting Agency is a Local Contracting Agency selecting a Consultant when the conditions under ORS 279C.110(2) do not exist; and

(xiv) Any other criteria that the Contracting Agency seems relevant to the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these Division 48 rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information Contracting Agency deems reasonably necessary to permit Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering and Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in architecture, engineering, land surveying, Related Services, construction or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to Contracting Agency the results of the scoring and ranking for each Proposer.

(c) If Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering and Land Surveying Services or Related Services; and

(C) Any other provisions Contracting Agency believes to be in Contracting Agency's best interest to negotiate.

(d) Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering and Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.110, 279C.527
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0250
Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a direct appointment, informal selection procedure or formal selection procedure, or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0260
Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

(1) If a Local Contracting Agency requires an Architect, Engineer or Land Surveyor to perform Architectural, Engineering and Land Surveying Services or Related Services for a Public Improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Engineers or Land Surveyors for Architectural, Engineering and Land Surveying Services or Related Services for that Public Improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers or Land Surveyors.

(2) Tier One. State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in OAR 137-048-0210 (Informal Selection Procedure) and 137-048-0220 (Formal Selection Procedure), or from among Architects, Engineers or Land Surveyors identified under 137-048-0200 (Direct Appointment Procedure), and shall notify the Local Contracting Agency of the Architects, Engineers or Land Surveyors selected.

(3) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering and Land Surveying Services or Related Services for Local Contracting Agency's Public Improvement; or

(b) Select an Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services or Related Services for Local Contracting Agency's Public Improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer or Land Surveyor to perform the Architectural, Engineering and Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act

on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer or Land Surveyor in accordance with the negotiation provisions in OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to contract directly with Architects, Engineers or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.110, 279C.125
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0300
Prohibited Payment Methodology; Purchase Restrictions

(1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:

(a) Consultant's costs under the Contract plus a percentage of those costs; or

(b) A percentage of the Project construction costs or total Project costs.

(2) Except as otherwise allowed by law, a Contracting Agency shall not enter into any Contract in which:

(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and

(b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering and Land Surveying Services or Related Services required under the Contract.

(3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering and Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:

(a) Consultant is providing Architectural, Engineering and Land Surveying Services or Related Services under a Contract with Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see OAR 137-049-0670 and 137-049-0680); or

(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to Consultant pursuant to applicable law governing the award of such contracts.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0310
Expired or Terminated Contracts; Reinstatement

(1) If a Contracting Agency enters into a Contract for Architectural, Engineering and Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:

(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering and Land Surveying Services or Related Services required under the contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or

(b) Terminated Contracts. If the Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering and Land Surveying Services or Related Services not completed under the contract as adjusted to reflect a material alteration of the Project.

(2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with Consultant will:

(a) Promote efficient use of public funds and resources and result in substantial cost savings to Contracting Agency;

(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts.; and

(c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-048-0320
Contract Amendments

(1) Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering and Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279C.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0150
Emergency Contracts; Bidding and Bonding Exemptions

(1) Emergency Declaration. A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.

(2) Competition for Emergency Contracts. Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) Emergency Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) Emergency Contract Modification. Emergency Contracts may be modified by change order or amendment to address the conditions

described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(5) Excusing Bonds. Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See OAR 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.080, 279C.320, 279C.380
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0200
Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Document. Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information:

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See OAR 137-049-0300 regarding facsimile Bids or Proposals and OAR 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of $100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and OAR 137-049-0360. For timing issues relating to Addenda, see OAR 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148."

(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-049-0440(3));

(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-049-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in OAR 137-049-0360.

(b) Evaluation Process:

(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all Offers after finding that doing so is in the public interest;

(B) The anticipated solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of competitive Proposals is authorized under ORS 279C.335 and OAR 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of OAR 137-049-0650; and

(c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2);

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) BOLI Public Works bond (ORS 279C.830(2));

(P) Retainage (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.110, 279A.120, 279C.365, 279C.370, 279C.390, 279C.505 - 580, 279C.605, 305.385, 468A.720, 701.005 & 701.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0210
Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. A Contracting Agency shall furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing Notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing Notice on the Contracting Agency's Internet Web site.

(2) Advertising. Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Authority for that Contracting Agency has exempted the solicitation from the advertisement requirement as part of a competitive bidding exemption under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) A Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of $125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Contracting Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

(3) Minority, Women Emerging Small Business. State Contracting Agencies shall provide timely notice of all solicitations to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000. See ORS 200.035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360 & 200.035
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0220
Prequalification of Offerors

(1) Prequalification. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) Mandatory Prequalification. A Contracting Agency may, by rule, resolution, ordinance or other law or regulation, require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) Permissive Prequalification. A Contracting Agency may prequalify a Person for the Contracting Agency's solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a solicitation to that list.

(2) Prequalification Presumed. If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) Standards for Prequalification. A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency. (See, OAR 137-049-0390(2) regarding standards of responsibility.)

(4) Notice of Denial. If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.430 & 279C.435
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0260
Request for Clarification or Change; Solicitation Protests

(1) Clarification. Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(2) Request for Change.

(a) Delivery. An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Request for Change.

(A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.

(B) An Offeror shall mark its request for change as follows:

(i) "Contract Provision Request for Change"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) Protest.

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the Offeror; and

(iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

(i) "Contract Provision Protest"; and

(ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(4) Contracting Agency Response. The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under OAR 137-049-0260 or cancel the solicitation under OAR 137-049-0270.

(5) Extension of Closing. If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.345 & 279C.365
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0270
Cancellation of Solicitation Document

(1) Cancellation in the Public Interest. A Contracting Agency may cancel a solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the solicitation file.

(2) Notice of Cancellation. If the Contracting Agency cancels a solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with OAR 137-049-0210(1). Such notice of cancellation shall:

(a) Identify the solicitation;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Disposition of Offers.

(a) Prior to Offer Opening. If the Contracting Agency cancels a solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's solicitation file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0290
Bid or Proposal Security

(1) Security Amount. If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required performance bond, payment bond and any required proof of insurance. See ORS 279C.365(5) and 279C.385.

(2) Requirement for Bid Security (Optional for Proposals). Unless a Contracting Agency has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than $100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than $50,000. See ORS 279C.365(6). The Contracting Agency may require Bid security even if it has exempted a class of solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).

(3) Form of Bid or Proposal Security. A Contracting Agency may accept only the following forms of Bid or Proposal security:

(a) A surety bond from a surety company authorized to do business in the State of Oregon;

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

(c) A cashier's check or Offeror's certified check.

(4) Return of Security. A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.385 & 279C.390
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0320
Pre-Closing Modification or Withdrawal of Offers

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with OAR 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate solicitation file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.360, 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0330
Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) Receipt. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or mod-

ification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) Opening and Recording. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) Availability. After Opening, the Contracting Agency shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not required to be available for public inspection until after notice of intent to award is issued. In any event Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0350
Mistakes

(1) Generally. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Contracting Agency Treatment of Mistakes. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0360
First-Tier Subcontractors; Disclosure and Substitution

(1) Required Disclosure. Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed $100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least $15,000; or

(b) $350,000, regardless of the percentage of the total Contract Price.

(2) Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, the Contracting Agency shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, a Contracting Agency in its solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure
Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least $15,000; or (ii) $350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(A) The subcontractor's name;

(B) The category of Work that the subcontractor would be performing, and

(C) The dollar value of the subcontract. If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see OAR 137-049-0360)."

(4) Submission. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by the ITB.

(5) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) Contracting Agency Role. Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.370, 279C.585, 279C.590 & 279C.835
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0390
Offer Evaluation and Award; Determination of Responsibility

(1) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (ORS 279C.375(3)(a)) or is ineligible for Award as a nonresident education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple contract awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is legally qualified to contract with the Contracting Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) Contracting Agency Evaluation. The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.

(a) The Contracting Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) Evaluation of Proposals. See OAR 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335, 279C.365, 279C.375 & 279C.395
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0400
Documentation of Award; Availability of Award Decisions

(1) Basis of Award. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's solicitation file.

(2) Contents of Award Record for Bids. The Contracting Agency's record shall include:

(a) All submitted Bids;

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) Contents of Award Record for Proposals. Where the use of Requests for Proposals is authorized as set forth in OAR 137-049-0650, the Contracting Agency's record shall include:

(a) All submitted Proposals.

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the Contracting Agency permitted negotiations in accordance with OAR 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.

(4) Contract Document. The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.

(5) Bid Tabulations and Award Summaries. Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) Availability of Solicitation Files. The Contracting Agency shall make completed solicitation files available for public review at the Contracting Agency.

(7) Copies from Solicitation Files. Any Person may obtain copies of material from solicitation files upon payment of a reasonable copying charge.

(8) Minority, Women Emerging Small Business. State Contracting Agencies shall provide timely notice of Contract Award to the Advocate for Minority, Women and Emerging Small Business if the estimated Contract Price exceeds $5,000. See ORS 200.035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & 279C.375
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0430
Negotiation When Bids Exceed Cost Estimate

(1) Generally. In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of OAR 137-049-0360 do not apply to negotiations under this rule.

(2) Definitions. The following definitions apply to this administrative rule:

(a) "Cost Estimate" means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation work sheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) "Other Options" means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in OAR 137-049-0650, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.

(c) "Project" means a Public Improvement.

(d) "Value Engineering" means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) Rejection of Bids. In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.

(4) Scope of Negotiations. Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the Bidding process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.

(5) Discontinuing Negotiations. The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.

(6) Limitation. Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

(7) Public Records. To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & 279A.065
Stats. Implemented: ORS 279C.340
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0440
Rejection of Offers

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

(D) Offers Work that fails to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents;

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section 3 of this rule;

(H) Is not Responsible. See OAR 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 137-049-0370.

(3) Certification of Non-Discrimination. The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) Rejection of all Offers. A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(5) Criteria for Rejection of All Offers. The Contracting Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the solicitation in accordance with OAR 137-049-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.375, 279C.380, 279C.395, 279A.105 & 279A.110
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0620
Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency's Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these OAR 137-049-0600 to 137-049-0690 rules. See OAR 137-049-0630 regarding required Findings and restrictions on class exemptions.

(2) Energy Savings Performance Contracts. Unlike other Alternative Contracting Methods covered by OAR 137-049-0600 to 137-049-0690, ESPCs are exempt from the competitive bidding requirement for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the Contracting Agency complies with the procedures set forth in OAR 137-049-0600 to 137-049-0690 related to the solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the Contracting Agency prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency's Contract Review Authority within 30 Days of the date the Contracting Agency "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.355 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0645
Requests for Qualifications (RFQ)

As provided by ORS 279C.405(1), Contracting Agencies may utilize Requests for Qualifications (RFQs) to obtain information useful in the preparation or distribution of a Request for Proposals (RFPs). When using RFQs as the first step in a two step solicitation process, in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, Contracting Agencies shall first advertise and provide notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the firms selected in the RFQ process. In such cases the Contracting Agencies shall also provide within the RFQ a protest provision substantially in the form of OAR 137-049-0450(5) regarding protests of the Competitive Range. Thereafter, contracting agencies may distribute RFPs to the selected firms without further advertisement of the solicitation.

Stat. Auth.: ORS 279C.405, 279A.065
Stats. Implemented: ORS 279C.405
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0650
Requests for Proposals (RFP)

(1) Generally. The use of competitive Proposals must be specially authorized for a Public Improvement Contract under the competitive bidding requirement of ORS 279C.335 (1), OAR 137-049-0130 and 137-049-0600 to 137-049-0690. Also see ORS 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals, and OAR 137-049-0640 regarding competitive Proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of OAR 137-049-0200, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:

(a) The Contracting Agency shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 137-049-0640. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to the Contracting Agency;

(b) When the Contracting Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Contracting Agency must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Contracting Agency has identified as authorized for negotiation. The Contracting Agency must describe the evaluation and discussion or negotiation process, including how the Contracting Agency will establish the Competitive Range;

(c) The anticipated size of the Competitive Range shall be stated in the solicitation document, but may be decreased if the number of Proposers that submit responsive Proposals is less that the specified number, or may be increased as provided in OAR 137-049-0650(4)(a)(B);

(d) When the Contracting Agency intends to Award Contracts to more than one Proposer, the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Contracting Agency shall also include the criteria it will use to determine how the Contracting Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process for discussions or negotiations that is outlined and explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the Contracting Agency permitted discussions or negotiations in the Request for Proposals, the Contracting Agency shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency shall establish a negotiation team tailored for the acquisition. The Contracting Agency's team may include legal, technical and negotiating personnel.

(c) Cancellation. Nothing in this rule shall restrict or prohibit the Contracting Agency from canceling the solicitation at any time.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Contracting Agency will determine and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-049-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these rules expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450.

(ii) After the protest period provided in accordance with OAR 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) Discussions; Revised Proposals. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. The Contracting Agency shall provide Written notice to all Proposers in the Competitive Range of the Contracting Agency's intent to Award the Contract. An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450. After the protest period provided in accordance with that rule expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations.

(6) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals.

(c) Terminating Negotiations. At any time during discussions or negotiations that the Contracting Agency conducts in accordance with this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) Continuing Negotiations. If the Contracting Agency terminates discussions or negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the Request for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.400 - 279C.410
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0670
Design-Build Contracts

(1) General. The Design-Build form of contracting, as defined at OAR 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

(a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) Authority. Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these OARs 137-049-0600 to 137-049-0690 rules. See particularly 137-049-0620 on "Use of Alternative Contracting Methods" and 137-049-0680 pertaining to ESPCs.

(3) Selection. Design-Build selection criteria may include those factors set forth above in OAR 137-049-0640(2)(a), (b) and (c).

(4) QBS Inapplicable. Because the value of construction Work predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant Personal Services is not applicable.

(5) Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(6) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction Work, extends only to the provision of Personal Services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) Contract Requirements. Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

(a) Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.

(c) Risk Allocation. The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) Warranties. The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.110 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0680
Energy Savings Performance Contracts (ESPC)

(1) Generally. These OAR 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agencies to enter into ESPCs outside the competitive bidding requirements of ORS 279C.335 for existing buildings or structures, but not for new construction. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method provided for by these OAR 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) ESPC Contracting Method. The ESPC form of contracting, as defined at OAR 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining, through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) Preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC, as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) Authority. Contracting Agencies desiring to pursue an exemption from the competitive bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086), shall utilize the ESPC form of contracting only in accordance with the requirements of these OAR 137-049-0600 to 137-049-0690 rules.

(4) No Findings Required. A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these OAR 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in OAR 137-049-0600 to 137-049-0690.

(5) Selection. ESPC selection criteria may include those factors set forth above in OAR 137-049-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) QBS Inapplicable. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) Licensing. If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) Performance Security. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related services" include conventional design services, commissioning services, training services for the Contracting Agency's operations and maintenance staff, and any similar Personal Services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V services, and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee are not included in these 279C.380(1)(a) "design and related services." Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) Contracting Requirements. Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) General ESPC Contracting Practices. An ESPC involves a multiphase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the Project Development Plan for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) Design-Build Contracting Requirements in ESPCs. At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in OAR 137-040-0560(7) above.

(c) Pricing Alternatives. The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) Permitted ESPC Scope of Work. The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.110 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0800
Required Contract Clauses

Except as provided by OAR 137-0490-0150 and 137-049-0160, Contracting Agencies shall include in all Solicitation Documents for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in OAR 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provides further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 297C.505 - 279C.545 & 279C.800 - 279C.870
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0815
BOLI Public Works Bond

Pursuant to ORS 279C.830(2), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth: ORS 279A.065
Stats. Implemented: ORS 279C.830
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0820
Retainage

(1) Withholding of Retainage. Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the

retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) Deposit in interest-bearing accounts. Upon request of the Contractor, a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Contracting Agency. Earnings on such account shall accrue to the Contractor. State Contracting Agencies shall establish the account through the State Treasurer.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vii) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) Recovery of costs. A Contracting Agency may recover from the Contractor all costs incurred in the proper handling of retainage by reduction of the final payment.

(6) Additional Retainage When Certified Payroll Statements Not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & 279C.845
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-049-0860
Public Works Contracts

(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.

(2) Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).

(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The prevailing state rate of wage, as required by ORS 279C.830(1)(a):

(A) physically contained within or attached to hard copies of procurement Specifications;

(B) included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or, (iii) when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If applicable, the federal prevailing rate of wage and information concerning whether the state or federal rate is higher in each trade or occupation in each locality, as determined by BOLI in a separate publication. The same options for inclusion of wage rate information stated in subsection 3(a) of this rule apply. See BOLI rules at OAR 839-025-0020 and 0035.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.800 - 279C.870
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

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Rule Caption: Guidelines for calculating child support.
Adm. Order No.: DOJ 16-2009
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 1-4-10
Notice Publication Date: 9-1-2009
Rules Adopted: 137-050-0700, 137-050-0710, 137-050-0715, 137-050-0720, 137-050-0725, 137-050-0730, 137-050-0735, 137-050-0740, 137-050-0745, 137-050-0750, 137-050-0755, 137-050-0765
Rules Repealed: 137-050-0320, 137-050-0330, 137-050-0333, 137-050-0335, 137-050-0340, 137-050-0350, 137-050-0360, 137-050-0370, 137-050-0390, 137-050-0400, 137-050-0405, 137-050-0410, 137-050-0420, 137-050-0430, 137-050-0450, 137-050-0455, 137-050-0465, 137-050-0475, 137-050-0485, 137-050-0490
Subject: OAR 137-050-0700 is adopted to provide general provisions concerning the child support guidelines, including when changes to the guidelines apply, and how calculations should be done when a child does not reside with a parent.

OAR 137-050-0710 is adopted to provide the step-by-step process for calculating a support obligation.

OAR 137-050-0715 is adopted to provide instruction on using actual income, potential income, and when presumptions of income apply.

OAR 137-050-0720 is adopted to provide direction on calculating income after adjustments to income, including deductions and additions for spousal support, deductions for health care coverage for a parent's premium if necessary to enroll a child, and deductions for mandatory contributions to a union or other labor organization. Also

included are deductions for an additional child (formerly referred to as "non-joint" children).

OAR 137-050-0725 is adopted to provide the method of determining the basic support obligation. Included is credit for parenting time, if any, and information concerning income and numbers of children not included in the scale (which is now an appendix to the rules).

OAR 137-050-0730 is adopted to provide instruction on calculating parenting time credit.

OAR 137-050-0735 is adopted to provide instruction on child care costs. Child care costs are limited by area, but a provision has been added where practitioners may use the actual Department of Human Services Employment Related Day Care tables in lieu of the abbreviated tables in the rule to determine the cap.

OAR 137-050-0740 is adopted to provide instruction for reducing child support obligations when a child (or his or her representative payee) receives from a parent's disability or retirement Social Security or Veterans' benefits.

OAR 137-050-0745 is adopted to provide the method of ensuring that the parent who is or will be ordered to pay support is left with a self-support reserve of $1053. The self-support reserve is based on the federal poverty guideline.

OAR 137-050-0750 is adopted to provide instruction for calculating medical support. This rule incorporates provisions of Oregon law as amended by 2009 HB 2272, including a finding that private health care coverage and cash medical support are not considered reasonable in cost if the parent's income is equal to or less than full time Oregon minimum wage, and further defining "reasonable in cost" for medical support. Notice of rulemaking was originally given in the September 2009 Bulletin. However, because changes were made based on public comment, the rule was re-noticed in the November 2009 Bulletin.

OAR 137-050-0755 is adopted to provide direction that regardless of the computation, a parent is presumed to be able to pay $100 per month, except in limited circumstances, such as when parenting time is equal, an obligated parent without assets is incarcerated or receiving assistance, or has disability benefits as a sole source of income, or when the order only contains provisions for medical support.

OAR 137-055-0765 is adopted to provide the method by which parties may consent to a support amount which is within ten percent of the guideline amount.

Rules Coordinator: Vicki Tungate—(503) 986-6086

137-050-0700
General Provisions

(1) ORS 25.270 through ORS 25.280 require that child support be calculated according to a formula. The formula is known as the "Oregon Child Support Guidelines" and is contained in OAR 137-050-0700 through 137-050-0765 and in the "Obligation Scale" which is located in the appendix.

(2) Any change to the guidelines applies to all judicial or administrative actions which are pending as of the date of the change or initiated thereafter.

(3) Changes to these rules do not constitute a substantial change in circumstances for purposes of modifying a support order.

(4) "Pending" as used in section (2) means any matter that has been initiated before the effective date of a rule change but requires amendment, modification or hearing before a final judgment can be entered.

(5) With respect to a child that does not reside with either parent, calculate each parent's support obligation by performing a single calculation using the information for both parents. If one parent's income is unknown, attribute income equivalent to full time work at state minimum wage to that parent, as provided in OAR 137-050-0715, in order to complete the calculation.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0710
Calculating Support

(1) Apply standard rules of rounding to perform a child support calculation under the guidelines. Round to the hundredth place (two decimal places). For example, if the number beyond the one to be used is less than five, round the number down (2.443 becomes 2.44). If the number beyond the one to be used is equal to or greater than five, round up (2.445 becomes 2.45).

(2) Although reliable and comprehensive data is not available for costs of children between the ages of 18 and 21, the guidelines are used to calculate appropriate support amounts for a child attending school as defined in ORS 107.108. The presumption that the amounts are appropriate may be rebutted under OAR 137-050-0760.

(3) Determine an appropriate amount of support by following the steps in sections (4) through (16).

(4) Determine each parent's income as defined in OAR 137-050-0715.

(5) Determine each parent's adjusted income, as provided in OAR 137-050-0720.

(6) Determine each parent's income share by dividing the total combined income by each parent's individual adjusted income.

(7) Determine the basic support obligation and the parents' shares, as provided in OAR 137-055-0725.

(8) Determine parenting time credit, if any, as provided in OAR 137-050-0730.

(9) Determine each parent's costs for child care, as provided in OAR 137-050-0735.

(10) Determine the credit to be applied to the support obligation as a result of any Social Security or veterans' benefits as provided in OAR 137-050-0740.

(11) Determine each parent's support obligation before medical support by adding the parent's basic support obligation, subtracting the parenting time credit, adjusting for child care expenses, and subtracting the amount of credit given for Social Security or veterans' benefits. If the total is less than zero, use zero.

(12) Determine each parent's support obligation after application of the self-support reserve as provided in OAR 137-050-0745. Round the result to the nearest dollar.

(13) Determine each parent's medical support obligation, as provided in OAR 137-050-0750. Round the result to the nearest dollar.

(14) Determine whether the provisions of OAR 137-050-0755 (minimum order) apply, and if appropriate, enter the amount of the minimum order.

(15) If the support amount is unjust or inappropriate, as authorized in ORS 25.280, apply any appropriate rebuttal as provided in OAR 137-050-0760. Round the result to the nearest dollar.

(16) Determine whether an agreed support amount is appropriate as provided in OAR 137-050-0765.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0715
Income

(1) "Income" means the actual or potential gross income of a parent, as determined in this rule.

(2) "Actual income" means all earnings and income from any source, except as provided in section (4). Actual income includes but is not limited to:

(a) Employment-related income including salaries, wages, commissions, advances, bonuses, dividends, severance pay, pensions, and honoraria;

(b) Return on capital, such as interest, trust income, and annuities, and return of capital, such as a land sale contract;

(c) Income replacement benefit payments including Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits;

(d) Gifts and prizes, including lottery winnings;

(e) Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, minus costs of good sold, minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the fact finder to be inappropriate or excessive for determining gross income; and

(f) Expense reimbursements or in kind payments received by a parent in the course of employment, self employment, or operation of a business are income to the extent they reduce personal living expenses.

(3) To determine average monthly income when wages are paid weekly, multiply the weekly earnings by 52 and divide by 12. To determine average monthly income when wages are paid every two weeks, multiply the bi-weekly income earnings by 26 and divide by 12.

(4) Child support, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.

(5) "Potential income" means the greater of:

(a) The parent's probable full-time earnings level based on employment potential, relevant work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community; or

(b) The amount of income a parent could earn working full-time at the current state minimum wage.

(6) Income is presumed to be the amount determined as potential income in the following scenarios:

(a) An unemployed parent;

(b) A parent employed on less than a full-time basis;

(c) A parent with income less than Oregon minimum wage for full-time employment; or

(d) A parent with no direct evidence of any income.

(7) Income is presumed to be the parent's actual income in the following scenarios.

(a) A parent working full-time at or above the state minimum wage:

(b) A parent unable to work full-time due to a verified disability;

(c) A parent receiving workers' compensation benefits;

(d) An incarcerated obligor as defined in OAR 137-055-3300; or

(e) When performing a calculation for a temporary modification pursuant to ORS 416.425(13), except as provided in section (9) of this rule.

(8) The presumptions in sections (6) and (7) of this rule may be rebutted by a finding that the presumption is inappropriate in light of the parent's probable full-time earnings level based on employment potential, relevant work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community.

(9) Notwithstanding any other provision of this rule, if the parent is a recipient of Temporary Assistance for Needy Families, the parent's income is presumed to be the amount which could be earned by full-time work at the current state minimum wage. This income presumption is solely for the purposes of the support calculation and not to overcome the rebuttable presumption of inability to pay in ORS 25.245.

(10) As used in this rule, "full-time" means 40 hours of work in a week except in those industries, trades or professions in which most employers, due to custom, practice or agreement, utilize a normal work week of more or less than 40 hours in a week.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0720
Adjusted Income

(1) "Adjusted income" means income, as determined in OAR 137-050-0715, after:

(a) Deducting mandatory contributions to a union or other labor organization;

(b) If health care coverage is ordered as provided in ORS 25.323, deducting any cost associated with enrolling or maintaining the providing party in the insurance, if enrollment of the providing party is necessary to insure the child;

(c) Deducting the parent's monetary spousal support obligation, whether ordered in the same or a different proceeding, to this or a different party and whether paid or not;

(d) Adding the amount of court-ordered monetary spousal support owed to the parent, whether ordered in the same or a different proceeding, by this or a different party and whether paid or not; and

(e) Applying the additional child deduction described in section (2) of this rule.

(2) A parent is entitled to an income deduction when the parent is legally responsible for the support of a child not included in the current calculation.

(a) To qualify for the additional child deduction, the minor child must reside in the parent's household or the parent must be ordered to pay ongoing support for that child.

(b) A child attending school, as defined in ORS 107.108 and OAR 137-055-5110, qualifies the parent for the additional child deduction only if the parent is ordered to pay ongoing support for the child attending school.

(c) A stepchild only qualifies a parent for an additional child deduction if the parent is ordered to pay ongoing support for the stepchild.

(d) To calculate the additional child deduction:

(A) Subtract the union dues, health care coverage and spousal support deductions described in subsections 1(a), 1(b) and 1(c) of this rule from the parent's income;

(B) Add the amount of spousal support described in subsection (1)(d) of this rule to the parent's income; and

(C) Use the result to reference the obligation scale in the appendix using the income and number of children determined in this section to determine the total additional child deduction.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0725
Basic Support Obligation

(1) The appendix (Athe scale@) must be used in any calculation of support under ORS 25.270 to 25.280. The scale is based on a national average of incomes and costs of living and is therefore applicable regardless of whether an individual resides or works in another state. [Table not included. See ED. NOTE.]

(2) The basic child support obligation is determined by referencing the scale for the appropriate number of children for whom support is sought and the combined adjusted income of the parents.

(3) The scale lists amounts based on gross income, but presumes standard tax deductions for one person; amounts listed are therefore for net income.

(4) If each parent's parenting time is at least 25 percent, multiply the basic child support obligation by 1.5 (150 percent) as provided in OAR 137-050-0730.

(5) For combined adjusted gross incomes exceeding $30,000 per month, the presumed basic child support obligations will be the same as for parents with combined adjusted income of $30,000 per month. A basic child support obligation in excess of this level may be demonstrated for any reason set forth in OAR 137-050-0760.

(6) For support amounts for more than 10 children, the presumed basic child support obligation will be the same as for parents with 10 children. A basic child support obligation in excess of this level may be demonstrated for any reason set forth in OAR 137-050-0760.

(7) When the combined income falls between two income amounts on the scale, use the lower income amount on the scale to determine the child support obligation.

(8) Determine each parent's share of the basic support obligation by multiplying the combined basic support obligation by the parent's percentage share of adjusted income.

(9) The scale below presumes the parent with primary physical custody will take the tax exemption for the child for whom support is sought for income tax purposes. When that parent does not take the tax exemption, the rebuttals in OAR 137-050-0760 may be used to adjust the child support obligation. For the purposes of the guidelines, "primary physical custody" means the parent who provides the primary residence for the child and is responsible for the majority of the day-to-day decisions concerning the child.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0730
Parenting Time Credit

(1) For the purposes of this rule, "split custody" means that there are two or more children and each parent has at least one child more than 50 percent of the time.

(2) If there is a current written parenting time agreement or court order providing for parenting time, the percentage of overall parenting time for each parent must be calculated as follows:

(a) Determine the average number of overnights using two consecutive years.

(b) Multiply the number of children by 365 to arrive at a total number of child overnights. Add together the total number of overnights the parent is allowed with each child and divide the parenting time overnights by the total number of child overnights.

(c) Notwithstanding the calculation provided in subsections (2)(b) and (2)(c), the percentage of parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the child

is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, four-hour up to 12-hour blocks may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

(3) If the parents have split custody but no written parenting time agreement, determine each parent's percentage share of parenting time by dividing the number of children with the parent by the total number of children.

(4) If there is no written parenting time agreement or court order providing for parenting time, the parent or party having primary physical custody will be treated as having 100 percent of the parenting time, unless a court or administrative law judge determines actual parenting time.

(5) If the court or administrative law judge determines actual parenting time exercised by a parent is different than what is provided in a written parenting plan or court order, the percentage of parenting time may be calculated using the actual parenting time exercised by the parent.

(6) If each parent's parenting time is at least 25 percent, or the child resides with a caretaker or is in the care of a state agency and one or both parents each have at least 25 percent parenting time, a parenting time credit will be calculated as follows:

(a) Multiply the combined basic child support obligation by 1.5 (150 percent); and

(b) Multiply each parent's percentage share of parenting time by the combined basic child support obligation in subsection (a). The result is the amount of credit to be subtracted from the obligation for each parent.

(7) The parenting time credit is applied to the entire support obligation, including any support obligation for a child attending school.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0735
Child Care Costs

(1) Adjust the support obligation for child care costs if the child for whom support is being calculated is disabled or under the age of 13. The adjustment is equal to the average monthly child care expense less any state or federal child care tax credit.

(2) Child care costs can be incurred by either parent, but must be related to the parent's employment, job search, or training or education necessary to obtain a job. Only child care costs that can be documented and determined can be considered.

(3) Child care costs are allowable only to the extent that they are reasonable and, except as provided in section (4), do not exceed the maximums set out in table 1. For the purposes of applying the maximums, the location of the provider determines which rates apply. [Table not included. See ED. NOTE.]

(4) The maximum amounts allowed by the Department of Human Services in their Employment-Related Day Care allowance tables at OAR 461-155-0150 (http://dhsmanuals.hr.state.or.us/EligManual/07cc-f.htm#RateCharts) may be used as cost maximums in lieu of the abbreviated table in section (3).

(5) Child care costs incurred or to be incurred by a parent include any amounts paid by government subsidies for that parent.

(6) As used in this rule, "child with disabilities" means a child who has a physical or mental disability that substantially limits one or more major life activities (self-care, walking, seeing, speaking, hearing, breathing, learning, working, etc.).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0740
Social Security and Veterans' Benefits

(1) For the purposes of this rule:

(a) "Apportioned Veterans' benefits" means the amount the Veterans Administration deducts from the veteran's award and disburses to the child or his or her representative payee; and

(b) "Social Security benefits" refer to those benefits paid on behalf of a disabled or retired parent to a child or a child's representative payee.

(2) The support obligation may be reduced dollar for dollar in consideration of any Social Security or apportioned veterans' benefits; and

(3) The support obligation must be reduced dollar for dollar in consideration of any Survivors' and Dependents' Educational Assistance (veterans' benefit) under 38 U.S.C. chapter 35.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0745
Self-Support Reserve

(1) A support calculation must ensure that a parent being ordered to pay support is left with enough income to meet his or her own basic needs. This is known as the Self Support Reserve and is determined as follows:

(a) Determine the parent's adjusted income as provided in OAR 137-050-0715;

(b) Calculate the parent's income available for support by subtracting a self-support reserve of $1053 from the parent's adjusted income;

(c) Compare the amount of income available for support to the amount of support that was calculated under OAR 137-050-0710(8). The lesser of the two amounts is presumed to be the correct support amount.

(2) Any available income remaining after application of the self-support reserve in step (1)(c) is the income available for medical support.

(3) This rule does not apply to an incarcerated obligor as defined in OAR 137-055-3300.

(4) The amount of the self-support reserve (SSR) is based on the federal poverty guideline (FPG), and is adjusted to account for estimated taxes using a 1.167 multiplier. (SSR = FPG x 1.167) The self-support reserve amount will be reviewed and updated annually.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0750
Medical Support

(1) The scale (see OAR 137-050-0725 and its appendix) includes ordinary unreimbursed medical costs of $250 per child per year. These costs are included in the support obligation and prorated between the parents in the support calculation performed under OAR 137-050-0710.

(2) In addition to the definitions in ORS 25.321 and 25.323, "reasonable in cost" means that:

(a) The cost to a parent of cash medical support or private health insurance is not more than four percent of the parent's adjusted income as determined in OAR 137-050-0720. A greater amount may be ordered if compelling factors support a finding that a higher cost is reasonable;

(b) The cost to the obligated parent of cash medical support or private health insurance does not exceed the amount of the parent's income determined in OAR 137-050-0745(2) to be available for medical support; and

(c) The parent's income is greater than the Oregon minimum wage for full-time employment.

(3) In applying the reasonable in cost standard to private health care coverage, only the cost of covering the child for whom support is sought will be considered. If family coverage is provided for the joint child and other family members, prorate the out-of-pocket cost of any premium for the child for whom support is sought only.

(4) If only one parent has private health care coverage that is appropriate and available under ORS 25.323, that parent must be ordered to provide it.

(5) If both parents have access to appropriate, available private health care coverage, both parents may be ordered to provide coverage. If both parents provide coverage, neither parent will be ordered to reimburse the other for the cost of the premium, except as provided in section (10).

(6) If the obligee is ordered to provide private health care coverage and the obligor is not, the obligor must be ordered to pay cash medical support that is reasonable in cost to defray the cost of the premium and other medical expenses, or the order must include a finding explaining why cash medical support is not ordered.

(7) If neither parent has access to appropriate, available private health care coverage:

(a) One or both parents must be ordered to provide private health care coverage at any time whenever it becomes available;

(b) The party with custody of the child may be ordered to provide public health care coverage for the child; and

(c) Either or both parents must be ordered to pay cash medical support that is reasonable in cost, or the order must include a finding explaining why cash medical support is not ordered.

(8) For purposes of this rule, "to provide" health care coverage means to apply to enroll the child and pay any costs associated with the enrollment, even if the cost to the parent is zero.

(9) If the child is not in the custody of either parent and cash medical support is or will be ordered as provided in section (7) of this rule, the agency or person with legal or physical custody of the child is considered

the parent for the purposes of receipt or assignment of cash medical support.

(10) A medical support clause may be contingent in that it may order a party to provide private health care coverage and may order an amount of cash medical to be paid any time private health care coverage is unavailable to that party. If cash medical support is ordered due to private health care coverage being unavailable to a party, the order may also provide that any time private health care coverage is available to that party it will be provided instead of cash medical support.

(11) For purposes of ORS 25.323, private health care coverage may be "available" to a parent from any source, including but not limited to an employer or a spouse or domestic partner.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0755
Minimum Order

(1) Notwithstanding any other provision of OAR 137-050-0700 to 137-050-0760, it is rebuttably presumed that a parent has an ability to pay at least $100 per month as child support, except as provided in section (2).

(2) The presumption in this rule does not apply when:

(a) Each parent has 50 percent parenting time, as determined by OAR 137-050-0730;

(b) The administrator is entering an order which requires only medical support; or

(c) The parent from whom support is sought:

(A) Has disability benefits as a sole source of income;

(B) Is incarcerated and without ability to pay as described in OAR 137-055-3300(4); or

(C) Receives public benefits as defined in ORS 25.245.

Stat. Auth.: ORS 25.270 – 25.290, 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

137-050-0765
Agreed Support Amount

(1) It is in the best interest of children to have support orders reached by agreement of the parents. Entering orders with the parents' consent promotes positive parental involvement and prompt, consistent payment of the support obligation. Parents who enter into agreed support amounts avoid the uncertainty of hearings and possible appeals.

(2) The guideline support amount and rebuttal factors are intended to meet the needs of most families. Likewise, the rebuttal factors in OAR 137-050-0760 address most situations in which the guideline amount is inappropriate. However, there will be families for whom the support amount, even rebutted, is not correct and who value the certainty of agreed support amounts.

(3) In consideration of foregoing hearing and appeal rights, the parties may consent to a support amount that is within 10 percent of the amount determined under guideline rules 137-050-0700 through 137-050-0760, as rebutted pursuant to OAR 137-050-0760. The order must be entered with the written consent of the parties.

(4) An agreed support amount entered pursuant to this rule is presumed to be just and appropriate within the meaning of ORS 25.280.

Stat. Auth.: ORS 25.270 B 25.290, 180.345
Stats. Implemented: ORS 25.270 B 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10

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Rule Caption: Guidelines for calculating child support: rebuttals.
Adm. Order No.: DOJ 17-2009(Temp)
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 1-4-10 thru 7-1-10
Notice Publication Date:
Rules Adopted: 137-050-0760
Subject: OAR 137-050-0760 is adopted to provide rebuttals to the presumed correct support amount. This rule was originally proposed and rewritten in September, but due to comments received, has been changed enough to require re-notice of adoption. The primary change is to clarify that rebuttals, while now applied for costs, to income or the support amount, are applied at the end of the calculation.
Rules Coordinator: Vicki Tungate—(503) 986-6086

137-050-0760
Rebuttals

(1) When the presumed support amount is found to be unjust or inappropriate, as provided in ORS 25.280, rebuttals may be applied as provided in this rule.

(2) A parent's income may be increased or decreased based on factors affecting income, including but not limited to:

(a) Evidence of the other available resources of the parent;

(b) The reasonable necessities of the parent;

(c) The net income of the parent remaining after withholding required by law or as a condition of employment;

(d) A parent's ability to borrow;

(e) The number and needs of other dependents of a parent;

(f) The special hardships of a parent affecting the parent's ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care;

(g) The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker;

(h) The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a dependent, child tax credits, or the earned income tax credit received by either parent;

(i) The financial advantage afforded a parent's household by the income of a spouse or domestic partner;

(j) The financial advantage afforded a parent's household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715;

(k) Evidence that a child who is subject to the support order is not living with either parent or is a child attending school as defined in ORS 107.108;

(l) Prior findings in a judgment, order, decree or settlement agreement that the existing support award was made in consideration of other property, debt or financial awards, and those findings remain relevant;

(m) The net income of the parent remaining after payment of mutually incurred financial obligations;

(n) The tax advantage or adverse tax effect of a parent's income or benefits.

(3) Rebuttals for costs or to the child support order amount may be made for the following factors:

(a) The extraordinary or diminished needs of the child, except:

(A) Expenses for extracurricular activities may not be included, and

(B) Social Security benefits paid to a child because of a child's disability may not be included;

(b) Evidence that a child who is subject to the support order is not living with either parent or is a child attending school as defined in ORS 107.108;

(c) Prior findings in a judgment, order, decree or settlement agreement that the existing support award was made in consideration of other property, debt or financial awards, and those findings remain relevant.

(4) All rebuttals will be applied at the end of the support calculation. Rebuttals to income taken pursuant to section (2) or for costs taken pursuant to section (3) must be calculated based on the respective income shares of the parties. Rebuttals to the child support order amount taken pursuant to section (3) will be applied on a dollar-for-dollar basis.

Stat. Auth.: ORS 25.270B, 25.290 & 180.345
Stats. Implemented: ORS 25.270B & 25.290
Hist.: DOJ 17-2009(Temp), f. 12-1-09, cert. ef. 1-4-10 thru 7-1-10

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

Rule Caption: Maintain the current Petroleum Load Fee rate of $4.00 in lieu of raising it to $6.00.
Adm. Order No.: OSFM 3-2009
Filed with Sec. of State: 11-18-2009
Certified to be Effective: 11-18-09
Notice Publication Date: 10-1-2009
Rules Amended: 837-090-1145
Subject: The rule is being amended to maintain the Petroleum Load Fee at the current rate of $4.00 in lieu of raising the fee to $6.00. The

Petroleum Load Fee funds the Hazardous Materials Emergency Response Team Program (HMERT). The program is sustainable at the current rate of $4.00.
Rules Coordinator: Pat Carroll—(503) 934-8276

837-090-1145
Petroleum Load Fee

(1) As provided in ORS 465.101 to 465.131, the petroleum load withdrawal fee is established to carry out the state's oil, hazardous materials and hazardous substance emergency response program as it relates to the maintenance, operation, and use of the public highways, roads, streets, and roadside rest areas. Effective October 1, 2005 the fee shall be $2.50 per load, effective July 1, 2007 the fee shall be $4.00 per load and effective July 1, 2009 the fee shall be $6.00 per load.

(2) Fee collection by the Department of Revenue will begin October 1, 1993.

Stat. Auth.: ORS 465.106
Stats. Implemented: ORS 465.106
Hist.: FM 5-1993, f. & cert. ef. 11-1-93; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 12-2005, f. & cert. ef. 8-15-05; OSFM 3-2009, f. & cert. ef. 11-18-09

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Rule Caption: Adoption of the 2009 International Fire Code with Oregon Amendments.
Adm. Order No.: OSFM 4-2009
Filed with Sec. of State: 11-19-2009
Certified to be Effective: 4-1-10
Notice Publication Date: 8-1-2009
Rules Amended: 837-040-0010, 837-040-0020, 837-040-0140
Subject: (1) OAR 837-040-0010(2) adopts the 2009 International Fire Code with Oregon amendments to be known as the Oregon Fire Code, 2010 Edition with an effective date of April 1, 2010.

(2) Amendment to OAR 837-040-0020(3) removes mid-cycle Oregon amendments to the 2007 Oregon Fire Code as they will be incorporated into the 2010 Oregon Fire Code.

(3) OAR 837-040-0140 changes edition dates of the Oregon Structural Specialty Code and the Oregon Mechanical Specialty Code from 2007 to 2010.

The proposed adoption of the 2009 International Fire Code with Oregon amendment should have no adverse impact on government, local government, business or the public. Any cost increases or savings cannot be quantified at this time. The Oregon Fire Code Committee made the finding that the added cost, if any, is necessary to the health and safety of the public.
Rules Coordinator: Pat Carroll—(503) 934-8276

837-040-0010
Adoption of the International Fire Code

(1) The Oregon Fire Code is generally adopted every three years coinciding with the publication of a nationally recognized fire code.

(2) Effective April 1, 2010 the 2010 Oregon Fire Code is the 2009 edition of the International Fire Code, as published by the International Code Council, and as amended by the Office of State Fire Marshal. (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications.)

Stat. Auth: ORS 476.030
Stats. Implemented: ORS 476.030
Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-040-0005, Sec. (3) Uniform Fire Code; FM 3-1989, f. 6-30-89, cert. ef. 7-1-89; FM 6-1990, f. & cert. ef. 9-13-90; F)M 6-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1996, f. 1-22-96, cert. ef. 4-1-96; OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 3-1998, f. & cert. ef. 9-30-98; OSFM 4-1999, f. 12-29-99, cert. ef. 1-1-00; OSFM 3-2000, f. 4-1-00, cert. ef. 5-1-00; OSFM 13-2000, f. 10-3-00, cert. ef. 11-1-00; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 8-2004(Temp), f. 12-29-04, cert. ef. 1-3-05 thru 6-30-05; OSFM 11-2005, f. & cert. ef. 6-27-05; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 4-2009, f. 11-19-09, cert. ef. 4-1-10

837-040-0020
Amendments to the Oregon Fire Code

(1) The Office of State Fire Marshal may amend the Oregon Fire Code approximately midway between publications of the International Fire Code based on proposed code amendments submitted for consideration by interested persons.

(2) Any time between publications of the international Fire Code, the Office of State Fire Marshal may initiate and adopt code amendments to the Oregon Fire Code, as circumstanced merit (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications).

[Publications: Publications referenced are available from the agency.]
Stat. Auth: ORS 476.030
Stats. Implemented: ORS 476.030
Hist.: OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 6-2008, f. 9-2-08, cert. ef. 10-1-08; OSFM 10-2008, f. 12-18-09, cert. ef. 12-31-09; OSFM 4-2009, f. 11-19-09, cert. ef. 4-1-10

837-040-0140
Adoption of the Oregon Structural Specialty Code and Oregon Mechanical Specialty Code

The fire and life safety provisions of the 2010 edition of the Oregon Structural Specialty Code and the 2010 edition of the Oregon Mechanical Specialty Code is hereby adopted as a standard for the purpose of evaluation of existing buildings. (Referenced publications are available for review at the agency. See Building Codes Division web site for information on where to purchase publications.)

Stat. Auth.: ORS 476.030
Stats. Implemented: ORS 476.030
Hist.: OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07; OSFM 4-2009, f. 11-19-09, cert. ef. 4-1-10

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Rule Caption: Permanently adopt Oregon's new novelty/toylike lighter rules.
Adm. Order No.: OSFM 5-2009
Filed with Sec. of State: 11-20-2009
Certified to be Effective: 11-21-09
Notice Publication Date: 11-1-2009
Rules Adopted: 837-046-0000, 837-046-0020, 837-046-0040, 837-046-0060, 837-046-0080, 837-046-0100, 837-046-0120, 837-046-0140, 837-046-0160, 837-046-0180
Subject: The purpose of these rules is to permanently adopt Oregon's novelty/toylike lighter rules.
Rules Coordinator: Pat Carroll—(503) 934-8276

837-046-0000
Purpose and Scope

(1) The purpose of these rules is to implement the standards, policies and procedures pertaining to the regulation of *novelty lighters* by the Office of State Fire Marshal (OSFM).

(2) The scope of these rules applies to the implementation of 2009 HB 2365, relating to *novelty lighters*.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0020
Effective Dates

OAR 837-046-0000 through 837-046-0180 are effective upon the date of filing.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0040
Definitions

For the purpose of these rules, the following definitions apply to OAR 837-046-0000 through 837-046-0180:

(1) "*Audio effects*" means music, animal sounds and whistles, buzzers, beepers or other noises not pertinent to the flame-producing function of a lighter.

(2) "*Authorized Representative of the State Fire Marshal*" means an employee of the State Fire Marshal, as well as Assistants to the State Fire Marshal as defined in ORS 476.060.

(3) "*Distribute*" means to:

(a) Deliver to a person other than the purchaser; or

(b) Provide as part of a commercial promotion or as a prize or premium.

(4) "*Importer*" means a person who causes a *lighter* to enter this state from a manufacturing, wholesale, distribution or retail sales point outside this state, for the purpose of selling or distributing the *lighter* within this state or with the result that the *lighter* is sold or distributed within this state.

(5) "*Lighter*" means a handheld device of a type typically used for igniting tobacco products by use of a flame.

(6) "*Manufacturer*" means a person or business that makes *lighters* by hand or by machine.

(7) "*Misleading design*" means a *lighter* that has a shape that resembles or imitates an object other than a *lighter*. *Misleading design* applies to *lighters* of all types and includes *lighters* that resemble or imitate:

(a) Cartoon characters, figurines or action figures;

(b) Toys or game pieces;

(c) Musical instruments;

(d) Vehicles;

(e) Animals;

(f) Human body parts;

(g) Food, beverages or food or beverage packages;

(h) Weaponry;

(i) Furniture;

(j) Sports equipment;

(k) Holiday decoration;

(l) Tools; or

(m) Household products.

(8) "*Novelty lighter*":

(a) Means a lighter that has misleading design, audio effects or visual effects, or that has other features of a type that would reasonably be expected to make the *lighter* appealing or attractive to a child less than 10 years of age.

(b) Does not mean:

(A) A *lighter* manufactured before January 1, 1980;

(B) A *lighter* that has been rendered permanently incapable of producing a flame or otherwise causing combustion; or

(C) A *lighter* with only logos, decals, decorative artwork or heat-shrinkable sleeves.

(9) "*Retail dealer*" means a person, other than a manufacturer or *wholesale dealer* that engages in distributing *novelty lighters*.

(10) "*Sell*" means to provide or promise to provide to a wholesale, retail, mail-order or other purchaser in exchange for consideration.

(11) "*Visual effect*"means flashing lights, color-changing lights and changing images. *Visual effect* does not mean a continuous LED light used as a flashlight.

(12) "*Wholesale dealer*" means a person that distributes *novelty lighters* to a *retail dealer* or other person for resale.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0060
General

(1) As of June 2, 2009, *lighters* meeting the definition of *novelty lighters* may not be sold, offered for sale, distributed in Oregon or manufactured or possessed for the purpose of sale or distribution in Oregon.

(2) *Wholesale dealers*, *importers* or *retail dealers* must comply with:

(a) 2009 HB 2365; and

(b) OAR 837-046-0000 through 837-046-0180.

(3) A list of *lighters*, classes and types of *lighters* determined to be *novelty lighters* is available on the OSFM website or upon request. Photographs of *novelty lighters* are representative of *lighter* types, but may not include all prohibited *lighters*.

(4) Photographs of acceptable *lighters* are available on the OSFM website or upon request. Photographs of acceptable *lighters* are examples and do not include all acceptable *lighters*.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0080
Inspections

The OSFM or an *authorized representative* may inspect Oregon *wholesale dealers*, agents, and *retailers* for compliance with 2009 HB 2365. Inspections include any documents to determine compliance with 2009 HB 2365.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0100
Lighter Review Committee

Requests may be made for a review of a *lighter* determined to be a *novelty lighter* by the OSFM. Submit a written request and color photo to the OSFM. The lighter review committee will review the *lighter* and make a recommendation to the OSFM.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0120
Cooperative Agreements

The OSFM may enter into a cooperative agreement with any state or local agency allowing the agency to act as an *authorized representative* of the OSFM for enforcement purposes of this division.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0140
Seizure of Non-Compliant Product

The OSFM, an *authorized representative*, or a law enforcement agency may seize and make subject to forfeiture any *lighter* described in OAR 837-046-0040 and 2009 HB 2365.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0160
Civil Penalties

(1) The OSFM may impose civil penalties in accordance with ORS 183.745 for any violation of 2009 HB 2365 or OAR 837-046-0000 through 837-046-0180. Refer to the following penalty matrix for penalties established by 2009 HB 2365:

(a) $10,000 if the person is a manufacturer or *importer* of *lighters*;

(b) $1,000 if the person is a *wholesale dealer* of *lighters* or *distributes lighters* by means other than distribution directly to consumers;

(c) $500 if the person is:

(A) A retail seller of *lighters*; or

(B) A person distributing *lighters*, if the person is other than a manufacturer, *importer* or *wholesale dealer*.

(2) Each day a person *distributes* or *sells novelty lighters* after being notified of the violation by the OSFM constitutes a separate violation and subjects the person to additional civil penalties.

(3) All monies collected from civil penalties are to be deposited to the State Fire Marshal Fund.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

837-046-0180
Procedures, Hearings and Judicial Review

(1) Hearings are conducted according to ORS 183.413 through 183.470.

(2) The Attorney General may bring action for the OSFM to:

(a) Seek injunctive relief to prevent or end a violation;

(b) Recover civil penalties;

(c) Obtain access for inspections; or

(d) Recover attorney fees and other enforcement costs and disbursements.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09; OSFM 5-2009, f. 11-20-09, cert. ef. 11-21-09

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Department of Public Safety Standards and Training
Chapter 259

Rule Caption: Housekeeping — Plain Language Standards.
Adm. Order No.: DPSST 14-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 11-1-2009
Rules Amended: 259-008-0000

Subject: The Oregon Legislature enacted legislation (HB 2702) during the 2007 session, requiring written documents to conform to plain language standards.
Rules Coordinator: Bonnie Narvaez—(503) 378-2431

259-008-0000
Policies and Objectives

(1) The Board and Department adopt the following policies in response to ORS 181.630:

(a) The Board and Department exist to develop talented individuals into public safety providers who are:

(A) Culturally competent;

(B) Ethically, physically and emotionally fit; and

(C) Well trained, highly skilled and responsive to the needs of their communities.

(b) The Board and Department will promote the safety, efficiency, effectiveness, self-sufficiency and competence of public safety agencies and professionals.

(c) The Board and Department will encourage participation among public and private security, law enforcement, telecommunications and corrections organizations, the related organizations with whom they work as well as the interests of the communities they serve.

(d) The Board and Department will work together on matters related to public safety standards, training and certification.

(e) The Board may adopt or approve any policy, standard or minimum requirement related to public safety certifications and training.

(f) The Department may administer operations and procedures and implement or apply the policies and standards of the Board.

(g) The Department is a full department of the state.

(2) The objectives of the Board and Department are:

(a) To improve public safety services in Oregon by raising the level of competence of police, corrections, parole and probation officers, telecommunicators, emergency medical dispatchers, and support staffs:

(A) By setting minimum standards for all levels of career development in areas such as employment; promotion; education; physical, emotional, intellectual, and moral fitness; and any other matter that relates to the competence and reliability of a person seeking employment or promotion within the police, corrections, and parole and probation services;

(B) By setting minimum standards for training and certifying police, corrections, parole and probation officers, telecommunicators, and emergency medical dispatchers, for all levels of career development, basic through executive;

(C) By providing, sponsoring, certifying or coordinating training courses for police, corrections, parole and probation, telecommunication, and emergency medical dispatchers.

(b) To conduct and stimulate research to improve the police, fire service, corrections, adult parole and probation, emergency medical dispatch and telecommunicator professions.

Stat. Auth.: ORS 181.630 & 181.640
Stats. Implemented: ORS 181.630 & 181.640
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0000, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 14-2009, f. & cert. ef. 12-15-09

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Rule Caption: Adopts Minimum Standards for Training DOC Correctional Officers and Amends Supervision and Middle Management Training.
Adm. Order No.: DPSST 15-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 11-1-2009
Rules Amended: 259-008-0025
Rules Repealed: 259-008-0025(T)
Subject: Adopts minimum standards for training correctional officers who are employed by Department of Corrections.

Amends Supervision and Middle Management training requirements for law enforcement officers who are appointed, promoted or transferred into a supervisory or middle management position.
Rules Coordinator: Bonnie Narvaez—(503) 378-2431

259-008-0025
Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers must satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion must be completed within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual must be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610, subsections (5), (13) and (14), and OAR 259-008-0005, subsections (7), (19), (23), and (24), during the last five (5) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610(9) and (18) and 259-008-0005(14) and (32) for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant must provide proof of successful completion of prior equivalent training.

(C) The applicant must provide documentation of the course content with hour and subject breakdown.

(D) The applicant must obtain a minimum passing score on all written examinations for the course.

(E) The applicant must demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant will only be given one opportunity to challenge a course.

(g) Previously employed police officers, corrections officers and parole and probation officers who are required to attend the Basic Course may not challenge the Basic Course.

(h) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610(5), (13) and (14), and OAR 259-008-0005(7), (19), (23) and (24) over two and one-half (2-1/2) but less than five (5) years must complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(i) Corrections and police officers who have not completed the Basic Course must begin training within 90 days of their initial date of employment.

(A) A police officer must begin training at an academy operated by the Department.

(B) A corrections officer who is employed by Oregon Department of Corrections (hereinafter referred to as DOC) during the period July 1, 2009 through January 1, 2014 must begin DOC Basic Corrections Course (hereinafter referred to as DOC BCC) training provided by DOC as described in section (6) of this rule.

(C) A corrections officer who is not employed by DOC must begin training at an academy operated by the Department.

(D) A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(j) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(k) The basic course for police officers must include:

(A) Training on the law, theory, policies and practices related to vehicle pursuit driving;

(B) Vehicle pursuit training exercises, subject to the availability of funding; and

(C) A minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2-1/2) and five (5) years, must satisfactorily complete a Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course must also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary. See 259-008-0025(1)(b).

(A) A law enforcement officer who fails to achieve a minimum passing test score after completing a Career Officer Development Course will be given one opportunity to remediate through self-study and re-test within 60 days of the initial date of failure.

(B) A law enforcement officer who fails to achieve a minimum passing test score after re-testing will have been determined to have failed academically and will be required to attend the next available Basic Course.

(C) A law enforcement officer who is scheduled to complete a distance learning COD Course must achieve a minimum passing test score within the timeframe set by the Department. Failure to successfully complete a distance COD Course within the timeframe set by the Department will require an officer to attend the next available COD Course.

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position shall satisfactorily complete the prescribed Supervision Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred from within a department, or is appointed from an outside department, without having completed a prescribed Supervision Course, within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete the prescribed Middle Management Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred to a middle management position within a department, or employed from outside a department and appointed to a middle manager position without having completed a prescribed middle management course within the preceding five (5) years.

(5) Specialized Courses:

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. The staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, must be trained on how to investigate and report cases of missing children and adults.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs must be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) The DOC Basic Corrections Course.

(a) *Course Requirements*:

(A) Except as provided in 259-008-0035, all corrections officers hired by the Oregon Department of Corrections (hereinafter referred to as DOC) on or after July 1, 2009, but prior to January 1, 2014, must satisfactorily complete the DOC Basic Corrections Course (hereinafter referred to as DOC BCC), including the field training portion. The DOC BCC and field training portion must be completed within twelve months from the date of employment by a corrections officer.

(B) Prior to attending a DOC BCC, a corrections officer hired by DOC on or after July 1, 2009, but prior to January 1, 2014, must:

(i) Meet the minimum standards for employment as a law enforcement officer contained in OAR 259-008-0010;

(ii) Meet the background investigation requirements for a law enforcement officer contained in OAR 259-008-0015; and

(iii) Meet the minimum standards for training contained in this section.

(C) The DOC BCC must conform to the content and standard approved by the Board. The DOC BCC must include, but is not limited to:

(i) Minimum training standards for the basic certification of corrections officer employed by DOC. The minimum training developed by DOC must be adopted by the Board and must meet or exceed the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than DOC.

(ii) Minimum Course Hours. The DOC BCC must include, at a minimum, the following:

(I) 24 hours in Law;

(II) 38 hours in Human Behavior;

(III) 36 hours in Security;

(IV) 82 hours in General Skills.

(V) Administrative time is not included within the hours identified above.

(iii) Attendance Standards. Attendance rosters must be kept and copies of these rosters must be submitted to the Department at the conclusion of a student's training, or when requested by the Department. To successfully complete the DOC BCC, a student may not miss more than 10% of the DOC BCC.

(iv) Notwithstanding (C) above, successful completion of the DOC BCC requires 100% attendance at the following mandatory classes:

(I) ORPAT

(II) Defensive Tactics/Reality Based Training

(III) Firearms

(IV) Medical Escorts/Restraints

(V) Contraband/Searches

(VI) Report Writing

(v) Conduct. An individual attending a DOC BCC is expected to uphold the minimum moral fitness standards for Oregon public safety officers during their training. DOC will document the date, type, and disposition of any student misconduct relating to the minimum standards for correctional officers. These include but are not limited to the following Zero Tolerance Offenses:

(I) Any unlawful act;

(II) Dishonesty, lying or attempting to conceal violations;

(III) Cheating;

(IV) Harassment;

(V) Alcohol possession or use at the training venue.

(vi) Course Curriculum.

(I) The DOC BCC will be based on the critical and essential job tasks identified in the most current Job Task Analysis for corrections officers provided to DOC by the Department.

(II) The DOC BCC will incorporate the most current conceptual performance objectives provided to DOC by the Department.

(III) The DOC BCC will incorporate curriculum updates provided to DOC by the Department, when those updates address the critical and essential job tasks or conceptual performance objectives referenced above.

(b) *Testing Requirements*:

(A) Academic Testing. Academic testing will consist of written test questions that are valid, create reasonable academic rigor, and require

students to demonstrate knowledge and application of the essential tasks identified within the DOC BCC curriculum. DOC must administer examinations and maintain a file of examinations conducted.

(i) Academic Testing Passing Score. Except as provided below, to successfully complete the DOC BCC, students must achieve a minimum score of 75% on each academic test. If a student does not attain a 75% score, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. After remediation, a student will be allowed one opportunity to re-test and achieve a minimum score of 75%.

(ii) Students must attain a score of 100% on all academic test questions on Use of Force topics.

(iii) If a student fails to attain a 100% score on Use of Force topics, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. Remediation must include the student completing the DPSST Use of Force Remediation form to demonstrate understanding of each topic missed.

(B) Skills Testing. Skills testing will consist of evaluations documented by use of Skills Sheets during which students must demonstrate competence and achieve a "pass" score in each skill tested.

(C) Test Security and Integrity.

(i) DOC must develop and strictly enforce measures to ensure the security of test questions and integrity of all testing processes.

(ii) DOC must randomize the order of test questions and must develop a sufficient bank of test questions to ensure that students who fail to achieve a passing score and are remediated are given a randomized test that includes some questions that are different than those in the test the student originally failed.

(c) *Instructor Requirements*: Instructor Qualifications. All instructors for the DOC BCC must meet or exceed the Instructor Certification standards for instructors at DPSST Basic courses and must be currently certified by the Department in the categories instructed.

(d) *Documentation Requirements*:

(A)(i) Required documentation for the DOC BCC must include, but is not limited to:

(ii) Name, DPSST number and employing institution of each student;

(iii) Topics;

(iv) Number of training hours per topic;

(v) Name, DPSST number, and topics taught for all instructors utilized;

(vi) Total hours attended per student;

(vii) Any student absences;

(viii) Any remediation of training;

(ix) Any instructor notes or observations relating to any students' performance during the training; and

(x) All academic and skills testing for each student.

(e) *Certification Requirements*:

(A)(i) Officer Certification. The applicant must meet the minimum standards for certification as a corrections officer contained in OAR 259-008-0060. DOC must submit the following documents at the time Basic certification is requested:

(ii) F-7 (Application for Certification);

(iii) F-6 (Course Roster) for DOC BCC including the number of hours and the final cumulative score;

(iv) F-6 (Course Roster) for DOC Advanced Corrections Course with attached itemized list of classes attended;

(v) Proof of current First Aid/CPR;

(vi) F-11 (Criminal Justice Code of Ethics); and

(vii) FTO Manual Completion Report.

(7) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 14-2008, f. & cert. ef. 10-15-08; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 8-2009(Temp), f. & cert. ef. 9-15-09 thru 3-1-10; DPSST 15-2009, f. & cert. ef. 12-15-09

Rule Caption: Housekeeping — Rescind Rules related to Wildland Interface Firefighter, Updating NWCG Standards.
Adm. Order No.: DPSST 16-2009(Temp)
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09 thru 6-11-10
Notice Publication Date:
Rules Amended: 259-009-0005, 259-009-0062
Subject: Rescinds Wildland Interface Fire Fighter, Wildland Interface Engine Boss, Wildland Interface Strike Team/Task Force Leader and Wildland Interface Division/Group Supervisor and NFPA Fire Inspector II because comments were timely received during the comment period.

Rescinds current NWCG standards relating to Wildland Interface Fire Fighter, Wildland Interface Engine Boss, Wildland Interface Strike Team/Task Force Leader Engine and Wildland Division/Group Supervisor because comments were timely received during the comment period.
Rules Coordinator: Bonnie Narvaez—(503) 378-2431

259-009-0005
Definitions

(1) "Authority having jurisdiction" shall means the Department of Public Safety Standards and Training.

(2) "Agency Head" means the chief officer of a fire service agency directly responsible for the administration of that unit.

(3) "Board" means the Board on Public Safety Standards and Training.

(4) "Cargo Tank Specialty" means a person who provides technical support pertaining to cargo tank cars, provided oversight for product removal and movement of damaged cargo tanks, and acts as liaison between technicians and outside resources.

(5) "Chief Officer" means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and supervises a particular fire service agency program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(7) "Company Officer" means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(8) "Content Level Course" is a course that includes an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(9) "Department" means the Department of Public Safety Standards and Training.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Entry Level Fire Fighter" means an individual at the beginning of his/her fire service involvement. During the probationary period an entry level fire fighter is in a training and indoctrination period under constant supervision by a more senior member of a fire service agency.

(12) "Field Training Officer" means an individual who is authorized by a fire service agency of by the Department to sign as verifying completion of tasks required by task books.

(13) "Fire Company" means a group of fire fighters, usually 3 or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(14) "Fire Fighter" is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

(15) "Fire Ground Leader" means a Fire Service Professional who is qualified to lead emergency scene operations."

(16) "Fire Inspector" means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(17) "Fire Service Agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire protection services.

(18) "Fire Service Professional" means a paid (career) or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(19) "Fire Training Officer" means a fire service member assigned the responsibility for administering, providing, and managing and/or supervising a fire service agency training program.

(20) "First Responder" means an "Operations Level Responder"

(21) "Hazardous Materials Safety Officer means a person who works within an incident management system (IMS) (specifically, the hazardous materials branch/group) to ensure that recognized hazardous materials/WMD safe practices are followed at hazardous materials/weapons of mass destruction (WMD) incidents.

(22) "Hazardous Materials Technician" means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents using a risk-based response process by which they analyze a problem involving hazardous materials/weapons of mass destruction (WMD), select applicable decontamination procedures, and control a release using specialized protective and control equipment.

(23) "Incident Commander" (IC) means a person who is responsible for all incidents activities, including the development of strategies and tactics and the ordering and release of resources.

(24) "Intermodal Tank Specialty" means a person who provides technical support pertaining to intermodal tanks, provided oversight for product removal and movement of damaged intermodal tanks, and acts as a liaison between technicians and outside resources.

(25) "Marine Tank Vessel Specialty" means a person who provides technical support pertaining to marine tank vessels, provided oversight for product removal and movement of damaged marine tank vessels, and acts as a liaison between technicians and outside resources.

(26) "NFPA" stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(27) "NFPA Airport Firefighter" means a member of a Fire Service Agency who has met job performance requirements of NFPA Standard 1003.

(28) "NFPA Driver-Operator" means a member of a fire service agency licensed to operate a fire service agency vehicle/apparatus in accordance with the job performance requirements of NFPA 1002 and who have met the Entry Level Fire Fighter requirements. Fire service agency vehicle/apparatus operators are required to be certified at NFPA 1001 fire fighter I standard prior to driver operator duties. Additional requirements are involved for those driver operators of apparatus equipped with an attack or fire pump, aerial devices, a tiller, aircraft firefighting and rescue vehicles, wildland fire apparatus, and mobile water supply apparatus (tanker/tender).

(29) "NFPA Fire Fighter I" means a member of a fire service agency who has met the Level I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter.

(30) "NFPA Fire Fighter II" means a member of a fire service agency who met the more stringent Level II job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter.

(31) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the Level I job performance requirements of NFPA Standard 1031.

(32) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes ands standards. This individual has met the lLevel II job performance requirements of NFPA standard 1031.

(33) "NFPA Fire Inspector III" means an individual at the third and most advanced level of progression who has met the job performance requirements specified in this standard for Level III. The Fire Inspector III performs all types of fire inspections, plans review duties, and resolves complex code-related issues.

(34) "NFPA Fire Investigator" means an individual who conducts post fire investigations to determine the cause and the point of origin of fire. This individual has met the job performance requirements of NFPA Standard 1033.

(35) "NFPA Fire Officer I" means the fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications. (Company officer rank)

(36) "NFPA Fire Officer II" means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021. (Station officer, battalion chief rank)

(37) "NFPA Fire Officer III" means the fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021. (District chief, assistant chief, division chief, deputy chief rank)

(38) "NFPA Fire Officer IV" means the fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021. (Fire Chief)

(39) NFPA Instructor I means a fire service instructor who has demonstrated the knowledge and ability to deliver instruction effectively from a prepared lesson plan, including instructional aids and evaluation instruments; adapt lesson plans to the unique requirements of the students and authority having jurisdiction; organize the learning environment so that learning is maximized; and meet the record-keeping requirements of authority having jurisdiction.

(40) NFPA Instructor II means a fire service instructor who, in addition to meeting Instructor I qualifications, has demonstrated the knowledge and ability to develop individual lesson plans for a specific topic including learning objectives, instructional aids, and evaluation instruments; schedule training sessions based on overall training plan of authority having jurisdiction; and supervise and coordinate the activities of other instructors.

(41) NFPA Instructor III means a fire service instructor who, in addition to meeting Instructor II qualifications, has demonstrated the knowledge and ability to develop comprehensive training curricula and programs for use by single or multiple organizations; conduct organization needs analysis; and develop training goals and implementation strategies.

(42) "NFPA Marine Land-Based Fire Fighter" means a member of a fire service agency who meets the job performance requirements of NFPA 1005.

(43) "Operations Level Responder" means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents for the purpose of implementing or supporting actions to protect nearby persons, the environment, or property from the effects of the release.

(44) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(45) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(46) "Tank Car Specialty" means a person who provides technical support pertaining to tank cars, provided oversight for product removal and movement of damaged tank cars, and acts as a liaison between technicians and outside resources.

(47) "Task Performance" means to be able to demonstrate the ability to perform the tasks, of a certification level, in a controlled environment while being evaluated.

(48) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(49) "Topical Level Course" is a course that does not include an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(50) "Track" means a field of study required for certification.

(51) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006, f. & cert. ef. 7-7-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10

259-009-0062
Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire service agency training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance Evaluations (TPE) if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2008 Edition, entitled "Fire Fighter Professional Qualifications";

(A) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(B) Delete section 1.3.1.

NOTE: This references NFPA 1500.

(C) Delete section 2.2.

NOTE: This references NFPA 1500 and 1582.

(D) Entry Level Fire Fighter means an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard 1403, 2007 Edition, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and verified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under constant supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(E) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for Fire Fighter I and Fire Fighter II, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard 1002, 2003 Edition, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) 5.1 General. The requirements of NFPA 1001 Fire Fighter I, as specified by the Department and the job performance requirements defined in Sections 5.1 and 5.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(G) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program".

(H) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for: Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(I) An individual who completes the requirements of Chapter 4 and meets the requirements of Entry Level Fire Fighter (NFPA 1403) may be certified as a Driver.

(c) The provisions of the NFPA Standards 1003, 2005 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications,"

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled "Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(B) Delete section 2.2.

NOTE: This references NFPA 1500.

(C) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(D) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(E) All applicants for certification must complete a Department approved Task Book for: Marine Fire Fighting for Land Based Fire Fighters and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(F) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009, will need to show completion of the approved task book.

(e) The provisions of the NFPA Standard No. 1031, Edition of (2009), entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted.

(A) All applicants for certification as an NFPA Fire Inspector I must:

(i) Successfully complete a Department approved Task Book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(B) All applicants for certification as an NFPA Fire Inspector II must:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(C) All applicants for certification as an NFPA Fire Inspector III must:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(D) Task books must be monitored by a Field Training Officer approved by the Department. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department staff.

(f) The provisions of the NFPA Standard No. 1033, Edition of (2009), entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and requirements:

(A) An individual must successfully complete a Department approved Task Book before the Department will administer a written examination for the Fire Investigator certification level. Exception: Anyone holding a valid IAAI Fire Investigator Certification, National Association of Fire Investigators (NAFI) certification, or Certified Fire Explosion Investigators (CFEI) certification is exempt from taking the Department's Fire Investigator written exam.

(B) A Department approved Field Training Officer must monitor the completion of a Task Book. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years fire investigation experience. Exception: The Department may approve a Field Training Officers with equivalent training, education and experience.

(g) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II," Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

(II) 1-4.11 Change the title of "Fire Screener" to "Fire Screening" and the definition to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

(III) 1-4.14 Include "insurance" in list of agencies.

(IV) 1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services."

(V) 1-4.16 Change "person" to "youth" and change age from 21 to 18.

(VI) 1-4.17 Add "using state-approved prepared forms and guidelines."

(VII) 1-4.22 Add "...or by authority having jurisdiction."

(VIII) 1-4.24 Add "...or as defined by the authority having jurisdiction."

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(h) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for Fire Service Instructor I and II. This requirement is effective for any application for certification after January 4, 2002.

(i) The provisions of the NFPA Standard 1021, 2003 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.2 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Written Communication, Advanced Speech, Technical Writing/Business Writing, Math, and Physics or Chemistry.

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for; NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.2 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.2 through 6.7 of the Standard. Amend section 6.1 to allow individuals certified as NFPA 1033 Fire Investigator, NFPA 1035 Public Fire and Life Safety Educator, or NFPA 1031 Fire Inspector III to apply for certification without attaining NFPA 1001 Fire Fighter II.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.2 through 7.7 of the Standard.

(i) 5-1.2 General Requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula — Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(j) Hazardous Materials Responder (DPSST-P-12 1/96).

(k) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader must first be certified as an NFPA Fire Fighter II.

(C) An applicant applying for Fire Ground Leader must document training in seven areas:

(i) Building Construction: Non-Combustible;

(ii) Building Construction: Combustible;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Managing Water Supplies Operations;

(v) MCTO — Preparation or PICO;

(vi) MCTO — Decision Making;

(vii) MCTO — Tactics or STICO;

(viii) Incident Command System;

(ix) Fire Investigation.

(D) A task book must be completed before certification is awarded.

(l) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST Wildland Interface Certification Guide, Revised September 2003).

(m) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book. Historical Recognition:

(A) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(B) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(C) All applications received after October 1, 2004, will need to show completion of the approved task book.

(n) Certification guide for Wildland Fire Investigator (August, 2005).

(o) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire service agency.

(B) Historical Recognition:

(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application to use historical recognition shall be submitted to DPSST on or before March 31, 2003.

(C) Instructors:

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the six specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off the task book.

(iii) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(p) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(q) The provisions of the NFPA Standard 472, 2008 Edition, entitled "Standard for Hazardous Materials and Weapons of Mass Destruction" are adopted subject to the following definitions and modifications hereinafter stated:

(A) Hazardous Materials Technician: All applicants for certification must first certify as an Operations Level Responder and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(B) Hazardous Materials Safety Officer: All applicants for certification must first certify as a Hazardous Materials Technician and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification. This certification level includes, but is not limited to, the following course work:

(i) Analyzing the Incident;

(ii) Planning the Response;

(iii) Implementing the Planned Response;

(iv) Evaluating the Progress.

(C) Incident Commander: The level of certification formerly known as "On-Scene Incident Commander" is now known as "Incident Commander." The Incident Commander correlates directly with NFPA 472. All applicants for certification must first certify as an Operations Level Responder.

(D) Operations Level Responder: The level of certification formerly known as "First Responder" is now known as "Operations Level Responder." The Operations Level Responder correlates directly with NFPA 472. Successful completion of skills sheets or task performance evaluations (TPE) must be met prior to certification as an Operations Level Responder.

(r) Specialty Levels of Certification. All applicants for specialty levels of certification must first certify as a Hazardous Materials Technician.

(A) The following four (4) specialty certifications are adopted:

(i) Cargo Tank Specialty;

(ii) Intermodal Tank Specialty;

(iii) Marine Tank Vessel Specialty;

(iv) Tank Car Specialty;

(B) Successful completion of task performance evaluations (TPE) must be met prior to obtaining a specialty level of certification.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10

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Department of State Lands
Chapter 141

Rule Caption: Updates to Removal-Fill Authorizations within Oregon Waters.
Adm. Order No.: DSL 8-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 10-1-2009
Rules Adopted: 141-085-0534
Rules Amended: 141-085-0506, 141-085-0510, 141-085-0515, 141-085-0530, 141-085-0535, 141-085-0545, 141-085-0550, 141-085-0555, 141-085-0565, 141-085-0575, 141-085-0585, 141-085-0590, 141-085-0665, 141-085-0675, 141-085-0680, 141-085-0685, 141-085-0690, 141-085-0700, 141-085-0705, 141-085-0720, 141-085-0725, 141-085-0730, 141-085-0735, 141-085-0745, 141-085-0750
Rules Repealed: 141-085-0670
Rules Ren. & Amend: 141-085-0570 to 141-085-0676
Subject: The Division 85 rules have been amended to reflect statutory changes enacted during the 75th Legislative Assembly — 2009 Regular Session (HB 2155 and HB 2156), and to provide increases precision in certain technical areas, such as In-Lieu Fee Mitigation, and acceptable forms of financial security instruments for compensatory mitigation projects.
Rules Coordinator: Elizabeth Martino—(503) 986-5239

141-085-0506
Policy

(1) **General Policy on Removal-Fill**. No authorization to place fill or remove material from the waters of this state may:

(a) Interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation uses; or

(b) Be inconsistent with the protection, preservation and best use of the water resources of this state.

(2) **Department Will Use Fair, Predictable Approach**. To the extent possible, the Department will administer these rules to ensure persons receive timely, fair, consistent and predictable treatment including timely communication and consistent application and interpretation of these rules and the removal-fill law.

(3) **Department Will Continually Improve the Program**. The Department will actively and continually pursue improvements to the authorization process in order to reduce paperwork, eliminate duplication, increase certainty and timeliness, and enhance protection of water resources.

(4) **Department Will Recognize Multiple Interests**. The Department will recognize the interests of adjacent landowners, tribal governments, public interest groups, watershed councils, state and federal agencies, and local government land use planning agencies.

(5) **Department's General Policies on Wetland Regulation**. In regard to the regulation of wetlands, the Department will administer these rules to ensure that:

(a) The protection, conservation and best use of this state's wetland resources, including their functions and values, are promoted through the integration and coordination of the local comprehensive plans and the Department permitting process; and

(b) A stable wetland resource base is maintained through avoidance of reasonably expected adverse impacts, and by compensating for unavoidable wetland impacts.

(6) **Restoration and Conservation Programs**. The Department will encourage and facilitate the restoration of waters of this state through voluntary restoration and conservation programs.

(7) **Compensatory Mitigation**. Through its permitting and enforcement programs, the Department will seek to offset losses of the functions and values of the water resources of this state.

(8) **Mitigation Banks**. The Department will allow the use of mitigation banks to offset adverse effects from removal or fill activities to the waters of this state.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0510
Definitions

The following definitions are used in addition to those in ORS 196.600 to 196.990.

(1) "Applicant" means a landowner or person authorized by a landowner to conduct a removal or fill activity and who has authority and responsibility to fully execute the terms and conditions of an authorization as evidenced by their signature on the application.

(2) "Aquatic Life and Habitats" means the aquatic environment including all fish, wildlife, amphibians, plants and other biota dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(3) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(4) "Authorization" means an individual permit, general authorization, general permit or emergency authorization.

(5) "Bankfull Stage" means the two-year recurrence interval flood elevation.

(6) "Baseline Conditions" means the ecological conditions, wetland functions and values and the soils and hydrological characteristics present at a site before any change by the applicant is made.

(7) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(8) "Beds" means:

(a) For the purpose of OAR 141-089, the land within the wet perimeter and any adjacent non-vegetated dry gravel bar; and

(b) For all other purposes, "beds" means that portion of a waterway that carries water when water is present.

(9) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and in tidal bays and estuaries by the limits of the highest measured tide. The "bed" is typically the horizontal section and includes non-vegetated gravel bars. The "bank" is typically the vertical portion.

(10) "Buffer" means an upland or wetland area immediately adjacent to or surrounding a wetland or other water that is set aside to protect the wetland or other waters from conflicting adjacent land uses and to support ecological functions.

(11) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway that periodically or continuously contains moving water and has a defined bed and bank that serve to confine the water.

(12) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of this state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

(13) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(14) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(15) "Compensatory Mitigation" means activities conducted by a permittee or third party to create, restore, enhance or preserve the functions and values of the waters of this state to compensate for the removal-fill related adverse impacts of project development to waters of this state or to resolve violations of ORS 196.600 to 196.905. Compensatory mitigation for removal-fill activities does not affect permit requirements of other state departments.

(16) "Compensatory Non-Wetland Mitigation (CNWM)" means activities conducted by a permittee or third party to replace non-wetland water functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.600 to 196.905.

(17) "Compensatory Wetland Mitigation (CWM)" means activities conducted by a permittee or third party to create, restore or enhance wetland and tidal waters functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.600 to 196.905.

(18) "Comprehensive Plan" means a generalized, coordinated land use map and associated regulations and ordinances of the governing body of a local government.

(19) "Condition" refers to the state of a water's naturalness or ecological integrity.

(20) "Cowardin" means Cowardin, L. M., V. Carter, F. C. Golet, E. T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States. U. S. Department of the Interior, Fish and Wildlife Service, Washington, D.C.

(21) "Credit" means the measure of the increase in the functions and values of the water resources of this state achieved at a mitigation bank site.

(22) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill law ORS 196.600 to 196.990 or rules adopted by the Department, or any order or authorization issued by the Department.

(23) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(24) "Degraded Wetland" refers to a wetland in poor condition with diminished functions and values resulting from hydrologic manipulation (such as diking, draining and filling) and other disturbance factors that demonstrably interfere with the normal functioning of wetland processes.

(25) "Department" means the Oregon Department of State Lands and the Director or designee.

(26) "Ditch" means a manmade water conveyance channel. Channels that are manipulated streams are not considered ditches.

(27) "Dredging" means removal of bed material using other than hand held tools.

(28) "Ecologically or Environmentally Preferable" means compensatory mitigation that has a higher likelihood of replacing functions and values or improving water resources of this state.

(29) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(30) "Enhancement" means to improve the condition and increase the functions and values of an existing degraded wetland or other water of the state.

(31) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to protect existing facilities and land from flood and high stream flows, in accordance with these regulations.

(32) "Essential Indigenous Anadromous Salmonid Habitat (ESH)" means the habitat that is designated pursuant to ORS 196.810 and is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing. ESH includes the designated streams and any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to the stream.

(33) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes, and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(34) "Extreme Low Tide" means the lowest estimated tide.

(35) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state. However, in designated ESH areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) "fill" means any deposit by artificial means.

(36) "Food and Game Fish" means those species identified under ORS 506.011, 506.036 or 496.009.

(37) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(38) "Functions and Values" are those ecological characteristics or processes associated with a water of the state and the societal benefits derived from those characteristics. The ecological characteristics are "functions," whereas the associated societal benefits are "values."

(39) "Highest Measured Tide" means the highest tide projected from actual observations within an estuary or tidal bay (see OAR 141-085-0515).

(40) "Hydrogeomorphic Method" or "HGM" is a method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and characteristics of water flow.

(41) "In-lieu Fee Mitigation" means the federally approved compensatory mitigation program used to compensate for reasonably expected adverse impacts of project development on waters of the United States and waters of this state with fees paid by the applicant to the Department or other sponsor, as approved by the Department.

(42) "Interagency Review Team (IRT)" is an advisory committee to the Department on mitigation banks and other compensatory mitigation projects.

(43) "Intermittent Stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(44) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(45) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered or threatened by the State of Oregon.

(46) "Location" means the entire area where the project is located.

(47) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(48) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original use. "Maintenance" includes a structure being widened by no more than twenty percent of its original footprint at any specific location in waters of this state if necessary to maintain its serviceability. "Maintenance" also includes removal of the minimum amount of sediment either within, on top or immediately adjacent to a structure that is necessary to restore its serviceability, provided that the spoil is placed on upland.

(49) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing effects by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

(50) "Mitigation Bank" or "Bank" means a site created, restored, enhanced or preserved in accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts to waters of this state due to activities which otherwise comply with the requirements of ORS 196.600 to 196.905.

(51) "Mitigation Bank Instrument (MBI)" means the legally binding and enforceable agreement between the Department and a mitigation bank sponsor that formally establishes the mitigation bank and stipulates the terms and conditions of the mitigation bank's construction, operation, and long-term management.

(52) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary proposal prepared by a mitigation bank sponsor describing a proposed bank.

(53) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the MBI unless otherwise specified in the MBI.

(54) "Navigational Servitude" means activities of the federal government that directly result in the construction or maintenance of congressionally authorized navigation channels.

(55) "Non-Motorized Methods or Activities" are those removal-fill activities within ESH that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and manually operated cable winches are examples of common non-motorized methods.

(56) "Non-Water Dependent Uses" means uses that do not require location on or near a waterway to fulfill their basic purpose.

(57) "Non-Wetland Waters" means waters of this state other than wetlands, including bays, intermittent streams, perennial streams, lakes and all other regulated waters.

(58) "Office of Administrative Hearings" means the state agency unit that provides Administrative Law Judges to conduct contested case proceedings.

(59) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season. The OHWL excludes exceptionally high water levels caused by large flood events (e.g., 100 year events).

(60) "Oregon Rapid Wetland Assessment Protocol (ORWAP)" is a tool for rapidly assessing wetland functions and values (as well as other attributes) in all wetland types throughout Oregon.

(61) "Payment In-Lieu Mitigation" means compensatory mitigation for waters of this state that is performed using funds paid to the Department. The payment in-lieu program is not approved to compensate for impacts to waters of the United States.

(62) "Perennial Stream" means a stream that has continuous flow in parts of its bed all year long during years of normal precipitation.

(63) "Permit Action" means activity conducted under a specific removal or fill permit or other authorization requested or issued under ORS 196.600 to 196.905.

(64) "Person" means a person or a public body, as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(65) "Plowing" means all forms of tillage and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include deep ripping or redistribution of materials in a manner that changes any waters of this state to upland.

(66) "Practicable" means capable of being accomplished after taking into consideration cost, existing technology, and logistics with respect to the overall project purpose.

(67) "Preservation" means to permanently protect waters of the state having exceptional ecological features.

(68) "Private Operator" means any person undertaking a project for exclusively a non-income-producing and nonprofit purpose.

(69) "Project" means the primary development or use intended to be accomplished for which the fill or removal is proposed (e.g., retail shopping complex, residential development, stream bank stabilization or fish habitat enhancement). A project shall have independent utility. Projects may include more than one removal-fill site.

(70) "Project Site" means the geographic area upon which the project is being proposed.

(71) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, by filling, removing or moving by artificial means less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single ESH stream in a single year.

(72) "Public Body" as used in the statutes of this state means state government bodies, local government bodies and special government bodies (ORS 174.109).

(73) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(74) "Push-Up Dam" is a berm of streambed material that is excavated or bulldozed (i.e., pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream. The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(75) "Reasonably Expected Adverse Effect" and "Adverse Impact" mean the direct or indirect, reasonably expected or predictable results of project development upon waters of this state including water resources, navigation, fishing and public recreation uses.

(76) "Reconstruction" means to rebuild, or to replace the existing structure in-kind.

(77) "Recreational placer mining" means to remove, fill or move by artificial means, either through motorized or nonmotorized methods, less then 25 cubic yards of material annually from or within the bed of a stream designated as ESH. Recreational placer mining using dredging is not permitted in State Scenic Waterways.

(78) "Reference Site" means a site or sites that represent the desired future characteristics and condition to be achieved by a compensatory mitigation plan.

(79) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated ESH areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(80) "Removal-Fill Site" means the specific point where a person removes material from and/or fills any waters of this state. A project may include more than one removal-fill site

(81) "Riprap" means facing a bank with rock or similar substance to control erosion.

(82) "Serviceable" means capable of being used for its intended purpose.

(83) "Service Area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map -1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project developments to waters of this state. Service areas for mitigation banks are not mutually exclusive.

(84) "State Scenic Waterway (SSW)" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law (ORS 390.805 to 390.995).

(85) "Temporary Impacts" are adverse impacts to waters of this state that are rectified within 24-months from the date the impact occurred.

(86) "Temporal Loss" means the loss of the functions and values of waters of this state that occurs between the time of the impact and the time of their replacement through compensatory mitigation.

(87) "Tidal Waters" are the areas in estuaries, tidal bays, and tidal rivers located between the highest measured tide and extreme low tide (or to the elevation of any eelgrass beds, whichever is lower), that is flooded with surface water at least annually during most years. Tidal waters include those areas of land such as tidal swamps, tidal marshes, mudflats, algal and eelgrass beds and are included in the Estuarine System and Riverine Tidal Subsystem as classified by Cowardin.

(88) "Violation" means removing material from or placing fill in any of the waters of this state in contravention to any provision of the removal-fill law (ORS 196.600 to 990), rules adopted by the Department, or any order or authorization issued by the Department.

(89) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(90) "Water Resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(91) "Waters of This State" means all natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(92) "Wet Perimeter", as used in OAR 141-089, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(93) "Wetland Creation" means to convert an area that has never been a wetland to a wetland.

(94) "Wetland Enhancement" means to improve the condition and increase the functions and/or values of an existing degraded wetland.

(95) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytes.

(96) "Wetland Restoration" means to reestablish a former wetland.

(97) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0515
Removal-Fill Jurisdiction by Type of Water

This section describes the types and jurisdictional limits of the waters of this state that are regulated by the Department of State Lands.

(1) Pacific Ocean. The Pacific Ocean is jurisdictional from the line of extreme low tide seaward to the limits of the territorial sea. As defined in ORS 390.605(2), the land lying between extreme low tide and the statutory vegetation line or the line of established upland shore vegetation, whichever is farther inland, is known as the "ocean shore." "Ocean shore" does not include an estuary as defined in ORS 196.600." The "ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(2) Estuaries, Tidal Bays and Tidal Rivers. Estuaries, tidal bays and rivers below the head of tide are jurisdictional to the elevation of the highest measured tide (excluding storm surge), or to the upper edge of wetland, whichever is higher. The head of tide is the farthest point upstream where a river is affected by tidal fluctuations. The highest measured tide elevation on a parcel may be determined by a land survey referenced to the closest tidal benchmark based upon the most recent tidal epoch and reference to both the tidal datum (MLLW) and the fixed geodetic datum (NAVD88). In lieu of surveyed elevations, subject to approval by the Department, highest measured tide elevation may be based upon actual tide gauge measurements during a wintertime spring tide or observation of the highest of the field indicators listed in (a) through (f) below. These field indicators are often not observable within the upper riverine portion of an estuary, in which case a land survey is required:

(a) The uppermost drift or wrack (or debris) line containing small driftwood, mats of filamentous algae (algae that form long visible chains, threads, or filaments that intertwine forming a mat), seaweeds, seagrasses, pieces of bulrush or other emergent vascular plants, styrofoam or other buoyant plastic debris, bivalve shells, crab molts, or other aquatic invertebrate remains;

(b) The uppermost water mark line on an eroding bank;

(c) The uppermost water mark line (e.g., discoloration; sediment, barnacles, snails, or algae growth) visible on a hard shoreline or bank consisting of bedrock, boulders, cobbles, riprap or a seawall;

(d) The uppermost intertidal zone inhabited by a community of barnacles, limpets, and littorine snails along shorelines composed of bedrock, riprap, boulders, and/or cobble;

(e) The uppermost tidal marsh/upland boundary, as indicated by a dominant plant community characteristic of saltwater, brackish, or freshwater tidal plant communities changing to a dominant plant community typical of uplands; and/or

(f) The intertidal/upland boundary along sandy shores as indicated by the appearance of a distinct dune plant community.

(3) Waters, Including Rivers, Intermittent and Perennial Streams, Lakes and Ponds. These waters are jurisdictional to the ordinary high water line (OHWL). The OHWL can be determined by direct observation of the annual high water event, using local gauge data to estimate bankfull stage, and/or by using readily identifiable field indicators. Field indicators for OHWL include:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation from riparian (e.g., willows) to upland (e.g., oak, fir) dominated;

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, and seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(4) Wetlands. Wetlands are jurisdictional within the wetland boundary.

(5) Reservoirs. The Department's jurisdiction over reservoirs extends to the higher of either the normal operating pool level or the upper edge of adjacent wetland.

(6) Artificially Created Wetlands and Ponds. These waters are jurisdictional when they are:

(a) Equal to or greater than one acre in size;

(b) Created, in part or in whole, in waters of this state; or

(c) Identified in an authorization as a mitigation site.

(7) Exempt Artificially Created Wetlands and Ponds. Artificially created wetlands and ponds created entirely from upland, regardless of size, are not waters of this state if they are constructed for the purpose of:

(a) Wastewater treatment;

(b) Settling of sediment;

(c) Stormwater detention and/or treatment;

(d) Agricultural crop irrigation or stock watering;

(e) Fire suppression;

(f) Cooling water;

(g) Surface mining, even if the site is managed for interim wetlands functions and values;

(h) Log storage; or

(i) Aesthetic purposes.

(8) Jurisdictional Ditches. Except as provided under section (9), ditches artificially created from upland are jurisdictional if they:

(a) Contain food and game fish; and

(b) Have a free and open connection to waters of this state. A "free and open connection" means a connection by any means, including but not limited to culverts, to or between natural waterways and other navigable and non-navigable bodies of water that allows the interchange of surface flow at bankfull stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(9) Non-Jurisdictional Irrigation Ditches. Existing irrigation ditches that meet the following tests are not jurisdictional:

(a) Are operated and maintained for the primary purpose of conveying water for irrigation; and

(b) Are dewatered during the non-irrigation season except for water incidentally retained in isolated low areas of the ditch or are used for stock water runs, provision of water for fire suppression, or to collect storm water runoff.

(10) Non-Jurisdictional Roadside and Railroad Ditches. Roadside and railroad ditches that meet the following tests are not jurisdictional:

(a) Ten feet wide or less at the ordinary high water line;

(b) Artificially created from upland or from wetlands;

(c) Not adjacent and connected or contiguous with other wetlands; and

(d) Do not contain food or game fish.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0530

Exemptions for Certain Activities and Structures

These exemptions apply in all waters of this state except State Scenic Waterways.

(1) **State Forest Management Practices**. Non-federal forest management practices subject to Oregon's Forest Practices Act conducted in any non-navigable water of the state are exempt. When these forestlands are being converted to other uses the exemption does not apply to the activities associated with the new use. Forest management practices shall be directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992, such as:

(a) Reforestation;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species; and/or

(d) Disposal of slash.

(2) **Fills for Construction, Operation and Maintenance of Certain Dams and Water Diversion Structures**. Fill for dams or other water diversions for which valid authorizations or certificates have been or will be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or will be issued under ORS 543 or 543A (hydropower), are exempt. These rules do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of this state as specifically permitted by WRD.

(3) **Navigational Servitude**. Activities conducted by or on the behalf of any agency of the federal government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel are exempt. Disposal of dredged material within the ordinary high water line of the same waterway is also exempt.

(4) **Maintenance or Reconstruction of Water Control Structures**. Fill or removal for maintenance or reconstruction of water control structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches, and tile drain systems are exempt if:

(a) The structure was serviceable within the past five years;

(b) The maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures; and

(c) The maintenance or reconstruction of the water control structure is designed according to applicable Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580–509.910).

(5) **Exempt maintenance, reconstruction, removal or replacement of culverts**. These rules do not apply to removal-fill activities within waters of this state for the maintenance, reconstruction, replacement or removal of culverts of any length or diameter if all of the following apply:

(a) The removal or fill expands the original footprint of the road prism by no more than 20 percent,

(b) The culvert was serviceable within the past five (5) years;

(c) The maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures; and

(d) The culvert is maintained, reconstructed, replaced or removed in a manner consistent with applicable Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580–509.910).

(6) **Maintenance or Emergency Reconstruction of Roads and Transportation Structures**. Fill or removal for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures, such as groins and riprap protecting roads, causeways, bridge abutments or approaches, and boat ramps is exempt.

(7) **Prospecting and Non-Motorized Activities within Designated Essential Indigenous Anadromous Salmonid Habitat (ESH) and State Scenic Waterways**. A permit is not required for prospecting or other non-motorized activities resulting in removal-fill of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a particular stream in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and shall not occur at any site where fish eggs are present.

(8) **Fish Passage and Fish Screening Structures in Essential Indigenous Anadromous Salmonid Habitat (ESH)**. Less then 50 cubic yards of removal-fill for the construction and maintenance of fish passage and fish screening structures is exempt, provided the project complies with applicable Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580–509.910). This exemption includes removal of material that inhibits fish passage or prevents fish screens from functioning properly.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0534

Exemptions for Certain Voluntary Habitat Restoration Activities

These exemptions apply in all waters of this state except State Scenic Waterways.

(1) For the Purposes of this Rule:

(a) "Habitat Restoration" means the return of an ecosystem from a disturbed or altered condition to a close approximation of its ecological condition prior to disturbance.

(b) "Voluntary" means activities undertaken by a person of their own free will, and not as a result of any legal requirement of the removal-fill law (ORS 196.600–196.990).

(2) **Conditions of Exemption**:

(a) Activities described in paragraphs (3)–(8) of this section are exempt from permit requirements with the following conditions:

(A) In-water activities are conducted during the Oregon Department of Fish and Wildlife (ODFW) recommended in-water timing guidelines, unless otherwise approved in writing by ODFW;

(B) The in-water activities conform to ODFW fish passage requirements (ORS 509.580–509.910), unless otherwise approved in writing by ODFW;

(C) The activities do not convert waters of the state to uplands;

(D) The activities will cause no more than minimal adverse impact on waters of the state including impacts related to navigation, fishing, and public recreation;

(E) The activities do not cause the water to rise or be redirected in such a manner that it results in flooding or other damage to structures or substantial property off of the project site; and

(F) All necessary access permits, right of ways and local, state, and federal approvals have been obtained.

(3) **Research and Fish Management in Essential Indigenous Anadromous Salmonid Habitat (ESH) are Exempt**. A permit is not required for the construction and maintenance of scientific and research devices related to population management, watershed and habitat restoration, or species recovery, provided the activity does not exceed 50 cubic yards of removal-fill.

(4) **Vegetative Planting**. A permit is not required for planting native woody or herbaceous plants by hand or mechanized means. Ground alteration such as grading or contouring prior to planting is not covered by this exemption.

(5) **Refuge Management**. A permit is not required for habitat management activities located on a National Wildlife Refuge or State Wildlife Area that are consistent with an adopted refuge, or wildlife area, manage-

ment plan. Fill or removal in waters of the state for non-habitat management activities such as roads and building is not covered by this exemption.

(6) **Ditch and Drain Tile Removal**. A permit is not required for the disruption or removal of subsurface drainage structures (e.g., drain tiles) and plugging or filling of drainage ditches in wetlands. Notification must be submitted on a form provided by the Department at least 15 calendar days prior to commencing the activity.

(7) **Placement of Large Wood, Boulders and Spawning Gravels**. A permit is not required for the placement of large wood, boulders and spawning gravels provided the project location is not tidally influenced and material is placed consistent with the Guide to Placing Large Wood and Boulders (DSL/ODFW 2010). If the activity will exceed 50 cubic yards of removal-fill in waters of the state, or any amount in Essential Salmonid Habitat, notice of the activity must be provided to the Department. Notification must be submitted on a form provided by the Department at least 15 calendar days prior to commencing the activity.

(8) **Other Activities Customarily Associated with Habitat Restoration in Essential Indigenous Anadromous Salmonid Habitat (ESH)**. A permit is not required for voluntary habitat restoration activities resulting in less than 50 cubic yards of removal-fill in waters of the state. This includes the disposal of material resulting from the restoration activities within the project area so long as it assists in accomplishing the objectives of the habitat restoration project.The activities must be consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide and utilize materials or structures that would naturally and/or historically occur at the project site. Notice of the activity must be provided, submitted on a form provided by the Department, at least 15 calendar days prior to commencing the activity.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0535
Exemptions Specific to Agricultural Activities

These exemptions apply in all waters of this state except State Scenic Waterways.

(1) Converted Wetlands. For the purposes of this rule:

(a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes;

(b) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area.

(2) **Exemptions Do Not Apply to Nonfarm Uses**. The exemptions in sections (3) and (4) of this rule do not apply to any fill or removal that involves changing an area of wetlands to a nonfarm use.

(3) **Normal Farming and Ranching Activities on Converted Wetlands**. Exempt activities on converted wetlands include:

(a) Plowing;
(b) Grazing;
(c) Seeding;
(d) Planting;
(e) Cultivating;
(f) Conventional crop rotation; or
(g) Harvesting.

(4) **Certain Activities Conducted on Exclusive Farm Use (EFU) Zoned Land**. The following activities on lands zoned for exclusive farm use as described in ORS 215.203 as designated in the city or county comprehensive plan are exempt:

(a) Drainage or maintenance of farm or stock ponds; or

(b) Maintenance of existing farm roads in such a manner as to not significantly adversely affect wetlands or any other waters of this state; or

(c) Subsurface drainage by deep ripping, tiling or moling, limited to converted wetlands.

(5) **Farm Uses on Certified Prior Converted Cropland**. Any activity defined as a farm use in ORS 215.203 is exempt if the land is zoned for exclusive farm use pursuant to 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by the Natural Resources Conservation Service, so long as commercial agricultural production on the land has not been abandoned for five or more years.

(6) **Federal Conservation Reserve Program**. Reestablishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831.

(7) **Activities Customarily Associated with Agriculture in Essential Indigenous Anadromous Salmonid Habitat (ESH)**. These are activities, including maintenance activities that are commonly and usually associated with the raising of livestock or the growing of crops in Oregon. Removal-fill covered by this exemption shall not exceed 50 cubic yards of material.

(8) **Push-Up Dams**.

(a) Department-authorized push-up dams greater than 50 cubic yards can continue to be maintained indefinitely during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580–509.910). In the event of conflicts with the original permit conditions, the most recent fish passage requirements will be controlling.

(b) Push-up dams that were built prior to September 13, 1967, are exempt if they meet the following tests:

(A) Are reconstructed, serviceable and used within the past five years; and

(B) Have the same effect as when first constructed (i.e., size and location); and

(C) Are operated in a manner consistent with the water right certificate and ORS 540.510(5).

(c) Push-up dams less than 50 cubic yards used for agricultural purposes in ESH are exempt.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0545
Fees; Amounts and Disposition

(1) **Fee Amounts**. Fees are adjusted annually, on January 1 of each year. By December 1 of each year the Department will consult the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor to determine the appropriate annual fee adjustment to become effective on January 1 of the following year. The Department will then revise the fees in accordance with the Price Index and post the fee schedule on the Department's website (http://oregonstatelands.us/).

(a) For individual permits and general permits, there is an application fee and an annual fee for each year that the permit is in effect. For emergency authorizations, there is an application fee.

(b) The application fee includes a base fee and a volume fee. The annual fee includes only the base fee.

(c) For each application that involves both removal and filling, the volume fee is either for removal or filling, whichever fee is higher in accordance with the current fee schedule

(d) For erosion-flood repair or stream bank stabilization, regardless of the authorization type, no fee is required.

(e) No fee is required for voluntary habitat restoration projects directed at habitat improvement.

(2) **Disposition of Fees**. Except for Emergency Authorizations, fees are due at the time of application submittal. Applications that do not include the fee are considered incomplete.

(a) An applicant who receives an Emergency Authorization shall, within 45 calendar days after receiving the authorization, submit a fee to the Department according to the current fee schedule.

(b) For multiyear permits valid over a period of more than one year and up to five years, the Department may, at the request of the applicant, assess a one-time fee at the rate in effect at the time of the application or renewal. The one-time fee shall include the application fee and any applicable annual fees for the duration of the term of the permit.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0550
Application Requirements

(1) **Complete and Accurate Information Required**. Failure to provide complete and accurate information in the application may be grounds for denial, suspension or revocation of the authorization.

(2) **Fee Required for a Complete Application**. A complete application shall include the appropriate fee.

(3) **Level of Detail Required May Vary**. The applicant is responsible for providing sufficient detail in the application to enable the Department to render the necessary determinations and decisions. The level of documentation may vary depending upon the degree of adverse impacts,

the level of public interest and other factors that increase the complexity of the project.

(4) **Required Information**: A completed and signed application on forms provided by the Department, including any maps, necessary photos and drawings, is required. The information shall be entered in the appropriate blocks on the application form and include the following:

(a) The applicant and property owner information including name, address and phone number;

(b) If the applicant is not the owner of the property upon which the removal-fill activity is to occur, a written authorization from the owner of the property consenting to the application must be provided;

(c) If the application is on behalf of a legal entity such as a partnership or a corporation, a certification that the individual signing the application is authorized to do so must be provided;

(d) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s), latitude and longitude, street location if any, and location maps with site location indicated;

(e) The location of any off-site disposal or borrow sites if these sites contain waters of this state;

(f) Project information including a project description and the volumes and area of removal-fill within jurisdictional areas. Area of wetland impact shall be expressed in acres to the nearest 0.01-acre;

(g) A description of the purpose and need for the project. All projects shall have a defined purpose or purposes and be based on a documented need or needs. The project purpose and need statement shall be specific enough to allow the Department to determine whether the applicant has considered a reasonable range of alternatives;

(h) Project plan views and cross-sectional views drawn to scale that clearly identify the jurisdictional boundaries of the waters of this state (e.g., wetland delineation or ordinary high water determination). Project details, such as footprint and impact area shall also be included so that the amount and extent of the impact to jurisdictional areas can be readily determined;

(i) A written analysis of potential changes that the project may make to the hydrologic characteristics of the waters of this state, and an explanation of measures taken to avoid or minimize any adverse impacts of those changes, such as:

(A) Impeding, restricting or increasing flows;

(B) Relocating or redirecting flow; and

(C) Potential flooding or erosion downstream of the project;

(j) A description of the existing biological and physical characteristics of the water resources, along with the identification of the adverse impacts that will result from the project;

(k) A description of the navigation, fishing and public recreation uses, if any, at the project site;

(l) If the proposed activity involves wetland impacts, a wetland determination or delineation report that meets the requirements in OAR 141-090 shall be submitted. A wetland delineation is usually required to determine the precise acreage of wetland impact and compensatory wetland mitigation requirements. Whenever possible, wetland determination and delineation reports should be submitted for review well in advance of the permit application. Although an approved wetland delineation report is not required for application completeness, a jurisdictional determination shall be obtained prior to the permit decision;

(m) A functions and values assessment is required if impacts to wetlands are proposed;

(n) Any information known by the applicant concerning the presence of any federal or state listed species;

(o) Any information known by the applicant concerning historical, cultural and/or archeological resources. Information may include but is not limited to a statement on the results of consultation with impacted tribal governments and/or the Oregon State Historic Preservation Office of the Oregon Department of Parks and Recreation;

(p) An analysis of alternatives to derive the practicable alternative that has the least reasonably expected adverse impacts on waters of this state. The alternatives analysis shall provide the Department all the underlying information to support its considerations enumerated in OAR 141-085-0565, such as:

(A) A description of alternative project sites and designs that would avoid impacts to waters of this state altogether, with an explanation of why each alternative is, or is not practicable, in light of the project purpose and need;

(B) A description of alternative project sites and designs that would minimize adverse impacts to waters of this state with an explanation of why each alternative is, or is not practicable, in light of the project purpose and need;

(C) A description of methods to repair, rehabilitate or restore the impact area to rectify the adverse impacts; and

(D) A description of methods to further reduce or eliminate the impacts over time through monitoring and implementation of corrective measures;

(q) After reasonably expected adverse impacts to the water resources have been avoided, minimized, rectified or reduced to the maximum extent practicable, a compensatory mitigation plan is required to compensate for unavoidable permanent impacts, and/or a rehabilitation plan for unavoidable temporary impacts to waters of this state;

(r) Names and addresses of adjoining property owners including those across a stream or street from the project;

(s) The signed local government land use affidavit; and

(t) Coastal zone certification statement, if the project is in the coastal zone.

(5) **Additional Requirements for Estuarine Fill**. If the activity is proposed in an estuary for a non-water-dependent use, a complete application shall also include a written statement that describes the following:

(a) The public use of the proposed project;

(b) The public need for the proposed project; and

(c) The availability of alternative, non-estuarine sites for the proposed use.

(6) **Additional Information as Requested**. The Department may request additional information necessary to make an informed decision on whether or not to issue the authorization.

(7) **Permit Application Modifications**. A modification to a permit application may be submitted at any time prior to the permit decision. If the modification is received after the public review period, the Department may circulate the revised application again for public review. Modifications proposing significantly different or additional adverse impacts will generally be resubmitted for public review. The Department may set an expedited time frame for public review.

(8) **Pre-Application Conference**. An applicant may request the Department to hold a pre-application meeting. In considering whether to grant the request, the Department will consider the complexity of the project and the availability of Department staff resources.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0555
Individual Removal-Fill Permit Application Review Process

(1) Initial Review. Within 30 calendar days of the receipt of an application, the Department will perform an initial review to determine if the application is complete and the information contained in the application adequately addresses the application requirements. During this time, the Department will inform the applicant of one or more of the following findings:

(a) The application is complete and will proceed to the public review process;

(b) The application is incomplete and/or deficient;

(c) The project qualifies for a general authorization; or

(d) The project does not require an authorization from the Department (no state permit is required).

(2) Failure to Perform Timely Initial Review. If the Department fails to complete its initial review within 30 calendar days of receipt of the application, and fails to notify the applicant, the application will be deemed complete. In this situation, the Department will still provide a list of deficiencies, if applicable, to be addressed prior to the permit decision.

(3) Incomplete Application. If the Department determines that the application is incomplete or deficient, the Department will notify the applicant in writing and list the missing or deficient information. The application will remain suspended awaiting revision. The applicant shall resubmit the entire amended package for reconsideration, unless instructed by the Department to do otherwise. Submission of a new or amended application package starts a new 30 day initial review period.

(4) Timeframe for Re-Submittal of Incomplete Applications. If a revised application is not resubmitted within 120 calendar days of an incompleteness determination, the Department may administratively close the application. If the Department closes the file for failure of the applicant to respond in a timely fashion to the request for additional information, the Department will retain the application fee. A subsequent application for the same or similar project will require submittal of a new application and payment of an application fee.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0565

Department Determinations and Considerations in Evaluating Individual Permit Applications

(1) **Departmental Final Review**. The Department will evaluate the information provided in the application, conduct its own investigation, and consider the comments submitted during the public review process to determine whether or not to issue an individual removal-fill permit.

(2) **Effective Date of Review Standards**. The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request.

(3) **Department Determinations**. The Department will issue a permit if it determines the project described in the application:

(a) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.990; and

(b) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(4) **Department Considerations**. In determining whether to issue a permit, the Department will consider all of the following:

(a) The public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal. When the applicant for a permit is a public body, the Department may accept and rely upon the public body's findings as to local public need and local public benefit;

(b) The economic cost to the public if the proposed fill or removal is not accomplished;

(c) The availability of alternatives to the project for which the fill or removal is proposed;

(d) The availability of alternative sites for the proposed fill or removal;

(e) Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety;

(f) Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations;

(g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion;

(h) Whether the proposed fill or removal is for stream bank protection; and

(i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.600

(5) **Alternatives Analysis**. The Department will issue a permit only upon the Department's determination that a fill or removal project is consistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the preservation of the use of the waters of this state for navigation, fishing and public recreation. The Department will analyze a proposed project using the criteria set forth in the determinations and considerations in sections (3) and (4) above (OAR 141-085-0565). The applicant bears the burden of providing the Department with all information necessary to make this determination.

(6) **Fills in an Estuary for Non-Water Dependent Use**. A "substantial fill" in an estuary is any amount of fill regulated by the Department. No authorizations will be issued for a substantial fill in an estuary for a non-water dependent use unless all of the following apply:

(a) The fill is for a public use;

(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fisheries and recreation; and

(c) The removal-fill meets all other review standards.

(7) **Written Findings**. In the following cases, the Department will prepare written findings to document an individual removal-fill permit decision:

(a) Permit denial;

(b) Fill of two acres or more in wetlands;

(c) Fill in estuaries (except cable crossings, pipelines, or bridge construction);

(e) Removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging);

(f) Placement of greater than 2,500 cubic yards of riprap in coastal streams or estuaries;

(g) Removal-fill in the Oregon territorial sea in accordance with Statewide Planning Goal 19-Ocean Resources; and

(h) Any permit decision that is contrary to the final decision recommendation of a state agency.

(8) **Marine Reserves and Marine Protected Areas**. The Department will only authorize a removal-fill activity within an area designated by the State Land Board as a marine reserve or a marine protected area if the removal-fill activity is necessary to study, monitor, evaluate, enforce or protect or otherwise further the studying, monitoring, enforcement and protection of the reserve or marine protected area.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0575

Permit Appeals

(1) **Applicant Appeal Within 21 Calendar Days**. An applicant may request a contested case hearing if they object to an application incompleteness determination, permit decision or permit condition imposed by the Department. The request shall be in writing and shall be postmarked, sent via facsimile or hand delivered within 21 calendar days of the decision. The request shall include the reasons for the request for hearing.

(2) **Other Parties Appeal Within 21 Calendar Days**. Any person who is aggrieved or adversely affected by the Department's final decision concerning an individual permit or a condition therein may file a written request to the Department for a hearing. Such request shall be postmarked, sent via facsimile or hand delivered within 21 calendar days after the authorization approval date. The request shall include the reasons for the request for hearing.

(3) **Standing in Contested Case Hearings**. For a person other than the applicant to have standing to request a contested case, the person shall be either "adversely affected" or "aggrieved:"

(a) To be "adversely affected" by the Department's individual removal-fill permit decision, the person shall have a legally protected interest that would be harmed, degraded or destroyed by the authorized project. Eligible parties may include adjacent property owners and other parties;

(b) To be "aggrieved" by the Department's individual removal-fill permit decision the person shall have participated in the Department's review of the project application by submitting written or verbal comments stating a position on the merits of the proposed removal-fill to the Department.

(4) **Setting a Contested Case Hearing**. If the written request for hearing is timely and made by an eligible person, the matter shall be referred to the Office of Administrative Hearings for hearing, and shall be conducted as follows:

(a) The hearing shall be conducted as a contested case;

(b) The permit holder and any other persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding; and

(c) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party.

(5) **Referral to the Office of Administrative Hearings**. The referral of a request for hearing to the Office of Administrative Hearings by the Department will include the individual removal-fill permit, or denial, and the request for hearing. An administrative law judge shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Department.

(6) **Review of Jurisdictional Determinations**. Jurisdictional determinations of the existence, or boundaries, of the waters of this state on a parcel of property, issued more than 60 calendar days before a request for hearing, are final. Jurisdictional determinations are judicially cognizable facts of which the Department may take official notice under ORS 183.450(3) in removal-fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090.

(7) **Proposed Order**. The Administrative Law Judge shall issue a proposed order containing findings of fact and conclusions of law within 20 calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Department.

(8) **Final Order**. Within 45 calendar days after the hearing the Department will consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(9) **Pre-Hearing Suspension of Permits**. A permit granted by the Department may be suspended by the Department during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Department and will be either granted or denied by the Department. The

permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Department by clear and convincing evidence that commencement or continuation of the fill would cause irremediable damage and would be inconsistent with ORS 196.600 to 196.990.

(10) **Issuance or Denial of a Permit**. Interested persons who request notification in writing of the Department's decision on a permit will be notified at the time of issuance or denial. The Department's failure to notify an interested person will not extend the statutory timeframe for hearing requests.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0585
Permit Conditions, Permit Expiration Dates and Permit Transfer

(1) **Applicable Permit Conditions**. If the Department approves the permit, it will impose applicable conditions to eliminate or reduce the reasonably expected adverse impacts of project development to waters of this state.

(2) **Applicant Acceptance of Permit Conditions**. Once an authorization holder initiates the removal fill activity authorized by a permit, it is understood that the permit holder accepts the conditions contained within the permit.

(3) **Enforceability of Permit Conditions**. Authorizations may include conditions, including compensatory mitigation and monitoring conditions that impose obligations beyond the expiration date of the removal/fill activity. All such conditions are enforceable until such obligations are satisfied.

(4) **Conflicts Between the Application and Permit Conditions**. The application, including all plans and operating specification, becomes an enforceable part of the removal fill authorization. In the event there is a conflict between information contained in the application and conditions in the removal fill authorization, the authorization conditions prevail.

(5) **Permit Expiration Date**. The Department may issue an individual removal-fill authorization for up to five years for removal fill activities that occur on a continuing basis or will take more than one year to complete.

(6) **Limits on Terms for Commercial Gravel Operations**. For commercial gravel removal, the Department will only issue a multi-year permit when it determines that:

(a) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and

(b) The authorization holder has, for at least one year preceding the pending renewal, conducted removal in compliance with permit conditions.

(7) **Modification of Permit Conditions**. Modifications of permit conditions may be either requested by the authorization holder or initiated by the Department:

(a) Upon the written request of the authorization holder, the Department may modify permit conditions to address changes in operating conditions or changes to the project. At its discretion, the Department may circulate proposed project modifications for public review as described in OAR 141-085-0560. Situations where public review may be necessary include those that would result in an increase in adverse impacts or those that involve significant changes in operating conditions; or

(b) At the time of permit renewal, the Department may modify permit conditions to address new standards in effect at the time of the permit renewal request or new information related to water resource impacts.

(8) **Transfer of Permit Responsibility**. Authorizations are issued to the applicant and are not automatically transferred through property transactions. The applicant is responsible for complying with the conditions of the permit, unless the permit is officially transferred to a different person or party. A transfer form must be submitted to the Department for review and approval. Transfers are approved through one of the following means:

(a) If the authorization has not expired, the Department will issue a modified permit to the transferee, who will then be responsible for complying with all of the conditions in the permit. If financial security was required for compensatory mitigation, a new financial security instrument, naming the transferee as the obligor shall be provided to the Department; or

(b) If the authorization has expired, but there is a pending mitigation obligation, the mitigation obligation shall be transferred to the transferee through an acknowledgement letter. If financial security was required for the pending mitigation obligation, a new financial security instrument shall be provided, naming the transferee as the obligor prior to the transfer.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0590
Renewal and Extension of Individual Removal-Fill Permits

(1) **Renewal of Individual Permits**. Individual permits may be renewed if the permit holder anticipates that the project within waters of this state will not be completed by the permit expiration date.

(2) **Renewal Notice**. At least 90 calendar days prior to the expiration of a valid removal-fill permit, the Department will send a renewal notice to the permit holder. The renewal notice will inform the permit holder of the expiration date of the permit and offer an opportunity to renew the permit.

(3) **Request for Renewal**. In order to renew the permit, the permit holder shall respond with a request to renew the permit. The request for renewal shall:

(a) Include a short statement of the status of the project, including any compensatory mitigation requirements;

(b) Include the base fee;

(c) Be received by the Department at least 45 calendar days prior to the expiration of the permit; and

(d) If requested by the Department, be accompanied by an updated application. Updated applications may be required for permits that have been in effect for five years, and at every five-year increment thereafter. Updated applications must be provided on current forms provided by the Department.

(4) **Processing the Renewal Request**. Upon receipt of a request for renewal, the Department:

(a) Must review the request pursuant to the standards contained in the applicable rules in effect at the time of the request; and

(b) May provide public notice of the renewal in accordance with the provisions in 141-085-0560.

(5) **Department's Decision**. Upon review of the renewal request, along with any updated information or public comments, the Department will either:

(a) Renew the permit, with or without modified conditions;

(b) Extend the permit for an additional time period; or

(c) Deny the request for permit renewal.

(6) **Extension of a Permit Expiration Date**. At the discretion of the Department, a permit expiration date may be extended:

(a) If more time is needed to resolve issues that arise during the renewal process; or

(b) If the applicant failed to respond to the renewal request in a timely manner.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0665
Expedited Process for Industrial or Traded Sector Sites

(1) **Department Assistance with Industrial Siting**. The Department will participate in planning and authorizing removal-fill within waters of this state for certain industrial or traded sector sites identified by the Economic Revitalization Team (ERT) or having the potential to be certified by the Oregon Business Development Department (OBDD). The Department will provide assistance to the maximum extent feasible, taking into account budget and staffing constraints.

(2) **Site Designation Process**. The Director shall, upon the request of ERT or OBDD, designate a site for expedited planning and processing. The project proponent or sponsor shall have authority to authorize the Department or its agent's physical access to the site.

(3) **Department-Appointed Project Leader**. The Director will assign a project leader from the Department to work with the ERT, OBDD, other applicable agencies and the project sponsor. Such work will include, but is not limited to:

(a) Expedited jurisdictional determinations by the Department;

(b) Technical assistance in the preparation of jurisdictional delineation and functional assessment reports, impact avoidance and minimization strategies, alternatives analyses and compensatory mitigation plans;

(c) Assistance with other permit application documents necessary to issue an authorization or to avoid the need to obtain an authorization by planning the project in such a way so as to avoid impacts to waters of this state;

(d) Expedited review of removal-fill applications and prompt permit decision so long as doing so will not result in the Department missing statutory deadlines for other permits; and/or

(e) Assistance with the early identification and resolution of issues raised by other agencies and the public.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0675

General Permits; Standards and Criteria; Process for Establishing

(1) **Purpose**. The purpose of the General Permit is to allow an applicant or group of applicants, or the Department, to propose or create a general permit that will authorize a group of activities. These activities shall be:

(a) Substantially similar in nature;

(b) Recurring or ongoing; and

(c) Have predictable effects and outcomes.

(2) **May Apply Statewide or Regionally**. The Department may issue a General Permit to the general public or to an applicant or group of applicants. It may do so on a statewide or regional basis. The Department may issue a General Permit in collaboration with the issuance by the U.S. Army Corps of Engineers of a Regional General Permit for the same or similar activities.

(3) **Application Process**. Before applying for a General Permit, a person shall contact the Department to determine if the Department will accept an application for a General Permit for the person's proposed activity:

(a) The Department reserves the right to decline to accept an application for a General Permit, based on staff or resource considerations; and

(b) The applicant may request pre-application meetings, and the Department may also set-up interagency meetings, or other such coordinating efforts prior to accepting an application for a General Permit.

(4) **Application Requirements**. An application for a General Permit under this rule shall be submitted on an application form available from the Department:

(a) The level of detail provided in the application shall be commensurate with the scope and complexity of the proposed activities;

(b) The Department will review the application for completeness; and

(c) When appropriate the Department may modify or waive specific completeness requirements.

(d) The Department is not required to submit an application for a General Permit proposed by the Department.

(5) **Information Requirements**. For each type of activity, the applicant shall provide, at a minimum, the following information in the application:

(a) Activity description and purpose;

(b) Estimated range of removal and fill volumes within waters of this state;

(c) Estimated range of acres of fill and removal within waters of this state;

(d) Proposed number of projects to be covered on an annual basis;

(e) Proposed geographic extent to be covered by the General Permit;

(f) Anticipated adverse impacts to waters of this state (including cumulative effects) and proposed measures to minimize effects;

(g) Criteria for selecting project sites;

(h) Location information on all known project locations; and

(i) Adjacent landowner information for all known locations.

(6) **Pre-Project Notice Requirement**. The Department may require a pre-project notice for each activity to obtain any information that is deemed necessary to determine whether the activity meets the criteria contained in the General Permit.

(7) **Limitations to Permanent Impacts to Wetlands**. Permanent impacts to wetlands will only be allowed under a General Permit if the effects are fully described and quantified in the initial application. For known activities that will involve permanent impacts to wetlands, the applicant shall provide the following:

(a) A wetland delineation report that meets the requirements in OAR 141-090; and

(b) An acceptable compensatory wetland mitigation plan.

(8) **Permanent Impacts to Non-Wetland Waters**. For activities that will involve permanent impacts to waters other than wetlands, the applicant shall provide a compensatory mitigation plan.

(9) **Public Review**. The Department will send the complete application out for public review, unless the Department determines that additional notice or another appropriate method is necessary to meet the obligations for the public review. The Department reserves the right to require additional public review and notify affected parties following receipt of a pre-project notice. The Department will provide a public review process for a General Permit proposed by the Department.

(10) **Conditions May Be Imposed**. Activities conducted under a General Permit shall be in compliance with the general and project specific conditions described in the Permit.

(11) **General Permits Are Enforceable**. Failure to comply with any conditions or submit any required information (e.g. pre-project notifications, mitigation monitoring reports or project completion reports) may result in suspension or revocation of the General Permit as well as subject the permittee to other administrative or legal penalties.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0676

Emergency Authorizations

(1) **Eligibility and Applicability**. The Department may issue, orally or in writing, an emergency authorization to a person for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. In order to qualify for an emergency authorization the Department shall determine that:

(a) The emergency poses a direct threat to substantial property, including but not limited to a dwelling, transportation structure, farm or cropland;

(b) Prompt action is required to reduce or eliminate the threat;

(c) The nature of the threat does not allow the time necessary to obtain some other form of authorization; and

(d) The proposed project is the minimal amount necessary to reduce or eliminate the threat and minimizes, to the extent practicable, adverse impacts to waters of this state.

(2) **Information Requirements**. Any person requesting an emergency authorization may apply verbally or in writing. Written applications may be sent via facsimile, e-mail or U.S. mail. Applications for an emergency authorization shall include:

(a) The applicant planning and carrying out the activity;

(b) The location of the project;

(c) The nature of the emergency (specifically, the nature of the threat to public health, public safety or property and the immediacy of the threat and need to act promptly);

(d) A description of the proposed work, including the approximate volume of material to be removed and/or filled, how the work will be accomplished and the schedule for doing the work;

(e) The date and approximate time when the event that caused the emergency took place;

(f) A statement as to whether the emergency action is intended as a temporary or permanent response measure; and

(g) Additional information, as requested from the Department.

(3) **Authorized Representative**. The Department may authorize a person, including personnel from public agencies, to act as a representative of the Department to conduct an on-site evaluation of the planned activity and make recommendations as to whether or not the application should be approved as requested, approved with conditions, denied or processed as an individual removal-fill authorization application.

(4) **Department Decision**. Based on review of all the available information, the Department may take the following action(s):

(a) Approve the emergency authorization, either verbally or in writing; or

(b) Deny issuance of the emergency authorization. If a request for an emergency authorization is denied, the applicant may resubmit the application as an individual removal-fill authorization or general authorization.

(5) **Written Authorization Needed to Confirm Verbal Authorization**. If an emergency authorization is issued verbally, the authorization will be confirmed in writing by the Department within ten calendar days confirming the issuance and setting forth the conditions of operation.

(6) **Term**. The term of the emergency authorization shall be limited to the time necessary to complete the planned project and shall be specifically stated in the authorization.

(7) **Conditions of Emergency Authorizations**. An emergency authorization may contain conditions to minimize the reasonably expected adverse impacts of the activity to waters of this state. Conditions may include:

(a) Compensatory mitigation or compensatory wetland mitigation;

(b) A requirement to revise the project and apply for a removal-fill permit after the emergency situation has subsided;

(c) A requirement to submit a report on the outcome of the project or monitor the project removal-fill sites; and/or

(d) Any other condition necessary to minimize reasonably expected adverse impacts on waters of this state.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; Renumbered from 141-085-0570 by DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0680

Compensatory Wetland and Tidal Waters Mitigation (CWM); Applicability and Principal Objectives

(1) **Applicability**. OAR 141-085-0680 to 0760 applies to removal-fill that occurs within wetlands and tidal waters and applies to all forms of compensatory mitigation (i.e., mitigation bank, in-lieu fee mitigation, advance mitigation, permittee responsible mitigation, payment in-lieu mitigation). OAR 141-085-0680 to 0760 does not apply to removal-fill within areas covered by an approved Wetland Conservation Plan.

(2) **Principal Objectives for CWM**. For projects where impacts to wetlands or tidal waters cannot be avoided, CWM will be required to compensate for the reasonably expected adverse impacts in fulfillment of the following principal objectives.

(a) The principal objectives of CWM are to:

(A) Replace functions and values lost at the removal-fill site;

(B) Provide local replacement for locally important functions and values, where appropriate;

(C) Enhance, restore, create or preserve wetlands or tidal areas that are self-sustaining and minimize long-term maintenance needs;

(D) Ensure the siting of CWM in ecologically suitable locations considering: local watershed needs and priorities; appropriate landscape position for the wetland types, functions, and values sought; connectivity to other habitats and protected resources; and the absence of contaminants or conflicting adjacent land uses that would compromise wetland functions; and

(E) Minimize temporal loss of wetlands and tidal waters and their functions and values.

(b) Applicants shall demonstrate how the selected method of CWM (i.e., mitigation bank, in-lieu fee mitigation, advance mitigation, permittee responsible mitigation, and payment in-lieu mitigation) addresses the principal objectives.

(3) **General Requirements**.

(a) Permittee responsible CWM at an off-site location shall be located within the 4th field Hydrologic Unit Code (HUC) in which the removal-fill site is located.

(b) Impacts to tidal waters shall be replaced in the same estuary unless the Director determines that it is environmentally preferable to exceed this limitation.

(c) Projects that involve less than 0.20 acres of permanent wetland impact may use mitigation banks, in-lieu fee, payment in-lieu or payment in-lieu mitigation without addressing the principle objectives set forth in OAR 141-085-0680(2).

(d) Payment in-lieu fee mitigation may not be used if appropriate mitigation bank credits or in-lieu fee credits are available at the time of permit decision.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0685

Functions and Values Assessment

(1) **Purpose**. The purpose of the functions and values assessment is to document those wetland or tidal waters functions and values anticipated to be lost as a result of the project and help ensure that the proposed CWM will replace those functions and values.

(2) **Assessment Requirements**. Elements of a functions and values assessment shall include the following:

(a) Existing functions and values at the proposed project site;

(b) Functions and values reasonably expected to be adversely impacted by the proposed project;

(c) Existing functions and values at the proposed CWM site, if the site is currently wetland or tidal waters; and

(d) The projected net gain or loss of specific functions and values as a result of the CWM project compared to the reasonably expected adverse impacts as a result of the project.

(3) **Functions and Values Assessment Methods**. Wetland functions and values assessment methods and requirements are as follows:

(a) All applications for tidal waters impacts or for wetland impacts of greater than 0.20 acres shall include a functions and values assessment using the reference-based method in the appropriate Hydrogeomorphic Method (HGM) guidebook for Oregon wetlands, if available. If not available, the Oregon Rapid Wetland Assessment Protocol (ORWAP) is the required method.

(A) The same functions and values assessment method shall be used on the impact site and the proposed CWM site.

(B) A functions and values assessment is not required for the CWM site if CWM is proposed to be fulfilled by purchase of bank credits, advance mitigation credits, or fee in-lieu program credits.

(C) If the same reference-based HGM is not available for both the impact site and the CWM site, then ORWAP must be used for both the impact site and the CWM site.

(D) If a reference-based HGM is not available for all wetland subclasses on the impact site, then ORWAP must be used for all wetlands on the impact site.

(b) For non-tidal wetland impacts involving impacts of 0.20 acres or less, ORWAP is the preferred method, but best professional judgment may be used to assess wetland functions and values. A written discussion of the basis of the conclusions based upon best professional judgment shall be provided. For example, if the water quality function is determined to be "low", a detailed rationale based upon direct measurement or observation of indicators of water quality function shall be discussed.

(c) If best professional judgment is used, wetland functions and values to be assessed shall include, but are not limited to:

(A) Water quality and quantity;

(B) Fish and wildlife habitat;

(C) Native plant communities and species diversity; and

(D) Recreation and education.

(d) The Oregon Freshwater Wetland Assessment Methodology will not satisfy the requirements of OAR 141-085-0685.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0690

Additional Requirements for CWM

(1) **Replacement by Class and Functions and Values**.

(a) The CWM project shall have the capability to replace:

(A) Wetland or tidal water type(s) impacted by the project, as classified per Cowardin system and class (e.g., palustrine forested) and by HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Department of State Lands, 2001); and

(B) The functions and values of the impacted wetland or tidal waters.

(2) **Exceptions**. The Department may approve exceptions to replacement by class and function if the applicant demonstrates, in writing, that the alternative CWM:

(a) Replaces functions and values that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan;

(b) Replaces important wetland or tidal waters types (Cowardin/HGM) and functions and values disproportionately lost in the region;

(c) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent Oregon Natural Heritage Program plant community classification; or

(d) Is for the replacement of a non-tidal wetland or tidal water type that is technically impracticable to replace. Upon demonstration of such to the satisfaction of the Department, the Department may require re-consideration of alternatives to ensure that all practicable opportunities to avoid and minimize impacts have been reasonably incorporated into the project.

(3) **Conversion of Wetland to Tidal Waters**. CWM involving the conversion of wetland to tidal waters will not be approved where the wetland proposed for conversion provides a high level of functionality, provides locally important functions or values, or supports listed species or rare plant community or communities.

(4) **CWM Ratios**.

(a) The purpose of CWM ratios is to:

(A) Ensure that the total area of the state's wetland and tidal waters resource base is maintained; and

(B) Replace wetland and tidal waters functions that may be size dependent.

(b) Ratios will not be used as the sole basis for demonstrating functional replacement.

(c) Except as otherwise provided in this section, the following minimum ratios shall be used in the development of CWM plans.

(A) One acre of restore wetland or tidal waters for one acre of impacted wetland or tidal waters (1:1).

(B) One and one-half acres of created wetland or tidal waters for one acre of impacted wetland or tidal waters (1.5:1).

(C) Three acres of enhanced wetland or tidal waters for one acre of impacted wetland or tidal waters (3:1).

(D) Two acres of enhanced cropped wetland for one acre of impacted wetland (2:1). Cropped wetland is converted wetland that is regularly plowed, seeded and harvested in order to produce a crop for market. Pasture, including lands determined by the Natural Resources and Conservation Service to be "farmed wetland pasture," is not cropped wetland.

(E) There is no established ratio for CWM using preservation. The acreage needed under preservation will be determined on a case-by-case basis by the Department.

(d) The Department may double the minimum ratio requirements for project development affecting existing CWM sites; for example, using enhancement to compensate for effects to an existing CWM site may require a minimum ratio of six acres enhanced for every one acre impacted (6:1).

(e) The Department may increase the ratios when:

(A) Mitigation is proposed to compensate for an unauthorized removal-fill activity; and/or

(B) Mitigation will not be implemented in the same construction season as the authorized impact

(f) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture):

(A) One acre of wetland and open water habitat, with depths less than 35 feet, for one acre of wetland impacted;

(B) Three acres of wetland and open water habitat, with depths greater than 35 feet, for one acre of wetland impacted;

(C) One acre of a combination of restored, created or enhanced wetland and upland, comprising at least 50 percent wetland, for one acre of wetland impacted.

(g) The Department may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):

(A) Allow for staged CWM or mined land reclamation required under ORS 517.700; or

(B) Allow the applicant, upon approval by the Department, to pay the entire cost of CWM according to the following criteria:

(i) On an annual basis for a period not to exceed 20 years over the life expectancy of the operation, whichever is less; or

(ii) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

(h) Alternative methods may be used for mitigation crediting and/or impact debiting by applying a wetland function-based accounting method approved by the Department.

(5) **Timing of CWM Implementation**. CWM earthwork shall be completed within the same construction season as the authorized removal-fill project. The Department may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so.

(6) **CWM in Areas with High Natural Resource Value**. CWM projects shall not degrade areas with existing high natural resource values (e.g., forested uplands).

(7) **CWM Hydrology Must Be Self-Sustaining**. CWM shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide adequate hydrologic support is not acceptable.

(8) **Multiple Purpose CWM**. CWM sites may fulfill multiple purposes including storm water retention or detention, provided:

(a) All other CWM requirements are met;

(b) No alteration or management is required to maintain the functionality of the stormwater facility that would degrade the wetland functions and values;

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area;

(d) Construction of storm water facilities in existing wetlands meets the criteria for enhancement;

(e) Construction of the CWM site will not adversely affect adjacent wetlands or tidal waters;

(f) Construction of the CWM site will not significantly change predevelopment hydrologic conditions or increase peak flows of velocity to receiving streams; and

(g) Stormwater discharges to existing or CWM wetlands will not result in hydrologic conditions that impair vegetation or substrate characteristics necessary to support wetland functions.

(9) **Special Requirements for Enhancement as CWM**. CWM enhancement shall conform to the following additional requirements. Enhancement shall:

(a) Be conducted only on degraded wetlands or tidal waters;

(b) Result in a demonstrable net gain in functions and values at the CWM site as compared to those functions and values lost or diminished as a result of the project and those functions and values that already exist at the CWM site;

(c) Not replace or diminish existing wetland or tidal waters functions and values with different functions and values unless the applicant justifies, in writing, that it is ecologically preferable to do so;

(d) Not consist solely of the conversion of one HGM or Cowardin class to another;

(e) Identify the causes of wetland or tidal waters degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(10) **Preservation as CWM**. Preservation of wetlands or tidal waters may be used for meeting the CWM requirement when the wetland or tidal waters site proposed for preservation is demonstrated to be under threat of development (e.g., zoned for a development use), and one of the following applies:

(a) The preservation site supports a significant population of rare plant or animal species;

(b) The preservation site is a rare wetland or tidal waters type (S1 or S2 according to the Oregon Natural Heritage Program);

(c) The preservation site is a native, mature forested wetland; or

(d) The preservation site, with existing and ongoing management, is in good condition and is highly functioning (as determined using a Department-approved assessment method). Preservation must also accomplish one or more of the following:

(A) Serves a documented watershed need; or

(B) Preserves wetland types disproportionately lost in the watershed.

(11) **Preservation as the Preferred CWM Option**. Preservation may be accepted as the preferred CWM option when the lost or diminished functions and values are exceptionally difficult to replace. Examples of such waters include, but are not limited to, vernal pools, fens, bogs and tidal spruce wetlands, as defined by the Oregon Natural Heritage Program.

(12) **Special Case**; CWM for Linear Projects in Multiple Watersheds. The Department will review and approve CWM for linear projects in multiple watersheds (e.g., roads or utility lines with wetland or tidal waters impacts) on a case-by-case basis and may establish other CWM requirements than those explicitly set forth in these rules.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0700
Financial Security for CWM Sites

(1) **Purpose**. Financial security instruments are required for CWM sites as a guarantee that the CWM will be constructed, monitored and maintained in accordance with removal-fill authorization requirements.

(2) **Exceptions**. Financial security Instruments are required for CWM projects except in the following circumstances:

(a) No financial security instrument is required for projects conducted by government agencies;

(b) The Department may waive the requirement for a financial security instrument for impacts (0.20) of an acre or less; and

(c) Financial security instruments are not required when CWM is satisfied by purchase of credits from a wetland mitigation bank, an in-lieu fee program, advance mitigation, or payment in-lieu mitigation.

(3) **Types of Financial Security Instruments**. To ensure compliance with CWM requirements, the Department may allow for any of the following types of financial security instruments:

(a) Surety bonds must be executed by the permit holder and a corporate surety licensed to do business in Oregon;

(b) Certificates of deposit must be issued by a bank licensed to do business in Oregon, assigned to the Department, and upon the books of the bank issuing such certificates.

(c) Letters of credit may only be issued by a bank authorized to do business in the State of Oregon and must be irrevocable prior to release by the Department.

(d) Such other financial instrument as the Department deems appropriate to secure the financial commitment of the applicant to fulfill the success of the CWM.

(4) **Financial Security Form**. The applicant shall file the financial security instrument or instruments on a form or forms prescribed and furnished by the Department. Financial security instruments shall be made payable to the Department and shall be submitted to the Department prior to permit issuance or prior to release of credits from a mitigation bank.

(5) **Commencement of the Liability Period**. The period of liability shall begin at the time of authorization issuance. The liability period shall be renewable until the Department deems the CWM to be complete and the Department releases the permittee from any further monitoring requirements.

(6) **Determining the Amount**. The Department will annually set the amount of the financial security instrument equal to either the cost of mitigation bank credit(s) within a service area covering the removal-fill site, or the current cost of payment in-lieu mitigation, whichever is greater. For mitigation banks, the amount shall be sufficient to ensure a high level of confidence that the mitigation will be successfully completed.

(7) **Financial Security Instrument Replacement**. The Department may allow a permit holder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Department will not release an existing financial security instrument until the permit holder has submitted and the Department has approved the replacement.

(8) **Financial Security Instrument Release**. The Department will authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and the conditions of the removal-fill authorization. The permit holder shall file a request with the Department for the release of all or part of a financial security instrument. The request shall include:

(a) The precise location of the CWM area;

(b) The permit holder's name;

(c) The removal-fill authorization number and the date it was approved;

(d) The amount of the financial security instrument filed and the portion proposed for release; and

(e) A description of the results achieved relative to the permit holder's approved CWM plan.

(9) **Forfeiture**. The Department may declare forfeiture of all or part of a financial security instrument for any project area or an increment of a project area if CWM activities fail to meet success criteria, the permittee fails to provide monitoring reports, or fails to follow other permit conditions related to mitigation. The Department will identify, in writing, the reasons for the declaration.

(10) **Determination of Forfeiture Amount and Use of Funds**. The permit holder shall forfeit the amount of the outstanding liability in the financial security instrument. The Department will either use the funds collected from the security forfeiture to complete the CWM or deposit the proceeds in the Oregon Removal-Fill Mitigation Fund.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0705
Requirements for All CWM Plans

(1) **CWM Plan Content**. CWM Plan detail shall be commensurate with the size and complexity of the proposed mitigation. A CWM Plan is not required for proposed CWM by means of using credits from an approved bank, advance mitigation site, in-lieu fee mitigation or payment in-lieu mitigation. A CWM plan for permittee responsible CWM shall include the sections listed below.

(a) CWM plan overview, including:

(A) CWM ecological goals and objectives;

(B) The CWM concept in general terms including a description of how the plan, when implemented, will replace the functions and values of the impacted non-tidal wetland or tidal waters;

(C) Mitigation site acreage by method(s) of mitigation proposed (restoration, creation and enhancement) and by proposed HGM and Cowardin classification for each method; and

(D) Summary of proposed net losses and gains of wetland or tidal waters functions and values.

(b) CWM site ownership and location information:

(A) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(B) Legal description (Township, Range, Quarter and Quarter-quarter Section and tax lot or lots); and

(C) CWM site location shown on a USGS or similar map showing the CWM site location relative to the impacted site, longitude and latitude, physical address, if any (e.g., 512 Elm Street), and road milepost (e.g., mp 25.21).

(c) A description of how the proposed CWM addresses each of the principal objectives for CWM as defined in OAR 141-085-0680.

(d) CWM site existing conditions, including the following, as applicable.

(A) If wetlands or tidal waters exist on the CWM site, then the following information be provided:

(i) A wetland determination/delineation report pursuant to OAR 141-090 for existing wetlands on the CWM site (or for tidal waters, any wetlands above highest measured tide elevation), as necessary to confirm acreage of proposed CWM;

(ii) Identification of HGM and Cowardin class(es) and subclass(es) of all wetlands and tidal waters present within the CWM site;

(iii) A general description of the existing and proposed water source, duration and frequency of inundation or saturation, and depth of surface water for wetlands or tidal waters on the CWM site. This information shall include identification of any water rights necessary to sustain the intended functions. Evidence that the water right has either been secured or is not required shall be documented in the first year mitigation monitoring report; and

(iv) Plans that involve enhancement shall include identification of the cause(s) of degradation and how the plan will reverse it and sustain the reversal.

(B) A description of the major plant communities and their relative distribution, including the abundance of exotic species within the CWM site and associated buffers.

(C) Approximate location of all water features (e.g., wetlands, streams, lakes) within 500 feet of the CWM site.

(D) Any known CWM site constraints or limitations.

(E) Plans for CWM by means of restoration shall include documentation sufficient to demonstrate that the site was formerly, but is not currently, a wetland or tidal water.

(e) A functions and values assessment. A summary of the assessment shall be placed in the body of the CWM plan, and supporting data sheets or assessment model outputs shall be placed in an appendix of the CWM Plan.

(f) CWM drawings and specifications, including:

(A) Proposed construction schedule;

(B) Scaled site plan(s) showing CWM project boundaries, existing and proposed wetland or tidal waters boundaries, restoration, creation and enhancement areas, buffers, existing and proposed contours, cross section locations, construction access location and staging areas;

(C) Scaled cross sections showing existing and proposed contours and proposed water depths;

(D) Plant list for each Cowardin and HGM class at the CWM site (include scientific names and wetland indicator status);

(E) Schematic of any proposed water control structures; and

(F) For CWM sites involving tidal waters, plan views and cross-sections shall show relevant tidal elevations relative to mean lower low water (MLLW) using the nearest local tidal datum. The elevation of MLLW shall be referenced to the North American Vertical Datum 1988 (NAVD88).

(g) Proposed CWM performance standards. The applicant may propose to use applicable pre-defined performance standards as approved by the Department, or may provide CWM site-specific performance standards that:

(A) Address the proposed ecological goals and objectives for the CWM;

(B) Are objective and measurable; and

(C) Provide a timeline for achievement of each performance standard.

(h) A description of the proposed financial security instrument. The Department will determine the amount of security required. A final financial security instrument will be required prior to permit issuance unless otherwise approved by the Department.

(i) A monitoring plan including specific methods, timing, monitoring plot locations, and photo-documentation locations.

(j) A long-term maintenance plan describing:

(A) How the applicant anticipates providing for maintenance of the CWM site beyond the monitoring period to ensure its sustainability (e.g., maintenance of any water control structures, weed management, prescribed burning, and vandalism repair);

(B) Expected long-term ownership of the CWM site and the anticipated responsible party or parties for long-term maintenance; and

(C) How the maintenance activities are anticipated to be funded.

(k) The CWM plan shall identify the long-term protection instrument for the CWM site in accordance with OAR 141-085-0695.

(l) The Department may require additional information as necessary to determine the appropriateness, feasibility and sustainability of the proposed CWM and at any time prior to the permit decision may make recommendations for improvements to CWM plans.

(2) **CWM Plans Using Preservation**. A CWM plan using preservation shall include:

(a) Functions and values assessment of the removal-fill site and site proposed for preservation;

(b) Maps showing the preservation site including all delineated wetlands or tidal waters to be conserved;

(c) Documentation demonstrating that the proposed preservation site meets the requirements of OAR 141-085-0690(10);

(d) The surrounding land uses and an analysis of the both the short-term and long-term known and probable effects of those land uses and activities on the preserved wetlands or tidal waters;

(e) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the preserved wetlands or tidal waters;

(f) Identification of the party or parties responsible for long-term protection of the preservation site;

(g) A long-term protection instrument;

(h) A long-term management plan with a funding mechanism that addresses the specific management needs to optimize and maintain functionality and ecological sustainability of the wetlands or tidal waters to be preserved; and

(i) The protection instrument, management plan and funding mechanism shall be in place prior to issuance of the authorization.

(3) **Authorization Conditions for CWM Plans**.

(a) The Department will review the CWM plan for sufficiency. In approving the final CWM plan, the Department may impose authorization conditions necessary to ensure compliance.

(b) The approved CWM plan becomes an enforceable part of the removal-fill authorization. In the event of conflict between CWM Plan provisions and removal-fill authorization conditions, the authorization conditions prevail.

(c) Regardless of the expiration date of the authorization, all compensatory mitigation conditions remain enforceable until the Department declares that the CWM has been successful.

(d) The permit holder cannot delegate responsibility for CWM requirements, unless the Department has officially transferred the mitigation obligation.

(e) If applicable, the Department will approve necessary draft administrative protection instrument(s) prior to permit issuance. A copy or copies of the recorded administrative protection instrument(s) shall be submitted to the Department with the post construction report unless the Department approves another schedule.

(f) For authorizations involving payment in-lieu mitigation as CWM:

(A) The individual removal-fill permit or letter of authorization for an activity will not be issued until payment has been made as approved by the Department; and

(B) Once an approved removal-fill permit activity has begun as proposed, the payment is non-refundable.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0720
Mitigation Banking Purpose, Applicability and Policies

Purpose and Applicability. These rules describe the requirements to establish and operate mitigation banks, which can be used to compensate for impacts to waters of this state. These rules pertain to mitigation banks that compensate for impacts to all types of waters of this state

(1) **Coordination with the Corps of Engineers**. The Department will coordinate with and participate on the Interagency Review Team as a co-chair agency with the Corps of Engineers to establish mitigation banks that also meet the Federal regulatory requirements, as appropriate.

(2) **Development of Mitigation Banks is Encouraged**. The Department encourages the development and will facilitate the expeditious approval of mitigation banks.

(3) **Compensation for Expected or Historical Losses to Aquatic Resources**. Mitigation banks shall be located and designed to compensate for expected or historical losses to aquatic resources by:

(a) Maintaining regional functions and values of aquatic resources in their service area;

(b) Matching the demand for credits with losses to the water resources of this state; and

(c) Meeting other ecological or watershed needs as determined by the Department.

(4) **Banks Must Meet Principal Objectives for CWM**: Mitigation banks established and operated under these rules specifically for wetlands shall meet the principal objectives of compensatory wetland mitigation in OAR 141-085-0680.

(5) **Subject to All CM Rules**. Mitigation banks are subject to all rules governing CWM and CNWM, as applicable.

(6) **Collaboration with Public Resource Protection and Restoration Programs**. The Department encourages collaboration with voluntary watershed enhancement projects in conjunction with, but supplemental to, the generation of compensatory mitigation credit, when greater ecological gains can be recognized. Except where public funding is specifically authorized to provide compensatory mitigation, or the Department otherwise approves the use or accounting of such funds, funds dedicated to non-compensatory aquatic resource restoration or preservation projects shall not generate transferable mitigation credit.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0725
Process for Establishing Mitigation Banks

(1) **Pre-prospectus Meeting with the Department**. To initiate a mitigation bank, a prospective bank sponsor shall request a meeting with the Department for initial review of the mitigation concept, site suitability, and content of the Prospectus.

(2) **Department Review of Draft Documents, Generally**. The process for establishing a mitigation bank involves the development of a Prospectus and Mitigation Bank Instrument in consultation with an interagency review team (IRT). In an effort to supply the IRT with complete documents that meet the requirements of these rules, multiple drafts and completeness reviews may be required.

(3) **Submittal of the Prospectus**. After discussion of the mitigation concept with the Department, a mitigation bank sponsor shall submit a Mitigation Bank Prospectus. A Mitigation Bank Prospectus shall include:

(a) Site information including location, size, ownership, soil mapping, and recent air photo;

(b) The objectives of the proposed mitigation bank;

(c) How the mitigation bank will be established and operated, in general terms;

(d) The proposed service area;

(e) A market or other analysis that demonstrates the general need for the mitigation bank;

(f) A description of the technical feasibility of the proposed mitigation bank;

(g) The proposed ownership arrangements and long-term management strategy for the mitigation bank;

(h) How the mitigation bank addresses each of the principal objectives for CWM listed in 141-085-0680; and

(i) Names and addresses of all landowners within 500 feet of the bank.

(4) **Prospectus Completeness Review**. Within 30 calendar days of the Department's receipt of a Prospectus, the Department will conduct an initial review to determine if the Prospectus is complete and the information contained in the Prospectus adequately addresses the requirements. During this time, the Department will inform the applicant of one or more of the following findings:

(a) The Prospectus is complete and will proceed to the public notice;

(b) The Prospectus in incomplete.

(5) **Incomplete Prospectus**. If the Department determines that the Prospectus is incomplete, the Department will notify the sponsor in writing and list the missing or deficient information. The Department will take no action on the incomplete Prospectus until the required information is submitted. The Sponsor shall resubmit the entire amended Prospectus for reconsideration, unless instructed by the Department to do otherwise.

Submission of a new or amended Prospectus starts a new 30 calendar day initial review period.

(6) **Department May Decline to Participate**. If a mitigation bank sponsor cannot demonstrate the need for the mitigation credits or the technical feasibility and ecological desirability of the bank, the Department may decline to participate in its development.

(7) **Public Notice of Prospectus**. Upon determining that a Prospectus is sufficient, the Department will issue a public notice entitled, "Intent To Create A Mitigation Bank." The Department will:

(a) Post the notice on the Department's web site for 30 calendar days;

(b) Send the notice to city and county planning departments, affected state and federal natural resource and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices;

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor; and

(d) Solicit comments for 30 calendar days from the date of the public notice.

(8) **Consideration of Comments Received During the Public Notice Period**. All comments received will be provided to the bank sponsor and to the IRT. If comments are not received from an interested party within the 30-day comment period, the Department will assume the entity does not desire to provide comments.

(9) **Establishment of an Interagency Review Team (IRT) and the Role of the IRT**. The Department will invite participants to serve on an IRT within 30 calendar days of the date of the public notice. The Department will serve as chair (or co-chair) of the IRT.

(a) The Department will invite each of the following agencies to nominate a representative for an IRT:

(A) Oregon Department of Environmental Quality;

(B) Oregon Department of Fish and Wildlife;

(C) Oregon Department of Land Conservation and Development;

(D) U.S. Fish and Wildlife Service;

(E) U.S. Environmental Protection Agency;

(F) Soil and Water Conservation District; and

(G) Local Government Planner, or equivalent.

(b) The Department may appoint other members of the IRT based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise that may be required by the Department in development of the MBI.

(c) The IRT acts in an advisory capacity to the Department in the establishment and operation of mitigation banks. The IRT member agencies may elect to be signatories on the MBI. By participating as signatories, IRT member agencies confirm that the approved bank supports the regulatory authorities and/or missions of the IRT agency. The IRT may:

(A) Review and provide input to the Department on the Prospectus and the comments received during the public notice for use in the development of the MBI;

(B) Review and provide input on the Draft MBI;

(C) Review the performance of the bank to assist the Department in determining compliance with the MBI; and

(D) Provide input on adaptive management of the mitigation bank, as necessary, to achieve the ecological goals and objectives.

(10) **Mitigation Bank Instrument (MBI)**. After consideration of the public comments and input from the IRT, the bank sponsor shall develop a Draft Mitigation Bank Instrument (MBI) for submittal to the Department. If the sponsor intends that the MBI serve as the permit application, he/she shall notify the Department of this intention at the time of submittal of the first draft MBI. If an MBI is used in place of a permit application, in addition to all requirements below, it shall meet the requirements for fees, content, and review procedures as specified in 141-85-0545 through 0565. The Draft MBI shall contain:

(a) If the proposed bank is for wetland mitigation, all requirements for CWM plans per OAR 141-085-0680 to 0710:

(b) The applicant shall also provide the following information:

(A) The proposed service area for the bank, including a map clearly showing recognizable geographic place names and watershed boundaries;

(B) Demonstration of the need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation;

(C) A description of the projected wetland losses in the service area by HGM and Cowardin wetland classes;

(D) Proof of ownership including a title report and disclosure of any and all liens or easements on the bank site. If the sponsor does not own the land, the MBI shall contain explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the proposed bank and any associated buffer is located;

(E) A description of the methods and results of the evaluation of ecological stressors, such as contaminants, present at the bank site that could compromise the wetland functions;

(F) Description of the location and plant community composition of reference site(s), unless an HGM reference data set is used;

(G) Description of the method(s) used to determine the number of credits to be created at the proposed bank, as well as those that will be used to account for and report credit and debit transactions;

(H) The proposed credit release schedule linked to achievement of specific performance standards;

(I) Detailed contingency plans describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as floods, vandalism, damage by pests and wildlife, invasion by weedy vegetation, etc.;

(J) Land use affidavit; and

(K) A statement indicating when each of the conditions of the MBI will terminate, unless they are perpetual in nature.

(11) **Review of the Draft MBI**. Within 30 calendar days of the Department's receipt of a draft MBI, the Department will conduct an initial review to determine if the MBI is complete and the information contained in the MBI adequately addresses the requirements. During this time, the Department will make and inform the sponsor of its findings, either:

(a) The Draft MBI is complete and will proceed to the IRT review process; or

(b) The Draft MBI is incomplete.

(12) **Incomplete Draft MBI**. If the Department determines that the Draft MBI is incomplete or deficient, the Department will notify the sponsor in writing and list the missing or deficient information. The Department will take no action on the incomplete draft MBI until the required information is submitted. The applicant shall resubmit the entire draft MBI for reconsideration, unless instructed by the Department to do otherwise. Submission of a new or amended draft MBI starts a new 30 day review period.

(13) **IRT Review of the Draft MBI**. Upon notification that the Draft MBI is complete, the sponsor shall provide copies to the IRT for review. At the next available IRT meeting, the IRT will review and discuss the draft MBI and identify any issues that need to be resolved prior to finalizing the MBI. IRT meetings will be held as necessary to resolve issues identified by the co-chairs.

(14) **Preparation of the Final MBI**. When revisions have been completed and issues identified through the IRT process have been resolved, the sponsor shall submit a final MBI to the Department and IRT members.

(15) **Final Approval of the MBI**. Within 30 calendar days of receipt of the final MBI, the Department will notify the sponsor and the IRT whether the agency will approve the MBI.

(16) **Appeal of Department Decision**. Appeals of the Department decision to affirm or deny mitigation bank approval shall be administered according to 141-085-0575.

(17) **Construction Timing**. At their own risk, a sponsor may begin construction of a bank prior to approval of the final MBI if the sponsor:

(a) Provides the Department with detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receives written consent from the Department prior to undertaking any construction. However, such consent from the Department does not exempt the sponsor from having to apply for, and obtain a removal-fill permit, if required. Written consent from the Department recognizes the sponsor's intent to create a bank but does not guarantee subsequent approval of the MBI by the Department. The Department assumes no liability for the sponsor's actions.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0730
Establishment of Mitigation Credits

(1) **Credit Options**. Credits can be established by using:

(a) The minimum mitigation ratios as stated in OAR 141-085-0690(4); or

(b) By applying a function based credit accounting method approved by the Department. Credits within a bank are determined by the difference between the baseline conditions of the bank prior to restoration, enhancement or creation activities, and the increased functions and values of the

water resources of the state that result, or are expected to result, from those activities.

(2) **Bonus Credits**. Additional credits beyond those established in an approved MBI may be released after five consecutive years in which the mitigation wetland meets all performance standards:

(a) For those bank credits using the 1.5:1 ratio for wetland creation, or a function based credit accounting method approved by the Department, additional credits may be recognized by the Department when the total number for wetland credits for such area, including the initial release and these additional credits, does not exceed a 1:1 ratio by acreage; or

(b) Bonus credits may be recognized, at the discretion of the Department in consultation with the IRT, to cover the reasonable costs of the addition of long-term stewardship provisions to existing banks that were approved without such measures.

(3) **Buffer Area Credit**s. Credits may be granted on an area basis for upland buffers at the discretion of the Department. Such buffers shall be essential to protect the functions of a bank from potentially adverse effects of adjacent land uses, and shall be subject to the same site protections as the bank.

(4) **Credits for Non-Wetland Areas**. The Department may recognize wetland credits for improvement of non-wetlands such as in-stream channel habitat, riparian floodplains, non-wetland inclusions in wetland/upland mosaics, and other ecosystem components that provide ecological benefits to the larger wetland bank.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0735
Release, Use and Sale of Mitigation Credits

(1) **Initial Release of Credits Must Be Specified in the MBI**. The maximum number of credits that may be released for sale in advance of bank certification shall be clearly specified in the MBI. In no case may this amount exceed 30 percent of the total credits anticipated for each phase of bank construction. Advance releases require a commensurate financial security per OAR 141-085-0700.

(2) **Release of Credits Must Be in Compliance with MBI**. The Department will not allow the sale or exchange of credits by a mitigation bank that is not in compliance with the terms of the MBI, the Removal-Fill Law, and in the case of a wetland mitigation bank, all applicable rules governing CWM. The Department may consult with the IRT in order to determine noncompliance and appropriate remedies, including enforcement action. The Department may, in consultation with the IRT, modify the credit release schedule, including reducing the number of credits or suspending credit transfers, when necessary to ensure that all credit transfers are backed by mitigation projects with a high probability of meeting performance standards.

(3) **Sales to Permit Applicants**. After credits have been released to the bank sponsor, they may be sold to permit applicants upon approval by the Department that such credits will satisfy the mitigation obligation of a specific permit, or to resolve an enforcement case.

(4) **Sales to Public Benefit Corporations or Public Bodies**. At the request of a mitigation bank sponsor, the Department may authorize the withdrawal of mitigation bank credits by a public benefit corporation as defined in ORS 65.001 or a public body. Such entities shall be designated by the Director for the purpose of reserving credits for future use in accordance with this subsection. The Director will manage such transactions to ensure that each credit is used no more than once to satisfy a use in accordance with this section. Mitigation Banks shall report every credit sale to the Department and will provide an annual credit ledger.

(5) **The Department May Purchase Bank Credits**. Funds from the wetland mitigation bank revolving fund may be used to purchase approved bank credits where such purchases will provide appropriate CWM.

(6) **Records and Reporting**. The Department will maintain a record of credit releases and withdrawals for each active wetland mitigation bank.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0745
In-Lieu Fee Mitigation

The Department may approve the use of in-lieu fee mitigation as a category of the mitigation banking program (OAR 141-085-0720 to 0745).

(1) **Applicability**. In-lieu fee mitigation involves the payment of funds to an approved sponsor to satisfy compensatory mitigation requirements for impacts to waters of this state. In-lieu fee mitigation differs from other forms of mitigation in that advanced credits can be released upon approval of a program Instrument, prior to Department approval of the mitigation site.

(2) **Policies**. In-lieu fee mitigation is subject to all rules governing mitigation banking (OAR 141-085-0720 to 0745), as applicable.

(3) **Implementation**. The Department will establish a method for implementing in-lieu fee mitigation, including, but not limited to the following elements:

(a) Additional information required for a program instrument outlining the operation and use of an in-lieu fee program, including, but not limited to a planning framework for identifying and securing mitigation sites within the defined service area, proposed advance credit release and justification, and accounting procedures;

(b) Timelines to implement compensatory mitigation projects to satisfy advance credit sales, and

(c) Department approval of compensatory mitigation projects proposed by the in-lieu fee sponsor.

(4) **Qualifying Sponsors May Be Limited**. The Department may limit the number and type of in-lieu fee sponsors.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

141-085-0750
Payments; Expenditure of Funds for Payment In-Lieu (PIL) Mitigation

The Department will use the Oregon Removal-Fill Mitigation Fund to hold and disperse money collected from the program.

(1) **Limitations on PIL Fund Expenditures**. The Department will expend funds collected under the PIL mitigation option to:

(a) Restore, enhance, create or preserve water resources of this state (including acquisition of land or easements as necessary to conduct restoration, enhancement, creation or preservation projects) as compensatory mitigation to compensate, replace or preserve functions and values lost or diminished as result of an approved project;

(b) Purchase credits from an approved mitigation bank for the purpose of fulfilling the mitigation requirements of an approved project;

(c) Monitor the compensatory mitigation;

(d) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful; and

(e) Administer the program and fund a staff position.

(2) **Geographic Limitations of Funds Expenditures**. The Department will expend funds collected under the PIL option within the basin where the removal-fill site occurs, unless the Department determines that this option is not feasible.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10

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Rule Caption: Changes to the general Authorizations Rules.
Adm. Order No.: DSL 9-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 10-1-2009
Rules Adopted: 141-089-0095
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Subject: The division 89 rules have been amended to reflect statutory changes during the 75th Oregon Legislative Assembly — 2009 Regular Session (HB 2155 and HB 2156), and to make them more succinct and consistent wit the format used in the recently revised division 85 rules.
Rules Coordinator: Elizabeth Martino—(503) 986-5239

141-089-0095
General Authorizations; Standards and Criteria; Process for Establishing

General Authorizations (GA) are adopted individually by rule and can be found in OAR 141-089.

(1) Individual Permit May Not Be Necessary. If a proposed activity meets the requirements of a general authorization, a person does not need to obtain an individual removal-fill permit for that activity. Any person proposing to conduct a removal-fill under a general authorization shall first notify the Department in writing in accordance with the requirements of the

specific general authorizations being sought, and pay any applicable fee to the Department.

(2) GAs May Apply Statewide or Regionally. General authorizations are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 to 183.550). A general authorization may be granted on a statewide or other geographic basis.

(3) Criteria for Adopting GAs. The Department may propose to adopt a general authorization upon a finding that the category of removal-fill, as described in the proposed general authorization (including the applicable conditions):

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative adverse impacts;

(c) Will not result in long-term harm to the water resources of this state; and

(d) Are consistent with the policies of these rules.

(4) Public May Request Department to Amend or Rescind GAs. The Department may amend or rescind any general authorization, through rulemaking, upon a determination that the removal-fill conducted under the general authorization has resulted in or would result in more than minimal adverse effect or long-term harm to the water resources of this state. Any person may request the Department invoke this provision. Such a request shall include the specific general authorization to be rescinded or amended and clearly and convincingly state the reasons for the request.

(5) GAs Must Be Compatible with Local Comprehensive Plan. No general authorization is valid where the removal-fill is prohibited by the local comprehensive plan or implementing regulations or other applicable ordinance.

(6) GAs Valid for Five Years. The rule promulgating the general authorization will be effective for up to a five-year term and will be reviewed every five years. Upon review, the general authorization will be reissued in a similar or amended form or repealed.

(7) GAs Are Enforceable. Failure of a person to adhere to the terms of any general authorization adopted under this section will be considered a violation of the removal-fill law and subject to appropriate enforcement in accordance with these rules.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 9-2009, f. 12-15-09 cert. ef. 1-1-10

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Rule Caption: Adopt rules governing the establishment of an uses within marine reserves and marine protected areas.
Adm. Order No.: DSL 10-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 10-1-2009
Rules Adopted: 141-142-0010, 141-142-0015, 141-142-0020, 141-142-0025, 141-142-0030, 141-142-0035, 141-142-0040
Subject: House Bill 3013 provides that the State land Board and other relevant state agencies "...shall, consistent with existing statutory authority, implement the November 29, 2008, recommendations from the Ocean Policy Advisory Council on marine reserves by: (1) Adopting rules to establish, study, monitor, evaluate and enforce a pilot rick marine reserve at Otter Rock and a pilot marine reserve and a marine protect area at Redfish Rocks..."

These rules describe what uses the Department of State Lands may authorize within areas designated as a marine reserve or marine protected area, and identify areas of state-owned submerged and submersible land in the Territorial Sea that have been designated by House Bill 3013 as a marine reserve or marine protected area.
Rules Coordinator: Elizabeth Martino—(503) 986-5239

141-142-0010
Purpose and Applicability

This division:

(1) Governs the State Land Board establishment and Department of State Lands (Department) management of marine reserves and marine protected areas in the Territorial Sea.

(2) Describes uses that the Department may authorize within areas designated as a marine reserve or marine protected area.

(3) Identifies areas of state-owned submerged and submersible land in the Territorial Sea managed by the Department that the State Land Board has designated as a marine reserve or marine protected area.

Stat. Auth.: ORS 183, 273, 274
Stats. Implemented: ORS 847
Hist.: DSL 10-2009, f. & cert. ef. 12-15-09

141-142-0015
Definitions

As used in this division, unless the context requires otherwise:

(1) "Authorization" means a lease, registration, short-term access authorization, temporary use authorization, public facility license, easement or other authorization the Department grants that allows a person to use, or place a structure in, on, under or over state-owned submerged land, state-owned submersible land, or both in the Territorial Sea.

(2) "Department" means the Department of State Lands.

(3) "Extractive Activity" means any human effort to remove or attempt to remove any living or non-living marine resource.

(4) "Extreme Low Water" or "ELWL" means the lowest elevation reached by the sea as recorded by a water level gauge during a given period. Extreme low water is generally seaward of the "line of ordinary low water" as defined in ORS 274.005(3).

(5) "Marine Protected Area" means any area of the marine environment within Oregon's Territorial Sea that has been reserved by the state to provide lasting protection for part or all of the natural and cultural resources therein.

(6) "Marine Reserve" is an area within Oregon's Territorial Sea or adjacent rocky intertidal area that is protected from all extractive activities, including the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research to evaluate reserve condition, effectiveness, or impact of stressors.

(7) "Mean High Water" or "MHWL" is a tidal datum. It is the average of all the high water heights observed over the National Tidal Datum Epoch. For stations with shorter series, comparison of simultaneous observations with a control tide station is made in order to derive the equivalent datum of the National Tidal Datum Epoch. For purposes of the Department's jurisdiction, Mean High Water corresponds generally with the "line of ordinary high water" as defined in ORS 274.005(3).

(8) "National Tidal Datum Epoch" means the specific 19-year period adopted by the National Ocean Service as the official time segment over which tide observations are taken and reduced to obtain mean values (e.g., mean lower low water, etc.) for tidal datums. It is necessary for standardization because of periodic and apparent secular trends in sea level. The present National Tide Datum Epoch is 1983 through 2001 and is actively considered for revision every 20-25 years. Tidal datums in certain regions with anomalous sea level changes are calculated on a Modified 5-Year Epoch.

(9) "Removal-Fill Permit" means an authorization granted by the Department governing the removal, fill, alteration, or any combination thereof of material within the waters of the State of Oregon as provided in ORS 196.668 to 196.692 and 196.800 to 196.990.

(10) "State Land" as provided in ORS 273.006(8) means public land controlled by the Department.

(11) "Structure" means anything placed, constructed, or erected in, on, under or over state-owned submerged and submersible land.

(12) "Submerged Land" as provided in ORS 274.005(7), means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal, except as provided in ORS 274.705.

(13) "Submersible Land" as provided in ORS 274.005(8), means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal, except as provided in ORS 274.705.

(14) "Territorial Sea" as provided in ORS 196.405(5), means the waters and seabed extending three nautical/geographical miles seaward from the coastline in conformance with federal law.

(15) "Territorial Sea Plan" as provided in ORS 196.405(6), means the plan for Oregon's Territorial Sea. In addition to the Territorial Sea as defined in section (15), the scope of the Territorial Sea Plan includes the "ocean shore" as defined in ORS 390.605.

Stat. Auth.: ORS 183, 273, 274
Stats. Implemented: ORS 847
Hist.: DSL 10-2009, f. & cert. ef. 12-15-09

141-142-0020
General Provisions

(1) The Department will only grant an authorization or a removal-fill permit for a regulated removal-fill activity if the use, or removal, fill or

alteration of material is necessary to study, monitor, evaluate, enforce or protect or otherwise further the studying, monitoring, enforcement and protection of the marine reserve or marine protected area.

(2) Applicants for an authorization within a marine reserve or marine protected area must provide evidence suitable to the Department and other reviewing agencies that their proposed use meets the requirements of OAR 141-142-0020(1) and the management plan adopted and in force for the area at the time the application is submitted.

(3) The Department will honor the terms and conditions of the agreement referenced in OAR 635-041-0500 and any valid authorization (including any provisions providing for a right of renewal) previously granted by the Department for a use existing within an area designated as a marine reserve or marine protected area at the time of its designation if the holder of the authorization is, and continues to be in full compliance with the terms and conditions of the authorization.

(4) The Department will condition any authorization to use or place a structure on, in or over state-owned submerged and submersible land in an area designated as a marine reserve or marine protected area to require that the holder receive all other authorizations required by the Department (such as a Removal-Fill Authorization under ORS 196.800 to 196.990) and other local, state, and federal entities before using the area.

(5) Any person applying to the Department for an authorization to place any structure on, in or over state-owned submerged and submersible land in an area designated as a marine reserve or marine protected area must describe in the application how they will remove the structure pursuant to the requirements of the Territorial Sea Plan.

(6) Notwithstanding the provisions of ORS 274.885–274.895, no person may harvest or remove any kelp or other seaweed for any purpose within an area designated as a marine reserve or marine protected area unless expressly authorized by the Department to do so in order to study, monitor, evaluate, enforce or otherwise further the purpose of the marine reserve or marine protected area.

Stat. Auth.: ORS 183, 273, 274
Stats. Implemented: ORS 847
Hist.: DSL 10-2009, f. & cert. ef. 12-15-09

141-142-0025
Establishing a Marine Reserve or Marine Protected Area

In order to be established, marine reserves and marine protected areas must be approved by the adoption of an amendment to this division by the State Land Board.

Stat. Auth.: ORS 183, 273, 274
Stats. Implemented: ORS 847
Hist.: DSL 10-2009, f. & cert. ef. 12-15-09

141-142-0030
Otter Rock Marine Reserve

(1) All state-owned submerged and submersible land that is under the jurisdiction of the Department and is bounded by the following points is within the Otter Rock Marine Reserve:

(a) Beginning at a point at the northwest corner of Gull Rock at Latitude 44° 45.175' (44° 45' 10.5" N), Longitude -124° 04.53' (124° 4' 31.8" W) (Point A);

(b) Then east to Latitude 44° 45.175' (44° 45' 10.5" N), Longitude -124° 3.8583' (124° 3' 51.5" W) (Point B) at approximately the MHWL;

(c) Then following the MHWL to Latitude 44° 44.7933' (44° 44' 47.6" N), Longitude -124°3.7833' (124° 3' 47" W) (Point C);

(d) Then following longitude -124°3.7833' (124° 3' 47" W) south to Latitude 44° 44.7283' (44° 44' 43.7"N) (Point D) at approximately the ELWL;

(e) Then following the ELWL to Latitude 44° 43.315' (44° 43' 18.9"N), Longitude -124° 3.6567' (124° 3' 39.4" W) (Point E);

(f) Then west to Latitude 44° 43.315' (44° 43' 18.9" N), Longitude -124° 4.2' (124° 4' 12" W) described as the southwest corner of Whale Back Rock (Point F);

(g) Then in a northerly direction back to the point of beginning (Point A).

(2) All coordinate information is provided in WGS84 coordinate system (geographic latitude/longitude) and has not been verified by a licensed surveyor.

Stat. Auth.: ORS 183, 273, 274
Stats. Implemented: ORS 847
Hist.: DSL 10-2009, f. & cert. ef. 12-15-09

141-142-0035
Redfish Rocks Marine Reserve

(1) All state-owned submerged and submersible land that is under the jurisdiction of the Department and is bounded by the following points is within the Redfish Rocks Marine Reserve:

(a) Beginning from a point at Latitude 42° 42.54' (42° 42' 32.4"N), Longitude-124° 29.64' (124° 29' 38.4" W) (Point A);

(b) Then east to Latitude 42° 42.96' (42° 42' 57.6" N), Longitude -124° 27.78' (124° 27' 46.8" W) (Point B) at approximately the ELWL;

(c) Then following the ELWL south to Latitude 42° 41.52' (42° 41' 31.2" N), Longitude -124° 27.18' (124° 27' 10.8" W), described as a point near the middle of Coal Point (Point C);

(d) Then west to Latitude 42° 41.16' (42° 41' 9.6" N), Longitude -124°28.86' (124° 28' 51.6" W) (Point D);

(e) Then in a northerly direction back to the point of beginning (Point A).

(2) All coordinate information is provided in WGS84 coordinate system (geographic latitude/longitude) and has not been verified by a licensed surveyor.

Stat. Auth.: ORS 183, 273, 274
Stats. Implemented: ORS 847
Hist.: DSL 10-2009, f. & cert. ef. 12-15-09

141-142-0040
Redfish Rocks Marine Protected Area

(1) All state-owned submerged and submersible land that is under the jurisdiction of the Department and is bounded by the following points is within the Redfish Rocks Marine Protected Area:

(a) Beginning from a point at Latitude 42° 41.90' (42° 41' 54" N), Longitude -124° 32.50' (124° 32' 30" W) (Point A);

(b) Then east to Latitude 42° 42.54' (42° 42' 32.4" N), Longitude -124° 29.64' (124° 29' 38.4" W) (Point B);

(c) Then south to Latitude 42° 41.16' (42° 41' 9.6" N), Longitude -124° 28.86' (124° 28' 51.6" W) (Point C);

(d) Then west to Latitude 42° 40.25' (42° 40' 15" N), Longitude -124° 32.50' (124° 32' 30" W) (Point D);

(e) Then in a generally northerly direction back to the point of beginning (Point A).

(2) All coordinate information is provided in WGS84 coordinate system (geographic latitude/longitude) and has not been verified by a licensed surveyor.

Stat. Auth.: ORS 183, 273, 274
Stats. Implemented: ORS 847
Hist.: DSL 10-2009, f. & cert. ef. 12-15-09

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Department of Transportation
Chapter 731

Rule Caption: Eligibility and application procedures for grants and loans under the multimodal transportation fund program.
Adm. Order No.: DOT 3-2009
Filed with Sec. of State: 11-17-2009
Certified to be Effective: 11-17-09
Notice Publication Date: 10-1-2009
Rules Amended: 731-035-0020, 731-035-0050, 731-035-0060, 731-035-0070
Subject: These amendments implement Section 10(1) of Chapter 865 OL 2009 (HB 2001) by allocating at least five percent of the net proceeds of lottery bonds used for the Connect Oregon III program to rural airports.
Rules Coordinator: Lauri Kunze—(503) 986-3171

731-035-0020
Definitions

For the purposes of division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Agreement" means a legally binding contract between the Department (or Oregon Department of Aviation) and Recipient that contains the terms and conditions under which the Department is providing funds from the Multimodal Transportation Fund for an Approved Project.

(2) "Applicant" means a Person or Public Body that applies for funds from the Multimodal Transportation Fund.

(3) "Approved Project" means a Project that the Commission has selected to receive funding through either a grant or loan from the Multimodal Transportation Fund.

(4) "Area Commissions on Transportation" means advisory bodies chartered by the Oregon Transportation Commission (OTC) through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.

(5) "Aviation" is defined in ORS 836.005(5).

(6) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the definition of collateral in ORS 79.0102(1), and with respect to a Public Body, any real or personal property as defined in ORS 288.594.

(7) "Commission" means the Oregon Transportation Commission.

(8) "Department" means the Oregon Department of Transportation.

(9) "Director" means the Director of the Oregon Department of Transportation.

(10) "Oregon Business Development Department" means the department defined in ORS 285A.070.

(11) "Freight Advisory Committee" means the committee created in ORS 366.212.

(12) "Person" has the meaning given in ORS 174.100(5), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.

(13) "Program" means the Multimodal Transportation Fund Program established by division 35 rules to administer the Multimodal Transportation Fund.

(14) "Program Funds" means the money appropriated by the Legislature to the Multimodal Transportation Fund. These funds may be used as either grants or loans to eligible projects.

(15) "Public Body" is defined in ORS 174.109.

(16) "Public Transit Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs related to public transportation in Oregon.

(17) "Rail Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs that affect rail freight and rail passenger facilities and services in Oregon.

(18) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the Multimodal Transportation Fund.

(19) "Recipient's Total Project Costs" means the funds received from the Multimodal Transportation Fund program plus the required 20 percent matching funds under Oregon Administrative Rule 731-035-0070(3)(a)(B), if applicable.

(20) "Rural Airports" means any airport that principally serves a city or standard metropolitan statistical area with a population of 500,000 or fewer, and is eligible for Federal Aviation Administration Airport Improvement Program funds.

(21) "State Aviation Board" means the board created in ORS 835.102.

(22) "Transportation Project" or "project" is defined in ORS 367.010(11). A Multimodal Transportation Fund Program Project must involve one or more of the following modes of transportation: air, marine, rail or public transit. The term includes, but is not limited to, a project for capital infrastructure and other projects that facilitate the transportation of materials, animals, or people.

(23) "Rural Airport Project" is a transportation project using the five percent of the net proceeds of the lottery bonds allocated to Rural Airports in Section 10(1) of Chapter 865, OL 2009.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09

731-035-0050
Application Review

(1) The Department will review applications received to determine whether the application is complete, and the Applicant and the Project are eligible for Program Funds.

(2) The Department will transfer all applications for Rural Airport Projects to the Oregon Department of Aviation.

(3) The Oregon Department of Aviation will review Rural Airport Project applications to determine whether the application is complete, and the Applicant and the Project are eligible for Program Funds.

(4) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Public Body or Person within the state of Oregon.

(b) The Applicant, if applicable, is current on all state and local taxes, fees and assessments.

(c) The Applicant has sufficient management and financial capacity to complete the Project including without limitation the ability to contribute 20 percent of the eligible grant Project cost.

(5) Projects that meet all of the following criteria are eligible:

(a) The project is a Transportation Project.

(b) The Project will assist in developing a multimodal transportation system that supports state and local government efforts to attract new businesses to Oregon or that keeps and encourages expansion of existing businesses.

(c) The Project is eligible for funding with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon.

(d) The Project will not require or rely upon continuing subsidies from the Department for ongoing operations.

(e) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fund.

(f) The Project is feasible, including the estimated cost of the Project, the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, the Project schedule, and all applicable and required permits may be obtained within the Project schedule.

(6) If an Applicant or Project is not eligible for Program Funds, the Department will, within 15 days of determination:

(a) Specify the additional information the Applicant must provide to establish eligibility; or

(b) Notify the Applicant that the application request is ineligible.

(7) The Department may deem an application ineligible if the Applicant fails to meet eligibility requirements of subsection (2 and 3) of this rule, or fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information.

(8) The Director will consider protests of the eligibility determination for the Program. Only the Applicant may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final.

(9) The Department will make all eligible applications available for review, as applicable under OAR 731-035-0060, to the State Aviation Board, the Freight Advisory Committee, the Public Transit Advisory Committee, the Rail Advisory Committee, the Oregon Business Development Department and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations on Project funding including the Area Commissions on Transportation.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09

731-035-0060
Project Selection

(1) The Commission will select Projects to be funded through either a grant or loan with moneys in the Multimodal Transportation Fund.

(2) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission shall solicit recommendations from:

(a) The State Aviation Board for Aviation Transportation Projects.

(b) The Freight Advisory Committee for freight Transportation Projects.

(c) The Public Transit Advisory Committee for public transit Transportation Projects.

(d) The Rail Advisory Committee for rail Transportation Projects.

(e) The Oregon Business Development Department for marine transportation projects.

(3) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section 2 of this rule including the Area Commissions on Transportation.

(4) Prior to selecting Rural Airport Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission will solicit recommendations from the State Aviation Board. Except for the State Aviation Board, Rural Airport Projects will not be reviewed by the committees and entities in section 2, section 3, and section 6 of this rule.

(5) State Aviation Board shall provide the Commission with a Rural Airport Recommendation Report of Rural Airport projects to be funded with moneys in the Multimodal Transportation Fund listing in priority order

eligible Rural Airport Projects together with a reasonable number of alternate Rural Airport Projects in priority order.

(6) The Commission may allocate funds to Rural Airport Projects prior to the review of other projects.

(7) Rural Airport Project applications that are not funded as a Rural Airport by the Commission are eligible for funds as a Transportation Project, and will be subject to review by the committees and entities in section 2, section 3 and section 6 of this rule.

(8) On behalf of the Commission, the Department shall solicit recommendations from the committees and entities in section 2 of this rule before soliciting recommendations from entities in section 3 of this rule. The Department shall provide the recommendations from the committees and entities in section 2 of this rule to the entities in section 3 of this rule.

(9) The Director, in consultation with committees and entities in section 2 of this rule and the Area Commissions on Transportation, shall appoint a Final Review Committee that includes representatives from each of the committees and entities in section 2 and section 3 of this rule. Following the receipt of recommendations from the entities in section, 3 of this rule, and prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund the Commission shall solicit a Final Recommendation Report from the Final Review Committee. The Department shall provide the Final Review Committee a list of recommendations from all committees and entities in section 2 and section 3 of this rule. The list shall include the evaluation results and recommendations from each of the committees and entities in sections 2 and 3 of this rule. The Final Review Committee shall provide the Commission its Final Recommendation Report of projects to be funded with moneys in the Multimodal Transportation Fund listing in priority order eligible Projects together with a reasonable number of alternate Projects in priority order.

(10) The Department shall determine the organizational guidance for the committees' and entities' processes and protocols.

(11) The committees and entities in sections 2, 3 and 5 of this rule shall follow the organizational guidance determined by the Department under section 10 of this rule.

(12) The Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Multimodal Transportation Fund:

(a) Whether a proposed Project reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor.

(b) Whether a proposed transportation project results in an economic benefit to this state.

(c) Whether a proposed Project is a critical link connecting elements of Oregon's transportation system that will measurably improve utilization and efficiency of the system.

(d) How much of the cost of a proposed Project can be borne by the Applicant for the grant or loan from any source other than the Multimodal Transportation Fund.

(e) Whether a Project is ready for construction, or if the Project does not involve construction, whether the Project is ready for implementation.

(f) Whether a Project leverages other investment and public benefits from the state, other government units, or private business.

(g) Whether the Applicant proposes to contribute more than the minimum 20 percent of the eligible grant Project costs established in OAR 731-035-0070(4).

(h) Whether the Applicant is applying for a loan rather than a grant.

(13) To award funds that become available due to an approved Project that is withdrawn or is sanctioned as prescribed in 731-035-0080(5), the Commission shall select the highest priority Project that is appropriate for the funds available from the Final Recommendation Report created in section 5 of this rule.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09

731-035-0070
Grant and Loan Awards and Match

(1) At lease five percent of the net proceeds of the lottery bonds will be allocated to Rural Airports.

(2) To the extent that proposed Projects meet the qualifications established in OAR 731-035-0050 and 731-035-0060, at least 10 percent of the total net proceeds of the lottery bonds will be allocated to each of the five regions as specified in Chapter 865, OL 2009. The regions consist of the following counties:

(a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties;

(b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties;

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties;

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties; and

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(3) Applicants may use a combination of grant and loan funds to finance a Project.

(4) Grants and loans will be awarded only when there are sufficient funds available in the Multimodal Transportation Fund to cover the costs of the loans and grants.

(a) Grants:

(A) Awards must not exceed 80 percent of the total eligible Project costs.

(B) Applicant matching funds must be provided by the Applicant in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase or rental, and cover at least 20 percent of the eligible Project costs.

(b) Loans:

(A) Loans may be for any portion of project costs, up to the full amount of the project.

(B) With the exception of the two percent payment described in section 2, subsection 2, of Chapter 859, Oregon Laws 2007 (which also applies to grants), the Department will not charge fees for processing or administering a loan to a Recipient.

(C) Loans from the Multimodal Transportation Fund may be interest free if repaid according to the terms and conditions of the Agreement between the Department and Recipient.

(D) Prior to entering into a loan Agreement, the Department will determine if an application meets reasonable underwriting standards of credit-worthiness, including whether:

(i) The Project is feasible and a reasonable risk from practical and economic standpoints.

(ii) The loan has a reasonable prospect of repayment according to its terms.

(iii) The Applicant's fiscal, managerial and operational capacity is adequate to assure the successful completion and operation of the Project.

(iv) The Applicant will provide good and sufficient Collateral to mitigate risk to the Multimodal Transportation Fund.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09

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Department of Transportation, Highway Division
Chapter 734

Rule Caption: Advertising signs attached to transit shelters.
Adm. Order No.: HWD 9-2009
Filed with Sec. of State: 11-17-2009
Certified to be Effective: 11-17-09
Notice Publication Date: 10-1-2009
Rules Amended: 734-065-0010, 734-065-0015, 734-065-0020, 734-065-0025, 734-065-0035, 734-065-0040, 734-065-0045, 734-065-0050
Rules Repealed: 734-065-0005, 734-065-0030
Subject: General updating of rules, most of which have not been updated in over 20 years; deleted former fee rule that was superseded by ORS 377.729 and subsequent fee rule for all outdoor advertising signs in 734-059-0100.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-065-0010
Outdoor Advertising Signs on Transit Shelters

For the purposes of Division 65 rules, transit shelters are defined as structures erected and maintained for a mass transit district, transportation district or any other public transportation agency to protect their riders from the weather at transit stops, and will hereinafter be referred to as shelters.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWD 9-2009, f. & cert. ef. 11-17-09

734-065-0015
Construction of Shelters

These rules do not grant authority to construct or maintain shelters but pertain solely to the placement of outdoor advertising signs on shelters visible from a state highway.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWD 9-2009, f. & cert. ef. 11-17-09

734-065-0020
Sign Location

(1) Shelter signs are prohibited on state highway right-of-way.

(2) Shelter signs are prohibited where visible from an interstate highway or a full-control access highway.

(3) Shelter signs are prohibited in a designated scenic area. No new shelter signs are allowed in a scenic byway.

(4) The shelter on which a sign is placed must be located within a commercial or industrial zone or, if on unzoned city street right-of-way, it must be adjacent to a commercial or industrial zone.

(5) Each shelter may have no more than one sign visible from each direction of travel of the highway.

(6) Shelter signs may only be located at a bus or transit stop on a city or urban transit system route. The applicant must provide official documentation, such as a route map produced by the transit system, showing the site meets this requirement.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWY 5-1993(Temp), f. & cert. ef. 7-23-93; HWY 6-1993, f. & cert. ef. 10-21-93; HWD 9-2009, f. & cert. ef. 11-17-09

734-065-0025
Size and Construction of Sign

(1) The maximum allowable size of a shelter sign is 16 square feet each side.

(2) The maximum distance between advertising panels placed back-to-back is one foot.

(3) The sign must not extend beyond the outer edges of the shelter.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWD 9-2009, f. & cert. ef. 11-17-09

734-065-0035
Spacing

(1) The minimum spacing between signs is as follows:

(a) Within the corporate boundaries of a city, 100 feet from any outdoor advertising sign located on the same side of the highway.

(b) Outside the corporate boundaries of a city, 500 feet from any outdoor advertising sign located on the same side of the highway.

(2) If the state highway is routed over a city street as provided in ORS 373.020, a shelter sign may be located on that portion of the city street right-of-way outside of the curb; or, if there is no curb, outside of that portion of the right-of-way utilized for state highway purposes.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWD 9-2009, f. & cert. ef. 11-17-09

734-065-0040
Compliance

All signs subject to these rules are also subject to the provisions of ORS 377.700 to 377.840 and to all applicable federal laws, regulations and agreements entered into by the Transportation Commission and the Federal Highway Administration. Signs erected under these rules are also subject to any ordinance or regulation of the local jurisdiction.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWD 9-2009, f. & cert. ef. 11-17-09

734-065-0045
Size Variance

Upon written request and for good cause shown the Department of Transportation may grant a variance from the size restrictions of OAR 734-065-0025(1) not to exceed:

(1) 32 square feet, one side;

(2) 64 square feet, back-to-back.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWD 9-2009, f. & cert. ef. 11-17-09

734-065-0050
Removal

All signs granted permits under these rules are subject to removal procedures in accordance with ORS 377.775.

Stat. Auth.: ORS 377.729
Stat. Implemented: ORS 377.725
Hist.: 2 HD 19-1981, f. & ef. 11-24-81; HWD 9-2009, f. & cert. ef. 11-17-09

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Land Conservation and Development Department
Chapter 660

Rule Caption: Amendment to Territorial Sea Plan as part of Oregon Coastal management Program by reference.
Adm. Order No.: LCDD 4-2009
Filed with Sec. of State: 11-25-2009
Certified to be Effective: 11-25-09
Notice Publication Date: 10-1-2009
Rules Adopted: 660-036-0005
Subject: The rule adopts by reference amendments to the Territorial Sea Plan authorized by ORS 196.443. ORS 196.471 requires the Land Conservation and Development Commission to review such amendments to the Territorial Sea Plan and adopt the amendments as part of the Oregon Coastal Management Program.
Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-036-0005
Territorial Sea Plan

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan entitled Part Five: Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities, that the Ocean Policy Advisory Council recommended on October 23, 2009 and the Commission approved as modified on November 5, 2009.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 196.471
Hist.: LCDD 4-2009, f. & cert. ef. 11-25-09

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Rule Caption: Amendment modifies uses on agricultural land.
Adm. Order No.: LCDD 5-2009
Filed with Sec. of State: 12-7-2009
Certified to be Effective: 12-7-09
Notice Publication Date: 10-1-2009
Rules Amended: 660-033-0120, 660-033-0130
Subject: The purpose of the rules is to amend for consistency with House Bill 3099, enacted by the 2009 legislature. HB 3099 amended ORS Chapter 215 modifying certain conditional and outright permitted uses or criteria for such uses, on land zoned for exclusive farm use, including golf courses, schools, solid waste disposal sites, model airplane sites and breeding and kenneling of greyhounds.
Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-033-0120
Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are permitted in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A — Use may be allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(2) R — Use may be approved, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(3) * — Use not permitted.

(4) # — Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numer-

ical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2) The use shall not be approved within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law.

(3)(a) A dwelling may be approved if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot of parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

(ii) The dwelling will comply with the provisions of ORS 215.296(1);

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d); and

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3)–(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 4.

(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multiunit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least $40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of $10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least $80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

(25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this rule or that require a permit from the Department of Environmental Quality under OAR 340-093-0050 . Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this Division.

(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part

of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils.

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.040 & 215.213
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994 , f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDD 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09

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Landscape Architect Board
Chapter 804

Rule Caption: Clarifies exam application procedure; outlines Emeritus registration; describes seal of Landscape Architect; annual business fee.
Adm. Order No.: LAB 2-2009
Filed with Sec. of State: 12-11-2009
Certified to be Effective: 12-11-09
Notice Publication Date: 10-1-2009, 11-1-2009
Rules Adopted: 804-022-0025
Rules Amended: 804-020-0003, 804-030-0000, 804-040-0000
Subject: OAR 804-022-0205 is a new rule which provides for an Emeritus registration status identified as an inactive type of registration which will allow individuals to continue using the title Landscape Architect if they meet the established criteria and pay the annual fee.

OAR 804-020-0003 revises the examination application procedure so that the Board approves all Oregon examination applicants, even those taking the on-line examinations administered by the national office to validate that applicants have met the Oregon standard.

OAR 804-030-0000 presents a written description of the seal of a Registered Landscape Architect and clearly identifies what should be on the seal. The rule also provides additional information about the use of the registrant's seal.

OAR 804-040-0000(11) clarifies that the business fee is an annual fee and the current fee amount of $225 is split so a business will pay an annual fee of $112.50.
Rules Coordinator: Susanna Knight—(503) 589-0093

804-020-0003
Application

(1) An application for the graphics portion of the Landscape Architect Registration Examination (LARE) must be on forms provided by the Board. The completed application must be accompanied by the following:

(a) Official university transcript(s);

(b) Verification of one year of experience under the direct supervision of a Registered Landscape Architect or experience verification from the Registered Landscape Architect that supervised the applicants experience if applying by other than an LAAB accredited program;

(c) Application fee for the examination; and

(d) Examination fee for the examination.

(2) Candidates sitting for the multiple choice on-line sections of the LARE, which are not administered by the Board, must have prior approval from the Board. This approval may be granted by submitting the following information to the Board office:

(a) A cover letter identifying yourself as a candidate and identifying the exam section(s) for which you will sit.

(b) The letter must include your home address, work address, daytime phone number, and current email address. Please identify which address should be used as your mailing address.

(c) An official university sealed transcript must arrive with your cover letter.

(d) No fee is required for this procedure.

Stat. Auth.: ORS 671.325, 671.335, 671.415
Stats. Implemented: ORS 671.325, 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; Renumbered from 804-020-0000, LAB 1-2007, f. & cert. ef. 4-27-07; LAB 2-2009, f. & cert. ef. 12-11-09

804-022-0025
Inactive Emeritus Status

(1) The Board may grant inactive Emeritus status to any Registered Landscape Architect who, while in good standing,

(a) Makes a request in writing to the board;

(b) Gives up the practice of landscape architecture as defined in ORS 671.310; and

(c) Validates 25 consecutive years of registration as a Landscape Architect which

(A) Includes 10 years of registration in Oregon; and

(B) Validates an active practice in Oregon during the three years prior to initial application for inactive Emeritus status as a Registered Landscape Architect in Oregon.

(2) The Registered Landscape Architect with inactive Emeritus status must submit an annual registration fee.

(3) Per ORS 671.376(4) the person can only register as a Registered Landscape Architect with inactive Emeritus status for a period of five years. If the registrant does not return to active status before the end of that five year period, the registration will lapse and cannot be renewed.

(4) If the Registered Landscape Architect with inactive Emeritus status wishes to resume practicing, active status may be granted within the initial 5 year period following the granting of Emeritus status if the registrant meets all of the requirements for returning to active status.

(5) If the Registered Landscape Architect with inactive Emeritus status wishes to resume practicing after the initial five years of obtaining inactive Emeritus status registration, registration may be granted only upon passing examinations required by the Board, by paying any required examination fees, renewal fees, and late fees, and otherwise meeting the requirements for registration.

Stat. Auth.: ORS 671.376(4); ORS 671.415; ORS 671.310
Stats. Implemented: ORS 671.325, 671.335, 671.365, 671.415
Hist.: LAB 2-2009, f. & cert. ef. 12-11-09

804-030-0000
Seal of the Landscape Architect

(1) Every registered landscape architect must obtain a seal of the design approved by the Board. The seal may be a rubber stamp or a computer-generated seal.

(2) The circular seal shall be approximately 1 5/8 inches in diameter with the word REGISTERED over the top with a large dot at both ends of the word and the words LANDSCAPE ARCHITECT around the bottom.

(3) The circular seal must have space for the registrant's signature through the center.

(4) The following must be included on the seal:

(a) The registration certificate number above the center signature space and below the word REGISTERED; and

(b) The following information below the center signature space and above the words LANDSCAPE ARCHITECT:

(A) The name of the registrant below the center signature space;

(B) The word OREGON below the registrant's name; and

(C) The initial date of registration below the word OREGON.

(4) Each final draft of professional drawings and documents per ORS 671.379 must be stamped or printed with the seal and signed by the registrant. Only the title page of bound specifications must be stamped or printed with the seal and signed by the registrant.

(5) The registrant's expiration date must be noted near the registrant's signature on the seal.

(6) Use of the seal without signature by the responsible Registered Landscape Architect is acceptable on preliminary plans, documents or drafts prepared for review by agencies or others prior to final submittal.

(7) A Registered Landscape Architect is responsible for the custody and proper use of the registrant's seal. Improper use of the seal by anyone shall be grounds for disciplinary action.

[ED. NOTE: Graphic referenced is available from the agency.]
Stat. Auth.: ORS 671.379, 671.415
Stats. Implemented: ORS 671.315
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 2-2009, f. & cert. ef. 12-11-09

804-040-0000
Fees

The following are fees established by the board:

(1) 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) Initial Landscape Architect registration: $250.00.

(3) Initial Landscape Architect in Training registration: $50.00.

(4) Registration renewal for Landscape Architect: $250.00.

(5) Registration renewal for Landscape Architect in Training: $50.00.

(6) Exam application fee (required to review qualifications to sit for each exam): $50.00.

(7) Reciprocity application fee: $100.00.

(8) Duplicate certificate: $50.00.

(9) Late renewal fee: $100.00: Lapsed Registration Fee to equal the full renewal fee plus late fee for each year the license has lapsed.

(10) Initial certification as an Authorized Business Entity in Landscape Architecture: $225.00.

(11) Authorized Business Entity in Landscape Architecture annual fee: $112.50.

(12) Emeritus Annual fee: $25.00.

(13) Application fee for initial Landscape Architect registration: $100.00.

(14) Application fee for business registration: $100.00.

(15) 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

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Landscape Contractors Board
Chapter 808

Rule Caption: Clarifies bond effective January 1, 2010 should state "landscape contracting business"; not "contractor".
Adm. Order No.: LCB 11-2009(Temp)
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 12-1-09 thru 5-30-10
Notice Publication Date:
Rules Amended: 808-003-0610
Subject: Clarifies bond effective January 1, 2010 should state "landscape contracting business"; not "contractor".
Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-003-0610
Bonds, Generally

(1) A properly executed Landscape Contractors Board bond issued after January 1, 2010 must:

(a) Be in the form adopted by the Landscape Contractors Board as the Landscape Contractors Board Surety Bond revised January 1, 2010.

(b) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the

time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(c) If issued after January 1, 2010 include the following:

"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "landscape contracting business" as defined by ORS 671.520, shall pay all amounts that may be ordered by the Landscape Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 671 and OAR chapter 808, then this obligation shall be void; otherwise to remain in full force and effect. This bond is for the exclusive purpose of payment of final orders of the Landscape Contractors Board in accordance with ORS Chapter 671. This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond. This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS Chapter 671, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Landscape Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation. This bond shall not be valid for purposes of licensing in accordance with ORS chapter 671 unless filed with the Landscape Contractors Board within sixty (60) days of the date shown below."

(2) Bond documents received at the agency office from a surety company or agent via electronic facsimile may be accepted as original documents. The surety must provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.690
Hist.: LCB 7-2009, f. & cert. ef. 10-28-09; LCB 11-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10

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Oregon Business Development Department
Chapter 123

Rule Caption: These rules are to establish policies for mandatory compatibility with Oregon's Planning Goals.
Adm. Order No.: EDD 21-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 11-1-2009
Rules Amended: 123-008-0005, 123-008-0010, 123-008-0015, 123-008-0020, 123-008-0025, 123-008-0030
Subject: The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business Development Department and created the infrastructure Finance Authority, a separate entity within the department. In addition these rules have been reviewed for clarity.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-008-0005
Purpose and Scope

The Oregon Business Development Commission through the Oregon Business Development Department in accordance with this division of administrative rules has established policies and procedures for mandatory compatibility with Oregon's Planning Goals and associated land use plans and standards.

Stat. Auth.: ORS 285B.075(5) & 285A.075
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

123-008-0010
Policy

It is the policy of the Oregon Business Development Department that prior to approving or undertaking projects or actions under an Applicable Program, as defined in OAR 123-008-0015, the Department shall take steps or have program procedures for accomplishing compliance and compatibility with Planning Goals, principally through the applicable acknowledged comprehensive plans and the land use regulations of local governments, in accordance with OAR chapter 660, division 030.

Stat. Auth.: ORS 285B.075(5) & 285A.075
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

123-008-0015
Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) Applicable Programs mean those funds, incentives and other activities, powers and resources of the Department and the Commission that directly influence physical development on or to the landand will generally not include educational, marketing, technical assistance, funds for technical analysis or other similar programs.

(2) Planning Goals mean the mandatory statewide planning standards for land use as adopted by the Oregon Land Conservation and Development Commission under ORS Chapters 195, 196 and 197, and are available and may be obtained from the Oregon Department of Land Conservation and Development, 635 Capitol Street, NE, Suite 150, Salem, Oregon 97301-2540.

Stat. Auth.: ORS 285B.075(5) & 285A.075
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

123-008-0020
Compliance with Planning Goals

(1) The Department shall achieve Planning Goal compliance whenever possible by taking actions that are compatible with the applicable acknowledged comprehensive plan of a county or city government and land use regulations of this state and local zone ordinances.

(2) However, if a situation arises that necessitates direct goal findings, because of potential or actual incompatibility under a local comprehensive plan or other reasons, as described in OAR 660-030-0065(3), the Department shall adhere to the following procedures, as formally as appropriate:

(a) Confirm that a situation exists requiring the Department to adopt direct goal findings of compliance with one or more of Planning Goals;

(b) Identify which Planning Goals or Goal requirements the Department must address;

(c) Consult directly with affected jurisdictions;

(d) Request interpretative guidance as needed from the Department of Land Conservation and Development or the Department of Justice;

(e) Rely on any relevant goal interpretations for state agencies adopted in accordance with OAR chapter 660, whenever applicable; and

(f) Adopt any necessary findings to ensure compliance with the Planning Goals.

Stat. Auth.: ORS 285B.075(5) & 285A.075
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

123-008-0025
Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations

For purposes of this division of administrative rules, and to act compatibly with acknowledged comprehensive plans and land use regulations, except when the Department makes direct findings for compliance with Planning Goals consistent with OAR 123-008-0020(2), a project applicant for resources under an Applicable Program shall effectively verify to the project's compliance with the applicable city or county comprehensive plan, public facility plan and land use regulations, through mechanisms such as the following:

(1) Receipt of a copy of the local land use permit or equivalent documentation from the city or county planning agency or the local governing body that the project has received land use approval;

(2) Receipt of a letter from the local planning agency or governing body stating that the project is permitted under the jurisdiction's comprehensive plan and land use regulations but does not require specific land use approval;

(3) Copies of official land use maps or other local documents that demonstrate necessary compliance; or

(4) Other equivalent documentation from the affected city or county.

Stat. Auth.: ORS 285B.075(5) & 285A.075
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

123-008-0030
Dispute Resolution

(1) When a land use dispute related to a proposal or application for financial assistance under an Applicable Program arises, the proposal spon-

sor/applicant is expected to resolve the dispute directly with the government of the city or county where the proposed project is to be located. The Department will not provide funding for such a project until the dispute is resolved, as indicated by documentation pursuant to OAR 123-008-0025.

(2) In other cases, the Department may attempt to resolve disputes regarding land use issues by direct contact with the applicable local governing body. Whenever possible, Department efforts to resolve land use disputes shall be pursued prior to and through local government land use proceedings.

Stat. Auth.: ORS 285B.075(5) & 285A.075
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

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Rule Caption: These rules cover the operation of the Oregon Business Development Fund.
Adm. Order No.: EDD 22-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 11-1-2009
Rules Amended: 123-017-0007, 123-017-0008, 123-017-0010, 123-017-0015, 123-017-0025, 123-017-0030, 123-017-0035, 123-017-0037, 123-017-0055
Rules Repealed: 123-017-0040
Subject: The 2009 Legislative session through House Bill 2152 has re-named the Oregon Economic and Community Development Department to the Oregon Business development Department. In addition the rules have been reviewed for clarity and unnecessary sections have been deleted.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-017-0007
Policy and Set Asides

(1) It is the policy of the Business Development Commission, the Finance Committee and the Business Development Department to make loans from the Oregon Business Development Fund to qualified applicants without regard to race, color, creed, sex, age or national origin.

(2) Fifteen percent of the available money in the Fund shall be set aside for loans to emerging small enterprises that are located in or draw their work forces from within distressed areas.

(3) The Oregon Targeted Development Account is hereby established within the Oregon Business Development Fund to make loans in distressed areas. The Commission authorizes the Department to transfer from time to time up to $10 million into or out of the Oregon Targeted Development Account.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.050 - 285B.098
Hist.: EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0008
Delegation

(1) Authority for the day-to-day operation of the fund, including approval of loans and projects, and amendments thereto, is delegated to the Finance Committee.

(2) The commission shall review and evaluate the operation of the fund with such frequency as it may from time to time determine, and may order any changes that it considers necessary or desirable.

(3) The commission shall retain final authority over policies and administrative procedures governing the operation of the fund.

(4) The Director or designee is authorized to execute any document reasonably necessary or convenient to close any loan approved by the Finance Committee or, in the case of loans of $100,000 or less, by the director.

(5) When applicable, the references to the Finance Committee shall include the Director, acting in regard to loans for business development projects of $100,000 or less pursuant to ORS 285B.080(3).

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.050 - 285B.098
Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0010
Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Applicant" means any county, municipality, person or any combination of counties, municipalities or persons applying for a loan from the Oregon Business Development Fund under ORS 285B.050 to 285B.098.

(2) "Business Development Project" means the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is used or is suitable for use by an economic enterprise and that will result in or will aid, promote or facilitate, development of one or more of the following activities:

(a) Manufacturing or other industrial production;
(b) Agricultural development or food processing;
(c) Aquacultural development or seafood processing;
(d) Development or improved utilization of natural resources;
(e) Convention facilities and trade centers;
(f) Destination facilitiesother than retail or food service businesses;
(g) Transportation or freight facilities; and
(h) Other activities that represent new technology or type of economic enterprise that the Finance Committee determines are needed to diversify the economic base of an area but not including:

(A) Construction of office buildings, including corporate headquarters; and

(B) Retail businesses, shopping centers or food service facilities;

(C) An office area or facility providing an internal support function to, and serving as an integral part of, a business development project shall not be considered an office building under paragraph (h)(A) of this section.

(3) "Fund" or "OBDF" means the Oregon Business Development Fund as defined and set forth in ORS 285B.050–285B.098.

(4) "Local Development Group" means any public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

(5) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(6) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.

(7) "Emerging Small Business" means any business as defined in ORS 200.005.

(8) "Convention center" means a facility for the holding of meetings, conferences, conventions, trade shows or similar gatherings. Sleeping accommodations may be included but at least one-third of the OBDF proceeds must be used for public meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee, in its sole discretion, may approve financing for projects consisting solely or primarily of sleeping accommodations if the applicant sufficiently demonstrates that existing sleeping accommodations are inadequate for existing facility meeting space.

(9) "Destination facility" means a project which has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible.

(10) "County" means any county or federally recognized Oregon Indian tribe.

Stat. Auth.: ORS 285A.110
Stats. Implemented: ORS 285B.050 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0015
Eligibility

(1) Eligible projects are business development projects as defined in OAR 123-017-0010(4). If the department is unable to obtain a sufficient number of approvable applications to meet the requirements of ORS 285B.059(5), it may, notwithstanding the limitations imposed by 285B.050(2)(g)(B), make loans to service and retail businesses operated by emerging small businesses which are located in or draw their workforces from within distressed areas as determined by the department, when such projects provide compelling economic development benefits. The amount of loans the department may make to service and retail businesses under (1)

of this section shall be limited to the amount calculated under the method described in 285B.059(5).

(2) Eligible purposes are the financing of land, buildings, fixture, equipment and machinery, research and development, and the provision of working capital.

(3) Eligible applicants are defined in OAR 123-017-0010(1).

(4) The relocation of a facility from one labor market area to another, if not accompanied by an expansion of the applicant's business or employment, is an eligible activity if:

(a) The relocation is caused by forces beyond the control of the applicant; or

(b) The relocation is necessary for the continued operation of the business; or

(c) There is no resulting loss of employment at the former site of the business.

(5) Relending of funds shall not be an eligible activity, except that the funds may be used for the local injection share of an SBA 503 or 504 Certified Development Company transaction.

(6) In cases where an otherwise eligible company or project has an insignificant (less than 25 percent) ineligible portion, the entire project may be determined eligible for a loan from the fund.

(7) Other than as specified in section (6) of this rule, Fund financing will be limited to 40 percent of the amount of the eligible costs, except that fund financing may equal up to 50 percent of eligible costs when the application is submitted through a Financial Institution.

(8) Tourist facilities shall not be eligible unless:

(a) The project can be qualified as a convention center; or

(b) The project can be qualified as a destination attraction with significant regional economic impact.

(9) Refinancing of existing debt, including existing trade payables and delinquent taxes, shall not be eligible unless the applicant demonstrates to the satisfaction of the Finance Committee that:

(a) The applicant contributes significantly to a target population or to a geographical area targeted by the Oregon Business Development Fund;

(b) The applicant requires refinancing to remain viable. Assessment of viability will be made at the sole discretion of the Finance Committee;

(c) Lenders agree to extend due dates, provide additional financing or provide other favorable terms to the applicant; and

(d) The applicant meets all other requirements set forth in statute and administrative rule, including demonstrating to the satisfaction of the Finance Committee that the project is feasible and a reasonable risk, has a reasonable prospect of repayment and can provide good and sufficient collateral.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.059, 285B.080(3) & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0025
Application Procedure

(1) It is the policy of the Finance Committee to strive for and encourage, throughout the application process:

(a) Maximum participation by financial institutions and local development groups; and

(b) A minimum administrative burden on the applicant and on the local government.

(2) Any applicant may submit an application to the department on a form approved by the department, together with an application fee.

(3) If the amount of the loan being sought from the Fund is $100,000 or less, the director may in the director's sole discretion approve or deny the loan request or forward it to the Finance Committee for the Committee's consideration.

(4) If the amount of the loan being sought from the fund exceeds $100,000 the department shall make a recommendation to the Finance Committee, which may in its sole discretion approve or deny the loan request.

(5) If a loan request is approved, the department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee or the director may have conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the director for loans of $100,000 or less.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.053 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-87; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0030
Loan Conditions

(1) The director (for loan requests of $100,000 or less) or the Finance Committee may approve a loan request if it finds that:

(a) Fund participation in any financing shall not exceed 40 percent of the total amount of the eligible project costs, except that Fund financing may be up to 50 percent when an application is submitted through a Financial institution.

(b) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, and the loan has reasonable prospect of repayment.

(c) The applicant can provide good and sufficient collateral for the loan, as determined by the Commission. The commission's security interest may be subordinated to the security interest of other lenders participating in the project. The security interest of loans from the Oregon Targeted Development Account will not be subordinated to the security interest of other lenders, unless the Finance Committee or the director finds there is an abundance of collateral and/or company or guarantor financial strength. The Business Development Commission may make loans in distressed areas, as defined by the department, without regard to the requirements for security and collateral under ORS 285B.059 and 285B.062 that are otherwise applicable. Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(d) Monies in the Oregon Business Development Fund are or will be available for the proposed business development project.

(e) There is a need for the proposed business development project.

(f) The applicant's financial resources are adequate to ensure success of the project.

(g) The applicant has not received or entered into a contract or contracts exceeding $700,000 with the commission, under authority of ORS 285B.050–285B.098, for the previous 365 days.

(2) The Finance Committee may, in its sole discretion, permit the assumption of an outstanding Oregon Business Development Fund Loan, if the assuming obligor satisfies the Finance Committee or the director as to its willingness and ability to perform all obligations of the original borrower related to the loan, including but not limited to the obligation to repay the loan in accordance with its terms, and if the State's collateral position is not diminished. Oregon Business Development Fund loans are not, however, necessarily or automatically assumable. A complete application, application fee and supporting documentation are required to initiate review of the request.

(3) The applicant agrees to abide by all laws and regulations applicable to the applicant's project.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.059 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0035
Loan Agreement

If the Finance Committee approves the business development project, the Finance Committee or the director, on behalf of the state, and the borrower may enter into a loan contract of not more than $700,000, secured by good and sufficient collateral (except as noted in OAR 123-017-0030(1)(c), as determined by the Finance Committee, that shall set forth, among other matters:

(1) A plan for repayment by the borrower to the Oregon Business Development Fund moneys borrowed from the Fund used for the business development project with interest charged on those moneys at the fixed rate of one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable maturity. Loans made from the Oregon Targeted Development Account shall be made at a fixed rate of four percentage points less than the prevailing prime rate. The rate

shall not be less than four percent. For the purposes of this section, the prevailing interest rate shall be the weekly average interest rate as set forth in the most recent Federal Reserve Statistical Release H.15(519) that the department has received at the time the loan is approved. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for the business development project and interest thereon no later than one year after the date of the loan contract or at such other time as the Finance Committee may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the Finance Committee or the director;

(c) Shall provide for such evidence of debt assurance of, and security for, repayment of the loan as is considered necessary by the Finance Committee;

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less. The term of the Fund loan will normally be matched to, and not exceed twice that of the commercial or private lender participating in the project. Loans from the Oregon Targeted Development Account shall be for a maximum term of 5 years, with a maximum amortization of 15 years. The term of the loan from the Oregon Targeted Development Account may be extended by the Finance Committee, with any additional terms and conditions, including interest rate, that it may determine. The payment schedule shall include repayment of interest that accrues during any period of delay in repayment authorized by subsection (a) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the department. Loans shall be declared delinquent when any payment is more than ten days late. borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the department for bringing the loan current have not been made, the department may declare the loan in default, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection;

(f) May allow for other forms of payment on loans than scheduled principal and interest payments, as determined by the Finance Committee, or director in the case of loans of $100,000 or less.

(2) Provisions satisfactory to the department for field engineering and inspection, the department to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the Oregon Business Development Fund for use in the business development project.

(4) Such further provisions as the Finance Committee considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(5) That the borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the leased premises and payable during the term of the lease;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Finance Committee. Such insurance shall include but shall not be limited to: fire and hazard insurance, liability insurance and flood insurance (if applicable); and

(d) Out-of-pocket costs associated with the loan closing which may include but are not limited to filing and recording fees, title insurance and appraisals, and attorney fees.

(6) That the borrower will provide to the department on an annual basis, within 120 days of the end of its fiscal year, the same type of financial statements as required by the participating bank. The Finance Committee or the department may require additional financial information.

(7) The Finance Committee, or director for loans under $100,000, may require an assignment of life insurance on active principals in borrower.

(8) The Department, at its sole discretion, may require the execution of a Commitment Letter and receipt of a non-refundable Commitment Fee to secure resources necessary to fund the loan. The Commitment Fee will be applied at closing to the loan fee. If the loan does not close, the Commitment Fee will not be refunded.

(9) In the case of loans of more than $100,000 that are funded by proceeds from the Oregon Lottery, that the borrower shall make a good faith effort to hire and retain low-income individuals who have received job training assistance from publicly funded job training providers and enter into a first-source hiring agreement with a publicly funded job training provider.

(10) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, adequate access for handicapped persons must be provided. This provision applies only to firms that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(11) If a project involves building construction, expansion, rehabilitation or modification, a loan from the fund shall be permanent and not interim financing.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.062 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0037
Appeals, Servicing, Amendments, Assumptions and Modifications

(1) If the Director denies a loan request, the applicant may appeal the Director's decision to the Finance Committee. The Finance Committee may:

(a) Affirm the Director's denial; or

(b) Decide to consider the loan request itself.

(2) If the Finance Committee denies a loan request, the applicant has the right to appeal to the Finance Committee for a rehearing of its application.

(3) An applicant has the right to appear in person at the appeal hearing, and to introduce whatever books, documents and data it regards as necessary to support the appeal.

(4) An applicant whose appeal of the Director's or the Finance Committee's decision has been denied by the Finance Committee must submit a new application, including a new application fee, to be eligible for further consideration of a new loan request.

(5) All loans shall be monitored by, and all loan repayments shall be made to, the Department.

(6) It is the responsibility of the Borrower to ensure that the Department receives its payment by the due date.

(7) Any request for modification or amendment to any loan condition shall be made in writing to the Department and approved by the Finance Committee or Director. However, in those cases where a requested amendment or modification will not have a serious adverse effect on the State's security position, the Chairperson or his/her designee from the Finance Committee or the Director may approve such requested amendment or modification.

(8) If the Director, the Finance Committee, its Chairperson or designee, consents to any requested modification, assumption or amendment, the Borrower shall be responsible for all costs, including filing fees, of modifying or amending of any loan documents, filings, recordings or financing statements.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.059, 285B.062 & 285B.092
Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

123-017-0055
Fees and Charges

(1) The department shall charge and collect a fee of $200 at the time the application is filed.

(2) In addition, the applicant, immediately upon receiving the loan proceeds, shall pay to the department one and one-half percent of the principal amount of the loan.

(3) The Department may charge and collect a Commitment Fee, payable to the Department, in an amount up to three quarters of one percent of the principal amount of the loan to be applied to the fee specified in section (2) of this rule at closing of the loan. If the loan does not close, the Commitment Fee will not be refunded.

(4) The Department may charge and collect an Assumption Fee, payable to the Department, in an amount up to one half of one percent of the remaining principal balance of the loan. The individual or entity assum-

ing the obligation will also be responsible for closing costs associated with the transfer of debt including but not limited to document preparation, review of documentation for legal sufficiency, title, escrow, recording or filing fees.

(5) The Department may charge and collect a Loan Modification Fee, payable to the Department, of $50 at the time of the modification request. A loan modification may include, but, is not limited to, modification to terms of repayment, subordination requests or collateral swaps. The individual or entity requesting the modification will also be responsible for costs associated with the modification including, but, not limited to, document preparation, review of documentation for legal sufficiency, title, escrow, recording or filing fees.

(6) Monies referred to in (1), (2), (3), (4) and (5) of this section shall be paid into the Fund.

(7) The department may, in its sole discretion, use some or all of the money collected under section (2) of this rule, plus a maximum of an additional one and one-half percent as payment to a local development group, county or municipality for packaging the loan, processing applications, investigating proposed business development projects and servicing outstanding loans. The additional amount of up to one and one-half percent may be paid for projects which are located in an enterprise zone or in a distressed area or for which the OBDF loan being sought is not more than $100,000. In no case shall the department make any payment of more than $10,000 for any one project. In no case shall the department make any payment to any third party until the loan has been closed and the department has collected the fee specified in section (2) of this rule.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.056, 285B.068 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-13-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

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Rule Caption: These rules refer to small business development centers and have been edited for clarity.
Adm. Order No.: EDD 23-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 11-1-2009
Rules Amended: 123-022-0070, 123-022-0080, 123-022-0090, 123-022-0100, 123-022-0110
Subject: The Small Business Development Center rules have been revised to clean-up old language and ensure compliance with statute. In addition a requirement has been added to evaluate applicants annual work plans.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-022-0070
Definitions

For the purposes of these rules definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(1) "Small Business Development Center" means a community college-based and state university-based center which helps small businesses develop and improve skill in such areas as marketing management and capital formation.

(2) "Small Business Development Center Network" means the statewide network of small business development centers.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.340 - 285A.075 285A.349 & 285B.165 - 285B.180
Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

123-022-0080
Eligibility Criteria

From funds appropriated for such purposes, the Department may make grants to community college and community college service districts and state university partners to assist in the formation and improvement of small business development centers. Grants are available on a justified need basis.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180
Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

123-022-0090
Application and Award Procedures

(1) Each applicant for a small business development center grant shall submit an annual work plan to the Small Business Development Center Network office and the Department. The annual work plan shall include:

(a) Evidence of the potential demand for assistance;

(b) Plans for involving other training resources and expert resource people from the business community;

(c) A plan to offer business counseling to the small business community;

(d) A budget for the year for which a grant is requested, including federal, state, college or university, and client grants.

(e) A plan to participate in evaluations conducted by the Small Business Development Center Network office.

(f) A plan for alignment with department's job creation and retention definitions, policy and reporting methodology;

(g) A plan for alignment with department strategic goals and focus on key industries

(2) The Department and the Small Business Development Center Network office shall review and approve the work plans submitted by applicants prior to disbursement of grant funds to the Small Business Development Center program recipients.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180
Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

123-022-0100
Standards and Criteria

The Small Business Development Center Network office and the Department shall use the following criteria to evaluate applicants annual work plans:

(1) The number of small business clients to be served through one-to-one counseling and training programs as set out in the annual work plans;

(2) Special needs based upon geographic location or special populations to be served.

(3) The quality and the extent to which the annual work plan meets the needs of small business clients in the service area.

(4) Alignment with the department's job creation and retention definitions, policy and reporting methodology;

(5) Alignment with department strategic goals and focus on key industries

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180
Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

123-022-0110
Project Administration

(1) The Director of the Department shall designate one of the small business development centers to coordinate the activities of all small business development centers and the Small Business Development Center Network office. In making the designation the Director shall consider the recommendations of others providing substantial financial support to the Small Business Development Center Network.

(2) The Small Business Development Centers shall be required to provide matching funds, by cash or in-kind contributions or some combination of funds and contributions, on a 1:1 basis with Department funds.

(3) The Director of the Department shall have the discretion to waive or modify aspects of subsection 3 of this section if the Director determines it to be reasonable and necessary.

(4) The Small Business Development Centers shall require small businesses that receive business assistance services to pay part of the costs of those services. To the extent that federal laws or regulations impose requirements that limit the payment of fees by recipients of business assistance services to small businesses, the Business Development Department and the Small Business Development Center Network office shall apply for waivers of such federal requirements

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180
Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

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Rule Caption: These rules have changed methodology used in determining a distressed area.
Adm. Order No.: EDD 24-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 11-1-2009
Rules Adopted: 123-024-0046

Rules Amended: 123-024-0011, 123-024-0031
Subject: These rules have changed methodology used in determining a distressed area. In addition, a new temporary method has been added to better suit current economic conditions.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-024-0011
Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001 The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "City" means the area within the corporate limits or urban growth boundary, or both, of any incorporated city in Oregon.

(2) "Quartile" means any of the three values which divide a sorted data set into four equal parts, so that each part represents one fourth of the sampled population.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065
Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09

123-024-0031
Methodology for Determining Distressed Areas

The department will consider a county, incorporated city, or other geographic area to be a distressed area under one of the following methods:

(1) Using the most recent data available on the date of calculation, a county is considered distressed when, an index is calculated as the product of the values calculated with the following four composite factors (a) through (d). It is distressed if its index is less then 1.0 and if the index is more then 1.0 then it is considered non-distressed. The following are the four factors used to determine a distressed county:

(a) The county's unemployment rate divided by this state's unemployment rate;

(b) The county's per capita personal income divided by the state's per capita personal income;

(c) The change in the county's average covered payroll per worker over a two year period;

(d) The sum of the change in the county's employment over a two year period; or

(2) An incorporated city outside of a county identified as a distressed area under subsection (1) of this section may be designated as distressed when its variable values are below the designated threshold value as determined by at least three of the four s listed below. The threshold values for each of the four indicators shall be determined by using reliable data from each of the distressed counties based on a demonstrated methodology, as approved by the director of the department.Threshold values are calculated using decennial census county level data for distressed counties only.

(A) Percent of city population of 25 years old with a bachelor's degree or higher. The threshold value for variable A is calculated as follows: calculate the third quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the third quartile. This is the threshold value for variable A. A value above this threshold is not distressed.

(B) The city's unemployment rate.The threshold value for variable B is calculated as follows: calculate the first quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the first quartile. This is the threshold value for variable B. A value below this threshold is not distressed.

(C) The percent of the city's population below the poverty level.The threshold value for variable C is calculated as follows: calculate the third quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the third quartile. This is the threshold value for variable C. A value below this threshold is not distressed.

(D) The city's per capita personal income. The threshold value for variable D is calculated as follows: calculate the first quartile and the inter-quartile range. Multiply the inter-quartile range by 1.5 and add this to the first quartile. This is the threshold value for variable D. A value above this threshold is not distressed.

(3) A county, incorporated city, or other geographic area that has demonstrated in writing, through a Temporary Distressed Petition, to the satisfaction of the director of the department, that it is suffering or is likely to suffer economic distress equal to or greater than those counties and cities qualifying as distressed areas under subsections (1) and (2) of this section. The director shall have the authority to declare counties, cities, and other geographic areas distressed as allowed under the Temporary Methodology for Determining Distressed Areas, OAR 123-500-0040.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065
Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05; Administrative correction 10-19-05; EDD 7-2005(Temp), f. & cert. ef. 10-24-05 thru 12-21-05; EDD 10-2005(Temp), f. & cert. ef. 11-4-05 thru 12-21-05; Administrative correction 1-19-06; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 4-2009(Temp), f. & cert. ef. 5-7-09 thru 11-2-09; Administrative correction 11-19-09; EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09

123-024-0046
Temporary Methodology for Determining Distressed Areas

The following methodology will be used to determine temporarily distressed areas when economic distress is abundant throughout the state of Oregon.

(1) State Temporary Distressed Test: In a given month, if Oregon's unemployment rate exceeds 8.0%, the County Temporary Distressed Methodology will be used.

(2) County Temporary Distressed Test: In a given month, if Oregon's unemployment rate exceeds 8.0% and if the county's unemployment rate exceeds 8.0%, the county is considered temporarily distressed.

(a) When a temporarily distressed county's unemployment falls below 8.0%, it will remain distressed for 180 days or until the regular distressed communities list is published, whichever is less.

(b) All places and cities within a temporarily distressed county are considered distressed.

(3) Any county that is unable to pass the County Temporary Distressed Test is not considered to be temporarily distressed.

(a) All cities or places within a county that is unable to pass the County Temporary Distressed Test may seek temporary distressed status by filing a temporary distressed petition defined in OAR 123-024-0040(4).

(4) Temporary Distressed Petition: Any city or place not considered distressed may submit a formal petition asking for temporary distressed status in accordance with OAR 123-500-0031(4)

(a) Temporary distressed petitions will describe in narrative form local conditions that warrant temporary distressed status.

(b) Local conditions may include, but are not limited to, first-source anecdotal discussions of changes in employment, temporary lay-offs, furloughs, firm closures, firm idlings, reduced sales revenue, home foreclosure rates, welfare assistance, and unemployment assistance.

(c) The temporary distressed status granted under the petitions will last no longer than 180 days or until the normal distressed communities list is published.

(5) If Oregon fails to pass the State Temporary Distressed Test, the regular distressed communities' methodology as described in OAR 123-500-0031 will be used in December of the same year. The distressed communities list will be published at this time. All counties, cities, and places will maintain their temporary distressed status until the distressed communities list is published.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065
Hist.: EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09

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Rule Caption: The Water/Wastewater financing rules have changed to comply with 2009 Legislature.
Adm. Order No.: EDD 25-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 11-1-2009
Rules Amended: 123-043-0000, 123-043-0010, 123-043-0015, 123-043-0025, 123-043-0035, 123-043-0055, 123-043-0065, 123-043-0075, 123-043-0085, 123-043-0095, 123-043-0102, 123-043-0105, 123-043-0115
Rules Repealed: 123-043-0045
Subject: These rules have been revised to include the new Infrastructure Finance Authority brought from the 2009 Legislative session through HB 2152 and revised for clarity.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-043-0000
Purpose and Objectives

Pursuant to ORS 285B.563, the Oregon Business Development Department is required to adopt rules that provide procedures, standards and criteria for the Water/Wastewater Financing Program.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0010
Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "DEQ" means the State of Oregon Department of Environmental Quality.

(2) "Development Project" means

(3) "Facilities" means something that is built or installed to perform some particular function.

(4) "Fund" means the water fund created by ORS 285B.563.

(5) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(6) "Non-compliance" means the municipality has received a notice of non-compliance with:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(7) "Project" means an activity that is eligible for assistance from the fund as defined in ORS 285B.560(5) and (6).

(8) "System" means the interconnected facilities that are required or useful for performing the required function.

(9) "Technical Assistance" means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a project. Technical Assistance also means required Water Master Plans or Wastewater Facility Studies needed to allow communities to properly plan for the future.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0015
Eligible Project Costs and Activities

(1) Eligible costs include the reasonable costs for eligible program activities and include:

(a) Project development costs;

(b) Construction contingencies for a project as approved by the Authority;

(c) Financing costs associated with the department's financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project;

(d) Costs incurred by the municipality prior to the award if such costs are allowable under the Authority's adopted policy for reimbursement of pre-award costs; and

(e) At the discretion of the Authority, reasonable, new project management costs but not expenses for current staff that are already included in the municipality's adopted budget.

(2) Eligible project and program activities includes the construction, improvement or expansion of the following facilities owned and operated by a municipality:

(a) Domestic drinking water systems including all facilities necessary for source, supply, filtration, treatment, storage, transmission, and metering;

(b) Wastewater systems including all facilities necessary for collecting; conveying, pumping, treating and disposing of sanitary sewage, including correction of infiltration and inflow through replacement of lines, sliplining, or other corrective processes approved by the Authority;

(c) Water development projects, as defined in ORS 541.700, that are owned and operated by a municipality;

(d) Storm water systems including all facilities necessary for controlling, collecting, conveying, treating and discharging of storm water; and

(e) The acquisition of real property directly related to or necessary for the proposed project.

(f) Project development and the associated engineering, architectural and planning work involved in developing the facilities listed in (1) above, including technical assistance and support activities necessary to the construction of a project as determined by the Authority.

Stat. Auth.: ORS 285B.563
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0025
Ineligible Project Activities
Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required by a regulatory agency, the municipality is not required to document non-compliance. Other Technical Assistance projects may be considered after consulting with the regulatory agency.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to $20,000 may be awarded for a project.

(b) A loan of up to $50,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years; and

(c) No more than $600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under OAR 123-043-0025 the Authority will not first consider a municipality's ability to repay a loan.

(d) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0035
Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the Authority may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the **Safe Drinking Water Act** or the **Clean Water Act**; or

(b) The Authority deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the Authority as having responsibility for the protection of water quality and the supply of clean drinking water.

(3) The Authority generally will not fund projects without approval of the appropriate regulatory agency(s).

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The Authority encourages regionalization whenever feasible.

(6) The Authority encourages asset management planning where possible.

(6) The Authority will apply approved prioritization when reviewing project information contained in project notification intake form.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08

thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0055
Loan and Grant Information

The Authority may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The Authority shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the Authority may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the Authority determines are not financially feasible will not be funded.

(1) Loans:

(a) The term of a loan is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the Authority on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project may be determined by the Authority on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management.

(e) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the Authority to be pledged in addition to the foregoing.

(2) Grants: When making a determination to award a grant, the Authority will apply prudent fiscal management of the fund in order to manage limited funding resources. In making its determination, the Authority shall apply the following criteria:

(a) The Authority's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) The projected annual residential utility rate for the system will be equivalent to a minimum rate as determined by the Authority's policy. The Authority's policy incorporates the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census; and

(c) The Authority shall determine if the project meets the criteria of a grant and make a determination on the amount of the grant based on financial need or other special circumstances. A project in a distressed community may be eligible for a grant not to exceed $750,000.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0065
Application Requirements

(1) A municipality may submit an application to the Authority at any time after the Authority has made a preliminary determination of eligibility and shall comply with the Authority's procedures for submitting applications. The Authority may, to the extent possible, assist municipalities in understanding program requirements and in completing applications.

(2) For a project that is part of a system that is, or will be, functionally connected to, another municipality's system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity is required. The fully executed intergovernmental agreement must be provided before the financing contract will be executed by the Authority.

(3) The application shall be in the form provided by the Authority and shall contain or be accompanied by such information and documentation as the Authority may require. The Authority will process only completed applications.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0075
Application Review and Approval

For a non-technical assistance project, the Authority must make the following determinations:

(1) The municipality shall document that a registered professional engineer has certified in an engineering report, such as a Master Plan, that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(2) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the Authority that there will be adequate funds available to repay the loans made to the municipality from the fund;

(3) Moneys in the appropriate accounts of the fund are or will be available for the project;

(4) The municipality is willing and able to enter into a contract with the Authority;

(5) The project is consistent with the requirements governing assistance from the fund. If the Authority determines that the municipality or the proposed project does not meet the requirements of this OAR 123-043-0075, the Authority may reject an application or require further documentation from the municipality; and

(6) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0085
Contract Administration and Disbursement of Funds

(1) The Authority shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in a form provided by the Authority, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the Authority under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the Authority a lien on or a security interest in the collateral as determined by the Authority to be necessary to secure repayment of the loan or bond;

(d) A provision that, for a period of up to six (6) years after project completion, the Authority may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project;

(e) For a drinking water development project, a provision requiring the municipality to install meters on all new active service connections from any distribution lines that may be included in the project;

(f) For a drinking water development project with existing, active unmetered service connections, a provision requiring the municipality to install meters on such service connections; and

(g) Other provisions that the Authority considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0095
Recipient Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the Authority and its representatives reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the Authority.

(3) The municipality shall certify that a registered professional engineer will be responsible for the design and construction of the project and it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(4) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 for public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project: "This project was funded in part with a financial award from the Water Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Business Development Department."; and

(b) For a construction project, post a sign, provided by the Authority , at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(5) For a construction project the municipality shall have a plan for ongoing operation, maintenance and replacement that will preserve the project's benefits over its useful life.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0102
Eligibility Criteria for State Revenue Bond Loans

The Authority shall apply the following standards for determining the eligibility of projects for state revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the Authority;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments, and the term of the loan must not exceed the usable life of the contracted project or 25 years from the year of project completion, whichever is less;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for state revenue bond financing as established by Authority policies.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0105
Remedies

The Authority may pursue any remedies available to it against a municipality upon the occurrence of an event of default under the Authority's contract with the municipality.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

123-043-0115
Appeals and Exceptions

(1) Appeals of decisions made by the municipality regarding a project must be made at the local level in accordance with the requirements and procedures of the municipality.

(2) The director will consider appeals of the Authority's funding decisions. Only the municipality may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the Authority's review of the application, as determined by the director, will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The director's decision is final.

Stat. Auth.: ORS 285B.563 & 285A.075
Stats. Implemented: ORS 285B.560 - 285B.599
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

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Rule Caption: These rules refer to First Source Hiring Agreements and have been edited for clarity.
Adm. Order No.: EDD 26-2009
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 11-1-2009
Rules Amended: 123-070-1000, 123-070-1100, 123-070-1150, 123-070-1300, 123-070-1500, 123-070-1600, 123-070-1800, 123-070-1900, 123-070-2300, 123-070-2400
Rules Repealed: 123-070-1200, 123-070-1700, 123-070-2000
Subject: The First Source hiring Agreement rules have revised to clean-up and repeal old language and to ensure compliance with statute. Several rules have been removed because they are unnecessary.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-070-1000
Purpose and Scope

(1) The purpose of this division of administrative rules is to implement ORS 461.740, under which business firms are required to enter into a First Source Agreement if benefiting from funds derived from the Oregon State Lottery through certain economic or community development programs, as determined by the Oregon Business Development Department.

(2) Provisions of this division of administrative rules also apply to businesses benefiting under the following tax incentive programs, as provided by the relevant statutes:

(a) The "Strategic Investment Program" under ORS 285C.600 to 285C.626 and 307.110(4) and 307.123, as specified in division 023 of this chapter of administrative rules; and

(b) The "enterprise zones" under ORS 285C.050 to 285C.250, as specified in division 065 of this chapter of administrative rules and OAR chapter 150.

(3) Requiring Benefited Businesses to enter into a First Source Agreement is intended to help individuals, who are already receiving job training and assistance supported by public funds, by linking these individuals with private sector employment opportunities of businesses that:

(a) Will be hiring in association with the receipt of public benefits; and

(b) Should make a good faith effort to hire and retain such individuals, who are presumed to have low incomes or otherwise face disadvantages in finding employment.

(4) First Source Agreements and this division of administrative rules are not intended to do the following:

(a) Guarantee employment for any such individual;

(b) Dictate the actual hiring by a Benefited Business; or

(c) Necessarily accomplish other public or social objectives associated with employment opportunities.

(5) As used in ORS 461.740(1), "good faith effort to hire and retain as employees low-income individuals who have received job training assistance from publicly funded job training providers" means the Benefited Business will do whatever is reasonably feasible to honor the terms of the First Source Agreement entered into with the Contact Agency for local Providers as specified in OAR 123-070-1700.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.215(3) & 285C.615(7)
Stats. Implemented: ORS 285C.060, 285C.175, 285C.215, 285C.606 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0300; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-1100
Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) Contact Agency is defined as the entity designated to represent publicly funded job training providers as specified in OAR 123-070-1200(3)(a), and it shall designate a Contact Person, which means an accessible and appropriate staff person at the Contact Agency, who is charged with interacting with Benefited Businesses and other entities and with representing the Contact Agency on matters related to First Source Agreements.

(2) First Source Agreement means the contract between a Benefited Business and Providers, as executed by a Contact Agency, under this division of administrative rules, and it has the same meaning as "first-source hiring agreement" as used in ORS 285C.050(10), 285C.606(4) and 461.740(4)(b), which covers and is applicable to all of the Benefited Business's hiring or job openings, except for those persons or positions that are:

(a) Hired solely to construct, renovate or install property;

(b) Excluded by a waiver in accordance with OAR 123-070-1500; or

(c) Specified in OAR 123-070-2100 as inapplicable for enterprise zone purposes.

(3) Interagency Agreement is the agreement entered into among Providers as specified in OAR 123-070-1200.

(4) Provider has the same meaning as "publicly funded job training provider," as used in ORS 285C.050(14), 285C.606(4) and 461.740(4)(c) and means one of the following:

(a) A local office of the Oregon Department of Human Services that delivers training or employment services for low-income parents, seniors, persons with disabilities and so forth;

(b) An administrative agent for programs under the federal Workforce Investment Act of 1998 (Public Law 105-220) or amendments thereto;

(c) A community college of this state;

(d) A government or government-supported entity, similar to those in subsections (a) to (c) of this section, that is directly or indirectly engaged in training or assisting people to perform or succeed in the workplace or in a particular occupation; or

(e) Any other entity that is a party to the Interagency Agreement as described in OAR 123-070-1200, but such inclusion is effective only insofar as the entity, including but not limited to a local office of this state's Employment Department, remains such a party.

(5) Qualified Applicants means individuals who have received job training assistance and who meet the Benefited Business's minimum requirements for education, experience, reliability and skills, or who are able to meet these requirements within a reasonable time period (as negotiated with the Benefited Business) with training provided either by the Benefited Business or by a Provider.

(6) As used in sections (5) and (8) of this rule, "received job training assistance" means the individual has received intake or other services from a Provider.

(7) "Local zone manager" means a person appointed by the sponsor of the enterprise zone under ORS 285C.105(1)(a).

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.215(3) & 285C.615(7)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.215, 285C.606 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0310; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-1150
Affected Businesses

For purposes of this division of administrative rules:

(1) A Benefited Business means any for-profit business firm (regardless of its form of ownership or organization) that benefits directly or substantially from a state lottery-funded program, as indicated below in this section:

(a) Any of the following programs, throughout this state, except as set forth in section (3) of this rule:

(A) Oregon Business Development Fund (ORS 285B.050 to 285B.098);

(B) Strategic Reserve Fund (ORS 285B.266); or

(b) Any program financed by state lottery funds and administered by the Department, as so determined by the Director, including but not limited to industry development activities under ORS 285B.280 to 285B.286.

(2) A Benefited Business also means either of the following, regardless if section (1) of this rule applies too:

(a) An "authorized business firm" as defined under ORS 285C.050(2) for an enterprise zone exemption on qualified property from ad valorem taxation under 285C.175; or

(b) A business firm approved to receive or receiving the partial exemption of property from ad valorem taxation as an eligible project of the Strategic Investment Program under ORS 285C.600 to 285C.626.

(3) Regardless of association with a program in subsection (1)(a) or (b) of this rule, a business firm is not a "Benefited Business" solely because it receives any of the following from the Department, a grantee or any other entity:

(a) A purchase order or contract to provide services;

(b) Funds strictly for marketing or research activities; or

(c) Any grant or loan of $100,000 or less.

(4) Benefits substantially from any program by way of loan or grant financed by state lottery funds" as used in ORS 461.740(4)(a) and section (1) of this rule means that the business firm:

(a) Receives benefits through infrastructure or facility improvements financed by an entity that is receiving state lottery-funded loan or grant assistance to immediately make such improvements; and

(b) Was given prior notice from the Department or the entity that the First Source Agreement was a condition for the facility or infrastructure improvements or modifications arising from lottery funds.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.615(7)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.175, 285C.215, 285C.606 & 461.740
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-1300
Administration for Lottery-Funded Projects

(1) For the lottery-funded programs listed in OAR 123-070-1150(1)(a), the Department shall take anticipatory actions that are necessary and appropriate to implement the requirement of the First Source Agreement in accordance with ORS 461.740, which may include but are not limited to requiring a Benefited Business to submit a copy of the First Source Agreement, or otherwise ensuring that one has been entered into, before the grant or loan is ultimately awarded.

(2) The responsibilities consistent with section (1) of this rule may be delegated by the Department to a grantee that is the direct recipient of lottery-derived funds and that provides the grant, loan or substantial benefits to the Benefited Business.

Stat. Auth.: ORS 285A.075 & 285A.110(1)
Stats. Implemented: ORS 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0320; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-1500
Waivers and Geographic Coverage of First Source Agreements

(1) Except in the case of the Strategic Investment Program, the Director may issue a waiver that does the following:

(a) Relieves a Benefited Business of the requirement of entering into the First Source Agreement, entirely; or

(b) Excludes professional, managerial, technical, highly skilled or seasonal positions of a Benefited Business from the First Source Agreement.

(2) The waiver under section (1) of this rule may be granted by the Director, who shall make the final decision, upon written recommendation by Department staff that explains why:

(a) The Benefited Business's small size or the technical, professional or unusual nature of its needs with respect to employees means that it will generally be unable to fill positions with persons referred by the Providers for much of its anticipated jobs openings or for the excluded positions, as defined in the waiver, and will thus receive little or no meaningful service through the First Source Agreement; or

(b) The waiver will further the goals or purposes of applicable and specified state policies, whether or not such policies are directly associated with the program.

(3) A Benefited Business may request to Department staff for a waiver under this rule at the time of application for the grant or loan assistance, or before the contract for such assistance is signed, in the case of lottery-funded programs, or at any time prior to qualifying for an enterprise zone exemption.

(4) Department staff will notify the Benefited Business and the Contact Agency for the geographic area in which the Benefited Business is located of the Director's decision and send a copy of any approved waiver. Such notice and distribution shall also include other entities as described in OAR 123-070-2400(5), as applicable for an enterprise zone exemption.

(5) Except as specified in OAR 123-070-2100 for an enterprise zone exemption, the First Source Agreement entered into by a Benefited Business shall apply only to the Benefited Business's operations at the site receiving the benefit, unless other locations are designated by the Department or specifically agreed to by the Benefited Business and the Contact Agency.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.060, 285C.215 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 9-1991, f. 9-6-91, cert. ef. 9-9-91; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-

2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0330; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-1600
Duration of First Source Agreements

For purposes of a First Source Agreement:

(1) The term of agreement shall **begin** on or before the first date of any new hiring activity associated with employees for the benefited investment of the Benefited Business.

(2) The term of agreement shall **end**, as follows:

(a) Under state lottery-funded programs listed in OAR 123-070-1150(1), no less than 18 months from the date that the Benefited Business begins to request referrals under the First Source Agreement, unless a longer period is specified in the body of the First Source Agreement.

(b) Under tax incentive programs listed in OAR 123-070-1150(2), when the property tax exemption period concludes, which shall occur:

(A) On December 31 of the final year of exemption; or

(B) Sooner, in cases where an enterprise zone authorization application or exemption claim is formally withdrawn, or the exemption is disqualified or terminated by the county assessor, and the Benefited Business either does not exercise or has exhausted its right to appeal the refusal, denial, disqualification or termination.

(3) Nothing shall hinder or prevent a Benefited Business and a Contact Agency from mutually continuing to function under the arrangements of a First Source Agreement, even though the agreement is no longer in force, as stipulated by this rule.

Stat. Auth.: ORS 285A.075 & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.215, 285C.606 & 461.740
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-1800
Local/Case-Specific Modifications to the First Source Agreement

For purposes of OAR 123-070-1700, the First Source Agreement may be modified or amended as follows, as long as such modification or amendment does not alter or nullify the clear expression or the intent of any provision in OAR 123-070-1700(1):

(1) The Contact Agency or the Providers under the Interagency Agreement covering the geographic area in which the Benefited Business is located may add other substantive provisions or components to the First Source Agreement, but only through and pursuant to mutual consent by the Benefited Business, unless otherwise allowed in sections (2) or (3) of this rule or for data reporting as described in OAR 123-070-1900(4) and (5).

(2) As initiated or agreed to by the Contact Agency and Providers, a locally developed model First Source Agreement may include provisions that are conditions for receiving local administered incentives that are in addition to state lottery or property tax benefits. Such conditions do not, however, affect the benefits of programs listed in OAR 123-070-1150(1) or (2).

(3) With the consent and approval of the sponsor of an urban enterprise zone, the Contact Agency may add local conditions that are derived directly from the policy adopted by the sponsor under ORS 285C.150 to the regular format of the First Source Agreement that is used for the Benefited Businesses in that zone, and such additional provisions of the First Source Agreement shall be conditions for the enterprise zone property tax exemption consistent with the standards in the zone sponsor's policy.

Stat. Auth.: ORS 285A.075 & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.215, 285C.606 & 461.740
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-1900
Data Collection

(1) For purposes of OAR 123-070-1200(3)(e) and 123-070-1700(1)(e), the Contact Agency may collect and compile data by Benefited Business and by referring agency (Provider), and may specify in the First Source Agreement a schedule and method by which a Benefited Business submits or confirms data, for the following items:

(a) The Benefited Business's name, address and State Business Identification Number (BIN/unemployment insurance account number);

(b) The number and names of all persons referred to each Benefited Business through a First Source Agreement with the Contact Agency;

(c) The number of such referrals and the names of referred persons who were hired by the Benefited Business;

(d) The total number of individuals hired by each Benefited Business; or

(e) A consolidated list of applicable job openings, whether filled or unfilled, even if vacated or refilled.

(2) Any data collection under this rule shall be performed no more frequently than as follows, and then only for data specific to the intervening period in question and not previously collected:

(a) For Benefited Businesses as described in OAR 123-070-1150(1) (lottery-funded programs), the data may be collected for the following quarters: January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31.

(b) For Benefited Businesses as described in OAR 123-070-1150(2) (tax incentive programs), the data may be collected on an annual basis, subject to modification under section (3) of this rule, for each calendar year until the end of the property tax exemption period.

(3) If a Benefited Business is receiving benefits under a program pursuant to both subsections (2)(a) and (b) of this rule, the data for the Benefited Business may be collected in the manner specified in subsection (2)(a) of this rule during the period in which the First Source Agreement is in effect for the lottery-funded benefits, with an annual compilation for every December 31. After such period, data collection may take place only as indicated in subsection (2)(b) of this rule.

(4) For Benefited Businesses as described in OAR 123-070-1150(2), the county under ORS 285C.609 or the enterprise zone sponsor may seek the Contact Agency's assistance as described in subsection (5) of this rule for the following:

(a) A Strategic Investment Program agreement under ORS 285C.609;

(b) An urban enterprise zone in which the sponsor has adopted a policy under ORS 285C.150 (irrespective of a regularly formatted First Source Agreement as provided in OAR 123-070-1800);

(c) Resolution adopted under ORS 285C.155 to waive employment increase requirement; or

(d) A written agreement for an extended period of enterprise zone abatement up to five years under ORS 285C.160.

(5) For the purposes of section (4) of this rule and this section, the zone sponsor or the county:

(a) Shall take appropriate and necessary actions to compensate the Contact Agency or Providers for any expenses that arise, and to safeguard the confidentiality of data submitted or compiled with respect to legal constraints affecting the Contact Agency or any Provider;

(b) May make the Benefited Business's submission of data specified in paragraph (c)(A) of this section a condition for the tax incentive benefit, if so provided in the policy or agreements under section (4) of this rule; and

(c) May in cooperation with the Contact Agency request the following:

(A) That the First Source Agreement specify particular types and formats of data that the Benefited Business must provide, either to demonstrate compliance with requirements under ORS 285C.150, 285C.155, 285C.160, 285C.205 or 285C.609(5) or to satisfy other information needs of the sponsor or the county related to the Benefited Business's hiring, employment, training, compensation and so forth, insofar as it is practical, and as such data or information reasonably relates to the First Source Agreement; and

(B) To have such data transmitted through the Contact Agency. (No such data is to come from any other information source to which a Provider has access, including but not limited to unemployment insurance data.)

(6) For Benefited Businesses under the state lottery-funded programs listed in OAR 123-070-1150(1), the Contact Agency may provide appropriate compilations of data collected under this rule to the Department, as requested by the Director.

Stat. Auth.: ORS 285A.075 & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.150, 285C.155, 285C.160, 285C.606, 285C.609 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 9-1996, f. 10-8-96, cert. ef. 10-11-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0360; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-2300
Enterprise Zone: Handling Exemption Claims

For purposes of the county assessor's processing of a Benefited Business's enterprise zone exemption claim with property schedule under ORS 285C.220 and 285C.225, except in the case of an existing waiver as described in OAR 123-070-1500(1)(a):

(1) The Benefited Business may attach a copy of the First Source Agreement to the claim form.

(2) For purposes of ORS 285C.175(1)(c), the assessor shall primarily rely on the zone sponsor, Contact Agency or other Provider informing the assessor's office under ORS 285C.215(2) that a requisite First Source Agreement is lacking, for purposes of checking that the Benefited Business

has entered into a current First Source Agreement consistent with this division of administrative rules.

(3) If an assessor wishes to verify the existence, effectiveness or general suitability of the First Source Agreement, the assessor may do the following:

(a) Request and receive a copy of the First Source Agreement and related input directly from the local zone manager, the Contact Agency, the Benefited Business or any other entity, regardless of what is said elsewhere in this division or division 065 of these administrative rules; or

(b) FollowORS 285C.230(1)(b) and request assistance from the local zone manager before approving the exemption claim, for which inability or unwillingness on the part of the zone sponsor to provide such assistance may result in termination of the zone.

(4) If learning of a problem with the Benefited Business's execution of a suitable First Source Agreement by whatever means, then pending a corrective waiver as described in OAR 123-070-1500(1) or 123-070-2400, the county assessor:

(a) May deny the exemption claim, if the First Source Agreement was not executed as described in OAR 123-070-2200(1).

(b) Shall deny the exemption claim, if the First Source Agreement:

(A) Was not executed on or before December 31 directly preceding the first exemption year under ORS 285C.175;

(B) Does not cover at least all years of exemption; or

(C) Is not signed, violates this division of administrative rule or is contractually deficient.

(5) The assessor shall deny the exemption under ORS 285C.175(6), if by August 31 of the first tax year of exemption, a problem as described in subsection (4)(b) of this rule is not resolved through copies/documentation of the following:

(a) A (revised/replacement) First Source Agreement;

(b) Applicable waiver as described in OAR 123-065-1500 or 123-065-2400; or

(c) Both, as necessary.

(6) Once a Benefited Business is qualified and approved to receive the exemption, the exemption may not later be revoked or disqualified for lack of compliance with this division of administrative rules, except for the case of fraudulent representations by the Benefited Business or an agent thereof.

(7) Subject to requisite resolution of the outstanding problem, a denial as described in section (5) of this rule may be reversed and the exemption granted, as otherwise allowed under the laws and rules governing the procedures and authority of the assessor.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.175, 285C.215, 285C.220, 285C.240
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

123-070-2400
Enterprise Zone: Allowing Late Execution of Agreement

(1) The Director may issue a waiver that excuses the requirement of entering into a First Source Agreement for the purposes of enterprise zones up until the time when it is actually executed or takes effect, such that it is not required to have been entered into:

(a) At the time of applicable hiring regardless of OAR 123-070-1600(1) or 123-070-2200(1)(b); or

(b) On or before December 31 of the year when qualified property is placed in service, directly before the first exemption year, as otherwise required under ORS 285C.215(1).

(2) A waiver as described in section (1) of this rule may be issued for the following reasons:

(a) The Benefited Business began or was using the first-source services of the Contact Agency or other Providers in a timely fashion, without having a formal First Source Agreement;

(b) Mistaken communications, an absence of local contacts or other similar situations hampered the ability or understanding of the Benefited Business regarding the First Source Agreement or the need to enter into it;

(c) The Benefited Business made a good faith effort to obtain a First Source Agreement, but it was misled or otherwise unable to readily obtain a First Source Agreement through no fault of its own; or

(d) Other comparable circumstances, including but not limited to what is described in OAR 123-065-1500(2).

(3) A Benefited Business, the local zone manager, county assessor or Contact Agency on behalf of the Benefited Business, may seek a waiver under this rule by contacting Department staff at any time following approval of the application for authorization, whether before or after an action by the county assessor as described in OAR 123-070-2300.

(4) A waiver under this rule shall take the form of a written recommendation from Department staff to the Director that is approved by signature of the Director. The written recommendation shall describe:

(a) The justification for the waiver pursuant to this rule;

(b) The basis or source of evidence for such justification or determinations, including but not limited to verbal communications with the Contact Agency, the county assessor or other local parties;

(c) The status of the Benefiting Business's entering into a First Source Agreement; and

(d) The date by which the First Source Agreement must be in effect.

(5) The Department shall provide notice of the Director's decision and distribute copies of any approved waiver, as well as any waiver as described in OAR 123-070-1500 affecting an enterprise zone exemption, to the:

(a) Benefited Business;

(b) County assessor;

(c) Contact Agency;

(d) Local zone manager; and

(e) Department of Revenue (Attention: Exemptions Specialist, Property Tax Division).

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

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Oregon Criminal Justice Commission
Chapter 213

Rule Caption: Amends Oregon Sentencing Guidelines in light of HB 3508 (2009) and SB 1087 (2008).
Adm. Order No.: CJC 5-2009
Filed with Sec. of State: 12-11-2009
Certified to be Effective: 12-13-09
Notice Publication Date: 11-1-2009
Rules Adopted: 213-018-0022
Rules Amended: 213-017-0004, 213-017-0006
Rules Repealed: 213-017-0004(T), 213-017-0006(T), 213-018-0022(T)
Subject: The Oregon Legislature passed SB 1087 on February 22, 2008. The legislature referred SB 1087 to a vote of the people at the general election of November 4, 2008 through Ballot Measure 57. Ballot Measure 57 was passed by a majority of the voters at the general election. Section 10 of SB 1087 (2008 Oregon Laws chapter 14) changed the crime of Mail Theft or Receipt of Stolen Mail under ORS 164.162 from a Class A misdemeanor to a Class C felony. The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. The rule change classifies ORS 164.162 as a Crime Category 6 on the Crime Seriousness Scale. This rule change has been approved by the legislature, as required under ORS 137.667(4), in HB 2665 (2009).

The Oregon Legislature voted to suspend implementation of portions of Measure 57 in SB 3508 (2009). Following HB 3508 (2009), Mail Theft or Receipt of Stolen Mail under ORS 164.162 will be classified as a felony effective for sentences imposed prior to February 15, 2010 and for sentences imposed for crimes committed on or after January 1, 2012. During the intervening time period, that portion of Measure 57 that classified Mail Theft or Receipt of Stolen Mail under ORS 164.162 as a felony is suspended and that crime becomes a Class A misdemeanor. The rule change contains language outlining this.

HB 3508 (2009) became effective on July 1, 2009. Section 39 of HB 3508 reclassifies the crime of Assault in the Third Degree from a Class C felony to a Class B felony, if that crime resulted from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving while under the influence of intoxicants. Section 40 of HB 3508 (2009) requires CJC to classify Assault in the Third Degree that is committed from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving under the influence of intoxicants, as a crime category 8 on the sentencing guidelines grid. The rule amendments and adoption classifies ORS 163.165(2)(b) as a Crime Category 8 on the Crime

Seriousness Scale as required by the legislature. The rule changes also include numbering changes necessitated by adding to the list of numerically ordered crimes, and updated statutory citations.
Rules Coordinator: Craig Prins—(503) 378-4830

213-017-0004
Crime Category 8

The following offenses are classified at crime category 8 on the Crime Seriousness Scale:

(1) AGGRAVATED DRUG OFFENSES (See division 19).

(2) ORS 163.125 — MANSLAUGHTER II — (B). (If not categorized at CC 9.)

(3) ORS 163.145 — NEGLIGENT HOMICIDE — (B). (If not categorized at CC 9.)

(4) ORS 163.165 — ASSAULT III — (B). (If offense resulted from operation of a motor vehicle and defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants; otherwise CC 6).

(5) ORS 163.207 — FEMALE GENITAL MUTILATION — (B).

(6) ORS 163.365 — RAPE II — (B).

(7) ORS 163.395 — SODOMY II — (B).

(8) ORS 163.408 — SEXUAL PENETRATION II — (B).

(9) ORS 163.427 — SEXUAL ABUSE I — (B).

(10) ORS 163.433 — ONLINE SEXUAL CORRUPTION OF A CHILD I — (B).

(11) ORS 163.537 — BUYING/SELLING THE CUSTODY OF A MINOR — (B). (If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5.)

(12) ORS 163.670 — USING CHILD IN DISPLAY OF SEXUAL CONDUCT — (A).

(13) ORS 163.684 — ENCOURAGING CHILD SEX ABUSE I — (B).

(14) ORS 163.732 — STALKING — (C).

(15) ORS 163.750 — VIOLATE COURT STALKING ORDER — (C).

(16) ORS 164.225 — BURGLARY I — (A). (If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.)

(17) ORS 164.325 — ARSON I — (A). (If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is $25,000 or more but less than $50,000; otherwise CC 9 or CC 7.)

(18) ORS 164.877(3) — TREE SPIKING-INJURY — (B).

(19) ORS 166.275 — INMATE POSSESSION OF WEAPON — (A). (if firearm, otherwise CC 7.)

(20) ORS 167.012 — PROMOTING PROSTITUTION — (C).

(21) ORS 167.017 — COMPELLING PROSTITUTION — (B).

(22) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A). (CC 4 if minor less than 3 yrs. younger than offender.)

(23) ORS 811.705 — HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) — (B).

Stat. Auth.: ORS 137.667, 811.707, & 2003 OL Ch. 453, & 2009 OL Ch. 660
Stats. Implemented: ORS 137.667 - 137.669, 811.707 & 2003 OL Ch. 453, 815, & 2007 OL Ch. 876, & 2009 OL Ch. 660
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09 cert. ef. 12-13-09

213-017-0006
Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

(1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS* — (C).

(2) MAJOR DRUG OFFENSES (See division 19.)

(3) ORS 162.015 — BRIBERY — (B).

(4) ORS 162.025 — BRIBE RECEIVING — (B).

(5) ORS 162.065 — PERJURY — (C).

(6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).

(7) ORS 162.155 — ESCAPE II — (C).

(8) ORS 162.185 — SUPPLYING CONTRABAND — (C). (The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)

(9) ORS 162.265 — BRIBING A WITNESS — (C).

(10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).

(11) ORS 162.285 — TAMPERING W/ WITNESS — (C).

(12) ORS 162.325 — HINDERING PROSECUTION — (C).

(13) ORS 163.160(3) — FELONY DOMESTIC ASSAULT — (C).

(14) ORS 163.165 — ASSAULT III — (C). (If the offense cannot be ranked at CC 8).

(15) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).

(16) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).

(17) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).

(18) ORS 163.264 — SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I — (B). (If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)

(19) ORS 163.275 — COERCION — (C). (No threat of physical injury; otherwise CC 7.)

(20) ORS 163.355 — RAPE III — (C).

(21) ORS 163.385 — SODOMY III — (C).

(22) ORS 163.432 — ONLINE SEXUAL CORRUPTION OF A CHILD II — (C).

(23) ORS 163.465 — FELONY PUBLIC INDECENCY — (C).

(24) ORS 163.525 — INCEST — (C). (If one of the participants is under the age of 18; otherwise CC 1.)

(25) ORS 163.547 — CHILD NEGLECT IN THE FIRST DEGREE — (B).

(26) ORS 163.688 — POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I — (B).

(27) ORS 164.055 — THEFT I* — (C).

(28) ORS 164.057 — AGGRAVATED THEFT — (B). (Economic loss was greater than $50,000; otherwise CC 5.)

(29) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY * — (C).

(30) ORS 164.075 — THEFT BY EXTORTION* — (B).

(31) ORS 164.085 — THEFT BY DECEPTION* — (C).

(32) ORS 164.125 — THEFT OF SERVICES* — (C).

(33) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE* — (C).

(34) ORS 164.138 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* — (C).

(35) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY* — (C).

(36) ORS 164.162 — MAIL THEFT OR RECEIPT OF STOLEN MAIL — (C). (For sentences imposed prior to February 15, 2010, and for sentences imposed for crimes committed on or after January 1, 2010; otherwise a Class A misdemeanor.)

(37) ORS 164.215 — BURGLARY II* — (C).

(38) ORS 164.315 — ARSON II* — (C).

(39) ORS 164.365 — CRIMINAL MISCHIEF I* — (C).

(40) ORS 164.377 — COMPUTER FRAUD (LOTTERY)* — (C).

(41) ORS 164.377(3) — COMPUTER CRIME* — (C).

(42) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING* — (C).

(43) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE* — (C).

(44) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE* — (C).

(45) ORS 164.877(1) — TREE-SPIKING — (C).

(46) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH* — (C).

(47) ORS 165.013 — FORGERY I* — (C).

(48) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I* — (C).

(49) ORS 165.055(3)(A) — CREDIT CARD FRAUD* — (C).

(50) ORS 165.065 — NEGOTIATING BAD CHECKS* — (C).

(51) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD* v (C).

(52) ORS 165.692 — FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT — (C).

(53) ORS 165.800 — IDENTITY THEFT* — (C).

(54) ORS 166.015 — RIOT — (C).

(55) ORS 166.165 — INTIMIDATION I — (C).

(56) ORS 166.220 — UNLAWFUL USE OF WEAPON — (C).

(57) ORS 166.270 — EX-CON IN POSSESSION OF FIREARM — (C).

(58) ORS 166.272 — UNLAWFUL POSSESSION OF FIREARM — (B).

(59) ORS 166.370(1) — INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) — PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL — (C).

(60) ORS 166.382 — POSSESSION OF DESTRUCTIVE DEVICE — (C).

(61) ORS 166.384 — UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE — (C).

(62) ORS 166.410 — ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS — (B).

(63) ORS 166.643 — UNLAWFUL POSSESS SOFT BODY ARMOR — (B). (If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)

(64) ORS 167.057 — LURING A MINOR — (C).

(65) ORS 167.339 — ASSAULT OF A LAW ENFORCEMENT ANIMAL — (C).

(66) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION* — (C).

(67) ORS 647.145 — TRADEMARK COUNTERFEITING II* — (C).

(68) ORS 647.150 — TRADEMARK COUNTERFEITING I* — (B).

(69) ORS 811.182 — DRIVING WHILE SUSPENDED/REVOKED — (C).

(70) ORS 811.705 — HIT & RUN VEHICLE (INJURY) — (C).

(71) ORS 813.010 — FELONY DRIVING UNDER THE INFLUENCE — (C).

(72) ORS 819.300 — POSSESSION OF STOLEN VEHICLE* — (C).

(73) ORS 819.310 — TRAFFICKING IN STOLEN VEHICLES — (C). (If part of an organized operation or if value of property taken from one or more victims was greater than $50,000; otherwise CC 5.)

(74) ORS 830.475 — HIT AND RUN BOAT — (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was $50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453, & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635, 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, 876, SB 1087 (2008), Ballot Measure 57 (2008), & 2009 OL Ch. 660

Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09 cert. ef. 12-13-09

213-018-0022
Assault III (ORS 163.165)

(1) CRIME CATEGORY 8: Assault III shall be ranked at Crime Category 8 if the assault resulted from the operation of a motor vehicle and defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants.

(2) CRIME CATEGORY 6: Assault III shall be ranked at Crime Category 6 if it cannot be ranked at Crime Category 8.

Stat. Auth.: ORS 137.667 & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669 & 2009 OL Ch. 660

Hist: CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09 cert. ef. 12-13-09

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Rule Caption: Suspends temporary rule in Oregon's sentencing guidelines in light of 2009 legislative action.
Adm. Order No.: CJC 6-2009(Temp)
Filed with Sec. of State: 12-11-2009
Certified to be Effective: 1-1-10 thru 6-29-10
Notice Publication Date:
Rules Suspended: 213-017-0009(T)
Subject: Under ORS 137.667(2), the Criminal Justice Commission (CJC) may adopt changes to the sentencing guidelines. CJC adopted a temporary rule deleting Felony Animal Abuse I (ORS 167.320(4)) and Aggravated Animal Abuse I (ORS 167.322) from a Crime Category 3 on the Crime Seriousness Scale. That rule required legislative approval before becoming effective. The temporary rule had an effective date of January 1, 2010, to parallel the effective date of the possible legislative approval. The rule was not approved by the legislative assembly. Accordingly, the temporary rule is being suspended for the period of time during which it would have been effective had it been approved by the legislature. This rule must be suspended immediately to ensure that the rules as published by the Archives Division accurately reflect the rules as approved by the legislature. This rule change is necessary to delete rule text that the legislature does not wish to approve, and concomitantly to include only rule text that the legislature has approved.
Rules Coordinator: Craig Prins—(503) 378-4830

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Oregon Department of Education
Chapter 581

Rule Caption: Removes references to Oregon School for the Blind from rules.
Adm. Order No.: ODE 12-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 9-1-2009
Rules Amended: 581-001-0053, 581-016-0520, 581-016-0526, 581-016-0536, 581-016-0537, 581-016-0538, 581-016-0541, 581-016-0560, 581-021-0110, 581-021-0500, 581-022-0610
Rules Repealed: 581-016-0890, 581-016-0900, 581-016-0910, 581-016-0920, 581-016-0930, 581-016-0940, 581-016-0950, 581-016-0960, 581-016-0970, 581-016-0980, 581-016-0990, 581-016-1000, 581-016-1010, 581-016-1020, 581-016-1030, 581-016-1040, 581-016-1050
Subject: Chapter 562, Oregon Laws 2009 (Enrolled House Bill 2834) directed the Superintendent of Public Instruction to close the Oregon School for the Blind. The proposed rules remove references in rules to the school.
Rules Coordinator: Diane Roth—(503) 947-5791

581-001-0053
Parking Rules (OSSD)

(1) There shall be no charge to employees of the Oregon State Schools for the Deaf for parking automobiles at the school or for using bicycle racks provided by the Department.

(2) The Department may issue parking permits to other employees who wish to park at the school. The parking rate for such permits will be one-half of the O rider permits issued for the Pringle site rounded to the nearest half dollar.

(3) The Department provides parking for official business only, unless other arrangements are expressly made for employees (during working hours), visitors, commercial service, and state-owned vehicles. Persons who fail to comply with this rule shall forfeit their parking privileges, and be subject to the enforcement provisions specified in OAR 581-023-0052(12). The Department may provide the following types of additional parking:

(a) Specially marked or designated free parking for the temporary use of individuals with handicaps visiting state offices. Vehicles occupying such spaces shall bear the appropriate identifying plate or decal sticker issued by the Motor Vehicles Division;

(b) Time-limited free spaces for use by persons transacting business in state offices. No state employee shall abuse this class of parking;

(c) Free spaces designated for commercial loading and service vehicle use only.

(4) Provisions for safety and enforcement set forth in OAR 581-001-0052(11) and (12) shall apply as well to parking facilities at the Oregon State School for the Deaf.

(5) Effective date of these amendments shall be September 1, 1988.

Stat. Auth.: ORS 98, 276 & 591

Stats. Implemented: ORS 276.591 & 276.595

Hist.: 1EB 19-1981(Temp), f. & ef. 12-23-81; 1EB 8-1982, f. & ef. 3-24-82; 1EB 13-1986, f. 4-25-86, ef. 4-28-86; EB 33-1988, f. 8-3-88, cert. ef. 9-1-88; ODE 12-2009, f. & cert. ef. 12-10-09

581-016-0520
Definitions

The following definitions apply to OAR 581-016-0520 through 581-016-0560, unless the context indicates otherwise:

(1) Board: The State Board of Education;

(2) OSD: The Oregon School for the Deaf;

(3) Superintendent: The State Superintendent of Public Instruction.

(4) IEP: An individualized education program as defined in OAR 581-015-0005(8).

Stat. Auth.: ORS 346.010
Stats. Implemented: ORS 346.010
Hist.: 1EB 264, f. & ef. 7-5-77; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09

581-016-0526
General Placement

(1) It is the policy of the State Board of Education (Policy 8100) that any student with a hearing impairment shall be served whenever possible in the student's home community if appropriate. It is the intent that all local agencies having interest in the student collaborate to offer services locally. A referral shall be made to OSD only when local programs are unable to provide a free appropriate public education consistent with the needs of the student as identified in the student's IEP.

(2) A student may be referred to OSD if the student:

(a) Has been determined to be eligible for special education services by the resident district under OAR 581-015-0051;

(b) Is auditorily impaired to the extent that services needed to implement the IEP as described in OAR 581-016-0536(8)(f)(A)–(D) are not available in the local district with regional program support;

(c) Is a legal resident of the State of Oregon;

(d) Regarding consent:

(A) Has the consent of a parent(s), guardian or surrogate if the student is under age 18; or

(B) Has given his or her consent, if over age 18; or

(C) Has the consent of a court-appointed guardian if one is appointed and the student is over age 18; and

(e) Has not completed the school year in which the student turns age 21.

(3) OSD may act as an evaluation and diagnostic center for a student with hearing impairments when requested to do so by the student's resident school district or the student's parents, or when additional assessment information is needed prior to a placement decision.

Stat. Auth.: ORS 346
Stats. Implemented: ORS 346.015
Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09

581-016-0536
Procedures for Referral and Placement

(1) The resident school district or the regional program shall contact the director of OSD to request a multidisciplinary team meeting to determine placement.

(2) The director or designee of OSD shall send the placement procedure packet to the district contact person and set a mutually agreed upon date, place and time for a meeting to determine placement.

(3) The district contact person shall obtain parent consent to send the following records to OSD and shall send the records for review to the director of OSD at least three working days prior to the multidisciplinary team meeting:

(a) The current audiological report (OSD);

(b) The current and previous medical, behavior, psychological, health immunization, and educational records, including previous IEPs, multidisciplinary team decisions and eligibility statements;

(c) The current statement of eligibility;

(d) The current IEP; and

(e) The signed parent consent for release of information.

(4) If the student is eligible for special education as mentally retarded or developmentally disabled, the resident school district shall contact the local mental health program case manager, who, in consultation with a Children's Services Division caseworker, shall review the IEP to determine if the student has need for residential care as part of the education program:

(a) If the student needs residential care or other support services as part of the education program, but community resources are not available as documented by the local community mental health program case manager, the resident school district shall proceed with the placement process;

(b) In cases where the student does not need residential care as a part of the education program, but needs other educational services provided by OSD, the resident school district shall proceed with the placement process.

(5) The resident school district is responsible for conducting the multidisciplinary team meeting to determine the student's placement.

(6) Participants in the placement meeting shall include persons knowledgeable about the student, the meaning of the evaluation data and placement options. The multidisciplinary team shall consist of:

(a) The student's parent(s), guardian, or surrogate if the student is under age 18 or has a court-appointed guardian, or alternatively the student, if the student is over age 18 and does not have a court-appointed guardian;

(b) The student, when appropriate;

(c) The resident school district representative;

(d) The regional program representative who is knowledgeable about the student's disability;

(e) The director or designee from OSD who has knowledge about services that can be provided by the special school and has the authority to commit resources for services;

(f) The local mental health case manager for students eligible for mental retardation or developmentally disabled services;

(g) Other representatives from the student's local placement; and

(h) Other persons with pertinent information about the student.

(7) The multidisciplinary placement team shall designate a member to complete the placement form.

(8) When determining placement, the multidisciplinary team shall:

(a) Base its decision on the student's current IEP;

(b) Consider documented information from a variety of sources;

(c) Address the variety of educational programs and services available to students without disabilities;

(d) Review opportunities to participate in nonacademic and extracurricular services and activities with students without disabilities;

(e) Consider any potential harmful effects on the student or on the quality of services provided to the student;

(f) Consider the following factors:

(A) The services needed to implement the IEP which may include, but are not limited to, areas such as academics; self-help, social, interpersonal, independent living; vocational training; and language development;

(B) A learning environment in which there is ample opportunity for the student to have meaningful communication with other students and teachers and exposure to cultural factors related to the student's disability;

(C) The student's need for direct instruction in an alternative communication system; and

(D) The extent of curriculum and instructional adaptations needed.

(g) Determine whether the student needs additional services and specialized educational resources available at OSD that are not available at the local placement options;

(h) Consider the impact on the student regarding the length of daily transportation for each placement option considered;

(i) Compare the instructional time available at local placement options to implement the student's IEP with the instructional time available at OSD; and

(j) Document the placement options considered and the rationale for rejection or acceptance.

(9) Within 14 calendar days of the multidisciplinary team meeting, the resident school district shall submit the following documents to the Assistant Superintendent for the Office of Student Learning and Partnerships, Oregon Department of Education:

(a) The eligibility statement;

(b) The placement meeting notes;

(c) The parental consent for release of information;

(d) A letter of placement recommendation from the regional program and the resident school district; and

(e) A written statement from the local community mental health program case manager regarding the availability of local residential services, when appropriate.

(10) The Assistant Superintendent for the Oregon Department of Education's Office of Student Learning and Partnerships shall send written notification of the multidisciplinary team's placement decision to the parent(s), guardian or surrogate, the resident school district, the regional program, and OSD. Placement shall begin after written notification is received by the parent(s) and the resident school district.

(11) Prior to the student's enrollment at OSD, the school shall review the student's file to insure that the documents identified in section (3) of this rule have been received.

Stat. Auth.: ORS 346
Stats. Implemented: ORS 346.015
Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09

581-016-0537
General Obligations

OSD is subject to the rules contained in division 15 of this chapter including, but not limited to, the requirements for identifying and determining eligibility of students with handicapping conditions, development

of IEPs, placement of students and the provision of a free, appropriate education.

Stat. Auth.: ORS 346
Stats. Implemented: ORS 346.010
Hist.: EB 37-1990, f. & cert. ef. 7-10-90; ODE 12-2009, f. & cert. ef. 12-10-09

581-016-0538
Resident School District Responsibility

(1) When a student is placed at OSD the student's resident school district remains responsible for assuring that the student receives a free appropriate education in accordance with ORS 343.221, OAR 581-015-0005(20) and 581-015-0061.

(2) A representative of the child's resident school district shall attend the student's IEP meetings while the student is placed at OSD.

(3) In those cases where OSD cannot within the resources allocated provide all of the services required in the child's IEP, the resident district may elect to provide these services if in so doing OSD would become an appropriate placement.

(4) At the time of placement, OSD and the resident district shall determine by written agreement those services for which the resident district shall remain responsible.

Stat. Auth.: ORS 346
Stats. Implemented: ORS 346.015
Hist.: EB 35-1990, f. & cert. ef. 7-10-90; ODE 12-2009, f. & cert. ef. 12-10-09

581-016-0541
Termination of Placement and Revocation of Consent

(1) The student's placement at OSD shall be determined annually by the student's multidisciplinary team and shall be terminated when:

(a) The student has completed the school year in which the student turns age 21;

(b) The student graduates from the program;

(c) A multidisciplinary team, which includes those individuals set forth in OAR 581-016-0536(6), determines that:

(A) An appropriate program can be provided at the local or regional level;

(B) OSD is no longer the appropriate placement for the student; or

(d) It is required as the result of a due process hearings officer or court's decision.

(2) If a parent, guardian or surrogate, student over the age of 18 without a court-appointed guardian, or educational staff question the appropriateness of the student's placement at OSD, the resident school district shall convene a multidisciplinary team with all of the individuals set forth in OAR 581-016-0536(6). The multidisciplinary team shall determine the appropriate placement for the student. This meeting shall occur prior to any change in placement for the student.

Stat. Auth.: ORS 346
Stats. Implemented: ORS 346.015
Hist.: 1EB 24-1986, f. & ef. 7-11-86; EB 30-1988, f. & cert. ef. 7-5-88; EB 36-1990, f. & cert. ef. 7-10-90; EB 2-1994, f. & cert. ef. 4-29-94; ODE 12-2009, f. & cert. ef. 12-10-09

581-016-0560
Placement Appeal Procedures — OSD

A parent, guardian or surrogate may challenge the child's placement, denial of placement, or transfer in the manner provided in ORS 343.165 to 343.177.

Stat. Auth.: ORS 346
Stats. Implemented: ORS 346.015
Hist.: 1EB 264, f. & ef. 7-5-77; 1EB 19-1979, f. & ef. 11-15-79; 1EB 17-1982, f. & ef. 8-13-82; EB 36-1990, f. & cert. ef. 7-10-90; ODE 12-2009, f. & cert. ef. 12-10-09

581-021-0110
Tobacco Free Schools

(1) For the purpose of this rule "tobacco" is defined to include any lighted or unlighted cigarette, cigar, pipe, bidi, clove cigarette, and any other smoking product, and spit tobacco, also known as smokeless, dip, chew, and snuff, in any form.

(2) No student, staff member, or school visitor is permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-school hours

(a) In any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or

(b) On school grounds, athletic grounds, or parking lots.

(3) No student is permitted to possess a tobacco product:

(a) In any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or

(b) On school grounds, athletic grounds, or parking lots.

(4) By January 1, 2006, school districts must establish policies and procedures to implement and enforce this rule for students, staff and visitors.

(5) For purposes of this rule, the term "school district" includes the Oregon School for the Deaf (OSD). The Oregon School for the Deaf must establish, in cooperation with the Oregon Department of Education, policies and procedures to implement and enforce this rule for students, staff and visitors by June 30, 2006.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: ODE 30-2004, f. 9-15-04, cert. ef. 9-20-04; ODE 8-2006, f.& cert. ef 2-21-06; ODE 12-2009, f. & cert. ef. 12-10-09

581-021-0500
Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means:

(A) Any person newly hired after December 31, 1993 by a school district into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;

(B) Any person newly hired after December 31, 1993 as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;

(C) Any person included above unless the current employer has on file evidence from a previous employer documenting a successfully completed Oregon and FBI criminal records check. The Oregon Department of Education or the Teacher Standards and Practices Commission verification of a previous check shall be acceptable only in the event the employer can demonstrate records are not otherwise available. Additional evidence that the employee has not resided outside the state between the two periods of time working in the district shall be maintained;

(D) An individual currently employed by a school district either part time or full time, who has direct, unsupervised contact with children;

(E) A person who is a community college faculty member providing instruction at a kindergarten through grade 12 school site during the regular school day; and

(F) A person who is an employee of a public charter school.

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) — $28;

(B) Federal Bureau of Investigation (FBI) — $24;

(C) Oregon Department of Education — $10;

(D) TOTAL — $62.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not effect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for

expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Newly hired" means the employment of a person after application or request for a position having direct, unsupervised contact with students without regard to that person's current or previous employer; and

(h) "School district" means:

(A) A taxing district providing public elementary or secondary education, or any combination thereof, within the state;

(B) An education service district;

(C) The Oregon School for the Deaf;

(D) An educational program under the Youth Corrections Education Program; and

(E) A public charter school.

(2) School districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify the criteria for determining which staff positions will warrant consideration for subject individuals as defined in this rule. The local districts shall publish a list of those positions affected;

(b) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(c) Provide a clear statement of district response to notification by the Superintendent of Public Instruction or the State Board of Education regarding persons who have either been convicted, or have made a false statement as to the conviction of any of the crimes prohibiting employment that are listed in section (9) of this rule;

(d) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;

(e) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(f) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(3) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(4) School districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule immediately following offer and acceptance of employment or contract.

(5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.

(6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has made a false statement as to conviction of a crime.

(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, or have made a false statement as to the conviction of a crime shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction. The crimes listed in ORS 342.143 are:

(a) ORS 163.095 — Aggravated Murder;

(b) ORS 163.115 — Murder;

(c) ORS 163.185 — Assault in the First Degree;

(d) ORS 163.235 — Kidnapping in the First Degree;

(e) ORS 163.355 — Rape in the Third Degree;

(f) ORS 163.365 — Rape in the Second Degree;

(g) ORS 163.375 — Rape in the First Degree;

(h) ORS 163.385 — Sodomy in the Third Degree;

(i) ORS 163.395 — Sodomy in the Second Degree;

(j) ORS 163.405 — Sodomy in the First Degree;

(k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;

(l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;

(m) ORS 163.415 — Sexual Abuse in the Third Degree;

(n) ORS 163.425 — Sexual Abuse in the Second Degree;

(o) ORS 163.427 — Sexual Abuse in the First Degree;

(p) ORS 163.432 — Online sexual corruption of a child in the second degree;

(q) ORS 163.433 — Online sexual corruption of a child in the first degree;

(r) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;

(s) ORS 163.445 — Sexual Misconduct;

(t) ORS 163.465 — Public Indecency;

(u) ORS 163.515 — Bigamy;

(v) ORS 163.525 — Incest;

(w) ORS 163.547 — Child Neglect in the First Degree;

(x) ORS 163.575 — Endangering the Welfare of a Minor;

(y) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;

(z) ORS 163.675 (1985 Replacement Part) — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;

(aa) ORS 163.680 (1993 Edition) — Paying for Viewing Sexual Conduct Involving a Child;

(bb) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;

(cc) ORS 163.686 — Encouraging Child Sex Abuse in the Second Degree;

(dd) ORS 163.687 — Encouraging Child Sex Abuse in the Third Degree;

(ee) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;

(ff) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;

(gg) ORS 164.325 — Arson in the First Degree;

(hh) ORS 164.415 — Robbery in the First Degree;

(ii) ORS 166.005 — Treason;

(jj) ORS 166.087 — Abuse of Corpse in the First Degree;

(kk) ORS 167.007 — Prostitution;

(ll) ORS167.012 — Promoting Prostitution;

(mm) ORS 167.017 — Compelling Prostitution;

(nn) ORS 167.054 — Furnishing sexually explicit material to a child;

(oo) ORS 167.057 — Luring a minor;

(pp) ORS 167.062 — Sadomasochistic Abuse or Sexual Conduct in Live Show;

(qq) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;

(rr) ORS 167.080 — Displaying Obscene Materials to Minors;

(ss) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

(tt) ORS 475.848 — Unlawful manufacture of heroin within 1,000 feet of school;

(uu) ORS 475.852 — Unlawful delivery of heroin within 1,000 feet of school;

(vv) ORS 475.858 — Unlawful manufacture of marijuana within 1,000 feet of school;

(ww) ORS 475.860 — Unlawful delivery of marijuana;

(xx) ORS 475.862 — Unlawful delivery of marijuana within 1,000 feet of school;

(yy) ORS 475.864(4) — Unlawful possession of marijuana within 1,000 feet of school;

(zz) ORS 475.868 — Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

(aaa) ORS 475.872 — Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

(bbb) ORS 475.878 — Unlawful manufacture of cocaine within 1,000 feet of school;

(ccc) ORS 475.880 — Unlawful delivery of cocaine;

(ddd) ORS 475.882 — Unlawful delivery of cocaine within 1,000 feet of school;

(eee) ORS 475.888 — Unlawful manufacture of methamphetamine within 1,000 feet of school;

(fff) ORS 475.890 — Unlawful delivery of methamphetamine;

(ggg) ORS 475.892 — Unlawful delivery of methamphetamine within 1,000 feet of school;

(hhh) ORS 475.904 — Unlawful manufacture or delivery of controlled substance within 1,000 feet of school;

(iii) ORS 475.906 — Penalties for distribution to minors.

(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 or an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(11) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(12) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(13) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(14) Contested case appeals may be informally resolved through procedures specified in ORS.

(15) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(16) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

(a) Card sequence number;

(b) District submitting the cards;

(c) Date cards and Department form received;

(d) Date completed card sent to Oregon State Police;

(e) Date denial or probationary approval sent to district;

(f) Date FBI card returned to Department; and

(g) Date denial or final approval sent to district.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: ODE 25-2008, f. & cert. ef. 9-26-08; ODE 12-2009, f. & cert. ef. 12-10-09

581-022-0610

Administration of State Assessments

(1) Definitions. As used in this rule:

(a) "Accommodations" means practices and procedures in presentation, response, setting, and timing or scheduling that, when used in an assessment, provide equitable access to all students. Accommodations do not compromise the learning expectations, construct, grade-level standard, or measured outcome of the assessment as determined by the Oregon Accommodations Panel established by the Oregon Department of Education (ODE).

(b) "Allowable resources" means subject-specific resources identified as allowable in the Test Administration Manual that are made available to students by a test administrator during a testing event. Allowable resources are not student-specific, and their use does not invalidate test results. Allowable resources are the only resources that districts may give to students during administration of an Oregon Statewide Assessment.

(c) "District test coordinator" (DTC) means district personnel who ensure secure administration of Oregon Statewide Assessments as defined by Oregon Revised Statute, Administrative Rules, and the Test Administration Manual, including but not limited to supervising the work of the school test coordinators and test administrators.

(d) "Force majeure" means an extraordinary circumstance (e.g., power outage or network disturbance lasting at least one full school day) or act of nature (e.g., flooding, earthquake, volcano eruption) which directly prevents a school district from making reasonable attempts to adhere to the Test Schedule.

(e) "Impropriety" means the administration of an Oregon Statewide Assessment in a manner not in compliance with the Test Administration Manual, Oregon Revised Statute, or this rule.

(f) "Invalidation" means the act of omitting test results and student responses from the testing, reporting, and accountability systems for a given testing event for which the student may not retest.

(g) "Irregularity" means an unusual circumstance that impacts a group of students who are testing and may potentially affect student performance on the assessment or interpretation of the students' scores. A force majeure is an example of a severe irregularity.

(h) "Modification" means practices and procedures that compromise the intent of the assessment through a change in the achievement level, construct, or measured outcome of the assessment.

(i) "OAKS Online" means a mode of delivering the Oregon Assessment of Knowledge and Skills (OAKS) using a secure web-based testing application.

(j) "Oregon Statewide Assessments" means:

(A) The Oregon Assessment of Knowledge and Skills (OAKS) in:

(i) Reading/Literature;

(ii) Mathematics;

(iii) Science

(iv) Social Sciences;

(v) Writing Performance; and

(B) The English Language Proficiency Assessment (ELPA).

(k) "Paper-based administration" means administration of an OAKS assessment using one of the following ODE-provided formats:

(A) OAKS Paper/Pencil;

(B) OAKS Braille;

(C) OAKS Large Print; and

(D) OAKS Extended.

(l) "Reset" means the removal of student responses from the web-based testing application for a given testing event for which the student may retest.

(m) "School building" means facilities owned, leased, or rented by a school district, educational service district, public charter school, private school, or private alternative program.

(n) "School district" means:

(A) A school district as defined in ORS 332.002;

(B) The Oregon School for the Deaf;

(C) The Juvenile Detention Education Program as defined in ORS 326.695;

(D) The Youth Corrections Education Program as defined in ORS 326.695;

(E) The Long Term Care Program as defined in ORS 343.961; and

(F) The Hospital Education Programs as defined in ORS 343.261.

(o) "School test coordinator" (STC) means school personnel who provide comprehensive training to test administrators and monitor the testing process.

(p) "Test Administration Manual" means a manual published annually by ODE that includes descriptions of the specific policies and procedures that school districts are required to follow when administering any component of the Oregon Statewide Assessments. References to the Test Administration Manual refer to the edition in effect at the time of test administration and include appendices and any addenda published in accordance with ODE's revision policy.

(q) "Test administrator" (TA) means an individual trained to administer the Oregon Statewide Assessments in accordance with the Test Administration Manual.

(r) "Test Schedule" means the Test Schedule and Required Ship Dates published annually by ODE that includes the windows in which school districts must offer their students the Oregon Statewide Assessments and the deadline by with DTCs must ship or postmark test materials.

(2)(a) School districts, as defined in ORS 332.002, must enforce the assessment policies described in this rule for all students enrolled a school operated by the district or enrolled in a public charter school or alternative education program that is located within the boundaries of the school district.

(b) The Oregon School for the Deaf must enforce the assessment policies described in this rule for all students enrolled in that school.

(c) The Juvenile Detention Education Program and the Youth Corrections Education Program must enforce the assessment policies described in this rule for all students enrolled in that program.

(d) The Long Term Care Program and the Hospital Education Programs must enforce the assessment policies described in this rule for all students enrolled in that program.

(3) School districts must administer Oregon Statewide Assessments in accordance with the Test Administration Manual and Test Schedule published by ODE. School districts must use student assessment data in accordance with the Adequate Yearly Progress (AYP) Policy and Technical Manual published annually by ODE. The results of these assessments are used to satisfy the requirements specified in OAR 581-022-1670 and 581-022-0606 and as a method to evaluate compliance with OAR 581-022-1210.

(4) School districts must ensure that students are administered the proper Oregon Statewide Assessment and that the testing environment satisfies the following testing conditions:

(a) School districts must ensure that Oregon Statewide Assessments are administered by a trained TA who has signed an Assurance of Test Security form for the current school year on file in the district office;

(b) School districts must administer Oregon Statewide Assessments in a school building or in an environment that otherwise complies with the Test Administration Manual;

(c) School districts must apply the following criteria in deciding whether to provide a student with an accommodation during administration of an Oregon Statewide Assessment:

(A) School districts must decide whether to provide accommodations during an assessment on an individual student basis and separately for each content area to be assessed; and

(B) For students with an Individualized Education Plan (IEP) or 504 Plan, school districts must implement the assessment decision made by a student's IEP or 504 team and documented in the IEP or 504 Plan;

(d) School districts may only administer modifications to students with an IEP or 504 Plan and only in accordance with the assessment decision made by the student's IEP or 504 team and documented in the IEP or 504 Plan. Before administering an assessment using a modification, a student's IEP or 504 team must inform the student's parent that the use of a modification on an OAKS assessment will result in an invalid assessment;

(e) School districts must provide only those subject-specific allowable resources listed in the Test Administration Manual;

(f) School districts must ensure that students do not access electronic communication devices such as cellular phones or personal digital assistants (PDAs) during an assessment; and

(g) School districts must follow all additional testing conditions specified in the Test Administration Manual.

(5) Failure by a school district to comply with Section (4) of this rule constitutes an impropriety as defined in Section 1(e) of this rule. DTCs must report all potential improprieties or irregularities to ODE within one business day of learning of the potential impropriety or irregularity in accordance with the reporting procedures contained in the Test Administration Manual.

(6) The ODE may invalidate assessment results and student responses for assessments administered under conditions not meeting the assessment administration requirements specified in Sections 3 and 4 of this rule. In rare instances, ODE may reset a student assessment at the request of the school district if ODE determines that a reset would not compromise the security or validity of the assessment.

(7) ODE counts assessments that meet the following conditions as non-participants in ODE calculations of participation and does not include such assessments in ODE calculations of performance:

(a) OAKS Assessments administered using Modifications as defined in Section (1)(h) of this rule;

(b) Invalidated assessments;

(c) Assessments administered outside the testing window specified in the Test Schedule; or

(d) Assessments shipped or postmarked after the dates identified in the Test Schedule.

(8) ODE only allows extensions to the testing window or shipping deadlines identified in the Test Schedule in cases where a force majeure occurs within three days of the close of the testing window or shipping deadline and prevents a school district from meeting the deadline. Upon receiving a force majeure extension request from the school district, ODE may permit a one-day extension of the testing window or shipping deadline for each day of the force majeure, for up to five days. The force majeure extension begins on the first school day after normal operations resume and ends no later than the last school day in the month in which the testing window closes.

(9) School districts must use OAKS Online when administering OAKS assessments in the following content areas:

(a) Mathematics;

(b) Reading/Literature;

(c) Science; and

(d) Social Science.

(10) School districts may only assess students in the content areas listed in Section (9)(a)–(c) of this rule using a paper-based administration of the OAKS assessment instead of OAKS Online if the following conditions are met:

(a) For students with an IEP or 504 Plan, the student's Plan indicates separately for each content area to be assessed that the student requires a paper-based administration; or

(b) For students without either an IEP or 504 Plan, the school district determines separately for each content area to be assessed that the web-based testing application is not appropriate for the particular student to demonstrate his or her level of proficiency. The school district must base its determination on an individual evaluation of the student and on documentation of the student's needs maintained by the school district. Such documentation is subject to audits by the ODE.

(11) School districts must administer OAKS Online using the ODE-required secure browser. If a secure browser is not available or does not operate as described in the Test Administration Manual, the DTC may request a written waiver for the current school year from the ODE Assistant Superintendent of Assessment and Information Services or the Assistant Superintendent's designee prior to the administration of assessments. School districts who receive a written waiver may administer OAKS Online using a non-secure browser either until a secure browser becomes available or for the duration of the school year for which the waiver is in effect, whichever occurs sooner. In cases where the school district demonstrates that providing students with access to an internet connection would result in undue hardship to the school district, ODE may permit the school district to administer OAKS assessments using a paper-based administration.

(12) School districts may only provide students with access to printed reading passages from OAKS Online if:

(a) The TA administering the testing session approves the student's request to print a reading passage;

(b) The printer used to print reading passages is monitored by staff who have received test security training and signed an Assurance of Test Security Form for the current school year; and

(c) Staff who have received test security training and signed an Assurance of Test Security Form for the current school year securely shred the printed reading passages immediately after the testing session in which the test was administered in accordance with the Test Administration Manual.

(13) School districts must administer ELPA annually to all students determined by the school district to be eligible for English language development (ELD) services under Title III of the No Child Left Behind Act of 2001 (NCLB), regardless of whether an eligible student actually receives ELD services.

Stat. Auth.: ORS 326
Stats. Implemented: ORS 326.051
Hist.: 1EB 2-1985, f. 1-4-85, ef. 1-7-85; EB 14-1990(Temp), f. & cert. ef. 3-5-90; ODE 6-2002(Temp), f. & cert. ef. 2-15-02 thru 6-30-02; ODE 16-2002, f. & cert. ef. 6-10-02; ODE 30-2008, f. 12-16-08, cert. ef. 12-19-08; ODE 12-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies provisions relating to provision of special education and related services.
Adm. Order No.: ODE 13-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 9-1-2009
Rules Amended: 581-015-2000, 581-015-2090, 581-015-2440, 581-015-2735
Subject: The proposed division 15 rule changes serve two purposes: (1) to bring Oregon into compliance with the new consent revocation regulations enacted by the US Department of Education on December 31, 2008 and (2) to "clean up" some definitions appear-

ing in the Oregon Administrative Rules to make them consistent with the definitions contained in the Oregon Revised Statutes.

The proposed amendments to the consent regulations allow parents to unilaterally withdraw consent for the provision of special education and related services under the IDEA. It also prescribes the appropriate procedures for school districts to follow when a parent revokes consent. The proposed amendments to the definitions do not represent a change to the substance of the definitions. The purpose of the proposed definition changes is to make them more clear and understandable.

Rules Coordinator: Diane Roth—(503) 947-5791

581-015-2000
Definitions

The definitions below apply to OARs 581-015-2000–2999, unless the context indicates otherwise.

(1) "Adult student" is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-2325.

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(3) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(4) "Children with disabilities" or "students with disabilities" means children or students who require special education because of: autism; communication disorders; deafblindness; emotional disturbances; hearing impairments, including deafness; mental retardation; orthopedic impairments; other health impairments; specific learning disabilities; traumatic brain injuries; or visual impairments, including blindness.

(a) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction that adversely affects a child's educational performance. Other characteristics that may be associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Essential features are typically but not necessarily manifested before age three. Autism may include autism spectrum disorders such as but not limited to autistic disorder, pervasive developmental disorder, not otherwise specified, and Asperger's syndrome. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. However, a child who qualifies for special education under the category of autism may also have an emotional disturbance as a secondary disability if the child meets the criteria under emotional disturbance.

(b) "Communication Disorder" means the impairment of speech articulation, voice, fluency, or the impairment or deviant development of language comprehension and/or expression, or the impairment of the use of a spoken or other symbol system that adversely affects educational performance. The language impairment may be manifested by one or more of the following components of language: morphology, syntax, semantics, phonology, and pragmatics.

(c) "Deafblindness" means having both hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments

(d) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems;

(F) The term includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(e) "Hearing Impairment" means a hearing condition, whether permanent or fluctuating, that adversely affects a child's educational performance. The term includes those children who are hard of hearing or deaf.

(f) "Mental Retardation" means significantly sub average general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.

(g) "Orthopedic Impairment" means a motor disability that adversely affects the child's educational performance. The term includes impairments caused by an anomaly, disease or other conditions (e.g., cerebral palsy, spinal bifida, muscular dystrophy or traumatic injury).

(h) "Other Health Impairment" means limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that:

(A) Is due to chronic or acute health problems (e.g. a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, attention deficit disorder, attention deficit hyperactivity disorder, leukemia, Tourette's syndrome or diabetes); and

(B) Adversely affects a child's educational performance.

(i) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Specific learning disability includes conditions such as perceptual disabilities, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage.

(j) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(k) "Visual Impairment" means a visual impairment that, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

(5) "Consent" means that:

(a) The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent or adult student understands and agrees in writing to the carrying out of the activity for which consent is sought; and the consent describes that activity and lists any records that will be released and to whom; and

(c) The parent or adult student understands that the granting of consent is voluntary and may be revoked at any time in accordance with OAR 581-015-2090(4) or 581-015-2735.

(6) "Day" means calendar day unless otherwise indicated as:

(a) "Business day," which means Mondays through Fridays, other than holidays; or as

(b) "School day," which means any day, including partial days that children are in attendance at school for instructional purposes. The term

"school day" has the same meaning for all children in school, including those with and without disabilities.

(7) "Department" means the Oregon Department of Education.

(8) "EI/ECSE" means early intervention/early childhood special education and refers to services or programs for preschool children with disabilities.

(9) "Elementary or secondary school or facility" means a school or facility with any combination of grades K through 12.

(10) "Evaluation" means procedures used to determine whether the child has a disability, and the nature and extent of the special education and related services that the child needs.

(11) "General education curriculum" means the same curriculum as for children without disabilities (children without disabilities). For preschool children with disabilities, the term means age-appropriate activities.

(12) "Health assessment statement" means a written statement issued by a nurse practitioner licensed by a State Board of Nursing specially certified as a nurse practitioner, or by a physician assistant licensed by a State Board of Medical Examiners. Both a nurse practitioner and a physician assistant must be practicing within his or her area of specialty.

(13) "Homeless children" (or "homeless youth") has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC § 11434a(2).

(14) "Identification" means the process of determining a child's disability and eligibility for special education and related services.

(15) "Individualized Education Program" (IEP) means a written statement of an educational program which is developed, reviewed, revised and implemented for a school-aged child with a disability.

(16) "Individualized Family Service Plan" (IFSP) is defined in OAR 581-051-2700.

(17) "Limited English proficient" has the same meaning as in the Elementary and Secondary Education Act, 20 USC § 9101(25).

(18) "Mediation" means a voluntary process in which an impartial mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such a time as a resolution is agreed to by the parties or the mediation process is terminated.

(19) "Medical statement" means a written statement issued by a physician licensed by a State Board of Medical Examiners.

(20) "Native language", when used with respect to a person who is limited English proficient, means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child. For an individual with deafness, blindness, deafblindness or no written language, the term means the mode of communication normally used by the person (such as sign language, Braille, or oral communication). In direct contact with a child, the term means the language normally used by the child.

(21) "Parent" means:

(a) One or more of the following persons:

(A) A biological or adoptive parent of the child;

(B) A foster parent of the child,

(C) A legal guardian, other than a state agency;

(D) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(E) A surrogate parent who has been appointed in accordance with OAR 581-015-2320, for school-age children, or 581-015-2760 for preschool children.

(b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person under subsection (a) to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.

(22) "Participating agency" means a state or local agency, other than the school district responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(23) "Personally identifiable" means information that includes, but is not limited to:

(a) The name of the child, the child's parent or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; and

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(24) "Placement" means educational placement, not social service placement by a state agency.

(25) "Preschool child" means "preschool child with a disability" as defined under OAR 581-015-2700.

(26) "Private school" means an educational institution or agency not operated by a public agency.

(27) "Public agency" means a school district, an education service district, a state agency or institution, EI/ECSE contractor or subcontractor, responsible for early intervention, early childhood special education or special education.

(28) "Related services" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes, and includes early identification and assessment of disabling conditions in children. This definition incorporates the exception for services for children with surgically implanted devices, including cochlear implants, in 34 CFR 300.34(b) and the definitions for individual related services in 34 CFR 300.34(c).

(29) "School age child or children" means a child or children who have reached 5 years of age but have not reached 21 years of age on or before September 1 of the current school year.

(30) "School district" means the public education agency (school district, ESD, or state agency) that is responsible by statute, rule or contract for providing education to children with disabilities.

(31) "Services plan" is defined in OAR 581-015-2450.

(32) "Short term objectives" means measurable intermediate performance steps that will enable parents, students and educators to gage, at intermediate times during the year, how well the child is progressing toward the annual goals by either:

(a) Breaking down the skills described in the goal into discrete components, or

(b) Describing the amount of progress the child is expected to make within specified segments of the year.

(33) "Special education" means specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability "Special education" includes instruction that:

(a) May be conducted in the classroom, the home, a hospital, an institution, a special school or another setting; and

(b) May involve physical education services, speech language services, transition services or other related services designated by rule to be services to meet the unique needs of a child with a disability.

(34) "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction:

(a) To address the unique needs of the child that result from the child's disability; and

(b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(35) "Supplementary aids and services" means aids, services and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

(36) "Superintendent" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.

(37) "Surrogate parent" means an individual appointed under OAR 581-015-2320 for school age children or 581-015-2760 for preschool children who acts in place of a biological or adoptive parent in safeguarding a child's rights in the special education decision-making process.

(38) "Transition services" means a coordinated set of activities for a student with a disability that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to

facilitate the student's movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(c) Includes:

(A) Instruction;

(B) Related services;

(C) Community experiences;

(D) The development of employment and other post school adult living objectives; and

(E) If appropriate, acquisition of daily living skills and functional vocational evaluation; and

(d) May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(39) "Ward of the state" means child who is in the temporary or permanent custody of, or committed to, the Department of Human Services or Oregon Youth Authority through the action of the juvenile court.

Stat. Auth.: ORS 343.041, 343.045, 343.155 & 343.223

Stats. Implemented: ORS 343.045, 343.155, 343.223, 34 CFR 300.5, 300.6, 300.8, 300.11, 300.15, 300.19, 300.22, 300.27, 300.28, 300.29, 300.30, 300.34, 300.37, 300.39, 300.42, 300.43 & 300.45

Hist.: 1EB 8-1978, f. & ef. 3-3-78; 1EB 35-1978, f. & ef. 10-5-78; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 5-1985, f. 1-30-85, ef. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93; EB 18-1994, f. & cert. ef. 12-15-94; EB 22-1995, f. & cert. ef. 9-15-95; ODE 10-2000, f. & cert. ef. 5-3-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0005, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 13-2009, f. & cert. ef. 12-10-09

581-015-2090

Consent

(1) Consent for initial evaluation:

(a) The school district must provide notice under OAR 581-015-2310 and obtain informed written consent from the parent or adult student before conducting an initial evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2130 through 581-015-2180.

(A) Consent for initial evaluation may not be construed as consent for the initial provision of special education and related services.

(B) The school district must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for special education services.

(b) If a parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation, does not respond to a request for consent for an initial evaluation, or revokes consent for an initial evaluation, the school district may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

(c) Consent for initial evaluation for a child who is a ward of the state may be obtained under OAR 581-015-2095(2).

(2) Consent for initial provision of services:

(a) A school district must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If a parent or adult student does not respond or refuses to consent for initial provision of special education and related services or revokes consent for the initial provision of special education and related services, the school district may not seek to provide special education and related services to the child by using mediation or due process hearing procedures.

(d) If a parent or adult student refuses to grant consent for initial provision of special education and related services, does not respond to a request to provide such consent, or revokes consent for the initial provision of special education and related services:

(A) The school district will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the school district requests consent; and

(B) The school district is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district requests such consent.

(e) If, at any time subsequent to the initial provision of special education and related services, the parent or adult student revokes consent in writing for the continued provision of special education and related services, the school district

(A) May not continue to provide special education and related services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services; and,

(B) Is not required to amend the student's education records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

(3) Consent for reevaluation:

(a) A school district must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2095.

(b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the school district may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these procedures.

(4) Revocation of consent:

(a) A parent or adult student may revoke consent at any time before the completion of the activity or action for which they have given consent.

(A) A parent or adult student may revoke consent for an evaluation or reevaluation that has not yet been conducted.

(B) A parent or adult student may revoke consent for the provision of special education services in writing at any time before or during the provision of those services.

(b) If a parent or adult student revokes consent, that revocation is not retroactive.

(5) Other consent requirements:

(a) The school district must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2195(3).

(b) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent does not respond to a request for consent:

(A) The school district may not use mediation or due process hearing procedures to seek consent; and

(B) The school district is not required to consider the child as eligible for special education services.

(c) A refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the school district, except as provided in this rule.

Stat. Auth.: ORS 343.041, 343.045, 343.055, 343.155, 343.164

Stats. Implemented: ORS 343.155, 343.164, 34 CFR 300.9, 300.300

Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 37-1978, f. & ef. 10-5-78; EB 9-1993, f. & cert. ef. 3-25-93; EB 11-1995, f. & cert. ef. 5-25-95; ODE 16-1999, f. & cert. ef. 9-24-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0039, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09

581-015-2440

Protections for Children Not Yet Eligible for Special Education

(1) The provisions of OAR 581-015-2400 through 581-015-2435 apply to children not yet identified as children with disabilities if the school district had knowledge that the child was a child with a disability.

(2) For the purposes of subsection (1) of this rule, a school district "had knowledge" if, before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the child expressed a concern in writing to supervisory or administrative school personnel, or a teacher of the child, that the child is in need of special education and related services;

(b) The parent of the child requested a special education evaluation of the child; or

(c) The teacher of the child, or other school personnel, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or other supervisory personnel of the district.

(3) Notwithstanding subsections (1) and (2) of this rule, a school district will not be considered to have had knowledge that the child was a child with a disability if:

(a) The parent of the child has not allowed an evaluation of the child or has refused services under OAR 581-015-2090;

(b) The child has been evaluated in accordance with OAR 581-015-2090–581-015-2180, and the child was determined not eligible; or

(c) The parent or adult student has revoked consent for the continued provision of special education and related services pursuant to OAR 581-015-2090(4)(a)(B) or 581-015-2735(4)(a)(B).

(4) If the school district did not have knowledge before taking disciplinary action against the child, the district may take the same disciplinary actions as applied to children without disabilities who engaged in comparable behaviors. However:

(a) If a special education evaluation is requested or if the school district initiates a special education evaluation, the evaluation must be conducted in an expedited manner.

(b) Until the evaluation is completed, the child remains in the educational placement determined by school personnel, which can include suspension, expulsion, or placement in alternative education under OAR 581-021-0071.

(c) If, on completion of the evaluation, the child is determined to be a child with a disability, the school district must conduct an IEP meeting to develop an IEP and determine placement and must provide special education and related services.

(d) The provisions of OAR 581-015-2400–581-015-2435 and 581-015-2445 apply beginning on the date of the eligibility determination.

Stat. Auth.: ORS 343.041, 343.045 & 343.155
Stats. Implemented: ORS 343.155, 34 CFR 300.534
Hist.: ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0558, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09

581-015-2735
Parent Consent for ECSE

(1) Consent for initial evaluation:

(a) The public agency must provide notice under OAR 581-015-2745 and obtain informed written parental consent before conducting an initial ECSE evaluation to determine if a child qualifies as a child with a disability under OAR 581-015-2795. Consent for initial evaluation may not be construed as consent for the initial provision of ECSE services.

(b) The public agency must make reasonable efforts to obtain the informed consent from a parent for an initial evaluation to determine a child's eligibility for ECSE services.

(c) If a parent of a child enrolled in public preschool or seeking to be enrolled in public preschool does not provide consent for an initial evaluation, does not respond to a request for consent for an initial evaluation, or revokes consent for an initial evaluation, the public agency may, but is not required to, pursue the initial evaluation of the child using mediation or due process hearing procedures. A public agency does not violate its child find obligations if it declines to pursue the evaluation using these procedures.

(2) Consent for initial provision of services:

(a) The contractor or subcontractor must obtain informed consent from the parent of the child before the initial provision of ECSE services to the child.

(b) The contractor or subcontractor must make reasonable efforts to obtain informed consent from the parent for the initial provision of ECSE services to the child.

(c) If a parent does not respond or refuses to consent for initial provision of ECSE services or revokes consent for the initial provision of ECSE services, the contractor or subcontractor may not seek to provide ECSE services to the child by using mediation or due process hearing procedures.

(d) If a parent refuses to grant consent for initial provision of ECSE services, does not respond to a request to provide consent for the initial provision of ECSE services, or revokes consent for such services:

(A) The contractor or subcontractor will not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the ECSE services for which the contractor or subcontractor requests consent; and

(B) The contractor or subcontractor is not required to convene an IFSP meeting or develop an IFSP for the child for the ECSE services for which consent is requested.

(e) If, at any time subsequent to the initial provision of ECSE services, the parent of a student revokes consent in writing for the continued provision of ECSE services, the school district

(A) May not continue to provide ECSE services to the student, but must provide prior written notice in accordance with OAR 581-015-2310 before ceasing the provision of special education and related services; and,

(B) Is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(3) Consent for reevaluation:

(a) The public agency must obtain informed parent consent before conducting any reevaluation of a child with a disability, except as provided in subsections (b) and OAR 581-015-2740(3).

(b) If a parent refuses to consent to the reevaluation or revokes consent for the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using mediation or due process hearing procedures. A district does not violate its child find obligations if it declines to pursue the reevaluation using these procedures.

(c) If, after reasonable efforts to obtain parent consent, the parent does not respond, the public agency may conduct the reevaluation without consent, unless the reevaluation is an individual intelligence test or test of personality.

(4) Revocation of consent:

(a) A parent may revoke consent at any time before the completion of the activity or action for which they have given consent.

(A) A parent may revoke consent for an evaluation or reevaluation that has not yet been conducted.

(B) A parent or adult student may revoke consent for the provision of special education services in writing at any time before or during the provision of those services.

(b) If a parent or adult student revokes consent, that revocation is not retroactive.

(5) Other consent requirements:

(a) The public agency must document its reasonable efforts to obtain parent consent in accordance with OAR 581-015-2755(2)(b).

(b) A parent's refusal to consent to one service or activity may not be used to deny the parent or child any other service, benefit, or activity of the contractor or subcontractor, except as provided in this rule.

(c) If a parent of a child who is placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent does not respond to a request for consent:

(A) The public agency may not use mediation or due process hearing procedures to seek consent; and

(B) The public agency is not required to consider the child as eligible for ECSE services.

Stat. Auth.: ORS 343.475, 343.531
Stats. Implemented: ORS 343.475, 343.531, 34 CFR 300.300
Hist.: EB 4-1995, f. & cert. ef. 1-24-95; ODE 24-2000, f. & cert. ef. 10-16-00; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0939, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 13-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies rules relating to Long Term Care and Treatment Programs that provide educational services.
Adm. Order No.: ODE 14-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Adopted: 581-015-2571, 581-015-2572, 581-015-2573, 581-015-2574
Rules Amended: 581-015-2270, 581-015-2275, 581-015-2570
Subject: The Department of Education contracts with districts and programs to provide education to children in Long Term Care and Treatment (LTCT) programs. The department receives funding from the State School Fund and from an appropriation from the General Fund for distribution to the districts and programs. The rule amendments break apart the current rule into five separate rules and clarify language in the rules. The rules specify program eligibility and approval, program funding formula, resident district obligations and requirements for student due process hearings.
Rules Coordinator: Diane Roth—(503) 947-5791

581-015-2270
Standards for Approval of Private Schools for School-age Children

(1) Applicability:

(a) This rule applies to private schools that intend to provide special education and related services to school-age children with disabilities who are placed in the school by a school district.

(b) This rule does not apply to educational programs operated by public agencies at treatment centers under OAR 581-015-2570 to 581-015-2574.

(c) This rule does not apply to private alternative schools registered under OAR 581-021-0072 if the contracting school district is providing the special education and related services in the student's IEP.

(2) Requirement for approval: Private schools that intend to provide special education under a written agreement with a school district must submit an application for initial approval and an annual application for renewal to the Department on a form provided by the Department in accordance with this rule.

(3) Initial approval: The application for initial approval must include:

(a) Documentation that the private school meets the following requirements:

(A) The applicable fire codes of the local or state fire marshal, including an annual inspection and documentation of correction of any violations;

(B) Facility occupancy and use standards set forth by the appropriate local building inspectors;

(C) Health standards of the county health department (including annual inspection and correction of any violations for environmental health, food service, and communicable disease); and

(D) OAR 581-022-1420 Emergency Plans and Safety Programs;

(E) If the private school acquired or leased a building after October 12, 1988, a copy of the Asbestos Management Plan in accordance with OAR 581-022-1430; and

(F) OAR 581-022-1440 Infectious Diseases including Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV), and Hepatitis B and C

(b) Documentation that the private school:

(A) Has in effect commercial general liability insurance with policy limits of at least $500,000 per school site.

(i) The private school must provide the Department with the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy.

(ii) If policy will expire during the approval year, the private school must submit documentation to the Department before the expiration date to maintain approval status.

(B) Has procedures in place regarding staff hiring and evaluation that require:

(i) The careful checking of personal and professional references for all potential employees;

(ii) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees; and

(iii) A regular schedule of staff evaluations of the competencies of all employees to work with children.

(C) Has a policy of nondiscrimination;

(D) Provides hours of instruction that meet state standards;

(E) Grants credit toward high school graduation consistent with OAR 581-022-1130 Diploma Requirements and 581-022-1350(2) and (3) Alternative Education Programs, or, if appropriate, an alternate document of completion as permitted under ORS 343.295.

(c) Assurances that the private school:

(A) Uses curriculum content, teaching practices and equipment that do not violate the constitutional prohibition on religious entanglement;

(B) Implements the special education services as described in each child's individualized education program in accordance with the contract between the private school and the placing school district;

(C) Maintains the confidentiality of student records consistent with state and federal laws relating to student records;

(D) Notifies the Department and the contracting public agency of any written complaint it receives concerning the special education programs and services being provided;

(E) Notifies the contracting public agency of the need for any change in a child's educational program and does not make changes in a child's IEP or special education program or services, or placement, unless the contracting school district consents to the changes; and

(F) Initiates and convenes IEP meetings only when this assistance is requested by a written agreement with the contracting school district in accordance with OAR 581-015-2265;

(G) Evaluates a child only when this assistance is requested by a written agreement with the contracting school district;

(H) Has at least one individual qualified to provide special education and licensed according to rules established by the Teacher Standards and Practices Commission available to serve the population of students described in the application. Private schools may provide special education and related services to students with disabilities placed by public agencies by employing professionals who are licensed within their own specialties. Pursuant to OAR 584-036-0010, these personnel are not required to hold licensure from the Teacher Standards and Practices Commission.

(I) Ensures that students have the opportunity to participate in district-wide and state-wide assessments of student achievement; and

(J) Meets the state curriculum standards set pursuant to OAR 581-022-1210.

(4) Renewal: The annual application for renewal of approval must include:

(a) Documentation that the private school meets:

(A) The requirements in subsection (3)(a)(A) and (3)(a)(C);

(B) If remodeled since the previous approval, the requirement in subsection (3)(a)(B);

(b) Documentation that the private school has insurance in accordance with subsection (3)(b)(A);

(c) Assurances that the private school meets the requirements in subsection (3)(a)(D)–(F), (3)(b)(B)–(E); and (3)(c).

Stat. Auth.: ORS 343.041, 343.045 & 343.055

Stats. Implemented: 343.221

Hist.: 1EB 28-1978, f. & ef. 7-20-78; EB 18-1994, f. & cert. ef. 12-15-94; ODE 18-2000, f. & cert. ef. 5-23-00; ODE 2-2003, f. & cert. ef. 3-10-03; ODE 1-2004, f. & cert. ef. 1-15-04; ODE 10-2004, f. & cert. ef. 8-4-04; Renumbered from 581-015-0126, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2009, f. & cert. ef. 12-10-09

581-015-2275

Standards for Approval of Private Preschools

(1) Applicability:

(a) This rule applies to private preschools that intend to provide a preschool setting, early intervention (EI) or early childhood special education (ECSE) and related services, in accordance with an individual family service plan IFSP to children with disabilities ages birth to five placed in the preschool by the contractor or subcontractor.

(b) This rule does not apply to:

(A) Private preschools that include kindergarten (which must apply for approval under OAR 581-015-2265);

(B) Public agencies providing educational programs at treatment centers under OARs 581-015-2570 to 581-015-2574;

(C) Public programs including preschools operated by school districts. Oregon Head Start Prekindergarten, Head Start, Migrant Seasonal Head Start, Tribal Head Start, Early Head Start, Migrant Education preschools, and Even Start Family Literacy programs.

(2) Requirement for approval:

(a) Private preschools that intend to provide EI or ECSE and related services and/or a preschool setting under a written agreement with an EI/ECSE contractor or subcontractor must submit an application for initial approval and an annual application for renewal to the Department on a form provided by the Department, in accordance with this rule.

(b) A current Certificate of Approval from the Department of Employment's Child Care Division may be submitted in place of certain requirements as specified below, provided that:

(A) The Certificate of Approval is maintained throughout the approval period; or

(B) If the Certificate of Approval will expire during the approval term, the private school submits a new Certificate of Approval to the Department before the expiration date to maintain approved status.

(3) Initial approval:

(a) The application for initial approval must include documentation that the private preschool meets the following requirements:

(A) The applicable fire codes of the local or state fire marshal, including an annual inspection and documentation of correction of any violations;

(B) A copy of the initial facility occupancy and use standards set forth by the appropriate local building inspector;

(C) Health standards of the county health department (including annual inspection and correction of any violations for environmental health, food service, and communicable disease);

(D) The requirements set by OAR 581-022-1420 Emergency Plans and Safety Programs; and

(E) Procedures for staff hiring and evaluation that require:

(i) The careful checking of personal and professional references for all potential employees;

(ii) Criminal background checks in compliance with ORS 181.539, 326.603, 326.607 and 342.232 for all potential employees and evidence that these have been completed; and

(iii) A regular schedule of staff evaluations of the competencies of all employees to work with children.

(b) The application for initial approval must also include the following:

(A) Documentation that the private preschool has in effect commercial general liability insurance with policy limits of at least $500,000 per school site.

(i) The private preschool must provide the Department with the name of the insurance company, the number of the insurance policy, the policy limits covered by the policy, and the effective term of the policy.

(ii) If policy will expire during the approval year, the private school must submit documentation to the Department before the expiration date to maintain approval status.

(B) The private school's policy of nondiscrimination.

(c) The application for initial approval must include assurances that the private preschool:

(A) Has at least one individual who is qualified to provide EI/ECSE and meets the requirements of OAR 581-015-1100(2) and (3);

(B) Uses curriculum content, teaching practices and equipment that do not violate the constitutional prohibition on religious entanglement;

(C) Implements each child's IFSP in accordance with the private preschool's written agreement with the EI/ECSE contractor or subcontractor responsible for the child's placement;

(D) Maintains the confidentiality of student records consistent with state and federal laws relating to student records;

(E) Notifies the Department and the contracting EI/ECSE contractor or subcontractor of any written complaint it receives for the EI/ECSE programs and services being provided;

(F) Notifies the contracting EI/ECSE contractor or subcontractor of the need for any change in a child's educational program and does not make changes in a child's IFSP, program, services, or placement, unless the contracting EI/ECSE contractor or subcontractor consents to the changes;

(G) Initiates and convenes the IFSP only when this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor in accordance with OAR 581-015-2265;

(H) Evaluates a child only when this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor; and

(I) Provides the opportunity for a child to participate in the Early Childhood assessment if this assistance is requested by a written agreement with the contracting EI/ECSE contractor or subcontractor.

(d) A current Certificate of Approval may be submitted in place of the requirements in subsection (3)(a).

(4) Renewal: The annual application for renewal of approval must include:

(a) Documentation that the private preschool:

(A) Meets the requirements in subsection (3)(a)(A) and (C);

(B) If remodeled since the previous approval, meets the requirement in (3)(a)(B); and

(C) Has insurance in effect in accordance with subsection (3)(b)(A);

(b) Assurances that the private preschool meets the requirements in subsections (3)(a)(D)–(E), (3)(b)(B)–(C), and (3)(c).

(c) A current Certificate of Approval may be submitted in place of requirements in subsection (4)(a)(A)–(B).

Stat. Auth.: ORS 343.041, 343.045, 343.055
Stats. Implemented: ORS 343.465, 343.475 & 343.495
Hist.: ODE 10-2007, f. & cert. ef. 4-25-07; ODE 14-2009, f. & cert. ef. 12-10-09

581-015-2570
Definitions and Purposes of Long-Term Care and Treatment (LTCT) Programs

(1) Definitions in this rule apply to OARs 581-015-2570 to 581-015-2574:

(a) "Contracting school district" means the school district, the education service district, a program operated under the auspices of the State Board of Higher Education, or a program operated under the auspices of the Oregon Health and Science University Board of Directors with which the Department of Education contracts for the provision of educational services.

(b) "Education program" means those activities provided under contract between a contracting school district and the Department of Education, which provide a public education to preschool or school-aged children placed by a state agency in a Psychiatric Day Treatment program or a Psychiatric Residential Treatment Facility;

(c) "Intermediate care facility" is defined in ORS 442.015(21);

(d) "Psychiatric Day Treatment Programs" are defined in OAR 309-032-1110(68);

(e) "Psychiatric Residential Treatment Facility" is defined in OAR 309-032-1110(69).

(f) "Resident district" means the resident district of a student as defined under ORS 339.133 and 339.134.

(g) "State agency" means the Oregon Department of Human Services (DHS), the Oregon Youth Authority (OYA), or their designee.

(h) "Treatment program" means the long-term day or residential treatment services provided by a private nonprofit or public agency and provided under contract with a state agency or designee of the state agency. Intermediate care facilities are excluded from this definition.

(2) The purposes of the education program under OARs 581-015-2570 to 581-015-2574 are as follows:

(a) To serve children placed by a state agency for needs other than educational;

(b) To serve children placed by a state agency who require schooling in a protected environment in order to protect the health and safety of themselves and/or others; and

(c) To extend the treatment process into the school day to fully implement the treatment plans of children placed by a state agency.

Stat. Auth. ORS 326.051 & 343.961
Stats. Implemented: ORS 343.961
Hist.: 1EB 23-1986, f. & ef. 7-14-86; EB 7-1988, f. & cert. ef. 1-15-88; EB 22-1990, f. & cert. ef. 5-18-90; EB 10-1991(Temp), f. & cert. ef. 7-15-91; EB 31-1991, f. & cert. ef. 12-18-91; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0044, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 34-2007, f. & cert. ef. 12-12-07; ODE 14-2009, f. & cert. ef. 12-10-09

581-015-2571
Long-Term Care and Treatment (LTCT) Education Program Eligibility and Approval

(1) The Department of Education shall base education program eligibility on the following:

(a) An agency may offer several different treatment programs serving different populations. For the purposes of determining eligibility for funding and funding levels for education programs, each program will be considered separately. Temporary shelter programs, which would not otherwise meet the eligibility criteria provided in OAR 581-015-2571(1)(b), are eligible for funding only when attached to an eligible treatment program and the children served are primarily awaiting placement in such programs;

(b) To be eligible for an education program, a treatment program must submit an application to the Department's Long-Term Care and Treatment Program demonstrating that the program meets all of the following criteria:

(A) Either:

(i) A letter of approval from the Addictions and Mental Health Division certifying that the psychiatric day treatment program or psychiatric residential treatment facility meets standards applicable for intensive children's mental health services under OAR 309-032-1120; or

(ii) Documentation that the program provides long-term residential treatment of children placed by a state agency or designee of the state agency;

(B) Meet state licensing requirements for a private child-caring agency;

(C) Be operated by a nonprofit corporation or a political subdivision of the state;

(D) Demonstrate through client admissions, staff hiring practices, and client access to services that it meets requirements for ORS 659.850 relating to the prevention of discrimination; and

(E) Demonstrate through curriculum content, teaching practices, and facilities management that the constitutional requirements regarding no religious entanglement are met.

(2) The Department of Education (ODE) is responsible for approving the educational program under this rule and shall base approval on the following:

(a) The contracting school district must ensure that the education program is operated in compliance with a written agreement with the Department that specifies, at a minimum, the following services to be provided:

(A) Each child who is not a child with a disability under OAR 581-015-2130 through 581-015-2180 has a personalized educational plan that includes assessment, goals, services, and timelines;

(B) Information pertaining to students and educational programs is provided to the Department in an accurate and timely manner;

(C) Children have opportunities to be educated in the least restrictive environment;

(D) The education program is developed and implemented in conjunction with the treatment program; and

(E) Other requirements as identified by the Department.

(b) The Department must ensure that the education program is operated in compliance with a written agreement with the contracting school district.

(c) Final determinations concerning the eligibility of treatment programs for education funding are at the discretion of the State Superintendent of Public Instruction.

(3) Funding Procedures: Upon receipt of an application for funding for a program under this rule, the Department of Education will:

(a) Determine if the treatment program meets the eligibility criteria in this rule within 45 business days;

(b) If necessary, request additional funding or a limitation for funding from the State Legislature; and

(c) Fund the program according to the formula in OAR 581-015-2572 only when sufficient funds are available for the program under ORS 342.243 and an appropriation from the General Fund as determined by the Department.

Stat. Auth. ORS 326.051 & 343.961
Stats. Implemented: ORS 343.243 & 343.961
Hist.: ODE 14-2009, f. & cert. ef. 12-10-09

581-015-2572
Long-Term Care and Treatment (LTCT) Education Program Funding Formula

The Department of Education shall provide funding to education programs based on the following:

(1) For the purpose of allocation of state funds under this rule, the following definitions apply:

(a) "Net operating expenditures (NOE)" means the sum of expenditures as defined in ORS 327.006(6), divided by the average daily membership of the school district, or in the case of an ESD, its districts, which contracts for education services offered in the program;

(b) "Service level factors" means:

(A) 1.75 for students in Psychiatric Day Treatment Programs; or

(B) 2.00 for students in Psychiatric Residential Treatment Facilities.

(c) "State agency slots" means the number of slots available for students in education programs under ORS 343.961, as reported to the Department by a state agency for the school year;

(2) The Department shall use the following formula for distribution of funding:

(Service level factors) x [(the contracting district's NOE in year one) x (state agency slots for year one) + (the contracting district's NOE in year two) x (state agency slots for year two)] = total state funding contract amount;

(3) If the total state funding available for all LTCT programs is less than the total state funding needed to fully fund each LTCT contract, the amount of state funding in each contract determined under paragraph (b) of this subsection will be prorated.

(4) A special needs fund is established at the Oregon Department of Education which will be up to five percent of the total state monies made available for the LTCT program during a biennium:

(a) Individual applications may be made to the Department for this fund to cover unexpected, emergency expenses;

(b) Funds not utilized under this paragraph for the first year of the biennium will be carried forward by the Department to the next fiscal year.

Stat. Auth. ORS 326.051 & 343.961
Stats. Implemented: ORS 343.243 & 343.961
Hist.: ODE 14-2009, f. & cert. ef. 12-10-09

581-015-2573
Due Process Hearings for Long-Term Care and Treatment (LTCT) Education Programs

(1) The following shall apply to Due Process Hearings involving students attending education programs:

(a) The contracting school district is the "school district" for the purposes of carrying out the procedures required by OAR 581-015-2340 through 581-015-2385;

(b) The issues of the hearing do not include the placement by the state agency or its designee for long-term treatment;

(c) Costs under OAR 581-015-2385(1)(a) that are in excess of the contracted educational program budget will be paid by the Oregon Department of Education;

(d) The Oregon Department of Education is a party to such proceedings and is responsible to provide additional educational services ordered by an administrative law judge that are beyond the scope of the written agreement between the Department and the contracting school district under OARs 581-015-2570 through 581-015-2574.

(2) The Department is not responsible for paying for transportation, care, treatment or medical expenses.

Stat. Auth. ORS 326.051 & 343.961
Stats. Implemented: ORS 343.243 & 343.961
Hist.: ODE 14-2009, f. & cert. ef. 12-10-09

581-015-2574
Resident District Obligations for Students in Long-Term Care and Treatment (LTCT) Education Programs

(1) The resident district must provide or pay for the daily transportation to and from a Psychiatric Day Treatment Program in which a resident student is enrolled as follows:

(a) The resident district may directly transport or contract for transportation services with the agency, an adjacent school district, an education service district or a private carrier as long as the subcontractor is operating under the provision of ORS 801.455, 801.460, and 820.100 through 820.150, or is exempt from these regulations by operating under the Public Utility Commission, ORS Chapter 767, or city regulations included in ORS Chapter 221.

(b) Subject to agreement with the parent or guardian, the resident district may reimburse a parent or guardian for the transportation of a child at the per mile rate established by that district.

(c) Transportation must be provided by the resident district even when the education calendar of the Psychiatric Day Treatment program differs from that of the resident district.

(2) The resident district may claim reimbursement for transportation costs under ORS 327.033.

(3) The resident district must participate in all individualized education program or personalized education plan meetings involving its students.

Stat. Auth. ORS 326.051 & 343.961
Stats. Implemented: ORS 343.961
Hist.: ODE 14-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies charter school rules relating to financial management system.
Adm. Order No.: ODE 15-2009(Temp)
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09 thru 6-8-10
Notice Publication Date:
Rules Adopted: 581-020-0333, 581-020-0335, 581-020-0362
Rules Amended: 581-020-0301, 581-020-0359
Subject: Senate Bill 767 requires public charter schools to have a sound financial management system. The rule provides the minimum requirements for this system.
Rules Coordinator: Diane Roth—(503) 947-5791

581-020-0301
Public Charter School Proposal Review and Approval Process

(1) An applicant must submit proposals to the local school district board and the State Board of Education.

(2) Upon receipt of a proposal from an applicant, the school district board will ensure that the proposal addresses all of the required components as set out in ORS 338.045(2). Within 15 business days of the receipt of a proposal, the school district will notify the applicant as to the completeness of the proposal. Proposals that minimally address or leave out any of the required components are not complete and may be returned to the applicant. A proposal that included, for example, a reprinting of the charter school statutes as its response to a required component, would minimally address that component and would not be complete. A proposal that addressed a required component based on an incorrect budget assumption or in a manner that is unsatisfactory to the local school district would nonetheless be complete.

(3) Within 60 days of the notification to the applicant of the school district's receipt of a complete proposal, the school district board must hold a public hearing on the proposal in accordance with Oregon public meeting laws (ORS 192.610 through 192.695, 192.710, and 192.990).

(4) The school district board must evaluate the proposal in good faith using the following criteria:

(a) Demonstrated, sustainable support for the public charter school by teachers, parents, students and other community members, including comments received at the public hearing held under section (3) above;

(b) Demonstrated financial stability of the public charter school, including the demonstrated ability of the school to have a sound financial management system in place at the time the school begins operation;

(c) Capability of the applicant, in terms of support and planning, to provide students with comprehensive instructional programs;

(d) Capability of the applicant, in terms of support and planning, to provide academically low achieving students with comprehensive instructional programs;

(e) The extent that the proposal addresses the components required in ORS 338.045, including any additional components or information required under local school district board policy;

(f) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact on the quality of the public education of students residing in the school district where the public charter school is located;

(g) Whether there are arrangements for any special education and related services for children with disabilities pursuant to ORS 338.165; and

(h) Whether there are alternative arrangements for students and for teachers and other school employees who choose not to attend or who choose not to be employed by the public charter school.

(5) Within 30 days of the public hearing, the district school board must either approve or deny the proposal. Written notice of the decision must be sent to applicants. Such notice must include reasons and suggestions for remediation for all proposals that are denied.

(6) An applicant may revise and resubmit the proposal to the district school board.

(7) The local school board must approve or disapprove the revised proposal within 20 days of receipt.

(8) The applicant must forward a copy of the written notice of approval to the State Board of Education.

(9) An applicant whose proposal is not approved by the local school board may request a review of that decision by the State Board of Education under the procedure set out in OAR 581-020-0330.

Stat. Auth.: ORS 338.025
Stats. Implemented: ORS 338.055
Hist.: ODE 13-2000, f. & cert. ef. 5-3-00; ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10

581-020-0333
Sound Financial Management System

(1) A charter school applicant must include a description of a sound financial management system within the proposal submitted to the local school district board and the State Board of Education.

(2) A public charter school must have in place a sound financial management system at the time the school begins operation.

(3) A sound financial system used by a public charter school must minimally have:

(a) Accounting and financial record keeping procedures which reflect Generally Accepted Accounting Principles (GAAP);

(b) Procedures reflecting cash management, investment practices and financial reporting;

(c) Balance sheets reflecting received summary of assets and liabilities;

(d) Segregation of duties of those providing reports; and

(e) Processes reflecting annual review of such systems by both charter school and sponsor.

Stat. Auth.: ORS 338.025
Stat. Implemented: ORS 338
Hist.: ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10

581-020-0335
Annual Financial Reporting

(1) A public charter school shall have an annual audit of the accounts of the public charter school prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990.

(2) After an audit, the public charter school shall forward the following shall be forwarded to the sponsor and the Department of Education:

(a) A copy of the annual audit;

(b) Any statements from the public charter school that show the results of all operations

and transactions affecting the financial status of the public charter school during the preceding annual audit period for the school; and

(c) An electronic copy of any balance sheet containing a summary of the assets and liabilities of the public charter school and related operating budget documents as of the closing date of the preceding annual audit period for the school.

(3) A charter school satisfies the requirements of section (2)(b) of this rule if the balance sheets submitted by the school summarize the operations and transactions affecting the financial status of the school.

(4) A charter school may satisfy the requirement under ORS 338.095 to send the documents described in section (2) of this rule to the State Board of Education by sending the documents to the department as the state board's designee.

Stat. Auth.: ORS 338.025
Stat. Implemented: ORS 338.095
Hist.: ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10

581-020-0359
Process to Renew Charter

(1) A public charter school governing body must request renewal of the charter (contract) by the sponsor in writing at least 180 days before expiration of the charter.

(2) When a sponsor has received a written request from a public charter school governing body, the sponsor must schedule and hold a public hearing on the renewal request within 45 days from the receipt of the request for renewal.

(3) Within 10 days after the public hearing, the sponsor must notify the public charter school governing body of the sponsor's intent to renew or not renew the charter.

(4) Within 20 days after the public hearing, the sponsor must either:

(a) Renew the charter; or

(b) State in writing the reasons for denying the renewal of the charter.

(5)(a) A sponsor must base its decision to renew or not renew a charter on a good faith evaluation of whether the charter school:

(A) Is in compliance with state and federal laws;

(B) Is in compliance with the terms of the prior charter;

(C) Is meeting or working toward meeting the student performance goals and agreements specified in the charter or any other written agreements between the sponsor and the public charter school governing body;

(D) Is fiscally stable and used the sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter; and

(E) Is in compliance with any renewal criteria specified in the previous charter, if any.

(b) As used in this section, "good faith evaluation" means an evaluation of all criteria required by this section resulting in a conclusion that a reasonable person would come to who is informed of the law and the facts before that person.

(6) The sponsor must base the evaluation described in section (5) of this rule primarily on a review of the public charter school's annual performance reports, annual audit of accounts and annual site visit and review as required by ORS 338.095 and any other information mutually agreed upon by the public charter school governing body and the sponsor.

(7)(a) If the sponsor renews the charter, the sponsor and public charter school governing body shall negotiate in good faith a new charter within 90 days after the date on which the sponsor approved the renewal of the charter, unless both parties agree to an extension of time.

(b) If the sponsor and the charter school governing body have not executed a new charter agreement within 90 days after the date on which the sponsor approved the renewal of the charter or an alternative date agreed to by both parties, the charter shall be considered not renewed and the sponsor must state in writing the reasons for denying the renewal of the charter within 100 days after the date on which the sponsor originally approved the renewal of the charter or by a specified alternative date agreed to by both parties.

(c) As used in this section, "negotiate in good faith" means to negotiate with an honest exchange of the facts of the matters under consideration with a view to obtaining agreement of each of the parties involved.

(8) If the sponsor does not renew the charter, the public charter school governing body may address the reasons for nonrenewal and resubmit its request to the sponsor within 30 days after the date on which the sponsor notified the public charter school governing body of the decision not to renew the charter. If a sponsor receives a revised request under this section, the sponsor shall review the request using the process required by sections (2) to (7) of this rule. A public charter school governing board may only submit a revised request once under this section unless otherwise specified by the sponsor.

(9) Notwithstanding sections (1) to (8) of this rule, a sponsor and a public charter school governing body may agree in the charter of the school to a timeline for renewing the charter that is different from the timeline required by sections (1) to (8) of this rule.

(10) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to determine if the charter of a school sponsored by the state board should be renewed. The Superintendent or designee shall follow the procedures and timelines required by this rule. This delegation to the Superintendent or designee includes, but is not limited to:

(a) Determining the form, contents, and timelines of the renewal;

(b) Determining the records required for determining the renewal and ordering the production of those records from the public charter school governing body and establishing timelines for the production of those records;

(c) Requiring the charter school governing body to respond to written or oral inquiries related to the sponsorship;

(d) Delegating the sponsorship function to Department of Education staff or a hearings officer to conduct a hearing and to issue a proposed order; and

(e) Issuing a final order.

(11) If the sponsor does not renew the charter based on the revised request for renewal submitted under section (8) of this rule, the public charter school governing body may:

(a) If the sponsor is a school district, appeal the decision of the sponsor to the State Board of Education under OAR 581-020-0361.

(b) If the sponsor is the State Board of Education, seek judicial review of the final order under ORS 183.484.

Stat. Auth.: ORS 338.025
Stats.. Implemented: ORS 338.065
Hist.: ODE 9-2008, f. & cert. ef. 3-21-08; ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10

581-020-0362
Process for Sponsor to Terminate Charter

(1) A sponsor may terminate a charter for failure to:

(a) Meet the terms of the approved charter or any requirement of ORS Chapter 338, unless waived by the State Board of Education;

(b) Meet the requirements for student performance as established in the approved charter;

(c) Correct any violation of a federal or state law described in ORS 338.115;

(d) Maintain insurance as described in the approved charter;

(e) Maintain financial stability; or

(f) If the charter is terminated on or after July 1, 2011, failure to maintain, for two or more consecutive years, a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter under 338.065.

(2) A sponsor intending to terminate an approved charter must:

(a) Notify the public charter school governing body in writing at least 60 calendar days prior to the proposed effective date of the termination;

(b) Include in the notification the grounds for the termination; and

(c) Deliver the notice to the business address of the charter school.

(3) The governing body of a public charter that has received notice from the sponsor of the sponsor's intent to terminate the charter may request a hearing by the sponsor. Such a request must be made in writing and be delivered to the business address of the sponsor. Within 30 days of receiving the request for a hearing, the sponsor must provide the public charter school with the opportunity for a hearing on the proposed termination.

(4) If the sponsor reasonably believes that a public charter school is endangering the health or safety of the students enrolled in the public charter school, the sponsor may act to immediately terminate the approved charter and close the public charter school without providing the notice requirements set out in Section 3 of this rule.

(5) The governing body of a public charter that is closed under the provisions of Section four (4) of this rule may request a hearing by the sponsor. Such a request must be made in writing and be delivered to the business address of the sponsor. Within 10 days of receiving the request for a hearing, the sponsor must provide the public charter school with the opportunity for a hearing on the termination.

(6) Nothing in this rule should be construed as limiting the ability of a sponsor and a public charter school to include in the charter a procedural requirement for alternative dispute resolution prior to invoking the termination process.

Stat. Auth.: ORS 338.025
Stat. Implemented: ORS 338.105
Hist.: ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10

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Rule Caption: Provides definition of virtual public charter school.
Adm. Order No.: ODE 16-2009(Temp)
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09 thru 6-8-10
Notice Publication Date:
Rules Adopted: 581-020-0337
Subject: Defines virtual public charter school for purposes of charter school laws.
Rules Coordinator: Diane Roth—(503) 947-5791

581-020-0337
Virtual Public Charter Schools

(1) All statutes and rules that apply to public charter schools also apply to virtual public charter schools. In addition, virtual public charter schools must also meet the requirements of sections 8, 13, 13a and 17, chapter 691, Oregon Laws 2009 (Enrolled Senate Bill 767).

(2) As used in ORS Chapter 338 and the rules of the State Board of Education, "virtual charter school" means a public charter school that provides online courses. An online course is a course in which:

(A) Instruction and content are delivered primarily on a computer using the Internet, other electronic network or other technology such as CDs or DVDs;

(B) The student and teacher are in different physical locations for a majority of the student's instructional period while participating in the course;

(C) The online instructional activities are integral to the academic program of the school as described in its charter; and

(D) The student is not required to be located at the physical location of a school while participating in the course.

(3) Notwithstanding section (2) of this rule, "virtual public charter school" does not include a public charter school that primarily serves students in a physical location. A charter school is not a virtual public charter school if the schools meets all of the following requirements:

(A) More than 50 percent of the core courses offered by the school are offered at a physical location and are not online courses;

(B) More than 50 percent of the total number of students attending the school are receiving instructional services at a physical location and not in an online course; and

(C) More than 50 percent of the minimum number of instructional hours required to be provided to students by the school under OAR 581-022-1620 during a school year are provided at a physical location and not through an online course.

(4) As used in this rule:

(a) "Core course" means:

(A) English language arts including reading and writing;

(B) Mathematics;

(C) Science;

(D) Social sciences including history, civics, geography and economics

(E) Physical education;

(F) Health;

(G) The arts;

(H) Second languages; and

(I) Career and technical education.

(b) "Physical location" means a facility that is owned, leased or otherwise used by a school to deliver educational services. "Physical location" includes, but is not limited to, a school, library, public building or other physical space utilized by the school. "Physical location does not include a student's home.

(c) "Public charter school" has the meaning given that term in ORS 338.005.

(5) This rule does not apply to programs or courses offered by school districts, education service districts, alternative education programs or the Oregon Virtual School District.

Stat. Auth.: ORS 338.025
Stats. Implemented: ORS 338.005
Hist.: ODE 16- 2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10

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Rule Caption: Modifies rule relating to administration of prescription and nonprescription medication to students.
Adm. Order No.: ODE 17-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Amended: 581-021-0037
Subject: The rule amendments specify who may provide training to designated school staff on the administration of medications to students. The rule also eliminates from the definition of physician those individual who are licensed in adjoining states.
Rules Coordinator: Diane Roth—(503) 947-5791

581-021-0037
Administration of Prescription and Nonprescription Medication to Students

(1) As used in this rule, definitions of terms shall be as follows:

(a) "Age appropriate guidelines" means the student must be able to demonstrate the ability, developmentally and behaviorally, to self medicate with permission from a parent or guardian, building administrator and in the case of a prescription medication a physician.

(b) "Designated staff" means the school staff person who is designated by the building level school administrator, either the principal or head teacher, to administer nonprescription or prescription medication pursuant to district policy and procedure;

(c)(A) "Instruction from physician, physician assistant or nurse practitioner" means a written instruction for the administration of a prescription medication to a student which shall include:

(i) Name of student;

(ii) Name of medication;

(iii) Dosage;

(iv) Route;

(v) Frequency of administration; and

(vi) Other special instruction, if any.

(B) The prescription medication label prepared by a pharmacist at the direction of a physician, physician assistant or nurse practitioner will meet the requirements for a written instruction if it contains the information listed in (i) through (vi) of this paragraph;

(d) "Instruction from the student's parent or guardian" means a written instruction for the administration of a nonprescription medication to a student which shall include:

(A) Name of student;

(B) Name of medication;

(C) Dosage;

(D) Route;

(E) Frequency of administration;

(F) Other special instructions; and

(G) Signature of parent or guardian.

(e) "Nonprescription medication" means only commercially prepared, nonalcohol-based medication to be taken at school that is necessary for the child to remain in school. This shall be limited to eyes, nose and cough drops, cough suppressants, analgesics, decongestants, antihistamines, topical antibiotics, anti-inflammatories and antacids that do not require written or oral instructions from a physician. Nonprescription medication does not include dietary food supplements;

(f) "Physician" means:

(A) A doctor of medicine or osteopathy or a physician assistant licensed to practice by the Board of Medical Examiners for the State of Oregon;

(B) A nurse practitioner with prescriptive authority licensed by the Board of Nursing for the State of Oregon;

(C) A dentist licensed by the Board of Dentistry for the State of Oregon;

(D) An optometrist licensed by the Board of Optometry for the State of Oregon; or

(E) A naturopathic physician licensed by the Board of Naturopathy for the State of Oregon;

(g) "Prescription medication" means any noninjectable drug, chemical compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by a student under the written direction of a physician. Prescription medication does not include dietary food supplements;

(h) "Qualified trainer" means a person who is familiar with the delivery of health services in a school setting and who is:

(A) A school nurse as defined in ORS 342.455;

(B) A physician; or

(C) A pharmacist licensed by the State Board of Pharmacy for the State of Oregon.

(i) "Student self-medication" means students must be able to administer medication to him or herself without requiring a trained school staff member to assist in the administration of the medication;

(j) "Training" means yearly instruction provided by qualified trainers to designated school staff on the administration of prescription and nonprescription medications, based on requirements set out in guidelines approved by the Department of Education, including discussion of applicable district policies, procedures and materials;

(2) Each school district shall adopt policies and procedures that provide for:

(a) The administration of prescription and nonprescription medication to students by trained school personnel; and

(b) Student self-medication including age appropriate guidelines.

(3) Policies and procedures shall:

(a) Include a process to designate, train and supervise appropriate staff;

(b) Permit designated staff to administer prescription medication under the written permission from the student's parent or guardian and instruction from a physician, physician assistant or nurse practitioner if, because of its prescribed frequency, the medication must be given during school hours;

(c) Permit designated staff to administer nonprescription medication under the written permission and instruction from the student's parent or guardian; and

(d) Permit student self-medication.

(4) Policies and procedures related to administration of prescription and nonprescription medication and student self-medication must discuss:

(a) Safe storage, handling, monitoring supply and disposing of medications;

(b) Record keeping and reporting of medication administration, including errors in administration;

(c) Emergency medical response for life threatening side effects and allergic reactions; and

(d) Student confidentiality.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.870

Hist.: ODE 3-1998(Temp), f. & cert. ef. 2-27-98 thru 8-25-98; ODE 6-1998, f. & cert. ef. 4-23-98; ODE 10-1999, f. & cert. ef. 2-12-99; ODE 8-2005, f. & cert. ef. 3-23-05; ODE 17-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies rule relating to public school employee criminal background checks.

Adm. Order No.: ODE 18-2009

Filed with Sec. of State: 12-10-2009

Certified to be Effective: 12-10-09

Notice Publication Date: 11-1-2009

Rules Amended: 581-021-0500

Subject: The 2009 legislature enacted SB 46. The rule amendments implement this bill. The rules require school districts, education services districts, the Oregon School for the Deaf, the Youth Corrections Education Program and public charter schools to request criminal background checks of all nonlicensed school employees. The rule amendments allow an educational entity to hire someone who has knowingly made a false statement as to a crime.

Rules Coordinator: Diane Roth—(503) 947-5791

581-021-0500

Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means:

(A) Any person newly hired by a school district and not requiring licensure under ORS 342.223;

(B) Any person newly hired as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223;

(C) Any person included above unless the current employer has on file evidence from a previous employer documenting a successfully completed Oregon and FBI criminal records check. The Oregon Department of Education or the Teacher Standards and Practices Commission verification of a previous check shall be acceptable only in the event the employer can demonstrate records are not otherwise available. Additional evidence that the employee has not resided outside the state between the two periods of time working in the district shall be maintained;

(D) A person who is a community college faculty member providing instruction at a kindergarten through grade 12 school site during the regular school day; and

(E) A person who is an employee of a public charter school.

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed the local school district's State School Fund by the Department of Education for processing each fingerprint card submitted. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) — $28;

(B) Federal Bureau of Investigation (FBI) — $24;

(C) Oregon Department of Education — $10;

(D) TOTAL — $62.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283-M.

(e) For purposes of criminal background checks pursuant to ORS 326.603 and 326.607, conducted in relation to individuals subject to such criminal background verification, the following definitions of "conviction" of a crime applies:

(A) Any adjudication in any criminal court of law, in this state or in any other jurisdiction, finding the individual committed a crime. A crime is an offense for which a sentence of imprisonment is authorized.

(B) Any adjudication in a juvenile proceeding, in this state or in any other jurisdiction, determining that the individual committed an offense, which if done by an adult, would constitute a crime listed in ORS 342.143.

(C) Any conduct which resulted in mandatory registration reporting as a sex offender in this state or any other jurisdiction. A later court order or other action relieving the individual of the sex offender registration/reporting requirement does not effect the status of the conduct as a conviction for purposes of this rule.

(D) Any plea of guilty, no contest or nolo contendere in connection with a crime, in this state or in any other jurisdiction.

(E) A conviction exists for purposes of this rule, regardless of whether a dismissal was later entered into the record in connection with a diversion or on any sort of deferred adjudication or delayed entry of judgment.

(F) A conviction exists for purposes of this rule even if a crime was expunged or removed from the record of the individual under the laws of another jurisdiction if the crime would be ineligible under ORS 137.225 for expunction or removal from the record if the conviction had occurred in Oregon. A conviction does not exist where an Oregon court has expunged or otherwise removed a conviction from the record of an individual.

(G) A conviction does not exist, except as noted above, only where there was a judicial adjudication that the individual did not commit the offense in question, or when a conviction, adjudication or plea is overturned by an appellate court of record and no later conviction, adjudication or plea indicating the individual committed the offense in question is on the record.

(f) "Knowingly made a false statement" means that a subject individual has failed to disclose a crime on the Department of Education form #581-2283-M as part of the criminal background check process.

(g) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(h) "Newly hired" means the employment of a person after application or request for a position without regard to that person's current or previous employer; and

(i) "School district" means:

(A) A taxing district providing public elementary or secondary education, or any combination thereof, within the state;

(B) An education service district;

(C) The Oregon School for the Deaf;

(D) An educational program under the Youth Corrections Education Program; and

(E) A public charter school.

(2) School districts shall adopt and implement local board policy related to fingerprint collection and processing which shall:

(a) Specify that subject individuals as defined by this rule are subject to fingerprinting and criminal record checks required by law;

(b) Specify which contractors will be considered to have unsupervised access to children and are subject to fingerprinting and criminal records checks required by law;

(c) Specify the format used to notify subject individuals that fingerprinting and criminal record checks are required by law and that any action resulting from those checks may be appealed as a contested case;

(d) Provide a clear statement that the district will terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has been convicted, of the crimes prohibiting employment that are listed in section (9) of this rule;

(e) Provide a clear statement that the district may terminate the employee, if it receives notification by the Superintendent of Public Instruction that the person has knowingly made a false statement as to the conviction of any crime;

(f) Specify that subject individuals may begin to carry out terms of a contract or employment on a probationary basis pending the return of criminal record checks by the FBI;

(g) Identify that employment shall be offered prior to collecting fingerprint cards for submission to the Department of Education and that fees may be collected from the applicant. The applicant may request that the amount of the fee be withheld from the amount otherwise due the individual, and the school district shall withhold the amount only upon the request of the subject individual; and

(h) Identify a procedure that ensures the integrity of fingerprint collection and will prevent any possible compromise of the process.

(3) Fingerprints may be collected by one of the following:

(a) Employing school district staff;

(b) Contracted agent of employing school district;

(c) Local or state law enforcement agency.

(4) School districts shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints for each subject individual defined in this rule immediately following offer and acceptance of employment or contract.

(5) The Department of Education shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the school district a fee not to exceed the actual cost of acquiring and furnishing the information.

(6) The Oregon Department of Education shall review the criminal records of subject individual upon the district's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status and related impact on employment or contract qualification. The Superintendent of Public Instruction or designee shall also notify the school district if the subject individual has knowingly made a false statement as to conviction of a crime.

(7) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(8) Subject individuals who refuse to consent to the criminal records check or refuse to be fingerprinted shall be terminated from employment or contract status by the district.

(9) Subject individuals who have been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number, shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction. The crimes listed in ORS 342.143 are:

(a) ORS 163.095 — Aggravated Murder;

(b) ORS 163.115 — Murder;

(c) ORS 163.185 — Assault in the First Degree;

(d) ORS 163.235 — Kidnapping in the First Degree;

(e) ORS 163.355 — Rape in the Third Degree;

(f) ORS 163.365 — Rape in the Second Degree;

(g) ORS 163.375 — Rape in the First Degree;

(h) ORS 163.385 — Sodomy in the Third Degree;

(i) ORS 163.395 — Sodomy in the Second Degree;

(j) ORS 163.405 — Sodomy in the First Degree;

(k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;

(l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;

(m) ORS 163.415 — Sexual Abuse in the Third Degree;

(n) ORS 163.425 — Sexual Abuse in the Second Degree;

(o) ORS 163.427 — Sexual Abuse in the First Degree;

(p) ORS 163.432 — Online sexual corruption of a child in the second degree;

(q) ORS 163.433 — Online sexual corruption of a child in the first degree;

(r) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;

(s) ORS 163.445 — Sexual Misconduct;

(t) ORS 163.465 — Public Indecency;

(u) ORS 163.515 — Bigamy;

(v) ORS 163.525 — Incest;

(w) ORS 163.547 — Child Neglect in the First Degree;

(x) ORS 163.575 — Endangering the Welfare of a Minor;

(y) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;

(z) ORS 163.675 (1985 Replacement Part) — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;

(aa) ORS 163.680 (1993 Edition) — Paying for Viewing Sexual Conduct Involving a Child;

(bb) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;

(cc) ORS 163.686 — Encouraging Child Sex Abuse in the Second Degree;

(dd) ORS 163.687 — Encouraging Child Sex Abuse in the Third Degree;

(ee) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;

(ff) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;

(gg) ORS 164.325 — Arson in the First Degree;

(hh) ORS 164.415 — Robbery in the First Degree;

(ii) ORS 166.005 — Treason;

(jj) ORS 166.087 — Abuse of Corpse in the First Degree;

(kk) ORS 167.007 — Prostitution;

(ll) ORS167.012 — Promoting Prostitution;

(mm) ORS 167.017 — Compelling Prostitution;

(nn) ORS 167.054 — Furnishing sexually explicit material to a child;

(oo) ORS 167.057 — Luring a minor;

(pp) ORS 167.062 — Sadomasochistic Abuse or Sexual Conduct in Live Show;

(qq) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;

(rr) ORS 167.080 — Displaying Obscene Materials to Minors;

(ss) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;

(tt) ORS 475.848 — Unlawful manufacture of heroin within 1,000 feet of school;

(uu) ORS 475.852 — Unlawful delivery of heroin within 1,000 feet of school;

(vv) ORS 475.858 — Unlawful manufacture of marijuana within 1,000 feet of school;

(ww) ORS 475.860 — Unlawful delivery of marijuana;

(xx) ORS 475.862 — Unlawful delivery of marijuana within 1,000 feet of school;

(yy) ORS 475.864(4) — Unlawful possession of marijuana within 1,000 feet of school;

(zz) ORS 475.868 — Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

(aaa) ORS 475.872 — Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;

(bbb) ORS 475.878 — Unlawful manufacture of cocaine within 1,000 feet of school;

(ccc) ORS 475.880 — Unlawful delivery of cocaine;

(ddd) ORS 475.882 — Unlawful delivery of cocaine within 1,000 feet of school;

(eee) ORS 475.888 — Unlawful manufacture of methamphetamine within 1,000 feet of school;

(fff) ORS 475.890 — Unlawful delivery of methamphetamine;

(ggg) ORS 475.892 — Unlawful delivery of methamphetamine within 1,000 feet of school;

(hhh) ORS 475.904 — Unlawful manufacture or delivery of controlled substance within 1,000 feet of school;

(iii) ORS 475.906 — Penalties for distribution to minors.

(10) Subject individuals who have been convicted of any of the crimes listed in ORS 161.405 or an attempt to commit any of the crimes listed in section (9) of this rule shall be refused continued employment or have employment terminated upon notification from the Superintendent of Public Instruction.

(11) A school district may terminate the employment of any subject individuals who knowingly makes a false statement as to the conviction of a crime upon notification of the false statement by the Superintendent of Public Instruction.

(12) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(13) Prior to making a determination that results in a notice and opportunity for hearing, the Superintendent of Public Instruction may cause an investigation to be undertaken. Subject individuals and districts shall cooperate with the investigation and may be required to furnish oral or written statements by affidavit or under oath. If the Superintendent of Public Instruction determines through investigation that a violation of this rule has not occurred, a written decision explaining the basis for the decision will be provided to the subject individual.

(14) Applicants may appeal a determination that prevents their employment or eligibility to contract with a school district as a contested case under ORS 183.413 to 183.470 to the Oregon Superintendent of Public Instruction.

(15) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action.

(16) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

(a) Card sequence number;

(b) District submitting the cards;

(c) Date cards and Department form received;

(d) Date completed card sent to Oregon State Police;

(e) Date denial or probationary approval sent to district;

(f) Date FBI card returned to Department; and

(g) Date denial or final approval sent to district.

Stat. Auth.: ORS 326.603

Stats. Implemented: ORS 326.603

Hist.: ODE 25-2008, f. & cert. ef. 9-26-08; ODE 12-2009, f. & cert. ef. 12-10-09; ODE 18-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies timeline for when students must be proficient in essential skills to receive diploma.

Adm. Order No.: ODE 19-2009

Filed with Sec. of State: 12-10-2009

Certified to be Effective: 12-10-09

Notice Publication Date: 10-1-2009

Rules Amended: 581-022-0615

Rules Repealed: 581-022-0615(T)

Subject: Students are required to demonstrate proficiency in certain essential skills to receive a high school diploma. These essential skills include reading, writing, mathematics and speaking. Previously the State Board of Education established a timeline for phasing in this requirement. The rule amendments delay the requirements that a student demonstrate proficiency in writing and mathematics until a specified time. The rule amendments delay the requirement that a student demonstrate proficiency in speaking until an undetermined time.

The rule amendments also allow districts and schools to modify assessment options for certain students who are seeking modified diplomas. This was previously allowed by department policy.

Rules Coordinator: Diane Roth—(503) 947-5791

581-022-0615

Assessment of Essential Skills

(1) Definitions. As used in this rule:

(a) "Assessment option" means an assessment approved to assess proficiency in the Essential Skills for the purpose of earning a high school diploma or a modified diploma.

(b) "Essential Skills" means process skills that cross academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings.

(c) "Local performance assessment" means a standardized measure (e.g., activity, exercise, problem, or work sample scored using an official state scoring guide), embedded in the school districts' and public charter schools' curriculum that evaluates the application of students' knowledge and skills.

(d) "Official state scoring guide" means an evaluation tool designed for scoring student work that includes specific, consistent assessment criteria for student performance and a 1-6 point scale to help rate student work. It is used by Oregon teachers to evaluate student work samples.

(e) "Student-initiated test impropriety" means student conduct that:

(A) Is inconsistent with:

(i) The Test Administration Manual; or

(ii) Accompanying guidelines; or

(B) Results in a score that is invalid.

(f) "Work sample" means a representative sample of individual student work (e.g., research papers, statistical experiments, speaking presentations, theatrical performances, work experience) that may cover one or more content areas and therefore may be scored using one or more official state scoring guide(s). At the high school level, a work sample can be used

to fulfill both the local performance assessment requirement described in Section 2 of this rule and the Essential Skills requirement described in Section 3 of this rule.

(2) School districts and public charter schools that offer grades 3 through 8 or high school shall administer local performance assessments for students in grades 3 through 8 and at least once in high school. For each skill area listed in section (17) of this rule, the assessments shall consist of:

(a) One work sample per grade scored using official state scoring guides; or

(b) Comparable measures adopted by the district.

(3) School districts and public charter schools shall require high school students to demonstrate proficiency in the Essential Skills using assessment options that are approved by the State Board of Education for the purpose of student eligibility for:

(a) The high school diploma as established in OAR 581-022-1130; or

(b) The modified diploma as established in OAR 581-022-1134.

(4) Pursuant to ORS 339.115 and 339.505, school districts and public charter schools shall provide any eligible student with instruction in and multiple assessment opportunities to demonstrate proficiency in the Essential Skills for the purpose of achieving the high school diploma or the modified diploma.

(5) To be eligible to receive a high school diploma or a modified diploma:

(a) For students first enrolled in grade 9 during the 2008–2009 school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skill listed in Section 16(a) of this rule: Read and comprehend a variety of text.

(b) For students first enrolled in grade 9 during the 2009–2010 school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skills listed in Sections 16(a)–(b) of this rule:

(A) Read and comprehend a variety of text; and

(B) Write clearly and accurately.

(c) For students first enrolled in grade 9 during the 2010–2011 school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skills listed in Section 16(a)–(c) of this rule:

(A) Read and comprehend a variety of text;

(B) Write clearly and accurately; and

(C) Apply mathematics in a variety of settings.

(d) For students first enrolled in grade 9 during the 2011–2012 school year or first enrolled in grade 9 in any subsequent school year, school districts and public charter schools shall require students to demonstrate proficiency in the Essential Skills listed in Section 16(a)–(c) of this rule and any additional Essential Skills for which:

(A) The State Board of Education has adopted the determination to phase in for inclusion in the high school diploma and modified diploma requirements; and

(B) The State Board of Education has adopted assessment options by March 1 of the student's 8th grade year.

(e) School districts and public charter schools may require students to demonstrate proficiency in additional Essential Skills beyond the minimum requirements described in section (5)(a)–(d) of this rule.

(6) The Superintendent of Public Instruction shall establish an Assessment of Essential Skills Review Panel (AESRP) to make recommendations on:

(a) The phasing in of Essential Skills for inclusion in the high school diploma and the modified diploma requirements;

(b) Criteria for local assessment options;

(c) The adoption of assessment options to measure students' proficiency in the approved Essential Skills for the purpose of the high school diploma or the modified diploma; and

(d) The achievement standards used to determine student eligibility for the high school diploma or the modified diploma.

(7) The AESRP shall work toward the goal of a system with a high degree of technical adequacy and equivalent rigor between assessment options as practicable.

(8) The AESRP shall base its recommendations on evidence provided by:

(a) School districts;

(b) Research organizations; and

(c) Other experts.

(9) The AESRP shall consist of assessment experts from:

(a) School districts, including but not limited to:

(A) Superintendents;

(B) Principals;

(C) Curriculum Directors;

(D) Educators;

(E) Special education educators; and

(F) English Language Learners (ELL) educators;

(b) Post-secondary education institutions; and

(c) Business partners who have expertise in:

(A) Assessment design;

(B) Assessment administration; or

(C) Use of assessments

(10) The State Board of Education shall make the determination to adopt the AESRP's recommended criteria for local assessment options, assessment options, and achievement standards for the purpose of conferring high school diplomas and modified diplomas. The determination of the State Board of Education will be final and not subject to appeal.

(11) The ODE shall issue the State Board of Education's intentions regarding the AESRP's recommendations by December 15 of each year and formal notice of the State Board of Education's final determination regarding the AESRP's recommendations by March 1 of each year as an addendum to the Test Administration Manual, which the ODE shall issue by August 1 of each year.

(12) School districts and public charter schools shall adhere to the requirements set forth in the Test Administration Manual to:

(a) Administer;

(b) Score;

(c) Manage; and

(d) Document the district and school assessments of students' proficiency in the Essential Skills required to receive a high school diploma or a modified diploma.

(13) School districts and public charter schools shall establish conduct and discipline policies addressing student-initiated test impropriety.

(14) School districts and public charter schools shall allow students to use assessment options and achievement standards adopted in a student's ninth through twelfth grade years as follows:

(a) Students may demonstrate proficiency in the Essential Skills using assessment options adopted in their ninth through twelfth grade years.

(b) Students may use achievement standards adopted in their 9th through 12th grade years that are equal to or lower than the achievement standards approved as of March 1 of the students' 8th grade year.

(15) The ODE shall publish the subset of Essential Skills assessment options and the associated performance levels which may be used by each of Oregon's post-secondary institutions as defined by those institutions' policies provided to the ODE by October 15 of each year.

(16) The Essential Skills identified by the State Board of Education as of July 1, 2008 are as follows:

(a) Read and comprehend a variety of text;

(b) Write clearly and accurately;

(c) Apply mathematics in a variety of settings;

(d) Listen actively and speak clearly and coherently;

(e) Think critically and analytically;

(f) Use technology to learn, live, and work;

(g) Demonstrate civic and community engagement;

(h) Demonstrate global literacy; and

(i) Demonstrate personal management and teamwork skills.

(17) School districts and public charter schools shall include one or more local performance assessments for grades 3 through 8 and for high school for each of the following skill areas:

(a) Writing;

(b) Speaking;

(c) Mathematical problem-solving; and

(d) Scientific inquiry.

(18) School districts and public charter schools may include one social science analysis work sample that is administered in accordance with school district or public charter school policies as a local performance assessment for grades 3 through 8 and for high school.

(19) For students on an Individualized Education Plan (IEP) or 504 Plan, if a student's IEP or 504 Team determines that the nature of a student's disability prevents the student from demonstrating proficiency in an Essential Skill using any of the approved assessment options listed in the Test Administration Manual, the student's IEP Team may exempt the student from the requirement as listed in the Test Administration Manual and determine an appropriate replacement assessment option for the student to use that addresses the Essential Skill in a manner that is consistent with:

(a) The student's instructional plan; and

(b) The state assessment criteria adopted by the State Board of Education.

(20) For students seeking a modified diploma, school districts and public charter schools may modify the assessment options adopted by the State Board of Education when the following conditions are met:

(a) For students on IEP or 504 Plans:

(A) School districts and public charter schools must comply with all requirements established by the student's IEP or 504 Plan when implementing modifications for work samples;

(B) School districts and public charter schools must comply with OAR 581-022-0610 section (4)(d) when implementing modifications for a statewide assessment.

(b) For students not on IEP or 504 Plans:

(A) School districts and public charter schools may only implement modifications for work samples that are consistent with the modifications the student has received during instruction in the content area to be assessed in the year in which the work sample is administered.

(B) School districts and public charter schools must obtain approval from the school team responsible for monitoring the student's progress toward the modified diploma before implementing modifications for work samples.

(C) Consistent with OAR 581-022-0610, school districts and public charter schools may not implement modifications for statewide assessments for students who are not on an IEP or 504 Plan.

Stat. Auth.: ORS 329.451,338.025, 339.115 & 339.505
Stats. Implemented: 329.045, 329.075, 329.451, 329.485 & 338.115
Hist.: ODE 17-2008, f. & cert. ef. 6-27-08; ODE 10-2009(Temp), f. & cert. ef. 9-1-09 thru 2-28-10; ODE 19-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies graduation requirements for certain high school students.
Adm. Order No.: ODE 20-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Amended: 581-022-1130
Subject: On April 1, 2009, Governor Kulongoski signed HB 2061 into law. This law waives the increased graduation credit requirements passed by the 2005 Legislature and set to go into effect July 1, 2009. These requirements are one additional English credit (for a total of 4) and one additional mathematics credit (for a total of 3). This waiver applies to students who began ninth grade during the 2005-2006 school year, attended school consecutively during the 2006-2007, 2007-2008 and 2008-2009 school years and who will receive their diploma prior to July 1, 2010.

This law is binding and has immediate effect. OAR 581-022-1130, which outlines the diploma implementation timeline, conflicts with this new law.

The rules also implement HB 2507 which was also adopted by the 2009 Legislature.
Rules Coordinator: Diane Roth—(503) 947-5791

581-022-1130
Diploma Requirements

(1) Each district school board and public charter school with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (2) to (11) of this rule and all local school district requirements as described in district school board policies or all public charter school requirements as described in the policies or charter of the public charter school.

(2) Unit of Credit Requirements for students graduating before July 1, 2009:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

(A) English Language Arts — 3 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 22;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Except as provided in section (4) of this rule, Unit of Credit Requirements for students graduating on or after July 1, 2009 and who were first enrolled in grade 9 prior to the 2008-2009 school year:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(4) Notwithstanding sections (2) and (3) of this rule, for students who began grade 9 during the 2005-2006 school year and who attended school during the 2006-2007, 2007-2008 and 2008-2009 school years, the unit of credits required for graduating is as described in section (2) of this rule if the student graduates prior to July 1, 2010.

(5) Unit of Credit Requirements for students who were first enrolled in grade 9 during the 2008-2009 or 2009-2010 school year:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 3;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(6) Unit of Credit Requirements for students who were first enrolled in grade 9 during the 2010-2011 school year or first enrolled in grade 9 in any subsequent school year:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3 (shall include one unit at the Algebra I level and two units that are at a level higher than Algebra I);

(C) Science — 3;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance);

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Career and Technical Education, The Arts or Second Language — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(7) Each student shall demonstrate proficiency in essential skills adopted by the State Board of Education as provided in OAR 581-022-0615;

(8) School districts shall develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7 through 12 with adult guidance. The plan and profile shall be reviewed and updated periodically (at least annually) and be supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.

(9) Each student shall develop an education plan and build an education profile.

(a) Each student shall develop an education plan that:

(A) Identifies personal and career interests;

(B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);

(C) Sets goals to prepare for transitions to next steps identified in section (7)(b);

(D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsection (a) (A), (B) and (C) of this rule that includes but is not limited to:

(i) Appropriate coursework and learning experiences;

(ii) Identified career-related learning experiences; and

(iii) Identified extended application opportunities.

(b) Through the education profile each student shall:

(A) Monitor progress and achievement toward standards including:

(i) Content standards;

(ii) Essential skills;

(iii) Extended application standard; and

(iv) Other standards where appropriate (e.g. industry standards).

(B) Document other personal accomplishments determined by the student or school district.

(C) Review progress and achievement in subsection (b)(A) and (B) of this subsection at least annually.

(10) Each student shall build a collection of evidence, or include evidence in existing collections(s), to demonstrate extended application (as defined in OAR 581-022-0102);

(11) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-0102);

(12) Notwithstanding sections (1) to (11) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1134.

(13) Notwithstanding sections (1) to (11) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award an extended diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1133.

(14) Notwithstanding sections (1) to (11) of this rule and as provided in OAR 581-022-1135, schools districts and public charter schools shall make an alternative certificate available to students as an alternative for students who do not obtain the regular diploma, modified diploma or extended diploma.

(15) Attendance Requirements:

(a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;

(b) Notwithstanding subsection (a) of this section, a student may satisfy the requirements of sections (2)(6) of this rule in less than four years. If the school district or public charter school has the consent of the student's parent or guardian, a school district or public charter school shall award a diploma to a student upon request from the student, if the student satisfies the requirements for the diploma that apply to the student based on the date of graduation of the student or the school year when the student first enrolled in grade 9, as applicable.

(c) If a school district or public charter school has the consent of a student's parent or guardian, the school district or public charter school may advance the student to the next grade level if the student has satisfied the requirements for the student's current grade level.

(d) The requirement for obtaining the consent of a student's parent or guardian under subsections (b) and (c) of this section does not apply to a student who is:

(A) Emancipated pursuant to ORS 419B.550 to 419B.558; or

(B) 18 years of age or older.

(e) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(f) With any modification of the attendance requirements for graduation, school district and public charter school staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district or public charter school guidelines and the wishes of parents and guardians.

(16) A school district or public charter school shall ensure that students have access to the appropriate resources to achieve a diploma at each high school in the school district or at the public charter school.

Stat. Auth.: ORS 326.051 & 329.451

Stats. Implemented: ORS 326.051, 329.451 & 339.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 18-2006, f. 12-11-06, cert. ef. 12-12-06; ODE 18-2007, f. & cert. ef. 9-10-07; ODE 18-2008, f. & cert. ef. 6-27-08; ODE 5-2009(Temp), f. 6-29-09, cert. ef. 6-30-09 thru 12-22-09; ODE 20-2009, f. & cert. ef. 12-10-09

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Rule Caption: Requires school districts to award extended diplomas to certain students.

Adm. Order No.: ODE 21-2009

Filed with Sec. of State: 12-10-2009

Certified to be Effective: 12-10-09

Notice Publication Date: 10-1-2009

Rules Adopted: 581-022-1133

Subject: The 2009 legislature enacted HB 2507 which required school districts and public charter schools to award extended diplomas to certain students. The rule implements this legislation.

Rules Coordinator: Diane Roth—(503) 947-5791

581-022-1133

Extended Diploma

(1) A school district or public charter school shall award an extended diploma to a student who satisfies the requirements of this rule.

(2) A school district or public charter school shall award an extended diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma with reasonable modifications and accommodations.

(3) A school district or public charter school may award an extended diploma to a student only upon the consent of the parent or guardian of the

student. A district or school must receive the consent in writing and during the school year in which the extended diploma is awarded. The requirement for obtaining the consent of a student's parent or guardian does not apply to a student who is emancipated or has reached the age of majority of 18 years of age or older at the time the extended diploma is awarded.

(4) To be eligible for an extended diploma, a student must:

(a) Have a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers or have a documented history of a medical condition that creates a barrier to achievement; and

(b)(A) Participate in an alternate assessment beginning no later than grade six and lasting for two or more assessment cycles; or

(B) Have a serious illness or injury that occurs after grade eight, that changes the student's ability to participate in grade level activities and that results in the student participating in alternate assessments.

(c) While in grade nine through completion of high school, complete 12 credits, which may not include more than six credits earned in a self-contained special education classroom and shall include:

(A) Two credits of mathematics;

(B) Two credits of English;

(C) Two credits of science;

(D) Three credits of history, geography, economics or civics;

(E) One credit of health;

(F) One credit of physical education; and

(G) One credit of the arts or a second language;

(3) A school district or public charter school shall:

(a) Ensure that students have access to the appropriate resources to achieve an extended diploma at each high school in the school district or at the public charter school.

(b) Beginning in grade five, annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of an extended diploma and the requirements for the extended diploma.

(c) A school district or public charter school may not deny a student who has the documented history described in subsection (1)(a) of this section the opportunity to pursue a diploma with more stringent requirements than a modified diploma or an extended diploma for the sole reason that the student has the documented history.

(5) A student who receives an extended diploma shall have the option of participating in a high school graduation ceremony with the class of the student.

(6) School districts and public charter schools shall make extended diplomas as required by ORS 329.451 and this rule first available to students during the 2009-2010 school year.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.451
Hist.: ODE 21-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies rule relating to modified diploma award by school districts and schools to students.
Adm. Order No.: ODE 22-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Amended: 581-022-1134
Subject: The 2009 legislature enacted HB 2507 which changed requirements for a modified diploma awarded by school districts and public charter schools to students. The rule amendments bring the rule implement these changes. The changes include:

- requiring consent of parent or guardian to award modified diploma
- requiring annual notification to parents or guardian about availability of modified diploma
- requiring that districts and schools provide access to appropriate resources to achieve a modified diploma at each high school
- applying requirements of modified diploma to all students who graduate on or after July 1, 2009

Rules Coordinator: Diane Roth—(503) 947-5791

581-022-1134
Modified Diploma

(1) Definitions. As used in this rule:

(a) "Documented history" means evidence in the cumulative record and education plans of a student that demonstrates the inability over time to maintain grade level achievement even with appropriate modifications and accommodations.

(b) "Instructional barrier" means a significant physical, cognitive or emotional barrier that impairs a student's ability to maintain grade level achievement.

(c) "Modified course" means a course that has been systematically changed or altered for a student only after reasonable alternative instructional strategies (e.g. accommodations, remediation) are exhausted.

(2) On or after July 1, 2009, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma only to students who have demonstrated the inability to meet the full set of academic content standards for a high school diploma even with reasonable modifications and accommodations but who fulfill all state requirements as described in this rule and all applicable local school district requirements as described in district school board policies or public charter school requirements as described in school policies. In addition, on or after July 1, 2009, a district school board or public charter school governing board may only award a modified diploma to a student who meets the eligibility criteria specified in section 3 of this rule.

(3)(a) Except as provided in paragraph (c) or (d) of this section, a school district or public charter school shall grant eligibility for a modified diploma to a student who has:

(A) A documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers; or

(B) A documented history of a medical condition that creates a barrier to achievement.

(b) A school district or public charter school may not deny a student who has the documented history described in paragraph (a) of this subsection the opportunity to pursue a diploma with more stringent requirements than a modified diploma for the sole reason that the student has the documented history.

(c) Students currently engaged in the use of illegal drugs are not eligible for a modified diploma if the significant learning and instructional barriers are due to the use of illegal drugs.

(d) Students currently engaged in the illegal use of alcohol are not eligible for a modified diploma if the significant learning and instructional barriers are due to the alcohol abuse, regardless of whether that student is disabled under Section 504 on the basis of alcoholism.

(e) Notwithstanding paragraph (c) and (d) of this section, a school district or public charter school may grant eligibility for a modified diploma to a student who is no longer engaging in illegal use of drugs or alcohol if the student:

(A) Has successfully completed a supervised drug or alcohol rehabilitation program and are no longer engaged in the illegal use of drugs or alcohol; or

(B) Has been rehabilitated successfully and is no longer engaged in the illegal use of drugs or alcohol; or

(C) Is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or alcohol.

(4)(a) A school district or public charter school shall determine which school teams shall decide if a student will work toward obtaining a modified diploma. A student's school team must include a parent or guardian of the student. In the case of a student receiving special education and related services the resident school district of a public charter school student shall determine the school team for that student.

(b) A school district or public charter school may award a modified diploma to a student only upon the consent of the parent or guardian of the student. A district or school must receive the consent in writing and during the school year in which the modified diploma is awarded. The requirement for obtaining the consent of a student's parent or guardian does not apply to a student who is emancipated or has reached the age of majority of 18 years of age or older at the time the modified diploma is awarded.

(c) Except as provided in subsection (e) of this section, a student's school team shall decide that a student should work toward a modified diploma no earlier than the end of the 6th grade and no later than 2 years before the student's anticipated exit from high school.

(d) Beginning in grade five, school district and public charter schools shall annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of a modified diploma and the requirements for the modified diploma.

(e) A student's school team may formally decide to revise a modified diploma decision.

(g) A student's school team may decide that a student who was not previously working towards a modified diploma should work toward a modified diploma when a student is less than 2 years from anticipated exit

from high school if the documented history of the student described in section (3) of this rule has changed.

(5) Unit of credit requirements for students graduating with a modified diploma:

(a) To receive a modified diploma a student must earn 24 units of credit, between grade 9 and the end of their high school career with at least 12 of those credits to include:

(A) English Language Arts — 3;

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences (which may include history, civics, geography and economics (including personal finance)) — 2;

(E) Health Education — 1;

(F) Physical Education — 1; and

(G) Career Technical Education, The Arts or Second Languages (units may be earned in any one or a combination) — 1.

(b) School districts and public charter schools shall be flexible in awarding the remaining 12 units of credit. These credits must be awarded to meet the needs of the individual student as specified in the education plan of the student with the expectations and standards aligned to the appropriate grade level academic content standards. These credits may include:

(A) Additional core credits described in paragraph (a) of this section;

(B) Professional technical education;

(C) Electives; and

(D) Career development.

(c) Students may earn units of credit through regular education with or without accommodations or modifications and through modified courses.

(d) Students shall have the option to earn credit for demonstrating proficiency. A student may be given credit for successful demonstration of knowledge and skills that meets or exceeds defined levels of performance. Students may demonstrate proficiency through classroom work or documentation of learning experiences outside of school, or through a combination of these means.

(e) School districts and public charter schools shall ensure that students have access to the appropriate resources to achieve a modified diploma at each high school in the school district or at the public charter school.

(f) School districts and public charter schools shall ensure that students have access to needed courses, modifications and supports to pursue a modified diploma and to progress in the general education curriculum.

(g) A school district or public charter school may not require a student to earn more than 24 units of credit to receive a modified diploma.

(6) A school district or public charter school shall grant credit toward a modified diploma only for courses that contain substantial academic content. A school district or public charter school shall grant credit for a modified diploma through a continuum of instruction beginning at basic skills and progressing through high level skills.

(7) A school district or public charter school shall award a regular diploma under OAR 581-022-1130 if all requirements for a regular diploma are met. Completion of one or more modified courses shall not prohibit a student from earning a regular diploma.

(8) A school district or public charter school shall grant credit toward a modified diploma according to individual student needs across academic content areas including applied, consumer, academic, or knowledge and skill development.

(9) Each student shall develop an education plan and build an education profile as provided under OAR 581-022-1130.

(10) A school district or public charter school shall inform the student and parent or guardian of the student if the courses in grades 9-12 have been modified for an individual student.

(11) A school district or public charter school shall provide transcripts which clearly identify modified courses that do not count toward the regular diploma but that do count toward a modified diploma.

(12) Each student shall build a collection of evidence, or include evidence in existing collections, to demonstrate extended application of the standards as defined in OAR 581-022-0102;

(13) Each student receiving a modified diploma shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.

(14)(a) The unit of credit requirements in section (5) of this rule for a modified diploma apply to all students who enter 9th grade on or after July 1, 2007.

(b) If a student entered 9th grade prior to July 1, 2007, the student's team shall decide whether the student must meet the unit of credit requirements in section (5) of this rule to receive a modified diploma or the unit of credit requirements specified by the school district or public charter school for a modified diploma when the student entered 9th grade. If a student's team decides that a student may receive a modified diploma by meeting the unit of credit requirements required by the district or school when the student entered 9th grade, a school district or public charter school may award a student who entered 9th grade prior to July 1, 2007 a modified diploma if the student meets the unit of credit requirements for a modified diploma specified by the district or school when the student entered 9th grade.

Stat. Auth.: ORS 329.451
Stats. Implemented: ORS 329.451
Hist.: ODE 15-2008, f. & cert. ef. 5-23-08; ODE 22-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies rule relating to alternative certificates awarded by school districts and schools to students.
Adm. Order No.: ODE 23-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Amended: 581-022-1135
Subject: The 2009 Legislature adopted HB 2507 which modified requirements relating to alternative certificates that are awarded by school districts and public charter schools to students. The rule amendments implement these requirements. These requirements include providing the appropriate resources at each high school to achieve an alternative certificate and notifying parents and guardians about the alternative certificate.
Rules Coordinator: Diane Roth—(503) 947-5791

581-022-1135
Alternative Certificate

(1) A School district or public charter school shall award an alternative certificate to a student who does not satisfy the requirements for a high school diploma, a modified diploma or an extended diploma.

(2) Each district school board or public charter school governing board with jurisdiction over high school programs shall define criteria for an alternative certificate and shall award an alternative certificate to those students who have met the criteria requirements as described in district school board policies.

(3) A school district or public charter school shall:

(a) Ensure that students have access to the appropriate resources to achieve an alternative certificate at each high school in the school district or at the public charter school.

(b) Beginning grade five, annually provide information to the parents or guardians of a student taking an alternate assessment of the availability of an alternative certificate and the requirements for the certificate.

(4) Each student receiving an alternative certificate shall have the option of participating in the high school graduation ceremony with the members of their class receiving a high school diploma.

Stat. Auth.: ORS 329.451
Stats. Implemented: ORS 329.451
Hist.: ODE 15-2008, f. & cert. ef. 5-23-08; ODE 23-2009, f. & cert. ef. 12-10-09

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Rule Caption: Requires school districts and public charter schools to provide literacy instruction to all students.
Adm. Order No.: ODE 24-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Adopted: 581-022-1215
Subject: The 2009 Legislature enacted HB 2507. The rule implements this bill be requiring school districts and public charter schools to provide literacy instruction to all students.
Rules Coordinator: Diane Roth—(503) 947-5791

581-022-1215
Literacy Instruction

School districts and public charter schools shall provide age appropriate and developmentally appropriate literacy instruction to all students until graduation. For purposes of this rule, a student is considered to be graduated when the student receives a diploma, modified diploma, extended diploma or alternative certificate. A district or school may choose to provide literacy instruction after graduation to students who continue to attend school. The determination to provide literacy instruction after graduation to a student may be made by the student's IEP team or other school team.

Stat. Auth: ORS 326.051
Stats. Implemented: ORS 329.451
Hist.: ODE 24-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies rule relating to human sexuality education by school districts.
Adm. Order No.: ODE 25-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 9-1-2009
Rules Amended: 581-022-1440
Subject: The 2009 Oregon legislature enacted House Bill 2509 which modified the statute relating to human sexuality education. The rule amendments bring the existing rule into compliance with this bill.
Rules Coordinator: Diane Roth—(503) 947-5791

581-022-1440
Human Sexuality Education

(1) The following definitions apply to Oregon Administrative Rule 581-022-1440:

(a) "Age-appropriate" means curricula designed to teach concepts, information, and skills based on the social, cognitive, emotional, and experience level of students;

(b) "Balanced" means instruction that provides information with the understanding of the preponderance of evidence;

(c) "Best practice" means something has the appearance of success, but has as yet not proved its effectiveness;

(d) "Comprehensive plan of instruction" (as defined by Oregon education statutes) means k–12 programs that emphasize abstinence, but not to the exclusion of condom and contraceptive education. The human sexuality information provided is complete, balanced, and medically accurate. Opportunities are provided for young people to develop and understand their values, attitudes, and beliefs about sexuality as a means of helping young people exercise responsibility regarding sexual relationships as further defined by (2) and (3);

(e) "Culturally sensitive" means materials and instruction that respond to culturally diverse individuals, families, and communities in an inclusive, respectful, and effective manner;

(f) "Gender role" means the socially determined sets of behaviors assigned to people based on their biological sex;

(g) "Gender sensitive" means materials and instruction that are sensitive to individual's similarities and differences regarding gender role and/or sexual orientation;

(h) "Medically accurate" means information that is established through the use of the 'scientific method.' Results can be measured, quantified, and replicated to confirm accuracy, and are reported or recognized in peer-reviewed journals or other authoritative publications.

(i) "Research-based" means intervention is based on theoretical approaches that have been shown to be effective in achieving the intended outcomes. Evaluation based on studies using scientifically based designs; results published in recognized, peer-reviewed journals;

(j) "Sexual intercourse" means a type of sexual contact involving one of the following:

(A) Vaginal sexual intercourse;

(B) Oral sexual intercourse; or

(C) Anal sexual intercourse;

(k) "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 sex at birth.

(l) "Shame or fear based" means terminology, activities, scenarios, context, language, and/or visual illustrations that are used to devalue, ignore, and/or disgrace students who have had or are having sexual relationships. Not all curricula or activities that describe risks of sexual activities can be considered "fear-based;"

(m) "Skills-based" means instructional strategy that has students practice the desired skill;

(2) Each school district shall teach an age-appropriate, comprehensive plan of instruction focusing on human sexuality education, HIV/AIDS and sexually transmitted disease prevention in elementary and secondary schools as an integral part of health education and other subjects. Course material and instruction for all human sexuality education courses that discuss human sexuality in public elementary and secondary schools shall enhance students' understanding of sexuality as a normal and healthy aspect of human development. In addition, the HIV/AIDS and sexually transmitted disease prevention education and the human sexuality education comprehensive plan shall provide instruction at least annually, for all students grades 6-8 and at least twice during grades 9–12.

(3) Parents, teachers, school administrators, local health department staff, other community representatives, and persons from the medical community who are knowledgeable of the latest scientific information and effective education strategies shall develop the plan of instruction required by this rule cooperatively.

(4) Local school boards shall approve the plan of instruction and require that it be reviewed and updated biennially in accordance with new scientific information and effective education strategies.

(5) Any parent may request that his/her child be excused from that portion of the instructional program required by this rule under the procedures set forth in ORS 336.035(2).

(6) The comprehensive plan of instruction shall include information that:

(a) Promotes abstinence for school-age youth and mutually monogamous relationships with an uninfected partner for adults as the safest and mostly responsible sexual behavior to reduce the risk of unintended pregnancy and exposure to HIV, Hepatitis B/C and other sexually transmitted infectious diseases;

(b) Allays those fears concerning HIV that are scientifically groundless;

(c) Is balanced and medically accurate;

(d) Provides balanced and accurate information on the risks and benefits of contraceptive and other disease reduction measures which reduce the risk of unintended pregnancy, exposure to HIV, hepatitis B/C and other sexually transmitted infectious diseases;

(e) Discusses responsible sexual behaviors and hygienic practices which may reduce or eliminate unintended pregnancy, exposure to HIV, hepatitis B/C and other sexually transmitted diseases;

(f) Stresses the high risks of contracting HIV, hepatitis B and C and other infectious diseases through sharing of needles or syringes for injecting drugs including steroids, for tattooing, and body-piercing;

(g) Discusses the characteristics of the emotional, physical and psychological aspects of a healthy relationship and a discussion about the benefits of delaying pregnancy beyond the adolescent years as a means to better ensure a healthy future for parents and their children. Students shall be provided with statistics based on the latest medical information regarding both the health benefits and the possible side effects of all forms of contraceptives, including the success and failure rates for prevention of pregnancy;

(h) Stresses that HIV/STDs and hepatitis B/C can be serious possible hazards of sexual contact;

(i) Provides students with information about Oregon laws that address young people's rights and responsibilities relating to childbearing and parenting;

(j) Advises pupils of the circumstances in which it is unlawful under ORS 163.435 and 163.445 for persons 18 years of age or older to have sexual relations with persons younger than 18 years of age to whom they are not married;

(k) Encourages family communication and involvement and helps students learn to make responsible decisions;

(l) Teaches that no form of sexual expression is acceptable when it physically or emotionally harms oneself or others and not to make unwanted physical and verbal sexual advances;

(m) Teaches that it is wrong to take advantage of or exploit another person;

(n) Validates through course material and instruction the importance of honesty with oneself and others, respect for each person's dignity and well-being, and responsibility for one's actions; and

(o) Uses culturally and gender sensitive materials, language, and strategies that recognizes different sexual orientations and gender roles.

(7) The comprehensive plan of instruction shall include skills-based instruction that:

(a) Assists students to develop and practice effective communication skills, the development of self-esteem and the ability to resist peer pressure;

(b) Provides students with the opportunity to learn about and personalize peer, media and community influences that both positively and negatively impact their decisions to abstain from sexual intercourse;

(c) Enhances students' ability to access valid health information and resources related to their sexual health;

(d) Teaches how to decline unwanted sexual advances, or accept the refusal of unwanted sexual advances, through the use of refusal and negotiation skills;

(e) Is research-based and/or best practice; and

(f) Aligns with the Oregon Health Education Content Standards and Benchmarks.

(8) All human sexuality education programs shall emphasize that abstinence from sexual intercourse, when practiced consistently and correctly, is the only method that is 100 percent effective against unintended pregnancy, HIV infection (when transmitted sexually), hepatitis B/C infection, and other sexually transmitted diseases. Abstinence is to be stressed, but not to the exclusion of other methods for preventing unintended pregnancy, HIV infection, sexually transmitted diseases, and hepatitis B/C. Such courses are to acknowledge the value of abstinence while not devaluing or ignoring those students who have had or are having sexual relationships. Further, sexuality education materials, instructional strategies, and activities must not, in any way, use shame or fear based tactics.

(9) Materials and information shall be presented in a manner sensitive to the fact that there are students who have experienced sexual abuse.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.455

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; EB 2-1997, f. & cert. ef. 3-27-97; ODE 25-2002, f. & cert. ef. 11-15-02; ODE 15-2007, f. & cert. ef. 7-6-07; ODE 25-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies student accounting for purposes of distribution of school funds.
Adm. Order No.: ODE 26-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Amended: 581-023-0006, 581-023-0018
Subject: The rule changes the requirements for school districts reporting enrollment, attendance, membership and other information. The rule also eliminates the enrollment does that apply to students. The codes and other requirements apply to the distribution of the State School Fund and the Common School Fund.
Rules Coordinator: Diane Roth—(503) 947-5791

581-023-0006
Student Accounting Records and State Reporting

(1) The following definitions and abbreviations apply to this rule:

(a) "Active roll" means the list of students enrolled and attending the school or program during the current school year;

(b) "ADA" means average daily attendance;

(c) "ADM" means average daily membership;

(d) "Alternative program" means any private or public alternative program providing instruction or instruction combined with counseling under ORS 336.635;

(e) "Class" means a separate group of students under the direction of a teacher.

(f) "Day in session" means a scheduled day of instruction during which students are under the guidance and direction of teachers;

(g) "Department" means the Oregon Department of Education;

(h) "Full school day" means the length of time a school or program is normally in session during the day in compliance with OAR 581-022-1620;

(i) "FTE" means full-time equivalency;

(j) "Inactive roll" means the list of students enrolled for purposes of credit but not attending the school or program. Includes students attending private alternative or Job Corps programs, students withdrawn after ten consecutive days' absence and students served on a tutorial basis outside the classroom;

(k) "Instruction" for purposes of reimbursement of alternative programs means all activities that are approved by the student's resident school district, consistent with Oregon's academic and career related learning standards, and designed to lead to student achievement of those standards, including participation in Oregon state assessment, where applicable.

(l) "Instructional unit" means a school or other organizational arrangement which provides instruction of a given type or types;

(m) "Intermediate group" means instruction provided to a student receiving a comprehensive instructional program consistent with OAR 581-022-1210 and individually placed by a school district in an alternative program approved by a school district to a class of six to 15 students;

(n) "Large group" means instruction consistent with OAR 581-022-1210 and provided to a student individually placed by a school district in an alternative program approved by a school district to a class of 16 or more students;

(o) "Nonpublic school" means instruction provided by an individual or institution listed in ORS 339.030 as exemptions to the compulsory attendance requirements set out in ORS 339.010.

(p) "Regular school program" means that which is offered to comply with the standards adopted by the State Board of Education and compulsory school attendance law. This does not include summer school, adult education, or pre-kindergarten programs;

(q) "Small group" means instruction provided to a student receiving a comprehensive instructional program consistent with OAR 581-022-1210 and individually placed by a school district in an alternative program approved by the school district to a class of two to five students;

(r) "Superintendent" means the State Superintendent of Public Instruction;

(s)(A) "Teacher" means:

(i) An appropriately licensed staff member with the responsibilities of a teacher in OAR 584-036-0011 or with the responsibilities of teacher described in the definition of a teacher in ORS 342.120; and

(ii) For purposes of private alternative education programs, an appropriately licensed or unlicensed staff member with the responsibilities of a teacher in OAR 584-036-0011 or with the responsibilities of teacher described in the definition of a teacher in ORS 342.120.

(B) "Teacher" does not include an "Educational Assistant" as defined by ORS 342.120 and OAR 581-037-0005 or "Instructional Assistant" described in 584-036-0011.

(t) "Tutorial" means instruction provided to a student receiving a comprehensive instructional program consistent with OAR 581-022-1210 and individually placed by a school district in an alternative program approved by a school district to one student.

(2) Instructions pertaining to the maintenance of student accounting records and state reporting shall be published by the Department.

(3) Each school district and ESD shall:

(a) Permanently maintain accounting records of student enrollment, attendance, membership, resident/nonresident status, and such other student information as may be required, for each student enrolled in regular school programs operating during the regular school year. Such records shall utilize uniform definitions of each student measure as stated in this rule;

(b) Designate the residency for school purposes, subject to the provisions of ORS 327.006 and 339.133 of each student enrolled in the district;

(c) Have in operation an attendance accounting system which is adequately controlled and enables the district's chief administrator to certify in writing the accuracy of reported data;

(d) Report enrollment, attendance, membership, and such other information as the Superintendent may require, within 15 days of the end of the collection periods. Reports for the period ending the first school day in October shall be submitted no later than November 15.

(e) Retain daily source records of enrollment, membership and attendance for a period of no less than two years. Records, whether paper or electronic, must be maintained in an accessible format.

(4) Students shall be entered and withdrawn from the district roll as follows:

(a) A student shall be entered on the district active roll on the first day of the student's actual attendance. A student with an excused absence of less than ten school days at the beginning of the school year may be counted in membership prior to the first day of attendance if the status has been verified by contact with the parent or guardian. A student participating in the program of more than one instructional unit shall be entered on the active roll of that instructional unit in which 50 percent or more of the student's time is scheduled and the student shall not be entered on the roll of other instructional units;

(b) A student whose withdrawal status can be determined within ten school days of their first day of absence shall be marked as a withdrawal on the school day following that determination. A student must be withdrawn from the active roll on the day following the tenth consecutive full school day of absence but may be retained on the inactive roll at the district's option. A student must be present for at least one-half day in order to restart the count of consecutive days' absence. Under no circumstances shall a student who is absent for the first ten days at the beginning of the school year be counted in membership prior to the first day of school attendance. A student whose attendance is reported as hours of instruction must be withdrawn from the active roll on the day following the tenth consecutive day of absence from the program in which they are enrolled. A student must be present for at least one hour of instruction in order to restart the count of

consecutive days' absence. A student who is enrolled in dual programs and reported as both days present/days absent and hours of instruction must be withdrawn according to the instructional unit in which fifty percent or more of the student's time is scheduled. Under no circumstance shall a student who is absent for the first ten days at the beginning of the school year be counted in membership prior to the first day of school attendance.

(5) Membership and attendance accounting in instructional units scheduled to operate a full school day shall be recorded as follows:

(a) A full-time equivalency (FTE) for each student on the active roll shall be determined. Students participating in more than one-half of the full-day program shall be given an FTE of 1.0. Students participating in one-half or less of the full-day program shall be given an FTE of .5. The FTE computation of students placed in community college programs by the local school district shall include time spent in the community college program:

(A) Kindergarten students shall be assigned an FTE of 1.0. The Department shall adjust the total days membership of kindergarten students reflecting the permissible percentage as stated in statute;

(B) Students participating in district supervised work-study programs may be credited as 1.0 FTE. If a student is released for work during school hours and the district assumes no supervisory responsibility for the time involved, that time shall not be counted as participation in the full-day program when determining the student's FTE.

(b) Membership of each student for the period shall be computed as follows: student FTE times days present plus student FTE times days absent equals total days membership of the student. The day upon which a student is marked as a withdrawal shall not be counted as a day of membership. A student not scheduled to attend daily shall be marked present or absent only on the days the student is scheduled to attend;

(c) Total days membership of the instructional unit shall be the total of days membership of all students on the active roll of the instructional unit as computed in subsection (b) of this section. The computation of total days membership of the instructional unit shall yield subtotals indicating grade placement and resident/nonresident status of student membership;

(d) The Department shall compute the ADM and ADA of resident students, nonresident students, and attending students for each instructional unit reporting and derive totals of such data for each local school district in the state, subject to the following procedures:

(A) ADM is the total days membership of an instructional unit during a specific reporting period divided by the number of days the instructional unit was in session during that reporting period. The ADM of groups of instructional units having varying lengths of terms shall be the sum of the ADMs obtained for the individual instructional units. If a district school board adopts a class schedule that operates throughout the year under the provisions of ORS 336.012 for all or any instructional units in the district, the computation shall be made so that the resulting ADM will not be higher or lower than if the local board had not adopted such a schedule;

(B) ADA is the total days attendance of an instructional unit during a specific reporting period divided by the number of days the instructional unit was in session during that reporting period. The ADA of groups of instructional units having varying lengths of terms shall be the sum of the ADAs obtained for the individual instructional units. If a district school board adopts a class schedule that operates throughout the year under the provisions of ORS 336.012 for all or any instructional units in the district, the computation shall be made so that the resulting ADA will not be higher or lower than if the local board had not adopted such a schedule.

(6) Students enrolled in programs operating less than the full school day and nonpublic school students attending public schools part time shall be accounted for as follows:

(a) The ADM of students enrolled in schools under provisions of ORS 336.135 and students enrolled in nonpublic schools or taught by private teacher or parent under ORS 339.035 shall be computed by multiplying total hours of instruction given all students during the reporting period by .167 and dividing the product by 73 for the July 1 to December 31 cumulative report and by 175 for the June 30 annual report;

(b) The ADM of students receiving tutorial instruction provided by licensed district staff shall be computed by dividing total number of hours of tutorial instruction given (not to exceed 5 hours per week for a single student) by 73 for the July 1 to December 31 cumulative report and by 175 for the June 30 annual report;

(c) The computation of ADM for each less than full-time program listed shall yield subtotals for resident and nonresident students;

(d) The ADM of students enrolled in less than full-time programs shall be reported to the Department for the period ending December 31 and for the year ending June 30.

(e) No more than five day's membership may be claimed for any student enrolled in any combination of programs during a one-week period.

(f) Kindergarten ADM will be adjusted by the Department to reflect the permissible percentage as stated in statute.

(7) A student enrolled in a public school district and receiving instruction in the district's comprehensive planned K-12 curriculum consistent with OAR 581-022-1210 and who is individually placed by the school district in an alternative education program under ORS 336.635 shall be accounted for as follows:

(a) The ADM of students enrolled in alternative programs scheduled to operate a full school day may be computed either on the basis of membership (section (5) of this rule) or on the basis of actual attendance (section (7)(b) of this rule);

(b) Equivalent ADM of students enrolled in alternative programs scheduled to operate less than full time shall be computed as follows:

(A) Equivalent ADM of students enrolled in large group instruction shall be computed by multiplying total hours of instruction given all students during the reporting period by a factor of .167 and dividing the product by 73 for the July 1 to December 31 period cumulative report and by 175 for the June 30 annual report;

(B) Equivalent ADM of students enrolled in intermediate group instruction shall be computed by multiplying the total hours of instruction given all students during the reporting period by a factor of .222 and dividing the product by 73 for the July 1 to December 31 period cumulative report and by 175 for the June 30 annual report;

(C) Equivalent ADM of students enrolled in small group instruction shall be computed by multiplying the total hours of instruction by a factor of .333 and dividing the product by 73 for the July 1 to December 31 period cumulative report and by 175 for the June 30 annual report;

(D) Equivalent ADM of students receiving individual instruction shall be computed by multiplying the total number of hours of tutorial instruction given by a factor of 1.0 and dividing the product by 73 for the July 1 to December 31 period cumulative report and by 175 for the June 30 annual report;

(E) Case management services (not limited to student contact) may be counted as large group instruction and constitute up to ten percent of equivalent ADM if specifically authorized by contract with the resident school district;

(F) Documented time in supervised work experience programs, supervised community service activities and supervised independent study, if performed as a part of the instructional programs designed to fulfill the student's educational goals, may be counted as large group instruction;

(G) Over any 20-day period, no more than 20 equivalent membership days may be claimed for any student receiving a combination of instructional services under paragraph (7)(b)(A), (B), (C) or (D) of this rule. Equivalent membership days for any student is equal to the hours of instruction given multiplied by the factor appropriate for the size of the instructional group.

(c) Students attending alternative programs part day and attending the home high school part day shall be reported by the home high school only, taking account of the total time spent in the alternative program and the home high school when determining FTE under section (5) of this rule;

(d) Students attending private alternative programs only, shall not be reported by the instructional unit placing the student for purposes of reporting membership or attendance.

(8) Each private alternative program shall:

(a) Maintain accounting records of student attendance, size of group attended, resident school district and such other student information as may be required by the contracting school district for each student attending the private alternative program;

(b) Report student name, dates served and hours served by group size to resident school district no less than twice yearly, once for the July 1 through December 31 period and an annual report ten days after the close of the school year; and

(c) Retain student attendance records for a period of no less than two years.

(9) Students in the following programs are not eligible to be counted in the resident average daily membership for purposes of ORS 327.013(7)(a):

(a) Students enrolled in special education programs under ORS 343.261, 343.961, and 346.010.

(b) Children enrolled in early intervention and early childhood special education programs under ORS 343.533;

(c) Students not receiving a free public education;

(d) Students in summer school programs;

(e) Students in adult education classes.

(10) Rules governing the reporting of students identified as dropouts are contained in the most recent edition of the Oregon Dropout Reporting Manual, published by the Oregon Department Education. The State Board of Education adopts the procedures in this publication to govern the reporting of dropouts by school districts.

(11) For the purposes of dropout reporting, the following shall apply:

(a) A student is considered enrolled when the student is present at school and attends more than half of a school day;

(b) Acceptable alternative programs are those programs providing activities meeting OAR 581-023-0008 and provided by public school districts, ESDs, community colleges or private alternative programs registered with the Oregon Department of Education under OAR 581-021-0072;

(c) An absence, explained or unexplained becomes a withdrawal after an absence of 10 consecutive days. A student must be present for at least one-half day in order to restart the count of consecutive days absence;

(d) Standards for excused absences must be developed by local districts. Policies shall clearly define excused and unexcused absences and ensure the health and safety of the child. Parents shall be informed of the policies at enrollment. Policy should address the documentation required.

(12) The Superintendent shall prescribe the applicable student accounting procedures for any programs or specific situations not covered by the provisions of this rule.

Stat. Auth.: ORS 326.310 & 327.125
Stats. Implemented: ORS 327
Hist.: 1EB 1-1981, f. 2-5-81, ef. 7-1-81; 1EB 14-1985, f. 7-3-85, ef. 7-5-85; 1EB 28-1986, f. & ef. 7-18-86; EB 17-1987, f. & ef. 8-4-87; EB 18-1987(Temp), f. & ef. 8-4-87; EB 33-1987, f. & ef. 12-11-87; EB 38-1988, f. & cert. ef. 9-22-88; EB 30-1992, f. & cert. ef. 10-14-92; EB 6-1996, f. & cert. ef. 4-25-96; ODE 3-2007, f. & cert. ef. 2-21-07; ODE 23-2008, f. 8-28-08, cert. ef. 8-29-08; ODE 26-2009, f. & cert. ef. 12-10-09

581-023-0018
Resident Enrollment and Resident Average Daily Membership by County Lines

To provide a basis for budgeting purposes and for final distribution of the Common School Fund and the County School Fund to the school districts, the following procedure shall be followed:

(1) Each school district shall report to the Oregon Department of Education the resident county of each student in the district's reports of enrollment, attendance, and membership. The resident county for each pupil shall be the county in which the student resides, regardless of where the student may attend school. Such reports shall be due within 15 days after the close of the respective periods.

(2) The Department of Education will calculate by county the resident average daily membership (ADM — As defined in ORS 327.006) of the joint districts based on the county of residence for each pupil as reported by each district.

(3) By March 15 the Department of Education will certify to each Education Service District (ESD) or county school district the December 31 report of resident ADM by county lines. These data are to be used for purposes of budgeting each district's share of estimated receipts from the Common School Fund and the County School Fund.

(4) By November 1, the Department of Education will certify to each ESD or county school district the June 30 report of resident ADM by county lines. These data are to be used for purposes of final distribution to the districts of the Common School Fund and the County School Fund.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 327.125 & 327.420
Hist.: 1EB 234, f. & ef. 6-18-76; 1EB 12-1981, f. 5-22-81, ef. 7-1-81; ODE 26-2009, f. & cert. ef. 12-10-09

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Rule Caption: Modifies rule relating to criminal background checks of private school employees.
Adm. Order No.: ODE 27-2009
Filed with Sec. of State: 12-10-2009
Certified to be Effective: 12-10-09
Notice Publication Date: 10-1-2009
Rules Amended: 581-045-0522, 581-045-0586
Subject: The 2009 legislature enacted SB 46. The rule amendments implement this bill. The rule amendments allow a private school to request a criminal background check of all unlicensed personnel not just those with direct, unsupervised contact with students.
Rules Coordinator: Diane Roth—(503) 947-5791

581-045-0522
Criminal Records Check of Employees

A private school registered with the Department of Education, per ORS 326.603, may require employees, whether part-time or full-time, and contractors who have direct, unsupervised contact with students as determined by the school, to have criminal records checks as specified in OAR 581-045-0586.

Stat. Auth.: ORS 326.603
Stats. Implemented: 326.603
Hist.: ODE 8-2009, f. & cert. ef. 6-29-09; ODE 27-2009, f. & cert. ef. 12-10-09

581-045-0586
Fingerprinting of Subject Individuals Employed by Private Schools in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses

(1) Definitions of terms shall be as follows:

(a) "Subject individual" means:

(A) A person employed by a Private School in a position not requiring licensure under ORS 342.223; and

(B) Any person newly hired as or by a contractor into a position having direct, unsupervised contact with students and not requiring licensure under ORS 342.223.

(b) "Direct, unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed. Fees shall be paid to the Oregon Department of Education with submission of fingerprint cards and associated form. The fee amount and distribution shall be as follows:

(A) Oregon State Police (OSP) — $28;

(B) Federal Bureau of Investigation (FBI) — $24;

(C) Oregon Department of Education — $10;

(D) TOTAL — $62.

(d) "Information to be required" means all information requested by the Oregon Department of Education for processing the fingerprint application, including the following:

(A) One properly completed FBI fingerprint cards #USGPO 1990-262-201-2000; and

(B) A properly completed Department of Education form #581-2283-M.

(e) "Convictions of crimes prohibiting employment, contract or assignment by a contractor" means, notwithstanding any other statutes or Oregon administrative rule, conviction of a crime listed in ORS 342.143, or making a false statement as to the conviction of a crime;

(f) "Applicant" means a subject individual for whom fingerprint cards and other required information have been submitted to the Oregon Department of Education for a criminal history check and review;

(g) "Knowingly made a false statement" means that a subject individual has failed to disclose a crime on the Department of Education form #581-2283-M as part of the criminal background check process.

(h) "Private School" means a school that is registered with the Oregon Department of Education under ORS 345.515.

(2) A private school may request that Department of Education conduct a criminal records check of a subject individual. Upon receipt of the information, the Department shall request criminal information from the Department of State Police in the manner prescribed by law and may charge the private school a fee not to exceed the actual cost of acquiring and furnishing the information.

(3) The Oregon Department of Education shall review the criminal records of subject individual upon the private school's submission of the required FBI and state forms and the State Superintendent of Public Instruction or designee shall issue a statement of criminal history status. The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has knowingly made a false statement as to conviction of a crime. A private school may choose to employ or contract with a person who has knowingly made a false statement as to conviction of a crime.

(4) The Oregon Department of Education shall not provide copies of criminal records to anyone except as provided by law. The subject individual may inspect his or her personal criminal records under the supervision of properly certified LEDS (Law Enforcement Data Systems) personnel at the Department of Education.

(5) The Superintendent of Public Instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in ORS 342.143, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Oregon under a different statutory name or number. A private school may choose to employ or

contract with a person who has been convicted of a crime listed in ORS 342.143 or the substantial equivalent. The crimes listed in ORS 342.143 are:

(a) ORS 163.095 — Aggravated Murder;
(b) ORS 163.115 — Murder;
(c) ORS 163.185 — Assault in the First Degree;
(d) ORS 163.235 — Kidnapping in the First Degree;
(e) ORS 163.355 — Rape in the Third Degree;
(f) ORS 163.365 — Rape in the Second Degree;
(g) ORS 163.375 — Rape in the First Degree;
(h) ORS 163.385 — Sodomy in the Third Degree;
(i) ORS 163.395 — Sodomy in the Second Degree;
(j) ORS 163.405 — Sodomy in the First Degree;
(k) ORS 163.408 — Unlawful Sexual Penetration in the Second Degree;
(l) ORS 163.411 — Unlawful Sexual Penetration in the First Degree;
(m) ORS 163.415 — Sexual Abuse in the Third Degree;
(n) ORS 163.425 — Sexual Abuse in the Second Degree;
(o) ORS 163.427 — Sexual Abuse in the First Degree;
(p) ORS 163.432 — Online sexual corruption of a child in the second degree;
(q) ORS 163.433 — Online sexual corruption of a child in the first degree;
(r) ORS 163.435 — Contributing to the Sexual Delinquency of a Minor;
(s) ORS 163.445 — Sexual Misconduct;
(t) ORS 163.465 — Public Indecency;
(u) ORS 163.515 — Bigamy;
(v) ORS 163.525 — Incest;
(w) ORS 163.547 — Child Neglect in the First Degree;
(x) ORS 163.575 — Endangering the Welfare of a Minor;
(y) ORS 163.670 — Using Child in Display of Sexually Explicit Conduct;
(z) ORS 163.675 (1985 Replacement Part) — Sale of Exhibition of Visual Reproduction of Sexual Conduct by Child;
(aa) ORS 163.680 (1993 Edition) — Paying for Viewing Sexual Conduct Involving a Child;
(bb) ORS 163.684 — Encouraging Child Sex Abuse in the First Degree;
(cc) ORS 163.686 — Encouraging Child Sex Abuse in the Second Degree;
(dd) ORS 163.687 — Encouraging Child Sex Abuse in the Third Degree;
(ee) ORS 163.688 — Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;
(ff) ORS 163.689 — Possession of Materials Depicting Sexually Explicit Conduct of a child in the Second Degree;
(gg) ORS 164.325 — Arson in the First Degree;
(hh) ORS 164.415 — Robbery in the First Degree;
(ii) ORS 166.005 — Treason;
(jj) ORS 166.087 — Abuse of Corpse in the first Degree;
(kk) ORS 167.007 — Prostitution;
(ll) ORS 167.012 — Promoting Prostitution;
(mm) ORS 167.017 — Compelling Prostitution;
(nn) ORS 167.054 — Furnishing sexually explicit material to a child;
(oo) ORS 167.057 — Luring a minor;
(pp) ORS 167.062 — Sadomasochistic Abuse or Sexual Conduct in Live Show;
(qq) ORS 167.075 — Exhibiting an Obscene Performance to a Minor;
(rr) ORS 167.080 — Displaying Obscene Materials to Minors;
(ss) ORS 167.090 — Publicly Displaying Nudity or Sex for Advertising Purposes;
(tt) ORS 475.848 — Unlawful manufacture of heroin within 1,000 feet of school;
(uu) ORS 475.852 — Unlawful delivery of heroin within 1,000 feet of school;
(vv) ORS 475.858 — Unlawful manufacture of marijuana within 1,000 feet of school;
(ww) ORS 475.860 — Unlawful delivery of marijuana;
(xx) ORS 475.862 — Unlawful delivery of marijuana within 1,000 feet of school;
(yy) ORS 475.864 — Unlawful possession of marijuana;
(zz) ORS 475.868 — Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
(aaa) ORS 475.872 — Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
(bbb) ORS 475.878 — Unlawful manufacture of cocaine within 1,000 feet of school;
(ccc) ORS 475.880 — Unlawful delivery of cocaine;
(ddd) ORS 475.888 — Unlawful manufacture of methamphetamine within 1,000 feet of school;
(eee) ORS 475.890 — Unlawful delivery of methamphetamine;
(fff) ORS 475.892 — Unlawful delivery of methamphetamine within 1,000 feet of school;
(ggg) ORS 475.904 — Unlawful manufacture or delivery of controlled substance within 1,000 feet of school;
(hhh) ORS 475.906 — Penalties for distribution to minors.

(6) Only cards and forms approved by the Department of Education will be accepted. The Department of Education will return any incomplete or incorrectly completed fingerprint cards and associated forms without taking any other action. The Department of Education will return fingerprint cards and associated forms without appropriate fees without taking any other action.

(7) The Department of Education shall maintain a record of all properly submitted fingerprint cards. The record shall include at least the following:

(a) Card sequence number;
(b) Name of Private School submitting the cards;
(c) Date cards and Department form received;
(d) Date incomplete card returned to the school (only if applicable);
(e) Date completed card sent to Oregon State Police;
(f) Date private school was notified of state police record or lack of record;
(g) Date FBI card returned to Department;
(h) Date private school was notified of FBI record or lack of record.

Stat. Auth.: ORS 326.603
Stats. Implemented: ORS 326.603
Hist.: EB 16-1997, f. & cert. ef. 12-29-97; ODE 29-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 13-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; Administrative correction 8-2-04; ODE 9-2006, f. & cert. ef. 2-21-06; Renumbered from 581-022-1732, ODE 25-2008, f. & cert. ef. 9-26-08; ODE 27-2009, f. & cert. ef. 12-10-09

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Oregon Health Licensing Agency
Chapter 331

Rule Caption: Decrease temporary license fees for the Respiratory Therapy Licensing Board.
Adm. Order No.: HLA 2-2009(Temp)
Filed with Sec. of State: 11-30-2009
Certified to be Effective: 12-1-09 thru 5-15-10
Notice Publication Date:
Rules Amended: 331-705-0060
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.
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: $25 for the first month in expired status, and $10 each month thereafter while in an expired status.
(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

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Allows the reservation of Farmworker Housing Tax Credits as a leverage for other federal and state funding.
Adm. Order No.: OHCS 3-2009(Temp)
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09 thru 6-12-10
Notice Publication Date:
Rules Adopted: 813-041-0027, 813-041-0035
Rules Amended: 813-041-0000, 813-041-0005, 813-041-0010, 813-041-0015, 813-041-0020, 813-041-0025, 813-041-0030
Subject: 813-041-0000 — Administrative changes.

813-041-0005 — Adds definitions for 'Acquisition Costs', 'Carry-Over Application' and 'Reservation Letter.' Completes administrative changes.

813-041-0010 — Allows the department to issue reservation letters for projects that have yet to obtain a firm commitment of financing where an applicant is applying for other federal or state funding.

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

813-041-0020 — Removes the language that a new application can be submitted for the next calendar year for a standby application that expires on December 31.

813-041-0025 — Administrative changes.

813-041-0027 — Allows the department to impose charges for applicants participating in the program and for any legal costs.

813-041-0030 — Administrative changes.

813-041-0035 — Allows the department to waive or modify requirements of the rules if it will serve the best interests of the program or department, and is not in violation of applicable federal or state statutes or regulations.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-041-0000
Purpose and Objectives

OAR chapter 813, division 41, is promulgated to carry out the provisions of ORS 315.164 through 315.169, in particular ORS 315.167, as they pertain to the Oregon Housing and Community Services Department. The purpose of the Farmworker Housing Tax Credit Program is to encourage the rehabilitation of existing housing and the construction or placement of additional housing for farmworkers.

Stat. Auth.: ORS 315.167 - 315.139 & 458.650
Stats Implemented: ORS 315.617
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0005
Definitions

All terms used in OAR chapter 813, division 41, are defined in the Act, in OAR 813-005-0005, in ORS 315.163, and herein.

(1) "Acquisition Costs" means the cost of acquiring buildings, structures and improvements that constitute or will constitute farmworker housing. Acquisition costs do not include the cost of acquiring land on which farmworker housing is or will be located. Acquisition does not mean solely the cost of acquiring a project which has been awarded farmworker housing tax credits.

(2) "Annual Notice" means the Department's notice of details of the program for that year, including any changes the Department may have made to the program from the previous year pursuant to ORS 315.164 through 315.167 and OAR chapter 813, division 41.

(3) "Application" means the application filed by an owner with the Department on the Department's prescribed application form(s), together with the attached information, as required by the Department in OAR 813-041-0010, and as the Department may specify in an annual notice or by other means, which has been signed by the owner requesting approval for tax credits for a project.

(4) "Approval" means issuance by the Department of a letter of credit approval for a project.

(5) "Cap" means the maximum aggregate amount of estimated eligible costs for all projects approved for the calendar year pursuant to letters of credit approval issued by the Department, as set forth in ORS 315.167(4).

(6) "Carry-over Application" means an application which is fully approvable and either:

(a) Can only be awarded partial credits due to cap restrictions for the calendar year. Applicants must voluntarily reduce their eligible costs and file a new application no later than January 15, or

(b) Is an application which received a reservation.

(7) "Condition of Habitability" means a condition that is in compliance with:

(a) The applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder; or

(b) If determined on or before December 31, 1995, section 12 and 13, chapter 964, Oregon Laws 1989.

(8) "Eligible Costs" includes finance costs, construction costs including development costs as well as hard construction costs, excavation costs, installation costs, and permit costs, but excludes land costs, operating and replacement reserves.

(9) "Estimated Eligible Costs" is the lesser of:

(a) A forecast of the actual eligible costs;

(b) An amount less than such forecasted amount that the owner is requesting for approval for a specific project; or

(c) A voluntary ceiling for the forecasted eligible costs for large projects as may be announced in an annual notice.

(10) " Farmworker" means any person who, for an agreed remuneration or rate of pay, performs temporary or permanent labor for another in the production of farm products or in the planting, cultivating or harvesting of seasonal agricultural crops or in the forestation or reforestation of lands, including but not limited to planting, transplanting, tubing, pre-commercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(11) "Farmworker Housing" means housing:

(a) Limited to occupancy by farmworkers and their immediate families;

(b) No dwelling unit of which is occupied by a relative of the owner or operator of such farmworker housing; and

(c) Consisting, if located in an exclusive farm use zone, of housing that is in compliance with any applicable local zoning ordinance and that is:

(A) A manufactured dwelling, as defined in ORS 446.003, or

(B) Any other dwelling unit in existing farmworker housing, if the project for which the tax credit is being claimed, consists of the rehabilitation of such existing farmworker housing.

(12) "Farmworker Housing Project" or "Project" means construction, installation or rehabilitation of farmworker housing located in the state of Oregon.

(13) "Firm Commitment of Financing" means an agreement by a lender or other resource provider to make funds available to the owner for the project, which agreement contains all of the terms and conditions that the owner has to satisfy prior to closing.

(14) "Owner" means a person or corporation, including a nonprofit corporation or state or local government entity including but not limited to a housing authority, which holds legal title to the farmworker housing and will develop and manage (whether directly or through an operator) the farmworker housing. The owner may be the controlling general partner in a limited partnership which holds legal title to the farmworker housing and will develop and manage (whether directly or through an operator) the farmworker housing in accordance with all applicable state and federal statutes and regulations and any other requirement as set forth by the Department.

(15) "Operator" means a person or entity other than an owner who operates and manages farmworker housing.

(16) "Program" means the Farmworker Housing Tax Credit Program.

(17) "Rehabilitation" means to make repairs or improvements to a building that improve its livability and are consistent with applicable building codes.

(18) "Relative" means a brother or sister (whether by the whole or by half blood), spouse, ancestor (whether by law or by blood), or lineal descendant of an individual.

(19) "Reservation Letter" means a letter indicating the level of farmworker housing tax credit award needed for leverage or match in an application for state or federal funds. The reservation letter does not mean a letter of tax credit approval.

(20) "Taxpayer" means a resident individual, corporation or financial institution, including, but not limited to, an owner or operator of farmworker housing.

(21) "Tax Credit" means a credit against taxes allowed a taxpayer for a farmworker housing project pursuant to ORS 315.164.

(22) "Tenant" is a person or a renter (including any family members) who occupies or will occupy a unit in farmworker housing.

Stat. Auth.: ORS 315-164 - 315.169 & 458.650
Stats Implemented: ORS 315.167
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0010
Program Description and Application Requirements

(1) Prior to submitting any application, applicants are encouraged to read ORS 315.164 through 315.169, the annual notice, and general information regarding this program. This information will be provided, along with application form(s), upon request addressed to: Farmworker Housing Tax Credit Program, Oregon Housing and Community Services Department, North Mall Office Building, 725 Summer Street NE, Salem, Oregon 97301-1266.

(2) The Department reserves the right to establish the initial date on which applications may be filed in any year, the application form(s) and required supporting documentation, and evaluation criteria. The Department also reserves the right to request additional information and to request applicants with large projects to agree to a voluntary ceiling on the estimated eligible costs included in their applications.

(3) An application for tax credit for a project shall be filed no later than six months after the date construction for the project commences. The application shall contain all information required by the Department, including, but not limited to:

(a) Name, address, telephone number, and taxpayer identification number of the taxpayer and owner;

(b) Location of the proposed farmworker housing;

(c) A description of the project, including:

(A) The type of housing (seasonal or year around housing); and

(B) Number and type of housing units to be provided and the projected occupancy and square footage per unit;

(d) The estimated eligible costs of the project, broken down by cost type (note that an annual notice may request owners to limit the amount of the estimated eligible costs requested in their applications); and

(e) Any other information as the Department may require, including but not limited to:

(A) Information about the current zoning of the proposed site, including at a minimum, an accompanying letter signed by the appropriate community development or planning agency indicating the current zoning designation and that the proposed project complies with the allowable uses for the zone designation, to confirm both the eligibility of the project proposed and its ability to proceed;

(B) An accompanying letter or form specifying the sources of the funds, including at a minimum any outside sources of funds, and/or firm commitments of financing for funds from sources not in the owner's name. The Department may, at its discretion, issue a reservation letter for projects which have yet to obtain a firm commitment of financing. Reservation letters will only be issued when an applicant is applying for other federal or state funding where a commitment of farmworker tax credits would benefit the application;

(C) Information on the readiness of the project to proceed to construction in the current calendar year, such as:

(i) Projected date on-site construction activity will begin or necessary permits will be secured; and

(ii) The projected construction time;

(D) Information on the projected occupancy date;

(E) Information on the projected life of the project for farmworker housing purposes;

(F) A commitment to the timely completion of the project, shall either be evidenced by:

(a) The execution of the application by the owner if the project will be completed and ready for occupancy in the calendar year of the approval; or

(b) A specific letter of commitment stating that the project will be completed and ready for occupancy during the following calendar year; and

(G) Any other information the Department may specify in an annual notice.

(4) To claim a tax credit under this division, a taxpayer must show in each year following the completion of a farmworker housing project that the project is continuing to be operated as farmworker housing for a period of at least ten years after such completion, unless the Department grants the taxpayer a waiver from this requirement after the taxpayer has successfully met this requirement for the first five years after completion. Factors necessary for the Department to grant such a waiver may include, but are not limited to, the following:

(a) A documented decline in a particular area for farmworker housing; and

(b) Other factors as may be outlined in the application form(s), informational materials, or annual notice(s).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 315.167 - 315.169 & 458.650
Stats Implemented: ORS 315.617
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0015
Filing, Consideration and Evaluation of Applications.

(1) Unless otherwise indicated by the Department in an annual notice, applications may be filed after January 2 for a given calendar year. Applications for a calendar year submitted before the initial date applications may be filed for that calendar year will not be considered and will be returned. Applications will be considered filed on the date of the USPS postmark if mailed; on the date printed out by Department devices on which they arrive if sent electronically by facsimile (Fax); and on the date they are stamped in at the Department if hand delivered.

(2) The Department may, subject to availability under the cap, consider applications through any reasonable process which may include, but is not limited to, a first come-first reviewed process, competitive review process, as a demonstration program, or as necessary to meet an on-going concern.

(3) The Department may create a 'soft set-aside' of credits solely for on-farm projects. Such set-aside will extend to June 30 of the given calendar year. Credits not awarded by that time may be made available to any otherwise viable project.

(4) The Department's evaluation of applications for approval may include, but is not limited to, the following criteria:

(a) Completeness, level of detail and accuracy of the information included in the application;

(b) Other criteria as may be established in the application form(s) and announced in the annual notice. In the evaluation process the Department may determine the qualifying status of the taxpayer, the proposed project and the costs included in the estimated eligible costs.

(5) The Department may:

(a) Return as not filed, any application determined in the evaluation process not to include specific or substantial information about the project or determined by the Department to be incomplete in any respect;

(b) Request the owner to provide, within 15 calendar days, any information deemed missing, and if such information is not timely submitted, the application may be returned as not filed;

(c) Limit the tax credit award to the minimum amount required to make the project financially viable; or

(d) Issue a reservation letter where appropriate.

(6) Upon determining that an application has successfully met the evaluation criteria, the application will be further processed for approval in the chronological order in which it was filed.

Stat. Auth.: ORS 315.167 315.169 & 458.650
Stats Implemented: ORS 315.617
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0020
Standby Applications

(1) Any application requesting approval for estimated eligible costs which, when aggregated with the estimated eligible costs of all projects approved to that date for that calendar year, is in excess of the cap, must be

declined unless the owner elects to reduce the estimated eligible costs for the project to an amount that would, when aggregated with the estimated eligible costs of all projects approved to that date for that calendar year, not exceed the cap, or unless the owner asks to be placed on a standby list.

(2) The Department may maintain applications on a standby list in any order determined by the Department if they are otherwise determined in the evaluation process to be appropriate for approval.

(3) Whenever, for any reason, there is availability under the cap later in a given calendar year, the Department will select a standby application for further processing for approval, and will notify the owner, and allow the owner a reasonable time to update its application to reflect current conditions.

(4) All outstanding standby applications shall expire on December 31 of the calendar year of application.

Stat. Auth.: ORS 315.167 - 315.169 & 458.650
Stats Implemented: ORS 315.617
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0025
Approval of Eligible Projects

(1) Subject to availability under the cap, the Department may approve an application for tax credit, provided that all occupied units in the farmworker housing for which the tax credit is being claimed are occupied by farmworkers and their immediate family. Relatives of the owner or operator may not occupy any dwelling unit in such farmworker housing.

(2) An owner who files an application and meets the requirements set forth in ORS 315.164 through 315.167, OAR chapter 813, division 41, and the applicable annual notice will be issued a letter of credit approval. A letter of credit approval designates by its date of issuance the earliest tax year in which the tax credit may be claimed for the completed project. The letter of credit approval will indicate that:

(a) A tax credit may, subject to disallowance by the Department of Revenue, be claimed based on the estimated eligible costs specified in the letter, or actual costs, whichever are lower, following completion of the project and a pre-occupancy inspection where applicable;

(b) Other criteria apply to the project and must be met for the full term of the tax credit to assure continued eligibility for claiming the tax credit by the owner, taxpayer, or financial institution; and

(c) The estimated eligible costs for all projects approved to date in the calendar year (including the project which is the subject of the letter of credit approval) do not exceed the cap.

Stat. Auth.: ORS 315.167 - 315.169
Stats Implemented: ORS 315.617
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0027
Charges

(1) The Department may impose a charge from any applicant requesting farmworker housing tax credits.

(2) The Department may charge for Department of Justice time required for review of applicant requested changes to proscribed documents.

Stat. Auth.: ORS 315-164 - 315.169
Stats Implemented: ORS 315.167
Hist.: OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0030
Monitoring

If, after issuance of a letter of credit approval and during the term the tax credit is being used, the project is found to be out of compliance with the requirements, including but not limited to ORS 315.164 through 315.167, OAR chapter 813, division 41, or the commitments contained in the application, the Department will promptly notify the Department of Revenue, and the Department of Revenue will take any appropriate action based on Department of Revenue statutes, rules and procedures.

Stat. Auth.: ORS 315.167 315.169
Stats Implemented: ORS 315.617
Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

813-041-0035
Waiver

The Department may waive or modify any requirements of these rules upon a determination by it of good cause in order to promote the best interests of the program or of the department, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat Auth.: ORS 456.515 - 456.720, 315.164 - 315.167 & 458.650
Stats Implemented: ORS 315.167 & 456.555
Hist.: OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Implement Senate Bill changes relating to reemployed retired members.
Adm. Order No.: PERS 11-2009
Filed with Sec. of State: 12-1-2009
Certified to be Effective: 12-1-09
Notice Publication Date: 9-1-2009
Rules Amended: 459-017-0060
Subject: Enacted Senate Bill 112 allows a retired PERS member who elects a total lump sum payment at retirement to be reemployed by a public employer under the same provision as a retired member receiving a monthly benefit. The bill also provides that is a retired member is reemployed by a public employer in a position that is not subject to limitations on hours of employment, hours worked by that retired member in that position do not count toward limitations on hours of employment with other public employers. The amendments to this rule incorporate the legislative changes from SB 112.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-017-0060
Reemployment of Retired Members

(1) For purposes of this rule, "retired member" means a member of the PERS Chapter 238 Program who is retired for service.

(2) Reemployment under ORS 238.082. A retired member may be employed under 238.082 by a participating employer without loss of retirement benefits provided:

(a) The period or periods of employment with one or more participating employers total less than 1,040 hours in a calendar year; or

(b) If the retired member is receiving retirement, survivors, or disability benefits under the federal Social Security Act, the period or periods of employment total less than 1,040 hours in a calendar year or no more than the total number of hours in a calendar year that, at the retired member's specified hourly rate of pay, limits the annual compensation of the retired member to an amount that does not exceed the following Social Security annual compensation limits:

(A) For retired members who have not reached full retirement age under the Social Security Act, the annual compensation limit is $14,160; or

(B) For the calendar year in which the retired member reaches full retirement age under the Social Security Act and only for compensation for the months before reaching full retirement age, the annual compensation limit is $37,680.

(3) The limitations on employment in section (2) of this rule do not apply if the retired member has reached full retirement age under the Social Security Act.

(4) The limitations on employment in section (2) of this rule do not apply if:

(a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7) or (8), and did not retire at a reduced benefit under the provisions of 238.280(1), (2), or (3);

(b) The retired member retired at a reduced benefit under ORS 238.280(1), (2) or (3), is employed in a position that meets the requirements of 238.082(4), the date of employment is more than six months after the member's effective retirement date, and the member's retirement otherwise meets the standard of a bona fide retirement;

(c) The retired member is employed by a school district or education service district as a speech-language pathologist or speech-language pathologist assistant and:

(A) The retired member did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3); or

(B) If the retired member retired at a reduced benefit under the provisions of ORS 238.280(1), (2) or (3), the retired member is not so employed until more than six months after the member's effective retirement date and the member's retirement otherwise meets the standard of a bona fide retirement;

(d) The retired member meets the requirements of section 2, chapter 499, Oregon Laws 2007;

(e) The retired member is employed for service during a legislative session under ORS 238.092(2); or

(f) The retired member is on active state duty in the organized militia and meets the requirements under ORS 399.075(8).

(g) For purposes of population determinations referenced by statutes listed in this section, the latest federal decennial census shall first be operative on the first day of the second calendar year following the census year.

(5) If a retired member is reemployed subject to the limitations of ORS 238.082 and section (2) of this rule, the period or periods of employment subsequently exceed those limitations, and employment continues into the month following the date the limitations are exceeded:

(a) If the member has been retired for six or more calendar months:

(A) PERS will cancel the member's retirement.

(i) If the member is receiving a monthly service retirement allowance, the last payment to which the member is entitled is for the month in which the limitations were exceeded.

(ii) If the member is receiving installment payments under ORS 238.305(4), the last installment payment to which the member is entitled is the last payment due on or before the last day of the month in which the limitations were exceeded.

(iii) If the member received a single lump sum payment under ORS 238.305(4) or ORS 238.315, the member is entitled to the payment provided the payment was dated on or before the last day of the month in which the limitations were exceeded.

(iv) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.

(B) The member will reestablish active membership the first of the calendar month following the month in which the limitations were exceeded.

(C) The member's account must be rebuilt in accordance with the provisions of section (7) of this rule.

(b) If the member has been retired for less than six calendar months:

(A) PERS will cancel the member's retirement effective the date the member was reemployed.

(B) All retirement benefits received by the member must be repaid to PERS in a single payment.

(C) The member will reestablish active membership effective the date the member was reemployed.

(D) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be the same as the amount in the member account at the time of the member's retirement.

(6) For purposes of determining period(s) of employment in section (2) of this rule:

(a) Hours of employment are hours on and after the retired member's effective retirement date for which the member receives wages, salary, paid leave, or other compensation.

(b) Hours of employment that are performed under the provisions of section (4) of this rule on or after the later of January 1, 2004 or the operative date of the applicable statutory provision are not counted.

(7) Reemployment under ORS 238.078(1). If a member has been retired for service for more than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(1):

(a) PERS will cancel the member's retirement effective the date the member is reemployed.

(b) The member will reestablish active membership on the date the member is reemployed.

(c) If the member elected a benefit payment option other than a lump sum option under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. Upon subsequent retirement, the member may choose a different benefit payment option.

(A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member's account under the provisions of paragraph (A) of this subsection will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(d) If the member elected a partial lump sum option under ORS 238.305(2), the last monthly service retirement allowance payment to which the member is entitled is for the month before the calendar month in which the member is reemployed. The last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the lump sum and installment benefits received and the earnings that would have accumulated on that amount.

(A) The member's account will be rebuilt as required by ORS 238.078 effective the date active membership is reestablished.

(B) Amounts from the BIF credited to the member's account under the provisions of paragraph (A) of this subsection, excluding any amounts attributable to repayment by the member, will be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement to the date of active membership.

(e) If the member elected the total lump sum option under ORS 238.305(3), the last lump sum or installment payment to which the member is entitled is the last payment due before the date the member is reemployed. Upon subsequent retirement, the member may not choose a different benefit payment option unless the member has repaid to PERS in a single payment an amount equal to the benefits received and the earnings that would have accumulated on that amount.

(A) If the member repays PERS as described in this subsection the member's account will be rebuilt as required by ORS 238.078 effective the date that PERS receives the single payment.

(B) If any amounts from the BIF are credited to the member's account under the provisions of paragraph (A) of this subsection, the amounts may not be credited with earnings for the period from the date of retirement to the date of active membership.

(f) If the member received a lump sum payment under ORS 238.315:

(A) If the payment was dated before the date the member is reemployed, the member is not required or permitted to repay the benefit amount. Upon subsequent retirement:

(i) The member may choose a different benefit payment option.

(ii) The member's retirement benefit will be calculated based on the member's periods of active membership after the member's initial effective retirement date.

(B) If the payment was dated on or after the date the member is reemployed, the member must repay the benefit amount. Upon subsequent retirement:

(i) The member may choose a different benefit payment option.

(ii) The member's retirement benefit will be calculated based on the member's periods of active membership before and after the member's initial effective retirement date.

(iii) The member's account will be rebuilt as described in ORS 238.078(2)

(g) A member who receives benefits to which he or she is not entitled must repay those benefits to PERS.

(8) Reemployment under ORS 238.078(2). If a member has been retired for less than six calendar months and is reemployed in a qualifying position by a participating employer under the provisions of 238.078(2):

(a) PERS will cancel the member's retirement effective the date the member is reemployed.

(b) All retirement benefits received by the member must be repaid to PERS in a single payment.

(c) The member will reestablish active membership effective the date the member is reemployed.

(d) The member account will be rebuilt as of the date that PERS receives the single payment. The amount in the member account must be the same as the amount in the member account at the time of the member's retirement.

(e) Upon subsequent retirement, the member may choose a different benefit payment option.

(9) Upon the subsequent retirement of any member who reestablished active membership under ORS 238.078 and this rule, the retirement benefit of the member must be calculated using the actuarial equivalency factors in effect on the effective date of the subsequent retirement.

(10) The provisions of paragraphs (7)(c)(B), (7)(d)(B), and (7)(e)(B) of this rule are applicable to retired members who reestablish active membership under ORS 238.078 and this rule and whose initial effective retirement date is on or after March 1, 2006.

(11) Reporting requirement. A participating employer that employs a retired member must notify PERS in a format acceptable to PERS under which statute the retired member is employed.

(a) Upon request by PERS, a participating employer must certify to PERS that a retired member has not exceeded the number of hours allowed under ORS 238.082 and section (2) of this rule.

(b) Upon request by PERS a participating employer must provide PERS with business and employment records to substantiate the actual number of hours a retired member was employed.

(c) Participating employers must provide information requested under this section within 30 days of the date of the request.

(12) Sick leave. Accumulated unused sick leave reported by an employer to PERS upon a member's retirement, as provided in ORS 238.350, may not be made available to a retired member returning to employment under sections (2) or (7) of this rule.

(13) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2016.

(14) This rule is effective January 1, 2010.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, 2007 OL Ch. 499 & 774 & 2009 OL Ch. 390 & 868
Hist.: PERS 1-1994, f. 3-29-94, cert. ef. 4-1-94; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0182; PERS 13-1998, f. & cert. ef. 12-17-98; PERS 7-2001, f. & cert. ef. 12-7-01; PERS 18-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04; PERS 19-2004, f. & cert. ef. 6-15-04; PERS 3-2006, f. & cert. ef. 3-1-06; PERS 18-2007, f. & cert. ef. 11-23-07; PERS 3-2009, f. & cert. ef. 4-6-09; PERS 11-2009, f. & cert. ef. 12-1-09

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Oregon State Treasury
Chapter 170

Rule Caption: Monthly Reporting Requirement for Bank Depositories at Increased Collateralization Level.
Adm. Order No.: OST 6-2009
Filed with Sec. of State: 11-19-2009
Certified to be Effective: 11-19-09
Notice Publication Date: 11-1-2009
Rules Adopted: 170-040-0110
Subject: Rule 170-040-0110 requires monthly filing of Treasurer Reports when a bank depository is ordered to collateralize at an increased level, but less than 110%.
Rules Coordinator: Sally Wood—(503) 378-4990

170-040-0110
Monthly Reporting Requirement for Bank Depositories at Increased Collateralization Level

Bank depositories ordered to collateralize their public funds deposits at an increased level, but less than 110%, by the State Treasurer are required to submit a new Treasurer Report monthly. The monthly reporting requirement shall remain in effect until such time as the bank depository no longer holds public funds deposits over deposit insurance limits or the State Treasurer removes the increased collateralization requirement. The monthly report is in addition to the quarterly Treasurer Report that is statutorily required.

Stat. Auth.: ORS 295.018(1)(b) & 295.061(1)
Stats. Implemented: ORS 295
Hist.: OST 4-2009(Temp), f. & cert. ef. 10-13-09 thru 3-31-10; OST 6-2009, f. & cert. ef. 11-19-09

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Oregon Student Assistance Commission
Chapter 575

Rule Caption: Authorizes Commission to reduce grants to students during school year, if required by budget.
Adm. Order No.: OSAC 1-2009(Temp)
Filed with Sec. of State: 11-24-2009
Certified to be Effective: 11-24-09 thru 5-17-10
Notice Publication Date:
Rules Amended: 575-031-0025
Subject: 575-031-0025(4)(c): The Commission may prescribe a specific date by which a student must apply to the Commission to qualify for a grant and may prescribe an additional date by which the award must be disbursed by school officials to the student.

575-031-0025(4)(d): The Commission may make per capita reductions to future student grants if appropriations are determined to be inadequate to the needs of all eligible students whose applications are received by the announced application deadline for a specific academic year. When future disbursements of student grants are reduced, the Commission will provide notification it deems adequate, to college and university financial aid offices and affected students.
Rules Coordinator: Beverly R. Boyd—(541) 687-7394

575-031-0025
Opportunity Grant Amount

(1)(a) For students attending a public 2- or 4-year Oregon-based postsecondary institution, award amounts for the 2007-08 academic year are based upon a fixed percentage of the average tuition and standard fees plus the weighted average of nontuition costs across all institutional segments.

(b) For students attending a private nonprofit 4-year Oregon-based postsecondary institution, award amounts for the 2007-08 academic year are based upon a fixed percentage of the average tuition and standard fees at each institution plus the weighted average of nontuition costs across all institutional segments.

(c) An Opportunity Grant may vary in amount from $100 to an amount that shall not exceed 50 percent of the student's financial need, as determined by the Commission. This provision expires upon full implementation of the Shared Responsibility Model.

(d) Effective starting with the 2008-09 academic year, an Opportunity Grant is based upon the state share, as calculated under provisions of the Shared Responsibility Model.

(2) Within the funds available, an Opportunity Grant for a student who is taking between 6 and 11 credit hours in a term or semester shall be 50 percent of the award made to a full-time student enrolled at the same institution. This section is effective starting with the 2006-07 academic year and expires at the end of the 2007-08 academic year.

(3) For concurrently enrolled students, the amount of the Opportunity Grant will be based on the school disbursing funds, unless otherwise approved by the Commission.

(4) In the event that the Commission determines that the total amount available to award as the state share to all qualified students is not sufficient to cover the total state share amount scheduled to be awarded to all students, the Commission will implement one or more of the following strategies to limit awards. Examples of such strategies may include, but are not limited to, the following:

(a) The Commission may limit awards to only students who are enrolled full time;

(b) The Commission may implement reductions of all awards using progressive prorata reductions based on a percentage of the student's expected family contribution;

(c) The Commission may prescribe a specific date by which a student must apply to the Commission to qualify for a grant and may prescribe an additional date by which the award must be disbursed by school officials to the student.

(d) The Commission may make per capita reductions to future student grants if appropriations are determined to be inadequate to the needs of all eligible students whose applications are received by the announced application deadline for a specific academic year. When future disbursements of student grants are reduced, the Commission will provide notification it deems adequate, to college and university financial aid offices and affected students.

(5) Grandfathered awards for academic years 2008-09, 2009-10, and 2010-2011. Notwithstanding paragraph (1)(d) above, a qualified student who attended an eligible postsecondary institution at least half time during the 2007-08 academic year and remains continuously enrolled at least half time at the same institution is eligible for grandfathered awards for the 2008-09, 2009-10, and 2010-2011 academic years. A qualified student who attended more than one eligible postsecondary institutions as at least a half-time student during the 2007-08 academic year and remains continuously enrolled at least half time at one or more of the same institutions is also be eligible for grandfathered awards for the 2008-09, 2009-10, and 2010-2011 academic years. For grandfathering-eligible students, awards are calculated using both the method in place during the 2007-08 academic year and the method for the Shared Responsibility Model, and students shall receive annual awards based on whichever of the two methods for calculating awards grants the student the greater amount of student assistance. Grandfathering of awards expires after the end of the 2010-11 academic year. Continuous enrollment is defined as completion of an academic year within any 12-month period.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; SSC 1-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 2-1979, f. 7-24-79, ef. 8-1-79; SSC 2-1985, f. & ef. 4-17-85; SSC 5-1987, f. & ef. 10-23-87; SSC 1-1993(Temp), f. & cert. ef. 9-20-93; SSC 3-1994, f. & cert. ef. 1-25-94; SSC 2-1995, f. & cert. ef. 12-6-95; SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 6-2002, f. & cert. ef. 3-12-02; OSAC 4-2005, f. 9-27-05, cert. ef. 10-1-05; OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 1-2009(Temp), f. & cert. ef. 11-24-09 thru 5-17-10

Oregon University System, Eastern Oregon University Chapter 579

Rule Caption: Amend Special Student and Course Fees.
Adm. Order No.: EOU 3-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 11-1-2009
Rules Amended: 579-020-0006
Subject: Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.
Rules Coordinator: Lara Moore—(541) 962-3368

579-020-0006
Special Student Fees

Eastern Oregon University intends to adopt by reference Special Student Fees for the 2009–10 school year.

[ED NOTE: Fee list referenced is available from the agency.]
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: EOSC 3, f. & ef. 6-23-76; EOSC 8, f. & ef. 6-16-77; EOSC 6-1978, f. & ef. 10-2-78; EOSC 1-1979, f. & ef. 6-27-79; EOSC 1-1981, f. & ef. 1-12-81; EOSC 3-1981, f. & ef. 7-1-81; EOSC 2-1983, f. & ef. 12-16-83; EOSC 2-1984, f. & ef. 10-25-84; EOSC 1-1986, f. & ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89; EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EOU 1-2006, f. & cert. ef. 4-14-06; EOU 1-2007, f. & cert. ef. 5-14-07; EOU 4-2007(Temp), f. & cert. ef. 8-15-07 thru 1-15-08; Administrative Correction 1-24-08; EOU 1-2008, f. & cert. ef. 3-14-08; EOU 5-2008, f. & cert. ef. 8-15-08; EOU 1-2009, f. & cert. ef. 3-12-09; EOU 2-2009, f. & cert. ef. 8-14-09; EOU 3-2009, f. & cert. ef. 12-15-09

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Oregon Youth Authority Chapter 416

Rule Caption: Updating rule to refer to the 2008 Model Rules of Procedure under the Administrative Procedures Act.
Adm. Order No.: OYA 6-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-16-09
Notice Publication Date:
Rules Amended: 416-530-0090
Subject: The rule revision updates reference to the Attorney General's Model Rues of Procedure, effective January 1, 2008. The rule referred to the 2006 Model Rules.
Rules Coordinator: Winifred Skinner—(503) 373-7570

416-530-0090
Denial, Suspension, and Revocation of Youth Offender Foster Home Certification or Re-Certification; Inactive Referral Status

(1) Denial:

(a) The OYA may deny an application for a youth offender foster home certification or re-certification if an applicant or foster parent fails to meet any of the criteria set forth in these rules, or does any of the following:

(A) Falsifies an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) Fails to provide information requested by the OYA within the time frame set by the OYA; or

(C) Fails to inform the OYA of conditions that could disqualify the foster parent or the foster home from certification.

(b) If the OYA proposes to deny an application for a foster home certification or re-certification, the OYA will provide the applicant or foster parent with a written Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification and a proposed Order Denying Certification or Recertification, mailed to the applicant or foster parent, by certified or registered mail or personally served upon the applicant or foster parent, and stating the reason(s) for the proposed denial.

(c) If an application for a youth offender foster home certification or re-certification is denied, no other current member of the household may apply

(d) An applicant or foster parent has 60 days from the date of mailing or service of the Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification to request a hearing. The request for hearing must be received by the OYA within the 60-day period.

(e) An applicant or foster parent who has been denied certification or re-certification may not re-apply for or hold a foster home certification for a period of five years from the effective date of the Final Order Denying Youth Offender Foster Home Certification or Re-certification

(2) Suspension:

(a) The OYA may suspend a youth offender foster home certification without a hearing if the OYA finds a serious danger to the public health or safety, including the health or safety of a youth offender or the community. In the event of an suspension, youth offenders will be removed from the foster home and no further referrals will be made to the foster home unless and until the suspension is lifted

(b) A foster parent has 90 days from the date of mailing or service of the Notice of Suspension to request a hearing on the emergency suspension. The request for hearing must be received by the OYA within the 90-day period

(c) The Notice of Suspension must be mailed by certified mail or personally served on the foster parent.

(d) If, within 10 days from the date of mailing of the Notice of Suspension, the foster parent does not enter into a written agreement containing a corrective action plan with the OYA, the OYA will initiate proceedings to revoke the youth offender foster home certification. The 10-day period may be extended upon prior written approval of the OYA.

(e) If the suspension will exceed 180 days or the expiration date of the current certification, the OYA will terminate the Youth Offender Foster Home Agreement with the foster parent until such time as the suspension has been resolved as set out in this rule. The foster parent will be placed on inactive referral status and will not receive youth offender referrals until the matter is resolved

(3) Revocation:

(a) The OYA may initiate revocation proceedings of a youth offender foster home certification after considering any of the following:

(A) The severity of any alleged violation of these rules;

(B) The number of similar or related violations;

(C) Whether the violations, including the alleged violation, were willful or intentional;

(D) The prior history of violations;

(E) Any other mitigating or aggravating circumstance determined by the OYA to be relevant to the alleged violation, or to the appropriate response to the alleged violation.

(b) The OYA may initiate revocation proceedings of a youth offender foster home certification if:

(A) The foster parent falsified an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) After certification, the foster parent fails to provide information requested by the OYA in the time frame set by the OYA;

(C) The foster parent fails to inform the OYA of conditions that could disqualify the foster parent or the foster home from certification; or

(D) The foster parent fails to comply with a corrective action plan within the time frame set by the OYA and the foster parent remains in violation of any of these rules.

(c) If the OYA initiates revocation proceedings of a youth offender foster home certification, the OYA will provide a written Notice of Proposed Revocation of Youth Offender Foster Home Certification and proposed Order Revoking Youth Offender Foster Home Certification. The Notice of Proposed Revocation and proposed Order will be mailed, by certified or registered mail, or personally delivered, to the foster parent stating the reason(s) for revocation proceedings.

(d) A foster parent has 10 days from the date of mailing of the Notice of Proposed Revocation of Youth Offender Foster Home Certification to request a hearing. The request for hearing must be received by the OYA within the ten-day period.

(e) A foster parent whose certificate has been revoked may not reapply for or hold a foster home certification for five years from the effective date of the Final Order Revoking Youth Offender Foster Home Certification, unless a lesser time or specific condition is stated in the Final Order.

(4) Inactive Referral Status:

(a) Inactive referral status, provider-initiated: A foster parent may ask to be placed on inactive referral status for up to 12 months.

(A) In order for inactive referral status to be granted, there can be no unresolved matters relating to non-compliance with certification rules.

(B) Prior to a return to active referral status, a foster parent must be in compliance with all certification rules, including training requirements.

(b) Inactive referral status, OYA-initiated:

(A) The OYA may place a foster parent on inactive referral status due to changes in the foster parent's family, including but not limited to death, divorce, new members joining the household, significant disabling health condition, or other circumstances that the OYA determines will put additional stress or pressure on the family. Prior to placing a foster parent on inactive referral status, the OYA will discuss the status change with the foster parent. The OYA will notify the foster parent in writing of the change in referral status and the expected duration of that change.

(B) The OYA-initiated inactive status may last for up to 180 days, during which time no additional youth offenders will be placed in the home. The OYA may continue the inactive status for more than 180 days if:

(i) The OYA and the foster parent do not enter into an agreement that addresses the issues that led to the change to inactive status;

(ii) The foster parent is not in compliance with all certification rules, including training requirements.

(5) Contested Case Hearings. Pursuant to the provisions of ORS 183.341, the OYA adopts the Attorney General's Model Rules of Procedure OAR 137-003-0001 to 137-003-0091 and 137-003-0580, effective January 1, 2008, as procedural rules for contested case hearings.

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 183.341, 183.430 & 420.888 - 420.892
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 6-2009, f. 12-15-09, cert. ef. 12-16-09

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Parks and Recreation Department
Chapter 736

Rule Caption: Amend and repeal administrative rules governing general provisions related to public contracting.
Adm. Order No.: PRD 16-2009
Filed with Sec. of State: 12-4-2009
Certified to be Effective: 12-4-09
Notice Publication Date: 10-1-2008
Rules Amended: 736-146-0010, 736-146-0012, 736-146-0015, 736-146-0020, 736-146-0050, 736-146-0060, 736-146-0070, 736-146-0080, 736-146-0090, 736-146-0100, 736-146-0110, 736-146-0120, 736-146-0130, 736-146-0140
Rules Repealed: 736-146-0025, 736-146-0030, 736-146-0040
Subject: Existing rules were amended for housekeeping updates in accordance with instructions of ORS 279A.065(5)(b), and to:

Remove independent contractor status for personal Services Contracts;

Remove section of procedural language governing internal files;

Remove extraneous section on Contract Administration Definitions.

The Agency held a public hearing and solicited public comment on the proposed amendments in September of 2008. A certificate and order of permanent adoption was filed on December 15, 2008. This certificate and order is re-filed to comply with notice received from Legislative Counsel 12/2/2009 regarding ORS 183.715 requiring timely notice to Legislative Counsel. This certificate and order duplicates the original filed on December 15, 2008 and permanently adopts these rules as previously filed. There are no changes to the rules since the previous filing on 12/15/2008.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-146-0010
Application

The Oregon Parks and Recreation Department adopts OAR 137-046-0100 through 137-046-0480 (effective January 1, 2008), the Department of Justice Model Rules, General Provisions Related to Public Contracting including the additional provision provided in these rules.

Stat. Auth.: ORS 279A.070
Stats. Implemented: ORS 279A.070 & 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. ef. 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0012
Definitions

(1) "Contract Administration" means all functions related to a given contract between OPRD and a contractor from the time the contract is awarded until the work is completed and accepted or the contract is terminated, payment has been made, and disputes have been resolved.

(2) "Designated Procurement Officer" (DPO) means the individual designated and authorized by the Director of the Oregon Parks and Recreation Department to perform certain procurement functions described in these rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050; 279A.065(5); 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0015
Special Approvals for Public Contracts When Required

(1) When Attorney General legal sufficiency approval is required under ORS 291.047, the Oregon Parks and Recreation Department (OPRD) must seek legal approval.

(2) When OPRD contracts for services normally provided by another contracting agency or for services for which another contracting agency has statutory responsibilities, OPRD is required to seek the other contracting agency's approvals. Examples of these special approvals include, but are not limited to:

(a) Oregon Department of Administrative Services (DAS), State Services Division, Risk Management for providing tort liability coverage;

(b) DAS, State Services Division, Publishing and Distribution for printing services;

(c) DAS, State Data Center for telecommunications services;

(d) Office of the Treasurer, Debt Management Division, for bond counsel and financial advisory services (bond counsel services also require the approval of the Attorney General);

(e) DAS Enterprise Information Strategy and Policy Division for information-system related services.

(3) The Attorney General has sole authority to contract for attorney services. Exceptions may be granted in writing on a case-by-case basis only by the Attorney General.

(4) The Secretary of State Audits Division has sole authority to contract for financial auditing services. Exceptions may be granted in writing on a case-by-case basis only by the Secretary of State Audits Division.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.140(2)
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0020
Reporting Requirements for Personal Services Contracts

The Department of Administrative Services (DAS) State Procurement Office maintains an electronic reporting system called the Oregon Procurement Information Network (ORPIN) and a report form for reporting personal services contracts. OPRD must submit this report form to the DAS State Procurement Office for each contract and subsequent contract amendment. The report form must include OPRD's name, not-to-exceed amount of the contract, the name of the contractor, the duration of the contract, and its basic purpose. OPRD will use the OPRIN system for reporting personal services contracts, including architectural, engineering and land surveying services contracts and related services contracts pursuant to ORS 729A.140(2)(h)(A)(I) unless directed otherwise by DAS State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140(h)(A)
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0050
Contract Administration; General Provisions

(1) OPRD conducts procurements for goods or services, including architectural, engineering, land surveying and related services, and public improvements, pursuant to ORS 279A.050 and ORS 279A.075.

(2) OPRD must appoint, in writing, a contract administrator as an OPRD representative for each contract. The contract administrator may delegate in writing a portion of the contract administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each contract.

(3) OPRD must maintain a procurement file for procurements exceeding the intermediate procurement threshold for goods or services; the informal selection threshold for architectural, engineering, and land surveying services; and the intermediate procurement threshold for public improvements pursuant to OAR 137-047-0270, 137-048-0210, and 137-049-0160, respectively:

(a) Each procurement file must contain:

(A) Documentation required by law and the DOJ Model Rules;

(B) An executed contract, if awarded;

(b) OPRD must maintain procurement files, including all documentation, for a period not less than six years, except for 10 years beyond each contract's expiration date for architectural, engineering, and land surveying services and related services or for another period in accordance with another provision of law.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0060
Payment Authorization of Cost Overruns for Goods or Services including Architectural, Engineering and Land Surveying Services and Related Services Contracts

(1) Payments on contracts that exceed the maximum contract consideration require approval from OPRD's designated procurement officer and may require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq. Approval may be provided if there is compliance with all of the following:

(a) The original contract was duly executed and, if required, approved by the Attorney General.

(b) The original contract has not expired, been terminated, or been reinstated under OAR 736-147-0070 as of the date written approval to increase the contract amount is granted.

(c) The cost overrun is not associated with any change in the statement of work set out in the original contract.

(d) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the original contract or the most recent amendment, if any, was signed. Such circumstances include but are not limited to cost overruns that:

(A) Address emergencies arising in the course of the contract that require prompt action to protect the work already completed.

(B) Comply with official or judicial commands or directives issued during contract performance.

(C) Ensure that the purpose of the contract will be realized;

(e) The cost overrun was incurred in good faith, results from the good faith performance by the contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional work or performance rendered.

(f) Except for the cost overrun, the contract and its objective are within the statutory authority of OPRD and OPRD currently has funds available for payment under the contract.

(g) An officer or employee of OPRD has presented a written report to OPRD's designated procurement officer within 60 days of the discovery of the overrun that states the reasons for the cost overrun and demonstrates to the satisfaction of OPRD's designated procurement officer that the original contract and the circumstances of the overrun satisfy the conditions stated above.

(h) OPRD's designated procurement officer approves in writing the payment of the overrun, or such portion of the overrun amount as OPRD's designated procurement officer determines may be paid consistent with the conditions of this rule. If OPRD's designated procurement officer has signed the contract, or has immediate supervisory responsibility over performance of the contract, that person must designate an alternate delegate to grant or deny written approval of payment.

(2) OPRD must obtain an Attorney General's approval of the contract amendment, if such approval is required by ORS 291.047, before making any overrun payment.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0070
Ethics in Public Contracting — Policy

Oregon public contracting is a public trust. OPRD and contractors involved in public contracting must safeguard this public trust.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0080
Ethics in Selection and Award of Public Contracts

(1) OPRD officers, employees or agents involved in the process of the selection and award of public contracts must carefully review the provisions of ORS 244.040.

(2) OPRD officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

(3) OPRD officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) OPRD officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 244.010 - 244.400, 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 244.010 - 244.400, 279A.065(5)(a), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0090
Ethics in Appointments to Advisory Committees

OPRD's designated procurement officer or a delegate may appoint procurement advisory committees to assist with specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competition pursuant to ORS 279A.015.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0100
Non-retaliation

Retaliation against anyone who complies with the Public Contracting Code and rules in this division related to ethics is prohibited. Any officer, employee or agent of OPRD or contractor who engages in retaliation action will be subject to penalties pursuant to ORS 279A.990, 244.350 to 244.400 and related rules. Also, any contractor who engages in a retaliation action may be debarred.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0110
Ethics in Specification Development

(1) OPRD and contractors must not develop specifications that primarily benefit a contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

(2) OPRD must not develop specifications that inhibit or tend to discourage public contracting with qualified rehabilitation facilities (QRF) under ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045 where those specifications inhibit or tend to discourage the acquisition of QRF-produced goods or services without reasonably promoting the satisfaction of bona fide, practical procurement needs of OPRD.

(3) OPRD and contractors must not develop specifications that inhibit or tend to discourage public contracting under other public procurement laws or policies of OPRD.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0120
Ethics in Sole Source

OPRD may not select a sole-source procurement pursuant to ORS 279B.075 and avoid a competitive procurement if the purpose of the selection is to primarily benefit the contractor, directly or indirectly, to the detriment of OPRD or the best interest of the state.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070, 279B.075 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0130
Fragmentation

A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065, or an intermediate procurement, pursuant to ORS 279B.070.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279B.065

Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

736-146-0140
Ethics in OPRD and Contractor Communications

(1) Research Phase. OPRD is encouraged to conduct research with contractors who can meet the state's needs. This research includes but is not limited to:

(a) Meetings;

(b) Industry presentations; and

(c) Demonstrations with contractors that, in OPRD's discretion, may be able to meet OPRD's needs.

(2) OPRD must document the items discussed during the research phase of solicitation development. The research phase ends the day of a solicitation release or request for a quote pursuant to an intermediate procurement, unless the solicitation or intermediate procurement provides for a different process that permits on-going research.

(3) Solicitation and Contracting Phase. Any communication between OPRD and contractors regarding a solicitation, that occurs after the solicitation release or request for a quote and before the award of a contract, must only be made within the context of the solicitation document or intermediate procurement requirements.

(4) Communication may allow for discussions, negotiations, addenda, contractor questions, and OPRD's answers to contractor questions about terms and conditions, specifications, amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the procurement file. Written inquiries regarding the solicitation should be responded to by OPRD in writing.

(5) A record of all material communications regarding the solicitation by interested contractors must be made a part of the procurement file pursuant to OAR 736-146-0030.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 12-2008, f. & cert. e.f 12-15-08; PRD 16-2009, f. & cert. ef. 12-4-09

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Rule Caption: Amend, adopt, and repeal administrative rules governing general provisions for public procurement for goods and services.
Adm. Order No.: PRD 17-2009
Filed with Sec. of State: 12-4-2009
Certified to be Effective: 12-4-09
Notice Publication Date: 10-1-2008
Rules Adopted: 736-147-0040, 736-147-0070
Rules Amended: 736-147-0010, 736-147-0030, 736-147-0050, 736-147-0060
Rules Repealed: 736-147-0020
Subject: Existing rules being amended for minor housekeeping updates as required by ORS 279.065(5)(b) and to:

remove Life Cycle Costing provision.

Add provision for price agreements.

Add reinstatement of expired or terminated contracts to facilitate the contracting process.

The Agency held a public hearing and solicited public comment on the proposed amendments in September of 2008. A certificate and order of permanent adoption was filed on December 15, 2008. This certificate and order is re-filed to comply with notice received from Legislative Counsel 12/2/2009 regarding ORS 183.715 requiring timely notice to Legislative Counsel. This certificate and order duplicates the original filed on December 15, 2008 and permanently adopts these rules as previously filed. There are no changes to the rules since the previous filing on 12/15/2008.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-147-0010
Application

The Oregon Parks and Recreation Department adopts OAR 137-047-0000 through 137-047-0810 (effective January 1, 2008) with the exception of 137-047-0270(4), the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.015
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. e.f 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0030
Emergency Procurements Process

(1) The Director of OPRD or person designated under ORS 279A.075, may authorize OPRD personnel to award a public contract for goods and services as an emergency procurement pursuant to the requirements of 279B.080. Emergency contracts are exempt from Department of Justice legal sufficiency review under OAR 173-045-0070 as set out in subsection (3)(b)of this rule.

(2) Pursuant to the requirements of this rule, OPRD may, in its discretion, enter into a public contract without competitive solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a contract to remedy the condition.

(3) For contracts above $5,000, when entering into an emergency contract, OPRD must:

(a) Encourage competition that is reasonable and appropriate under the circumstances;

(b) Award contract within sixty (60) days following the event triggering the need for an emergency contract unless an extension has been granted by the Director of OPRD or person designated;

(c) Have a written report prepared and signed by an executive of OPRD who is responsible for oversight of the public contract within ten (10) business days after execution of the public contract, said report to contain:

(A) A concise summary of the circumstances that constitute the emergency and the character of the risk of loss, damage, interruption of services, or threat to public health or safety created or anticipated to be created by the emergency circumstances;

(B) A statement of the reason or reasons why the prompt execution of the proposed public contract was required to deal with the risk created or anticipated to be created by the emergency circumstances;

(C) A brief description of the services or goods to be provided under the public contract, together with its anticipated cost; and

(D) A brief explanation of how the public contract, in terms of duration, services, or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the emergency circumstances.

(d) Maintain a copy of report described in (c) of this rule in OPRD's emergency public contract file and provide a copy of the report to the Attorney in Charge, Business Transactions Section, Department of Justice, within thirty (30) days after preparing the report;

(e) Provide a summary of the contract on the Oregon Procurement Information Network (ORPIN) maintained by the DAS State Procurement Office.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.080
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. e.f 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0040
Price Agreements

(1) OPRD may create price agreements designed for the exclusive use of OPRD or use DAS multi-agency price agreements. OPRD may create price agreements for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining requirements for volume discounts, standardization among agencies, and reducing lead time for ordering.

(2) If OPRD conducts a purchase of goods or services pursuant to a DAS or OPRD price agreement, OPRD does not need to undertake an additional competitive solicitation.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A
Hist.: PRD 13-2008, f. & cert. e.f 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0050
Mandatory Use Contracts

(1) For the purposes of this rule, a Mandatory Use Contracts means a public contract, DAS price agreement, or other agreement that OPRD is required to use for the procurement of goods and services.

(2) If DAS State Procurement Office establishes a price agreement that is designated mandatory for state agency use, OPRD must procure applicable goods and services pursuant to the Mandatory Use Contract unless otherwise specified in the contract, allowed by law or these rules.

(3) OPRD is exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Goods or services from another government public agency, provided that a formal written agreement is entered into between the parties;

(b) Goods or services from the federal government pursuant to ORS 279A.180;

(c) Personal property for resale through student stores operated by public educational contracting agencies; and

(d) Emergency purchases declared by a contracting agency pursuant to ORS 279B.080.

(4) If a DAS price agreement is not mandatory, the designated procurement officer or other designated person will decide whether to contract pursuant to the price agreement based on what best meets the business needs of OPRD.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.090
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. ef. 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0060
Amendments for Intermediate Goods or Services Procurements

OPRD may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800, but the cumulative amendments shall not increase the total contract price to a sum that is greater than 25 percent of the original contract price, except:

(1) OPRD may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800 over the 25 percent cumulative amount but not exceeding the $150,000 threshold with written approval from the OPRD Designated Procurement Officer based upon a determination of the best interests of the state.

(2) OPRD may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800 over the 25 percent cumulative amount exceeding the $150,000 threshold with written approval from the OPRD Designated Procurement Officer and Department of Justice based upon a determination of the best interests of the state.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 13-2008, f. & cert. ef. 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

736-147-0070
Reinstatement of Expired or Terminated Contracts

(1) If OPRD enters into a contract for goods or services and that contract subsequently expires or is terminated, OPRD may reinstate the contract subject to the following:

(a) The type or aggregated value (including all amendments) of the contract, after reinstatement, falls under OPRD procurement authority in accordance with law, the Department of Justice Model Rules and these rules;

(b) OPRD may reinstate and amend for time only;

(c) The purpose must be for:

(A) Fulfillment of its term, up to the maximum time period provided in the contract; or

(B) Completion of a deliverable, provided:

(i) The deliverable, including but not limited to goods, services, or work, was defined in the contract as having a completion date or event; and

(ii) OPRD documents the uncompleted work as of the date of the reinstatement of the expired contract in the procurement file.

(d) The expired or terminated contract was previously properly executed; and

(e) The failure to extend or renew the contract in a timely manner was due to unforeseen circumstances, unavoidable conditions or any other occurrence outside the reasonable control of OPRD or the contracting party.

(2) If the type or aggregated value (including all amendments) of the contract after reinstatement will exceed OPRD's procurement authority, then OPRD may reinstate and amend for time only, and OPRD must submit a written justification demonstrating the satisfaction of the requirements for reinstatement, as set forth in subsections (1)(a)–(e) of this rule.

(3) OPRD may amend an expired contract for time only in accordance with section (1) of this rule. OPRD may amend the contract purposes other than time in accordance with OAR 137-047-0800.

(4) If OPRD reinstates and amends an expired contract for time, pursuant to this rule, OPRD may compensate the contracting party for work performed in the interim between the expiration of the original contract and the effective date of the reinstatement and amendment.

(5) Once a contract is reinstated, it is in full force and effect as if it had not expired or terminated.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A
Hist.: PRD 13-2008, f. & cert. ef. 12-15-08; PRD 17-2009, f. & cert. ef. 12-4-09

Rule Caption: Amend administrative rules governing consultant selection for architectural, engineering, land surveying, and related services contracts.
Adm. Order No.: PRD 18-2009
Filed with Sec. of State: 12-4-2009
Certified to be Effective: 12-4-09
Notice Publication Date: 10-1-2008
Rules Amended: 736-148-0010, 736-148-0020
Subject: Existing rules being amended for housekeeping updates as required by ORS 279A.065(5)(b).

The Agency held a public hearing and solicited public comment on the proposed amendments in September of 2008. A certificate and order of permanent adoption was filed on December 15, 2008. This certificate and order is re-filed to comply with notice received from Legislative Counsel 12/2/2009 regarding ORS 183.715 requiring timely notice to Legislative Counsel. This certificate and order duplicates the original filed on December 15, 2008 and permanently adopts these rules as previously filed. There are no changes to the rules since the previous filing on 12/15/2008.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-148-0010
Application

The Oregon Parks and Recreation Department adopts OAR 137-048-0100 through 137-048-0320 (effective January 1, 2008), the Department of Justice Model Rules, Consultant Selection: Architectural, Engineering, Land Surveying, and Related Services Contracts including the additional provisions provided in these rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 14-2008, f. & cert. e.f 12-15-08; PRD 18-2009, f. & cert. ef. 12-4-09

736-148-0020
Price Agreement Selection Process

Consultants for price agreements must be selected, and Oregon Parks and Recreation Department (OPRD) must obtain architectural, engineering, land surveying and related services by selecting a consultant or consultants in the following manner:

(1) When OPRD selects more than one consultant in accordance with the price agreement solicitation process under OAR 137-048-0130(1), OPRD must identify objective criteria in the solicitation document and the price agreement to be used in assigning particular architectural, engineering land surveying or related services to the most qualified consultant.

(2) Design-Build contracts involve the provision of both design and construction services for public improvements under one contract. Under most circumstances, Design-Build contracts are mixed contracts with the predominate purpose of the contract involving construction of the public improvement. If the predominate purpose of the contract is to obtain architectural, engineering, land surveying and related aervices, selection may proceed under this division and shall not be considered a Design-Build project.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.110 & 279C.115
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 14-2008, f. & cert. e.f 12-15-08; PRD 18-2009, f. & cert. ef. 12-4-09

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Rule Caption: Amend existing administrative rule that governs general provisions related to public contracts for construction services.
Adm. Order No.: PRD 19-2009
Filed with Sec. of State: 12-4-2009
Certified to be Effective: 12-4-09
Notice Publication Date: 10-1-2008
Rules Amended: 736-149-0010
Subject: Existing rules being amended for housekeeping updates as required by ORS 279A.065(5)(b).

The Agency held a public hearing and solicited public comment on the proposed amendments in September of 2008. A certificate and order of permanent adoption was filed on December 15, 2008. This certificate and order is re-filed to comply with notice received from Legislative Counsel 12/2/2009 regarding ORS 183.715 requiring timely notice to Legislative Counsel. This certificate and order dupli-

cates the original filed on December 15, 2008 and permanently adopts these rules as previously filed. There are no changes to the rules since the previous filing on 12/15/2008.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-149-0010
Application

The Oregon Parks and Recreation Department adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2008), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services.

Stat. Auth: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: PRD 1-2007, f. & cert. ef. 2-7-07; PRD 14-2008, f. & cert. e.f 12-15-08; PRD 19-2009, f. & cert. ef. 12-4-09

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Rule Caption: Some of the administrative rules governing All-terrain vehicle funds and standards are being amended, adopted, or repealed.
Adm. Order No.: PRD 20-2009
Filed with Sec. of State: 12-8-2009
Certified to be Effective: 12-8-09
Notice Publication Date: 9-1-2009
Rules Adopted: 736-004-0035, 736-004-0120, 736-004-0125
Rules Amended: 736-004-0005, 736-004-0010, 736-004-0015, 736-004-0020, 736-004-0025, 736-004-0030, 736-004-0060, 736-004-0062, 736-004-0065, 736-004-0085, 736-004-0090, 736-004-0095, 736-004-0110, 736-004-0115
Rules Repealed: 736-004-0080
Subject: These rules govern the allocation of All-terrain Vehicle Funds through an ATV Grant Program, the ATV Advisory Committee, the issuance of ATV operator and operating permits, ATV Safety and Education, Rider Fit standards, and minimum training standards. The existing rules are being amended and three new rules adopted to comply with the provisions of SB 578B-Engrossed, 2009 Legislative Session. One rule is being repealed.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-004-0005
Purpose of Rule

This rule establishes the procedures and requirements used by the Oregon Parks and Recreation Department (OPRD) when allocating ATV Account monies to public and privately-owned land managers, ATV clubs and organizations; procedures for All-Terrain Vehicle (ATV) off-road operating permit; and implementation of safety and education requirements for Class I and Class III off-highway vehicles.

Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0010
Statutory Authority

(1) ORS 390.585 authorizes the Oregon Parks and Recreation Department to adopt rules and establish procedures to be used when OPRD allocates ATV Account money to public and privately-owned land managers, ATV clubs and organizations.

(2) OAR 736-004-0045 through 736-004-0070 are adopted pursuant to ORS 390.580, 390.585, and 390.590 which direct the Oregon Parks and Recreation Department to issue Class I and Class III Operating Permits to persons who satisfy the statutory requirements to ride on public property.

(3) OAR 736-004-0080 through 736-004-0115 are adopted pursuant to ORS 390.570 and 390.575 which direct the Oregon Parks and Recreation Department to issue or provide for issuance of Class I and Class III ATV operator permits to any person who has taken a Class I or Class III OPRD-approved ATV safety education course and has been found qualified to operate a Class I or Class III all-terrain vehicle. These statutes require the Department to provide safety education course instruction through public or private local and state organizations meeting qualifications established by the Department.

Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0015
Definitions

For purposes of this division, the following definitions shall apply:

(1) "Acquisition" means the gaining of real property rights for public use by donation or purchase including, but not limited to, fee title or easements.

(2) "Approved Course Provider" is any individual or organization who instructs or provides an OPRD-approved Class I or Class III ATV safety course.

(3) "ATV" or "All-Terrain Vehicle" means:

(a) Class I ATV, as defined in ORS 801.190: a motorized, off-highway recreational vehicle 50 inches or less in width with a dry weight of 800 pounds or less that travels on three or more low pressure tires, has a saddle or seat for the operator, and is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain.

(b) Class II ATV, as defined in ORS 801.193: any motor vehicle that:

(A) Weighs more than a Class I all-terrain vehicle;

(B) Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain; and

(C) Is actually being operated off a highway or is being operated on a highway for agricultural purposes under ORS 821.191.

(c) Class III ATV, as defined in ORS 801.194: an off-highway motorcycle with a dry weight of 600 pounds or less that travels on two tires.

(d) May also be referred to as an OHV or Off-Highway Vehicle.

(4) "ATV-AC" means the All-Terrain Vehicle Advisory Committee established by ORS 390.565 and appointed by the commission.

(5) "ATV Account" means those moneys described in ORS 390.555 and deposited in a separate account in the State Parks and Recreation Department Fund. ATV Account may also be called "ATV grant funds."

(6) "ATV Grant Instruction Manual" means a manual prepared by the OPRD containing state and federal policies, procedures, guidelines, and instructions to assist current and potential project sponsors.

(7) "ATV Grant Subcommittee" means the five-member subcommittee established by ORS 390.565(5)(a).

(8) "ATV Operating Permit" means a permit (decal) issued through the OPRD and which is permanently affixed to the vehicle. The permit authorizes the use of ATV's on trails and within designated areas authorized by the appropriate authorities.

(9) "ATV Operating Permit Agent" means a person, business or government agency to whom OPRD consigns ATV operating permits and decals for sale as a service to the general public.

(10) "ATV Operator Permit" means the ATV Safety Education Card issued upon completion of an OPRD-approved ATV Safety Education course and passage of the minimum standards test of ATV Safety Education competency as established by OPRD.

(11) "ATV Safety Checklist" is a document provided to a dealer, guide service, rental, or livery agent by the OPRD that consists of selected facts about Oregon ATV laws.

(12) "ATV Safety Course" is any OPRD-approved course of instruction that is offered by an approved course provider and concludes with an examination.

(13) "ATV Safety Education" means those grant projects that include but are not limited to training programs, media with information for the public, safe riding practices, environmental ethics, or any combination thereof.

(14) "All-Terrain Vehicle Safety Education Card" is the ATV Operator's Permit required by ORS 390.570 and 390.575.

(15) "Certificate of Completion" is a certificate generated by OPRD indicating completion of the internet ATV Safety Course.

(16) "Commission" means the State Parks and Recreation Commission.

(17) "Conversion" means any real property acquisition or development that is later wholly or in part converted to another use other than its intended and stated use as described in the grant application and the grant agreement.

(18) "Correspondence Course and Self Test" means either a Class I or a Class III ATV safety course and examination provided by the OPRD that is taken at home without a proctor. This correspondence course and self test will satisfy minimum standard of ATV safety education competency only for those individuals who have qualified for hardship status.

(19) "Dealer" means any person or business duly certified under ORS 822.020 and 822.040 to sell Class I or Class III ATVs.

(20) "Development" means the planning, design, construction and improvement of ATV recreational facilities, trails, and riding areas.

(21) "Director" means the director of the Oregon Parks and Recreation Department.

(22) "Dry Weight" means the unloaded weight, absent of all fluids, passengers, and any materials such as ice, snow or mud.

(23) "Emergency Medical Services" means medical services performed by certified personnel and the necessary items to perform their duties.

(24) "Endorsement Code" means an identifying color, text or mark on the ATV Safety Education Card that indicates the operator meets or exceeds OPRD's minimum standards in an approved hands-on ATV evaluation program.

(25) "Equivalency Exam" means a comprehensive written examination created by the OPRD. The equivalency exam is intended to provide either Class I or Class III operators, who are at least 16 years of age and have five or more years operating a Class I or a Class III vehicle, the opportunity to meet the minimum standard of ATV safety education competency.

(26) "Evaluation Course" means a course that measures the ATV operator's ability to demonstrate control of an ATV.

(27) "Grant Agreement" means an agreement between the OPRD and a project sponsor describing the terms and conditions of a project and its associated grant of funds.

(28) "Grant Application" means the form and its format as developed by the OPRD that the project sponsor uses to request ATV grant funds.

(29) "Hands-on Training" means any OPRD-approved evaluation course offered by an OPRD-approved course provider.

(30) "Hardship Status" means a situation or condition that prevents an individual from taking the ATV safety internet course. A hardship situation may allow an individual to use a correspondence course and self test provided by OPRD. An individual must submit a written request for hardship status. The OPRD Director or designee has the authority to grant or deny hardship status.

(31) "Instruction Permit" is a provisional permit issued by OPRD to youth under the age of 16 upon successful completion of the OPRD internet course.

(32) "Internet Course" means an OPRD-approved course of instruction that is offered through the internet.

(33) "Law Enforcement Services" means law enforcement services performed by certified personnel and the necessary items to perform their duties.

(34) "Minimum Standards of ATV Safety Education Competency" means a standard of proficiency established by OPRD that determines whether an applicant for either a Class I or Class III ATV Safety Education Card has met or exceeded the requirements of an ATV safety course.

(35) "Notice to Proceed" means the notification from OPRD that the Director or designee and the project sponsor have signed the grant agreement authorizing the project.

(36) "OHV" means Off Highway Vehicle, also called ATV.

(37) "Operations and Maintenance" means the preservation, rehabilitation, restoration, operation and upkeep of the facilities, riding areas, and equipment, including the purchase of equipment necessary to perform these functions.

(38) "OPRD" means the Oregon Parks and Recreation Department.

(39) "Personal Property" means tangible property other than land: movable property including but not limited to items such an ATV, trail repair equipment, or other movable property purchased through the ATV Grant Program.

(40) "Planning" means the research, design, engineering, environmental, and site survey of ATV recreation areas, trails, or facilities.

(41) " Project Sponsor" means the recipient of the grant funds and the responsible party for implementation of the project.

(42) "Public Lands" includes publicly and privately-owned land that is open to the general public for the use of all-terrain vehicles.

(43) "Real Property" means immovable property: land together with all the property on it that cannot be moved, together with any attached rights.

(44) "Rider Fit" means the minimum physical size requirements that a Class I ATV operator under 16 years of age must meet in relationship to the vehicle to be operated as established by OPRD and described in OAR 736-004-0115.

(45) "Saddle" means any device attached to the vehicle which is used for seating.

(46) "Successor" means a governmental entity that has agreed to accept the terms and conditions of the project sponsor's responsibilities as contained in the project sponsor's grant agreement and grant application should the project sponsor cease to exist; for example, if a club or non-profit organization should dissolve or disband. The successor shall agree to operate the project continuously for the public benefit and recreational purposes identified in the grant agreement and the grant application. If OPRD is a successor under OAR 736-004-0025 (1)(c), OPRD may operate, sell, or qualify another successor to the project.

(47) "Sustainability" means using, developing, protecting, and managing the resource in a manner that enables people to meet current and future generation needs from the multiple perspective of environmental, economic, and community objectives.

(48) "Temporary ATV Safety Education Card" is a document issued by OPRD or an approved course provider allowing the bearer to operate a Class I or Class III ATV in Oregon for a period of time not to exceed 30 days.

Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0020
Apportionment of Monies

Monies in the All-Terrain Vehicle Account shall be used for the following purposes:

(1) Planning, promoting and implementing a statewide all-terrain vehicle program including the acquisition, development and maintenance of all-terrain vehicle recreation areas;

(2) Education and safety training for all-terrain vehicle operators;

(3) Provision of first-aid and police services related to all-terrain vehicle recreation;

(4) Paying the costs of instigating, developing, or promoting new programs for all-terrain vehicle users and of advising people of possible usage areas available for all-terrain vehicles;

(5) Paying the costs of coordinating between all-terrain vehicle user groups and the managers of public lands;

(6) Paying the costs of providing consultation and guidance to all-terrain vehicle user programs;

(7) Paying the costs of administration of the all-terrain vehicle programs including staff support provided under ORS 390.565 as requested by the All-terrain Vehicle Advisory Committee;

(8) Paying the cost of law enforcement activities related to the operation of Class I and Class III all-terrain vehicles; and

(9) Control and eradication of invasive species related to all-terrain vehicle recreation.

Stat. Auth.: ORS 390.180, 390.585,
Stats. Implemented: ORS 390.180, 390.560
Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0025
Grant Application Eligibility and Requirements

(1) Eligibility for funding assistance:

(a) Public agencies: Federal land managers, state agencies, and local governments that have the responsibility, or are capable of, providing a service to ATV users;

(b) Private land owners or managers: Private land owners or managers who offer public OHV recreation opportunities and will provide open public ATV recreation for a minimum prescribed period of daily or seasonal time and who will maintain the opportunity for a prescribed period of time as determined by OPRD;

(c) Clubs and non-profit organizations: ATV clubs and non-profit organizations registered with the State of Oregon for a minimum of three consecutive years;

(A) Clubs and non-profit organizations shall have in place, prior to receipt of any funding, a written agreement with a successor in which the successor agrees to operate the facility as described in the grant agreement and the grant application should the club or non-profit organization cease to exist, for example, due to disbanding or dissolution; or

(B) OPRD shall be listed on the title as successor to the property:

(i) OPRD may sell the property and shall deposit the net revenue from the sale into the ATV Account;

(ii) OPRD may operate the project; or

(iii) OPRD may qualify and assign another successor to the project.

(2) ATV projects or components not eligible for funding:

(a) Overtime is generally not eligible for funding except for an identified emergency situation;

(b) Overhead items such as office or building rent, insurance, depreciation and other fixed costs associated with the normal everyday operation of a business, agency or group;

(c) ATV projects that have no way to measure completion or specific intent are not eligible;

(d) Portions of projects completed prior to an ATV agreement or after the expiration of an ATV agreement;

(e) ATV projects that do not meet the goals of the ATV Grant Program, OAR 736-004-0020 to 736-004-0030, or are not in the best interest of ATV recreation;

(f) Vehicle or other personal property usage unrelated to the scope of the ATV project.

(3) Requirements for Match:

(a) The minimum match required for eligible ATV projects is 20 percent of the total project cost except for land acquisitions;

(b) For land acquisitions and when unusual circumstances exist, public agencies may request a partial or full waiver of the 20 percent match requirement. Consideration for the waiver will be based upon the following criteria:

(A) The public agency is able to demonstrate due diligence was exercised in obtaining other funds and that the following limitations, among others, are present:

(i) Budget authority does not exist;

(ii) Budget appropriations cannot be obtained in a reasonable time yet public support does exist; and

(iii) No saleable assets, such as conservation easements, exist from which to generate the full cash match requirement.

(B) The public agency is able to demonstrate their ability to operate and maintain the project property for ATV recreational purposes:

(i) By having budgeted funds in place; or

(ii) Having identified other resources such as volunteers or contracted services.

(C) The public agency is able to demonstrate that time is of the essence:

(i) The seller of the real property has placed time limits in which the public agency can affect a purchase, such as the expiration of an Option to Purchase or a First Right of Refusal; or

(ii) The public agency can identify the possible loss of other existing matching funds such as grants from other entities that may have an expiration date.

(D) If a waiver to the required partial or full match is approved, the public agency shall be limited in all future grant requests to receiving ATV grant funds in an amount of 50 percent or less of the total costs for any development projects located on the acquired property.

(c) Match may include, but is not limited to, cash funds, labor, either force account or volunteer, materials, and equipment;

(d) Grants from other sources may be used as match provided the sponsor can certify the funds will be available within 120 days from the beginning date of the grant agreement;

(e) Eligible volunteer labor will require a log that includes the volunteer's name, date volunteer performed work, location volunteer performed work, the hours worked, and the hourly rate of compensation used for their contribution of labor.

(4) Conversions:

(a) It is the intent of the ATV Grant Program that all real property acquisitions or easements shall be retained and used for the project's intended and stated use as described in both the grant application and the grant agreement;

(b) The director has authority to disapprove conversion requests, reject proposed substitutions, or both;

(c) The project sponsor shall submit requests for conversions to the OPRD in writing. The OPRD may consider the request if the following prerequisites are met:

(A) All practical alternatives to a conversion have been evaluated and rejected on a sound basis;

(B) The project sponsor has established the fair market value of the property to be converted and the property proposed for substitution is of at least equal fair market value as established by a state-approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not directly enhance its ATV recreation utility;

(C) The project sponsor proposes a replacement property that is of reasonably equivalent usefulness and location as that being converted.

(d) If the project sponsor is unable to provide replacement property within 24 months of either the approved request for conversion or after the fact of conversion, the project sponsor shall pay the OPRD a current amount equal to the OPRD's original percentage of contribution to the project. As an example, if the OPRD provided an original grant of 80 percent for the project's acquisition costs, the project sponsor will be required to reimburse the OPRD 80 percent of the real property's value at the time of conversion or discovery of conversion, whichever is later;

(e) In the case of development, rehabilitation, and equipment purchases, the project sponsor shall operate the improvements or equipment for its established useful life. Guidelines established by the IRS will be used by the project sponsor to define useful life per each item. If the facility is closed, service is terminated and the facility or equipment has not reached its useful life, it will be made available to other agencies or organizations. If a facility is closed, service is terminated, or land is closed, or the facility or equipment has not reached its useful life, a percentage of the allocated funds will be returned to the OPRD equal to the percentage of useful life remaining in the funded facility or equipment.

Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0030
Project Administration

(1) Applications:

(a) A current ATV grant application is required for consideration of ATV funding;

(b) Information regarding application deadlines and public meetings will be provided through available media sources and on the OPRD — ATV website;

(c) Applicants must submit applications by published deadlines;

(d) Applications will be reviewed by the OPRD and the ATV-Grant Subcommittee;

(e) The ATV-Grant Subcommittee will recommend ATV project funding to the commission.

(2) Agreements:

(a) To authorize an ATV Project, OPRD requires a signed ATV Grant Agreement.

(b) A project sponsor may not begin work on an ATV project without a Notice to Proceed.

(c) OPRD, upon written request by the project sponsor, may approve, in writing, that some match may be considered and allowed prior to commencement of the project.

(3) If funds are not available to fully fund a project, or partial funding has been recommended by the ATV-Grant Subcommittee, the project sponsor may be given the option of reducing the scope of the project.

(4) If the project sponsor anticipates the project will not be completed by the expiration date of the ATV grant agreement, the project sponsor must make a timely written request for an extension of the ATV grant agreement prior to the expiration date of the project agreement. The time extension request shall include any reasons for delay of project completion and a new projected completion date.

Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 6-2007, f. & cert. ef. 7-31-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0035
Establishment of the ATV Advisory Committee

(1) The commission shall appoint the ATV-AC and the ATV-Grant Subcommittee established by ORS 390.565. In appointing the first members to the ATV-AC, the commission shall specify the end of the term of office for each member consistent with Oregon Laws 2009, chapter 812, section 4(2).

(2) The Director shall appoint the ATV-AC Chair and Vice Chair upon consideration of the committee's recommendations.

(3) The Director shall appoint the ATV-Grant Subcommittee Chair and Vice Chair upon consideration of the subcommittee's recommendations.

Stat. Auth.: ORS 390.180, 390.565
Stats. Implemented: ORS 390.180, 390.565
Hist.: PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0060
ATV Operating Permit

(1) An ATV operating permit shall be in the form of a decal valid for a two-year period from the date of issue to be placed on the vehicle as deter-

mined in OAR 736-004-0065. All ATV operating permits shall include on the decal:

(a) The distinctive number or characters assigned by OPRD to the vehicle;

(b) The word "Oregon"; and

(c) The expiration date.

(2) The application for an ATV operating permit shall be in a form as prescribed by OPRD and shall include.

(a) The name and address of the owner of the ATV; and

(b) The make and body style of the ATV for which application is made.

(3) To replace a permit that is lost, destroyed, mutilated or needs to be replaced for any reason, the owner must:

(a) Apply for a new permit in the same manner as for an original permit; and

(b) Pay the fee for a replacement ATV Operating Permit.

(4) The fee for an original or replacement ATV Operating Permit is $10.00.

Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0062
Ocean Shores ATV Operating Permit (Permit to operate a Class I ATV on the Ocean Shore)

(1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the person obtains an Ocean Shores ATV Operating Permit from OPRD.

(2) The operator must have, in addition to the Ocean Shores ATV Operating Permit, a current ATV Safety Education Card issued under ORS 390.570 and the vehicle must have a current ATV operating permit (ATV decal affixed to the vehicle) issued under 390.580.

(3) The Ocean Shores ATV Operating Permit is to be used only to meet the access needs of:

(a) Persons with disabilities, as defined by ORS 174.107; or who have proof of motor vehicle disabled placard, or both;

(b) Emergency response or emergency aid workers during the course of their work; or

(c) Biologists, wildlife monitors, or other natural resources workers during the course of their work.

(4) Ocean Shores ATV Operating Permits issued under subsection (3)(a) will allow use in those areas open to motorized vehicle use. However, upon request from an individual with a disability, OPRD may issue such a permit for sections closed to motorized use if the Director or his designee determines that such use:

(a) Is a reasonable accommodation of the individual's access needs; and

(b) Does not significantly impact environmentally or culturally sensitive areas or create a safety hazard to the public.

(5) Permits issued under this section shall specify length of time, area of operation and access points.

(6) Class I ATV's shall not be operated in a careless manner on the Ocean Shore Recreation Area.

(7) Unless otherwise posted Class I ATV's shall not be operated on the Ocean Shore in excess of 25 mph in open sections and 10 mph in closed sections.

Stat. Auth.: ORS 390.180 & 390.585
Stats. Implemented: ORS 390.729
Hist.: PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 10-2008, f. & cert. ef. 12-15-08; PRD 10-2009, f. & cert. ef. 6-18-09; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0065
Placement of ATV Off-Road Operating Permit

(1) An ATV operating permit shall be in the form of a decal to be permanently affixed to the vehicle for which it is issued, and must be clearly visible.

(2) Placement of the permit shall be as follows:

(a) For quads, three-wheelers, or vehicles of a similar design, the permit shall be displayed on the right-hand side of the vehicle in a visible location;

(b) For jeeps, pickups, passenger cars and similar vehicles, the permit shall be displayed in a manner that makes it visible from the rear of the vehicle, such as on the bumper or in the rear window;

(c) On sandrail vehicles (dune buggies) the permit shall be displayed in the middle of the rear rollbar and be visible from the rear of the vehicle; and

(d) For vehicles that are similar in design to motorcycles and where it is not possible to display the permit as required in sections (2) or (3) of this rule, the permit shall be displayed:

(A) On the front fork tube, on the opposite side of the vehicle from the brake, or in a location that is visible while the rider is on the vehicle; and

(B) Be positioned either horizontally or vertically.

Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0085
ATV Safety Education Card (ATV Operator Permits)

(1) To operate a Class I or Class III ATV on public lands in Oregon, a person must obtain an ATV Safety Education Card (ATV operator permit).

(2) The criteria for obtaining an ATV Safety Education Card are:

(a) Attain a test score of at least 80 percent on an OPRD-approved internet safety course;

(b) Attain a test score of at least 80 percent on a correspondence course and self test provided by OPRD; or

(c) Be at least 16 years of age and have five or more years of experience operating a Class I or Class III all-terrain vehicle and successfully pass an equivalency examination with a score of at least 80 percent.

(d) Effective January 1, 2012, operators under 16 years of age must:

(A) Successfully demonstrate ATV proficiency, and

(B) Pass either an OPRD-approved:

(i) Hands-on training course, or

(ii) Evaluation course.

(e) Effective January 1, 2012, a person under 16 years of age will receive a Certificate of Completion upon passing the ATV safety internet course. The certificate of completion will also be an Instruction Permit which shall be valid for 180 days.

(3) To obtain an ATV Safety Education Card, the applicant must provide to the OPRD a completed application on a form provided by the OPRD with the following information: the applicant's name, address, date of birth, hair color, eye color, gender, and, if applicable, years of experience. The applicant must also sign a statement declaring that the information is true and correct.

(4) ATV Safety Education Cards are not transferable.

(5) ATV Safety Education Cards shall contain a unique number and endorsement code that corresponds to the individual named on the permit.

(6) A person is considered in violation of the provisions of ORS 821.170 and 821.172 and subject to penalties prescribed by law when they:

(a) Provide a false statement or information or assist another person in giving a false statement or information on any application, affidavit, document or statement used to obtain an ATV Safety Education Card or replacement ATV Safety Education Card;

(b) Exhibit to a law enforcement officer an altered Oregon ATV Safety Education Card or any ATV Safety Education Card other than the one issued to them;

(c) Alter an ATV Safety Education Card or replacement card issued by the OPRD or its authorized agent;

(d) Produce or possess an unauthorized replica of an ATV Safety Education Card or replacement card; or

(e) Operate a Class I or Class III ATV on public lands without a valid ATV Safety Education Card in their possession.

(7) In addition to any penalties that may result from a violation of ORS 821.170 and 821.172, the ATV Safety Education Card is null and void for any person who provides a false statement or information or obtains a permit to which the person is not entitled.

(8) In accordance with ORS 821.174, when a person's driving privileges are suspended or revoked, the person may not operate a Class I or Class III all-terrain vehicle.

Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570, 390.575 & 821.174
Hist.: PRD 2-2001, f. & cert. ef. 2-23-01; PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0090
Replacement ATV Safety Education Card

(1) A person may apply for a replacement ATV Safety Education Card from the OPRD if:

(a) They legally change their name;

(b) The card is lost, stolen or destroyed;

(c) Misinformation is printed on the card; or

(d) The card has a printing error or physical defect.

(2) To obtain a replacement card, an applicant must provide the OPRD with a completed application form provided by the OPRD which includes an affidavit signed by the applicant stating the circumstances that led to the replacement of the original card.

Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570, 390.575 & 821.174
Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0095
Temporary ATV Safety Education Card

(1) A person who successfully passes the OPRD safety education course may print from their computer a temporary ATV safety education card and may operate an ATV for no more than 30 days from date of issue provided the temporary ATV safety education card is in the possession of the operator.

(2) A person residing in Oregon who is required to possess an ATV Safety Education Card and is in possession of a certificate issued by another state or nation that is equivalent to Oregon's ATV Safety Education Card may use that certificate as a temporary Safety Education Card and may operate an ATV in Oregon for no more than 30 days form date of residency provided the document is in the possession of the operator.

Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570, 390.575 & 821.174
Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0110
Fees

(1) There is no fee for issuance of the original ATV Safety Education Card.

(2) There is no fee for issuance of an ATV Safety Education Card that adds an endorsement code.

(3) The replacement fee for an ATV Safety Education Card is $8.00.

Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570, 390.575 & 821.174
Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0115
Rider Fit

(1) A Class I ATV operator under 16 years of age must meet all the following minimum physical size requirements in relationship to the vehicle:

(a) Brake Reach: With hands placed in the normal operating position and fingers straight out, the first joint (from the tip) of the middle finger will extend beyond the brake lever and clutch;

(b) Leg Length: While sitting and with their feet on the pegs, the knee must be bent at least 45 degrees;

(c) Grip Reach: While sitting upright on the ATV with hands on the handlebars and not leaning forward, there must be a distinct angle between the upper arm and the forearm; and

(d) The rider must be able to turn the handlebars from lock to lock while maintaining grip on the handlebars and maintaining the throttle and brake control.

(2) Disabled riders are allowed to use prosthetic devices or modified or adaptive equipment to achieve rider fit.

Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570, 390.575 & 821.174
Hist.: PRD 8-2008, f. & cert. ef. 10-15-08; PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0120
Minimum Training Standards

(1) Providers of a Class I or a Class III ATV evaluation or training course must evaluate ATV operators in their ability to control an ATV at or above OPRD minimum training standards under section (2) of this rule.

(2) OPRD will provide minimum ATV training or evaluation standards that will include:

(a) Prerequisite training requirements;
(b) Rider fit under OAR 736-004-0115;
(c) Familiarization of controls;
(d) Internet safety course review;
(e) Starting and stopping;
(f) Turns and weaves; and
(g) Navigating over and around obstacles.

(3) Participants in an ATV evaluation or training course must meet the following requirements:

(a) Rider must provide the eleven-digit card number from either their ATV Safety Education Card or their certificate of completion issued by OPRD;

(b) Rider under 16 years of age must be accompanied throughout the training by an adult at least 18 years of age; and

(c) Rider must have a Class I or a Class III ATV. Three-wheeled vehicles are not allowed.

(4) Rider must wear the following while operating an ATV during evaluation or training:

(a) DOT (Department of Transportation) approved motorcycle helmet;
(b) Goggles (or helmet with face shield);
(c) Gloves;
(d) Sturdy over-the-ankle shoes or boots;
(e) Long-sleeved shirt or jacket; and
(f) Long pants.

Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570, 390.575
Hist.: PRD 20-2009, f. & cert. ef. 12-8-09

736-004-0125
ATV Training Course Approval by OPRD

(1) An ATV course provider shall submit a course approval request on an application form provided by OPRD.

(2) OPRD will evaluate the course application under section (3) of this rule within 90 days of receipt of a complete application.

(3) OPRD shall evaluate the sufficiency of the course to train or evaluate to OPRD's minimum ATV training standards under OAR 736-004-0120(2) and meet the participation and equipment requirements of OAR 736-004-0120(3) and (4).

(4) OPRD course approval is valid for three years. An ATV course provider may submit a course approval renewal request on an application form provided by OPRD. OPRD will evaluate the course application renewal within 90 days of receipt of a completed application.

(5) OPRD may periodically audit courses or contact students for the purposes of evaluation for adherence to OPRD ATV minimum training standards under OAR 736-004-0120(2) through (4).

(6) If OPRD determines a course provider does not meet the ATV minimum training standards under OAR 736-004-0120(2) through(4), OPRD may take one or more of the following actions:

(a) Notify the course provider in writing of course deficiencies and allow the course provider until the next scheduled course, or 30 days (whichever is later) to enact changes to comply with OAR 736-004-0120(2) through (4);

(b) Notify the course provider in writing that effective immediately no further courses are authorized by OPRD until required changes are made and determined to be in compliance with OAR 736-004-0120(2) through (4) by OPRD; or

(c) Notify the course provider in writing that effective immediately no further courses are authorized by OPRD until a new application for approval has been made under section (1) and approved under section (3) of this rule.

(7) Course providers are solely responsible for the oversight and management of course instructors.

Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570 & 390.575
Hist.: PRD 20-2009, f. & cert. ef. 12-8-09

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Rule Caption: OAR 735-009 being amended to designate categories and process for establishing Oregon Scenic and Oregon Regional Trails.
Adm. Order No.: PRD 21-2009
Filed with Sec. of State: 12-8-2009
Certified to be Effective: 12-8-09
Notice Publication Date: 7-1-2009
Rules Adopted: 736-009-0006, 736-009-0021, 736-009-0022
Rules Amended: 736-009-0020, 736-009-0025, 736-009-0030
Rules Repealed: 736-009-0005, 736-009-0010, 736-009-0015
Subject: The rules in chapter 736, division 009, Oregon Recreation Trails are being amended to include the categories and processes for establishing Oregon Scenic Trails and Oregon Regional trails in accordance with the Oregon Recreation Trails Act.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-009-0006
Oregon Recreation Trails

(1) The purpose of OAR 735-009-0005 to 735-009-0030 is to establish the procedures and criteria that the Oregon Recreation Trails Advisory Council will use in recommending to the department the establishment and designation of Oregon Recreation Trails. Pursuant to the Oregon Recreation

Trails System Act, ORS 390.950 to 390.989 and 390.995, the following categories are established:

(a) "Oregon Scenic Trails" may be comprised of routes that provide access to national, state, or regional resources of superlative quality and scenic splendor.

(b) "Oregon Regional Trails" may be comprised of routes that provide connections to communities, recreation sites or trail systems, and close-to-home recreational opportunities.

(c) "Oregon Scenic Bikeways" may be comprised of bicycle paths, designated transportation corridors, or a combination thereof. Oregon Scenic Bikeways may include route sections that are located in or near existing rights of way for roads or highways.

(2) The goals and objectives of the Oregon Recreation Trails Program are to:

(a) Provide recreation trails of superlative quality for the enjoyment and health of Oregonians and visitors;

(b) Showcase a standard for excellence in the routing, construction, maintenance, and marking consistent with each trail's character and purpose;

(c) Preserve and enhance Oregon Recreation Trails;

(d) Provide links to recreation sites and scenic, historic, natural, cultural resources along Oregon Recreation Trails; and

(e) Preserve and protect the natural landscape, scenic features, historic character, and recreation opportunities within the trail corridor.

(3) In furtherance of the goals and objectives established in section (2) of this rule, the department will:

(a) Follow the process and criteria established in this division for evaluating, designating, updating and maintaining Oregon Recreation Trails;

(b) Develop management strategies to preserve and enhance Oregon Recreation Trails;

(c) Create and provide public information resource materials on Oregon Recreation Trails, and

(d) Promote interest and support from local communities for creation, enhancement, and publicizing of local trails and recreation opportunities adjacent to or in close proximity to any Oregon Recreation Trails.

Stat. Auth.: ORS 390.971(8)
Stats. Implemented: ORS 390.956, 390.959 - 390.962, 390.968, 390.971
Hist.: PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0020
Definitions

For purposes of this division, unless the context requires otherwise:

(1) "Agriculture/Forestry" means crops, wineries, vineyards, ranches, fisheries, orchards, nurseries, old-growth and reforested lands.

(2) "Amenities" may include potable water, lodging, camping, restrooms, bike shops, equipment storage, restaurants and grocery stores.

(3) "Commission" means the Oregon Parks and Recreation Commission.

(4) "Committee" means the eleven-member Scenic Bikeway Committee appointed by the director to recommend the establishment and designation of Oregon Scenic Bikeways to the department.

(5) "Council" means the Oregon Recreation Trails Advisory Council.

(6) "Department" means the Oregon Parks and Recreation Department.

(7) "Director" means the Oregon Parks and Recreation Director appointed under ORS 390.127.

(8) "Landform" means topography that becomes more interesting as it gets steeper or more massive, or more severely sculptured. Outstanding landforms may be monumental or artistic and subtle.

(9) "Landscape" means a combination of outdoor, manmade, natural, and agricultural features within a view shed.

(10) "Linear Route" means a route that progresses from a starting to an ending point. The beginning and end of a linear route do not meet, but may connect to another route or a destination point.

(11) "Loop Route" means a route that starts and ends at the same location or connects to another cycling route that returns to the starting point.

(12) "Natural Features" means non-manmade attractions including geologic formations, wildlife sites, waterfalls, lake basins, old-growth stands, and mountain meadows.

(13) "Oregon Recreation Trail" means any trail established and designated by the department pursuant to the Oregon Recreation Trails System Act.

(14) "Oregon Regional Trail" means any trail that connects communities, recreation sites or other trail systems and provides close-to-home recreational opportunities.

(15) "Oregon Scenic Bikeway" means a route designated for bicyclists under ORS 390.962.

(16) "Oregon Scenic Trail" means trails that provide access to and enjoyment of significant scenic natural views and features.

(17) "Bicycle Path" means a paved trail along a road or an independent right-of-way used by bicyclists, pedestrians, joggers, skaters, and other non-motorized travelers.

(18) "Paved" means a hard surface such as concrete, asphalt cement concrete (A/C) or other stable bituminous surface.

(19) "Proponent" means a group, organization, or individual who proposes the designation of an Oregon Recreation Trail.

(20) "Public Land" means any lands owned or leased by the federal government, this state or any political subdivision thereof.

(21) "Route" means a combination of streets and paths used to travel to destinations or in corridors for transportation or recreation.

(22) "Scenic" means an abundance and variety of aesthetically-pleasing manmade or natural elements along the route.

(23) "Trail Corridor" means the land associated with the use agreement, easement or right-of-way upon which the trail lies.

(24) "Unique" means relatively rare or unusual as applied to a resource or combination of features within a geographic region.

(25) "Vegetation" means forest, prairies, orchards, active farm cropland and tree farms with a variety of patterns, form and textures created by plant life, and small scale vegetation features that add striking and intriguing detail elements to the landscape.

(26) "Water" means ocean, rivers, lakes, streams, waterfalls, rapids, marshes, estuaries, bays, canals and harbors that add movement or serenity to a scene, or the degree to which water dominates the scene.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.950 – 390.989
Hist.: PRD 7-2008, f. & cert. ef. 9-15-08; PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0021
Establishing Oregon Scenic Trails

Pursuant to ORS 390.962(1), the department prescribes the criteria for the designation of Oregon Scenic Trails in this rule in addition to those provided in the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(1) Oregon Scenic Trails will be comprised of routes that provide access to national, state, or regional resources of superlative quality and scenic splendor.

(2) Oregon Scenic Trails may be linear, loop, or a combination of linear and loop routes and shall generally meet these criteria:

(a) Scenic Trails will connect to other trails to the extent possible.

(b) Scenic Trails should be a minimum of one (1) mile in length.

(3) Pursuant to ORS 390.962(1), an Oregon Scenic Trail may be located:

(a) Over public land with the consent of each governmental entity having jurisdiction over the lands designated; or

(b) Over privately-owned lands in the manner of and subject to the limitations provided in ORS 390.950 to 390.989 and 390.995(2).

(4) Evaluation of Applications

(a) To be considered as an Oregon Scenic Trail, a proponent must submit to the department a complete Oregon Scenic Trail Application form in the format specified by the department, including a detailed Trail Management Plan.

(b) The department will review each Oregon Scenic Trail application for completeness and eligibility, including whether the application adequately addresses the considerations provided in ORS 390.965(2). The department will provide all complete, eligible applications to the council. Incomplete or ineligible applications will be returned to the proponents with an explanation of the deficiencies.

(c) The council will consider trails for designation based on the criteria provided in sections (1) to (3) of this rule and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(d) The council or designee shall conduct a field review of the proposed trail.

(e) The council shall score the trail against criteria established in the Oregon Recreation Trails System Act, ORS 390.950 through 390.989 and 390.995, and in this rule, including but not limited to:

(A) Emphasis on use of public lands,

(B) Minimizing adverse effects on adjacent landowners,

(C) Harmony with and complement to established forest, agricultural, or other use plans, and

(D) Any natural features, agriculture, forest, unusual or unique landforms, vegetation, water components, scenic beauty and interest, as well as amenities available to the route.

(f) Based on the application, field review, and scoring, the council shall determine if the trail qualifies to be recommended for designation as an Oregon Scenic Trail.

(g) If the council does not recommend designating the route as an Oregon Scenic Trail, it shall provide comments and recommendations to the proponent. The proponent may reapply to the council only after fully addressing the recommendations of the council.

(5) Designation Process:

(a) The council shall provide each recommendation for designation as an Oregon Scenic Trail to the director.

(b) The department shall hold public meetings on the recommended designation as provided in ORS 390.965(1).

(c) After the public meetings required in subsection (b), the director shall either:

(A) Submit the council's recommendation to the commission for approval or denial of the proposed Oregon Scenic Trail; or

(B) Request that the council provide further consideration of issues presented in the public meeting.

(6) Trail Management:

(a) The department will enter into written cooperative agreements with landowners, federal agencies, other state agencies, local governments, private organizations and individuals as necessary to ensure that the development, signing, operation, maintenance, location or relocation of the trail meet the Oregon Scenic Trail standards.

(b) The department shall evaluate each Oregon Scenic Trail at least once every five years. The department will provide the council an evaluation and inventory of the trail features. Upon review, the council may recommend:

(A) The trail be improved to meet the standards of state designation; or

(B) Removal of Oregon Scenic Trails designation when or if the trail no longer meets the criteria.

(c) Signing and Publication of Oregon Scenic Trails.

(A) Consistent with the requirements of ORS 390.959, the department will establish sign standards and coordinate sign placement for each trail the commission designates as an Oregon Scenic Trail.

(B) The department will publish on its web page and make available standardized route maps for all Oregon Scenic Trails.

Stat. Auth.: ORS 390.971(8)
Stat. Implemented: ORS 390.956, 390.959, 390.962, 390.968, 390.971
Hist.: PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0022
Establishing Oregon Regional Trails

Pursuant to ORS 390.962(1), the department prescribes the criteria in this rule in addition to those provided in the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2), for the designation of Oregon Regional Trails.

(1) Oregon Regional Trails may be comprised of recreational trails that provide connections to communities, recreation sites or trail systems, and close-to-home recreational opportunities.

(2) Oregon Regional Trails may be linear, loop, or a combination of linear and loop routes that connect communities or recreation sites and shall generally meet these criteria:

(a) Regional Trails connect communities or recreation resources to the extent possible.

(b) Regional Trails should be a minimum of five (5) miles in length.

(3) Pursuant to ORS 390.962(1), an Oregon Regional Trail may be located:

(a) Over public land with the consent of each governmental entity having jurisdiction over the lands designated; or

(b) Over privately-owned lands in the manner of and subject to the limitations provided in ORS 390.950 to 390.989 and 390.995(2).

(4) Evaluation of Applications

(a) To be considered as an Oregon Regional Trail, a proponent must submit to the department a complete Oregon Regional Trail Application form in the format specified by the department, including a detailed Trail Management Plan.

(b) The department will review each Oregon Regional Trail proposal for completeness, including whether the application adequately addressees the considerations provided in ORS 390.965(2). The department will provide all complete, eligible applications to the council. Incomplete or ineligible applications will be returned to the proponents with an explanation of the deficiencies.

(c) The council will consider trails for designation based on the criteria provided in sections (1) to (3) of this rule and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(d) The council or designee shall conduct a field review of the proposed routetrail.

(e) The council shall score the trail against criteria established in the Oregon Recreation Trails System Act, ORS 390.950 through 390.989 and 390.995, and this rule, including but not limited to:

(A) Emphasis on use of public lands,

(B) Minimizing adverse effects on adjacent landowners,

(C) Harmony with and complement to established forest, agricultural, or other use plans, and

(D) Emphasis on connections to communities, recreation sites, or trail systems, and close-to-home recreational opportunities.

(f) Based on the application, field review, and scoring, the council shall determine if the trail qualifies to be recommended for designation as an Oregon Regional Trail.

(5) Designation Process:

(a) The council shall provide each recommendation for designation as an Oregon Regional Trail to the director.

(b) The department shall hold public meetings on the recommended designation as provided in ORS 390.965(1).

(c) After the public meetings required in subsection (b), the director shall either submit the council's recommendation to the commission for approval or denial of the proposed Oregon Regional Trail or request that the council provide further consideration of issues presented in the public meeting.

(6) Trail Management:

(a) The department will enter into written cooperative agreements with landowners, federal agencies, other state agencies, local governments, private organizations and individuals as necessary to ensure that the development, signing, operation, maintenance, location or relocation of the trail meet the Oregon Regional Trail standards.

(b) The department shall evaluate each Oregon Regional Trail at least once every five years. The department will provide the council an evaluation and inventory of the trail features. Upon review, the council may recommend:

(A) The trail be improved to meet the standards of state designation; or

(B) Removal of Oregon Regional Trail designation when or if the trail no longer meets the criteria.

(c) Signing and Publication of Oregon Regional Trails.

(A) Consistent with the requirements of ORS 390.959, the department will establish sign standards and coordinate sign placement for each trail the commission designates as an Oregon Regional Trail.

(B) The department will publish on its web page and make available standardized route maps for all Oregon Regional Trails.

Stat. Auth.: ORS 390.971(8)
Stats. Implemented: ORS 390.956, 390.959, 390.962, 390.968, 390.971
Hist.: PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0025
Oregon Scenic Bikeways Committee

(1) The director shall appoint a Scenic Bikeways Committee composed of 11 members. The committee shall include one representative each from:

(a) The department;

(b) Oregon Tourism Commission (dba Travel Oregon)

(c) Oregon Department of Transportation

(d) A Federal Lands Manager (U.S. Forest Service or Bureau of Land Management

(e) Oregon Association of Convention and Visitors Bureaus;

(f) Oregon Recreation Trails Advisory Council established pursuant to ORS 390.977;

(g) Oregon Bicycle and Pedestrian Advisory Committee established pursuant to ORS 366.112;

(h) Association of Oregon Counties;

(i) League of Oregon Cities;

(j) Representative of bicycle advocacy organization; and

(k) Citizen Representative.

(2) Members may serve two consecutive four-year terms on the committee. However, the director shall appoint the first committee members following the effective date of this rule to serve a two, three, or four-year term.

(3) The director shall appoint the chair from the committee membership, considering the recommendations of the committee.

(4) The committee shall meet at times and places specified by the call of the director.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) Function and Duties of Scenic Bikeways Committee:

(a) The committee shall evaluate proposed Oregon Scenic Bikeways against the criteria provided in OAR 736-009-0030 and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2). The committee shall make a recommendation to the director on each application for a proposed Oregon Scenic Bikeway.

(b) The committee shall evaluate each Oregon Scenic Bikeway route at least once every five years. The department and Oregon Department of Transportation will provide the committee an inventory of the features of the route determined by riding a bike along the route. The committee may recommend that the department improve, remove, or reroute portions of a route no longer meeting the criteria for an Oregon Scenic Bikeway.

Stat. Auth.: ORS 390.971(8)
Stats. Implemented: ORS 390.956, 390.959, 390.962, 390.968 & 390.971
Hist.: PRD 7-2008, f. & cert. ef. 9-15-08; PRD 21-2009, f. & cert. ef. 12-8-09

736-009-0030
Establishing Oregon Scenic Bikeways

Pursuant to ORS 390.962(1), the department prescribes the criteria in this rule in addition to those provided in the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2), for the designation of Oregon Scenic Bikeways.

(1) Oregon Scenic Bikeways may be comprised of bicycle paths, designated transportation corridors or a combination thereof. Oregon Scenic Bikeways may include route sections located in or near existing rights-of-way for roads or highways.

(2) Oregon Scenic Bikeways may be linear, loop, or a combination of linear and loop routes that encompass national, state, or regional scenic resources and shall generally meet these criteria:

(a) Linear routes connect to each other and other designated routes to the extent possible.

(b) Linear routes should be a minimum of 40 miles in length.

(c) Loop routes encompass regional or local scenic, cultural or historic features.

(d) Scenic loop routes should be a minimum of five miles in length and should return the cyclist to the point of origin.

(e) Scenic loop routes may be established as connections to existing linear Oregon Scenic Bikeways or may be established as Oregon Scenic Bikeways in and of themselves.

(3) Pursuant to ORS 390.962(1), an Oregon Scenic Bikeway may be located:

(a) Over public land with the consent of each governmental entity having jurisdiction over the lands designated; or

(b) Over privately-owned lands in the manner and subject to the limitations provided in ORS 390.950 to 390.989 and 390.995(2).

(4) Evaluation of Applications

(a) To be considered as an Oregon Scenic Bikeway, a proponent must submit to the department a completed Oregon Scenic Bikeway Application form in the format specified by the department, including a detailed Trail Management Plan.

(b) The department will review each Oregon Scenic Bikeway proposal for completeness, including whether the application adequately addressees the considerations provided in ORS 390.965(2). The department will provide all complete, eligible applications to the committee. Incomplete or ineligible applications will be returned to the proponents with an explanation of the deficiencies.

(c) The committee will consider routes for designation based on the criteria provided in sections (1) to (3) of this rule and the Oregon Recreation Trails System Act, ORS 390.950 to 390.989 and 390.995(2).

(d) The committee shall conduct a field review of the proposed route, to include a review conducted on bicycles by no less than three (3) members of the committee.

(e) The committee shall score the route against criteria established in the Oregon Recreation Trails System Act, ORS 390.950 through 390.989 and 390.995, and this rule, including but not limited to:

(A) Emphasis on use of public lands,

(B) Minimizing adverse effects on adjacent landowners,

(C) Harmony with and complement to established forest, agricultural, or other use plans, and

(D) Any natural features, agriculture, forest, unusual or unique landforms, vegetation, water components, scenic beauty and interest, as well as amenities available to the route.

(e) Based on the application, field review and scoring the committee shall determine if the route qualifies to be recommended for designation as an Oregon Scenic Bikeway.

(f) If the committee does not recommend designating the route as an Oregon Scenic Bikeway, it shall provide comments and recommendations to the proponent. The proponent may reapply to the committee only after fully addressing the recommendations of the committee.

(5) Designation Process:

(a) The committee shall provide each recommendation for designation as an Oregon Scenic Bikeway to the director.

(b) The department shall hold public meetings on the recommended designation as provided in ORS 390.965(1).

(c) The department will consult with the Oregon Recreational Trails Advisory Council as provided in ORS 390.977.

(d) After the public meetings required in subsection (b), and in consultation with the council, the director shall either:

(A) Submit the committee's recommendation to the commission for approval or denial of the proposed Oregon Scenic Bikeway; or

(B) Request that the committee provide further consideration of issues presented in the public meeting.

(6) Scenic Bikeway Management

(a) The department will enter into written cooperative agreements with landowners, federal agencies, other state agencies, local governments, private organizations and individuals as necessary to ensure that the development, signing, operation, maintenance, location or relocation of the trail meet the Oregon Scenic Bikeway Standards.

(b) The department shall evaluate each Oregon Scenic Bikeway at least once every five (5) years. The department will provide the committee an evaluation and inventory of the trail features. Upon review, the committee may recommend:

(A) The trail be improved to meet the standards of state designation; or

(B) Removal of Oregon Scenic Bikeway designation when or if the trail no longer meets the criteria.

(c) Signing and Publication of Oregon Scenic Bikeway.

(A) Consistent with the requirements of ORS 390.959, the department will establish sign standards and coordinate sign placement for all routes that the commission designates as an Oregon Scenic Bikeway.

(B) The department will publish on its web page and make available standardized route maps for all Oregon Scenic Bikeways.

Stat. Auth.: ORS 390.971(8)
Stats. Implemented: ORS 390.956, 390.959, 390.962, 390.968 & 390.971
Hist.: PRD 7-2008, f. & cert. ef. 9-15-08; PRD 21-2009, f. & cert. ef. 12-8-09

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Rule Caption: Rules governing confidentiality and inadmissibility of mediation communications being adopted.
Adm. Order No.: PRD 22-2009
Filed with Sec. of State: 12-8-2009
Certified to be Effective: 12-8-09
Notice Publication Date: 7-1-2009
Rules Adopted: 736-140-0005, 736-140-0015
Subject: These rules govern the Confidentiality and Inadmissibility of Mediation Communications and have been provided as model rules by the Office of the Attorney General to state agencies with a recommendation to adopt as authorized by ORS 36.224.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-140-0005
Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in these rules have the same meaning as given to them in ORS 36.110 and 36.234. In addition, as used in this rule, unless the context requires otherwise:

(a) "Agency" or "the agency" means Oregon Parks and Recreation Department or OPRD.

(b) "Director" means the Director of the Oregon Parks and Recreation Department.

(c) "State agency" may refer to Oregon Parks and Recreation Department or could refer to a state agency other than the Oregon Parks and Recreation Department if more than one state agency is party to the mediation.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the

Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(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, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be either confidential; or non-discoverable and inadmissible; or both confidential and non-discoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the format outlined in the OPRD form entitled: "Agreement to Participate in A Confidential Mediation" available from the agency. 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 Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Auth.: ORS 36.224 & 390.124

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: PRD 22-2009, f. & cert. ef. 12-8-09

736-140-0015

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234. In addition, as used in this rule, unless the context requires otherwise:

(a) "Agency" or "the agency" means Oregon Parks and Recreation Department or OPRD.

(b) "Director" means the Director of the Oregon Parks and Recreation Department.

(c) "State agency" may refer to Oregon Parks and Recreation Department or could refer to a state agency other than the Oregon Parks and Recreation Department if more than one state agency is party to the mediation.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)-(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, 390.124
Stats. Implemented: ORS 36.230(4)
Hist.: PRD 22-2009, f. & cert. ef. 12-8-09

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of Setting Regulatory Thresholds for Metered Water Systems.
Adm. Order No.: PUC 13-2009
Filed with Sec. of State: 11-24-2009
Certified to be Effective: 11-24-09
Notice Publication Date: 10-1-2009
Rules Amended: 860-036-0010, 860-036-0030
Subject: These rule amendments respond to SB 623 (2009 Oregon Legislature) by establishing for water utilities serving fewer than 500 customers with metered systems a higher maximum rate than for those with unmetered systems.
Rules Coordinator: Diane Davis—(503) 378-4372

860-036-0010
Definitions for Water Utilities and Associations

As used in division 036:

(1) "Actual cost" means the direct cost of parts, materials and labor of a specific item or project separated from indirect costs.

(2) "Applicant" means a person who:

(a) Applies for service with a utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(3) "Association" means an incorporated or homeowner association providing water service, as defined in ORS 757.005.

(4) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for water utility service on an account with the water utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance provided the water utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

(5) "Commercial customer" means a customer who performs or produces a service or product that is a source of revenue, income or livelihood to the customer or others using the premises.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Contributions in aid of construction" means any money, services or property received by a water utility to fund capital investments at no cost to the company with no obligation to repay.

(8) "Construction work in progress (CWIP)" means account 105 in the utility plant section of the balance sheet representing the costs of utility plant under construction but not yet placed in service.

(9) "Cooperative" means a cooperative corporation as defined in ORS Chapter 62.

(10) "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable expected return on investment.

(11) "Customer" means a person who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and subsequently asks for service with the same water utility at a new or existing location within 20 days after disconnection retains customer status.

(12) "District" means a corporation as defined under ORS Chapter 198.

(13) "Emergency" means an extraordinary interruption of the usual course of water service by a natural cause, an unforeseen event, or a combination of unexpected circumstances; an urgent need for assistance or relief; or the resulting state that calls for immediate action.

(14) "End-user" means a domestic water user.

(15) "Exempt water company" means a water company that meets the definition of a public utility in ORS 757.005, but is exempt from regulation as provided in ORS 757.005(1)(b)(E).

(16) "Flat rate" means a periodic stated charge for utility service not based on metered quantity of service. Such a rate is used where service is provided on an unmetered basis.

(17) "Forced connection" means a water utility or its customers being required by law, regulation, rule, or company policy to retrofit, improve, or change the original service connection. All retrofits, improvements, additions or changes to the original service connection will be the operational and financial responsibility of the company, with the following exceptions (1) any national or state laws or rules clearly assigning such costs to the customer, or (2) the Commission otherwise approves as provided in OAR 860-036-0105(1) and (2).

(18) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(19) "Large commercial customer" means a commercial customer with a meter or pipe diameter of two inches or larger.

(20) "Mainline extension" means the extension of a main line to an area not previously served. If the main line extension is required at the request of a potential customer to receive service, the cost of such extension shall comply with the water utility's main line extension policy.

(21) "Metered rate" means a periodic stated charge for utility service that is based on metered quantity of water consumed.

(22) "Meter set" means the parts, material, and labor necessary to install a meter. The meter set assembly is owned, installed, and maintained by the utility. The meter set does not include any components of the service connection required to provide unmetered service.

(23) "Metered system" means a water system that uses a meter to measure consumption of water and uses a metered rate as a charge to customers.

(24) "People's utility district" (PUD) means a corporation as defined in ORS Chapter 261.

(25) "Public utility" has the meaning given the term in ORS 757.005 and 757.061. The term does not include districts, People's Utility Districts (PUDs), cooperatives, or municipalities.

(26) "Rate-regulated utility" means a water utility that is not exempt from certain financial regulations and conditions under ORS 757.061.

(27) "Registered dispute" means an unresolved issue between a customer or applicant and a water utility that is under investigation by the Commission's Consumer Services, but is not the subject of a formal complaint.

(28) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(29) "Small commercial customer" means a commercial customer with a meter or pipe diameter of less than two inches.

(30) "System development fee or charge" is the proportionate fee charged by a water company prior to service being initiated that encompasses the cost of the system allocated to all potential customers.

(31) "Unmetered system" means a water system that does not use a meter to measure consumption and uses a flat rate to charge customers.

(32) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(33) "Water utility" has the same meaning as public utility in section (22) of this rule, except if a more limited scope is explicitly stated.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 756.105 & 757.061
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 9-2001, f. & cert. ef. 3-21-01; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef 4-9-04; PUC 13-2009, f. & cert. ef. 11-24-09

860-036-0030
Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers

As required by ORS 757.061(7), the Commission adopts the following maximum rates and charges for water utilities that are not rate regulated and are serving fewer than 500 customers:

(1) An annual average monthly residential rate of $33 for unmetered water systems and $36 for metered water systems;

(2) An annual average monthly service rate for small commercial customers with a meter or pipe diameter one inch or less of $33 for unmetered water systems and $36 for metered water systems;

(3) An annual average monthly service rate for large commercial customers with a meter or pipe diameter larger than one inch of $110 for unmetered water systems and $119 for metered water systems; and

(4) Any service connection charge, system impact fee, facilities charge, main line extension, or other similar charge must be cost based. Upon the Commission's request, a water utility must be able to demonstrate compliance with this requirement.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 757.061
Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 7-2004, f. & cert. ef 4-9-04; PUC 2-2008, f. & cert. ef. 5-30-08; PUC 13-2009, f. & cert. ef. 11-24-09

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Real Estate Agency
Chapter 863

Rule Caption: Legislation requires rules affecting real estate brokers and escrow agents; replaces/revises June 15, 2009 Rulemaking Notice.
Adm. Order No.: REA 1-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 7-1-2009
Rules Adopted: 863-014-0090, 863-049-0000, 863-049-0005, 863-049-0010, 863-049-0015, 863-049-0020, 863-049-0030, 863-049-0035, 863-049-0040, 863-049-0045, 863-049-0055
Rules Amended: 863-014-0000, 863-014-0003, 863-014-0005, 863-014-0010, 863-014-0015, 863-014-0030, 863-014-0042, 863-014-0055, 863-014-0063, 863-014-0065, 863-014-0085, 863-014-0095, 863-014-0100, 863-014-0160, 863-015-0000, 863-015-0003, 863-015-0150, 863-015-0186, 863-015-0188, 863-015-0210, 863-015-0250, 863-015-0255, 863-015-0260, 863-015-0275, 863-024-0000, 863-024-0003, 863-024-0015, 863-024-0030, 863-024-0075, 863-024-0085, 863-024-0100, 863-050-0150
Rules Repealed: 863-014-0038
Rules Ren. & Amend: 863-050-0035 to 863-049-0050, 863-050-0240 to 863-049-0025
Subject: Note: This is a corrected Certificate and Order to the Certificate and Order filed December 15, 2009 for the purpose of technical corrections to rule numbers. The Notice of Rulemaking Hearing for these rules published in the Oregon Bulletin July 2009 was replaced and revised by a September 15, 2009 Notice of Rulemaking Hearing (published in the Oregon Bulletin October 2009) on the same subject matter because the collaborative rules working groups determined additional rules needed to be amended. The new rules and amendments are in response to 2009 legislation, including SB 140, SB 141 and HB 2910. SB 140 will require an amendment to existing rules relating to depositing client funds with a licensed escrow agent. SB 141 requires the agency to adopt rules for licensing escrow agents and a new OAR chapter 863, Division 049 is established for this purpose. HB 2910 requires amendments to a significant number of rules to eliminate sole practitioners as a type of broker. HB 2910 requires a new rule (863-014-0090) that allows a broker with three years of active experience to supervise other brokers for a sole principal real estate broker for a period not to exceed 90 days.
Rules Coordinator: Laurie Skillman—(503) 378-4630

863-014-0000
Applicability and Purpose

(1) This division sets forth the requirements and process for licensing real estate brokers and principal real estate brokers, as those terms are defined in ORS 696.010.

(2) The purpose of this division is to specify the requirements for obtaining the desired real estate license.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0003
Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Agency" is defined in ORS 696.010.

(2) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(3) "Branch office" is defined in ORS 696.010.

(4) "Commissioner" is defined in ORS 696.010.

(5) "Incapacitated" means the physical or mental inability to perform the professional real estate activities described in ORS 696.010.

(6) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(7) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(8) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010.

(9) "Real estate broker" is defined in ORS 696.010 and includes a principal real estate broker, as that term is defined in ORS 696.010, unless the context requires otherwise.

(10) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010, unless the context requires otherwise.

(11) "Registered business name" is defined in ORS 696.010.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0005
Education

(1) The required courses of study for a real estate broker's license or principal real estate broker's license must be designed pursuant to the Guidelines for Oregon Private Real Estate Schools and Instructional Guidelines and approved by the commissioner.

(2) The commissioner may at any time reevaluate an approved course or instructor. If the commissioner finds there is basis for consideration of revocation of the approved course or the instructor, the commissioner shall give notice by ordinary mail to the coordinator of that provider or instructor of a hearing on the possible revocation of an approved course at least 20 days prior to the hearing.

(3) The commissioner may deny or revoke approval of a program, course, activity, or instructor, but that decision may be appealed to the commissioner within 20 days of the date of mailing the notice of denial or revocation and is subject to the contested case hearing provisions of the Oregon Administrative Procedures Act, ORS chapter 183.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; Renumbered from 863-015-0005, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0010
License Application Form and Content

(1) An applicant for a real estate broker's license or a principal real estate broker's license must submit a license application in writing on an Agency-approved form with all information provided by the applicant and verified by the applicant.

(2) The license application must contain:

(a) The applicant's legal name, mailing address, and phone number;

(b) If the applicant is to be associated with a principal real estate broker, the name of the principal real estate broker who will supervise the applicant's professional real estate activity;

(c) The place or places, including the street address, city, and county where the business will be conducted; and

(d) If the applicant will be associated with a principal real estate broker, the principal broker's authorization for the applicant to use the principal broker's registered business name.

(3) Every license application must be accompanied by the license fee authorized by ORS 696.270. At all periods of the year, the fee for all licenses issued is as authorized by 696.270. That is, the Agency does not pro-rate license fees.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0010, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0015
Background Check Application and Fingerprint Card

(1) An applicant for real estate broker or principal real estate broker license must submit to a background check, except an applicant who is currently licensed as a real estate broker, principal real estate broker, or real estate property manager or who is eligible for renewal of such licenses. The background check includes a criminal background check as provided in OAR chapter 863, division 005. The applicant must apply for the background check in writing on an Agency-approved form with all information provided by the applicant and verified by the applicant.

(2) The background check application must include, but is not limited to, the following information:

(a) The applicant's legal name, residence address, and telephone number;

(b) The applicant's date and place of birth;

(c) The applicant's Social Security Number;

(d) Whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had any real estate license or other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee; and

(e) Any other information the commissioner considers necessary to evaluate the applicant's trustworthiness and competency to engage in professional real estate activity in a manner that protects the public interest.

(3) As part of any application submitted under section (2) of this rule, the applicant must submit one completed fingerprint card on the form prescribed by the Oregon State Police and FBI and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(4) The Agency must receive the background check application, fingerprint card, and processing fee before it will issue a license.

(5) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The commissioner will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(6) If the Agency determines that additional information is necessary in order to process the application, the Agency may request such information in writing, and the applicant must provide the requested information in order to complete the application. If the applicant fails to provide the requested information, the Agency may determine that the application is incomplete, which will result in termination of the application.

(7) An applicant who has otherwise qualified for licensing may not be considered for any real estate license until the background check process and review has been completed, including but not limited to the Agency's receipt of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. If an individual who has had a successfully completed background check process and review does not successfully complete the remaining portions of the entire licensing application process within twelve months from the date of the successfully completed background check process and review, the successfully completed background check process and review is no longer valid.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; Renumbered from 863-015-0015, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0030
License Issue, Term, Form, and Inspection

(1) The Agency will issue a real estate license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790 and receiving:

(a) The license application form required by OAR 863-014-0010 and

(b) The fees authorized by ORS 696.270.

(2) A licensee may engage in professional real estate activities allowed for that license by ORS Chapter 696 and OAR chapter 863 from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered, or suspended.

(3) A licensee may hold only one of the following Oregon real estate licenses at any time:

(a) Real estate broker,

(b) Principal real estate broker, or

(c) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee's birth month.

(6) The license will include the following information:

(a) The licensee's legal name,

(b) The license number, effective date, and expiration date,

(c) The name under which the licensee conducts real estate business or the registered business name,

(d) The licensee's business address,

(e) The seal of the Real Estate Agency, and

(f) Any other information the Agency deems appropriate.

(7) Each license must be available for inspection in the licensee's principal place of business. If a licensee is associated with a principal real estate broker, the principal broker must make the license available for inspection in the licensee's principal place of business, which is:

(a) The principal broker's principal place of business, or

(b) A branch office.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0030, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0042
Waiver of Experience Requirements

(1) If an applicant for a principal real estate broker's license has met all requirements for such license except for the experience requirement, the applicant may petition the Real Estate Board for a waiver of the three-year experience requirement contained in ORS 696.022, OAR 863-014-0038, and 863-014-0040. The petition must contain sufficient information to allow the Board to determine whether the applicant qualifies for a waiver as allowed by this rule.

(2) The applicant must file a petition to waive the experience requirement on an Agency-approved form with the Agency no later than 21 days before the scheduled Real Estate Board meeting at which the applicant wishes the Board to act.

(3) The Board may issue a waiver if the applicant:

(a) Has graduated from a four-year college or university with a degree in real estate in a curriculum approved by the Commissioner, and the applicant has held an active license as a real estate broker for a period of at least one year; or

(b) Has a two-year community college associate degree in real estate in a curriculum approved by the Commissioner, has held an active license as a real estate broker for a period of at least two years and, if the applicant is applying for a principal real estate broker license, the applicant has completed the course of study for principal real estate brokers as required by OAR 863-014-0040; or

(c) Has had real estate-related experience equivalent to at least three years of active experience as a real estate licensee and provides written details about the nature of such experience.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0055
Continuing Education

(1) To renew an active license, a licensee must certify that the licensee has completed at least 30 clock-hours of real estate oriented continuing education during the preceding two license years.

(a) A licensee must complete 15 clock-hours of continuing education in one or more of the following required topics:

(A) Trust Accounts;

(B) Misrepresentation;

(C) Anti-Trust;

(D) Rule and Law Update;

(E) Property Management;

(F) Commercial Brokerage and Leasing;

(G) Real Estate Taxation: Federal, State, and Local;

(H) Agency;

(I) Fair Housing;

(J) Contracts;

(K) Property Evaluation;

(L) Brokerage Management;

(M) Land;

(N) Business Ethics; or

(O) Compliance Review.

(b) A licensee must complete the remaining 15 hours in any combination of the above course topics or in other elective real estate oriented continuing education courses.

(c) Courses related to personal skills, such as time management, and routine meetings and luncheons are not considered real estate oriented continuing education courses and do not qualify as such.

(d) Courses must be a minimum of one clock-hour in length. A clock-hour is measured in 60-minute increments, excluding meal or rest breaks.

(e) Credit will not be given for repeating a continuing education course with the same content during a two-year renewal period.

(2) Licensees must complete a standard Certificate of Attendance developed by the Agency for each course completed by a licensee. "Certifying licensee" means a principal real estate broker who certifies on an Agency-approved form that a licensee completed the continuing education requirements.

(3) In completing the standard Certificate of Attendance, the certifying licensee must decide:

(a) Whether a continuing education course meets the continuing education requirements; and

(b) Whether to classify the course as a required topic or an elective topic.

(4) A certifying licensee may approve continuing education courses completed outside of Oregon. However, for courses completed outside of Oregon, the number of approved credit hours must reflect the clock-hours of course content related to the practice of real estate in Oregon. Credit hours will not be approved for courses with content specific to another state or jurisdiction.

(5) The certifying licensee must retain the Certificate of Attendance in its records as prescribed in OAR 863-015-0260. The certifying licensee must produce a copy of the Certificate of Attendance if the associated licensee or the Agency so requests.

(6) Principal real estate brokers must:

(a) Self-certify that they have completed their continuing education requirements;

(b) Retain their Certificate of Attendance as prescribed in OAR 863-015-0260; and

(c) Produce a copy of the Certificate of Attendance if the Agency so requests.

(7) Providing false information on an Agency license renewal form or Certificate of Attendance or falsely certifying such information is prima facie evidence of a violation of ORS 696.301.

(8) In certifying a continuing education course, the certifying licensee must consider the totality of the information provided and the class content and may consider additional criteria including, but not limited to:

(a) Evidence of the instructor's qualifications to teach the course;

(b) Whether the course content is current and accurate, the learning objectives for the course, and whether the course content fulfills the learning objectives;

(c) Whether the course includes ways of measuring learning outcome, such as a final examination; and

(d) Whether students get to evaluate the course and instructor.

(9) A real estate broker first licensed on or after July 1, 2002 must complete a commissioner-approved course entitled "Advanced Real Estate Practices" before the first active renewal of the real estate broker's license or before the first license reactivation following an inactive first renewal. This requirement does not apply to principal brokers. An approved Advanced Real Estate Practices course satisfies the continuing education requirements for a licensee's renewal.

(10) Certifying licensees may approve continuing education courses completed through alternative delivery methods. "Alternative delivery" means presentation of continuing education material in a method other than classroom lecture, including but not limited to correspondence, and electronic means such as satellite broadcast, videotape, computer disc, and Internet.

(a) In addition to the certification criteria in section (8), in determining whether to certify an alternative delivery method course, the certifying licensee may consider:

(A) Whether the course offers operational or electronic security measures;

(B) The students' ability to interact with an instructor or access other resources to support their learning;

(C) Whether the learning environment and technical requirements are explained to students in advance of the course; and

(D) Whether the course includes a proctored final examination.

(b) In determining the number of credit hours to approve for an alternative delivery course, the certifying licensee may consider:

(A) The number of questions in the examination, with a minimum standard of 10 questions per hour of credit;

(B) The number of pages for Internet, Computer-Based Training, CD-ROM, and book courses, with a minimum standard of 10 pages per hour of credit; and

(C) The clock hours elapsed for videocassette, audiotape, or teleconference courses.

(11) Continuing education course sponsors may:

(a) State in their advertising that the licensee's principal broker must approve the continuing education requirements, e.g., course content, topics, and hours; and

(b) Complete the following information on a Certificate of Attendance:

(A) Real estate licensee's name;

(B) Continuing education course title and date of completion;

(C) Instructor's name and location of course; and

(D) Method of course delivery and whether a final examination was administered.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.174 & 696.301

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; Renumbered from 863-015-0055, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0063

Real Estate License Transfers, Principal Brokers' Responsibilities, Authority to Use Registered Business Name

(1) As used in this rule:

(a) "Authorized licensee" means a licensee who has authority over the use of a registered business name;

(b) "License transfer form" means a completed and signed Agency-approved form that does one of the following:

(A) Transfers a real estate broker license to a receiving principal broker in order to become associated with the receiving principal broker, or

(B) Authorizes a real estate licensee to use a registered business name to conduct professional real estate activity.

(c) "Sending principal broker" means the principal real estate broker with whom an active real estate broker license is associated before the license transfer;

(d) "Receiving principal broker" means the principal real estate broker with whom an active real estate broker license will be associated after the license transfer.

(2) The licensee must provide the following information on a license transfer form:

(a) The name, mailing address, and license number of the licensee who is transferring the license or documenting the authorized use of a registered business name;

(b) The current status of the license, whether active or inactive;

(c) If the real estate broker is associated with a sending principal broker, certification that the real estate broker provided written notice of the transfer to the sending principal broker, and that such notice was provided before the date the transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered by the post office to the sending principal broker's address;

(d) If the form is used to authorize the use of a different registered business name, certification that the licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided before the date the license transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered to the authorized licensee's address;

(e) If applicable, the receiving principal broker's registered business name, street address, and registered business name identification number;

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the real estate licensee will be authorized to conduct professional real estate activity; and

(g) The receiving broker's or authorized licensee's name, license number, telephone number, date, and signature.

(3) The Agency will transfer the license of an active real estate broker associated with a sending principal broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(4) The Agency will transfer the license of an active principal real estate broker to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(5) The Agency will transfer the license of an inactive real estate licensee, who has been inactive for a period of 30 days or less, to a receiving principal broker when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

(6) The Agency will change a real estate license category when the license is transferred under sections (4) and (5) of this rule and will not require a fee payment for changing the license category when the Agency receives the following:

(a) A license transfer form;

(b) The transfer fee authorized by ORS 696.270; and

(c) An Agency-approved form to change the license category.

(7) A principal real estate broker with whom a licensee is associated remains responsible for the licensee's professional real estate activity until the Agency receives one of the following:

(a) The licensee's real estate license;

(b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065; or

(c) A license transfer form and fee.

(8) If a principal real estate broker with whom a real estate broker is associated voluntarily gives the license to the real estate broker named in the license, the principal real estate broker remains responsible for the licensee's subsequent professional real estate activity until the Agency receives one of the following:

(a) The licensee's real estate license;

(b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-014-0065;

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under OAR 863-014-0065; or

(d) A license transfer form and fee.

(9) The Agency will document the registered business name under which a real estate licensee is authorized to conduct professional real estate activity when the Agency receives a license transfer form and the transfer fee authorized by ORS 696.270.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0063, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0065
Inactive License, Change License Status to Active, Change License Category, License Reactivation

(1) A real estate licensee whose license is on inactive status may not engage in professional real estate activity.

(2) The commissioner may reprimand, suspend, revoke, or impose a civil penalty against an inactive licensee under ORS 696.301.

(3) The Agency will change an active real estate license to inactive license status when the Agency actually receives the following:

(a) The license;

(b) A request by the licensee submitted on an Agency-approved form to change the license status to inactive; or

(c) An Agency-approved form submitted by the licensee terminating the relationship with the principal real estate broker under this rule.

(4) The Agency will change the status of an active real estate broker who is associated with a principal real estate broker to inactive status when the Agency receives one of the following:

(a) The real estate broker license, submitted by the licensee;

(b) The real estate broker license, submitted by the principal real estate broker;

(c) An Agency-approved form, submitted by the principal real estate broker, terminating the principal real estate broker's relationship with the real estate broker; or

(d) An Agency-approved form submitted by the real estate broker terminating the relationship with the principal real estate broker.

(5) An inactive real estate licensee may renew such license under OAR 863-014-0050.

(6) For a period of 30 days after a real estate broker license becomes inactive, the licensee may change such license status from inactive to active and transfer the license to a principal real estate broker under OAR 863-014-0063.

(7) Except as provided in section (8) of this rule, for a period of 30 days after the real estate license becomes inactive, the licensee may change such license category to an active principal real estate broker only if:

(a) The licensee is qualified for such license and

(b) The licensee submits to the Agency:

(A) An Agency-approved application form to change the license category and to change the license status to active,

(B) A license transfer form under OAR 863-014-0063, if applicable, and

(C) Payment of the transfer fee authorized by ORS 696.270.

(8) If the licensee under section (7) of this rule is changing license category to a principal real estate broker and has never been licensed as a principal real estate broker, the licensee must submit to the Agency:

(a) An Agency-approved broker license application form and

(b) The licensing fee authorized by ORS 696.270.

(9) If a license has not been on active status for two or more consecutive years, before applying for reactivation of such license under sections (10) and (11) of this rule:

(a) The licensee must submit to the Agency:

(A) An application for licensing reactivation examination; and

(B) The examination fee authorized by ORS 696.270; and

(b) The licensee must pass the reactivation examination.

(10) After the 30-day period specified in sections (6) and (7) of this rule, and subject to the examination requirements in section (9) of this rule, a licensee may change the license status from inactive to active only by submitting to the Agency:

(a) An application for license reactivation; and

(b) Payment of the reactivation fee authorized by ORS 696.270.

(11) Subject to the examination requirements in section (9) of this rule, if an inactive licensee renews a license and maintains inactive status under section (5) of this rule, the licensee may, within 60 days of the date of renewal, change the license status to active by submitting to the Agency:

(a) An Agency-approved application for license reactivation that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-014-0055; and

(b) Payment of the active renewal fee authorized by ORS 696.270, less the amount of the inactive renewal fee already paid by the licensee.

(12) The change of license status, transfer, or change of license category under sections (6) and (7) of this rule, or the reactivation of a license under sections (10) and (11) of this rule, are effective when the Agency actually receives all required forms and fees.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 1-1991, f. & cert. ef. 11-4-91; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0081; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07; REA 4-2007, f. & cert. ef. 9-26-07; Renumbered from 863-015-0065, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0085
Authorization to Control Broker's Business

(1) A principal real estate broker may authorize another principal broker to control and supervise his or her professional real estate activity and use the authorizing principal broker's registered business name, if any, during the principal broker's absence only if:

(a) The authorizing principal broker provides written authorization as required by this rule, and

(b) The supervising principal broker accepts the supervising responsibility in writing.

(2) Both licensees have joint responsibility for all professional real estate activity conducted during the authorizing principal broker's absence.

(3) The written authorization required by this rule must contain the following information:

(a) The authorizing principal broker's authorization, including the effective date and the termination date of such authorization, which may not exceed 90 days;

(b) The supervising principal broker's affirmation accepting the supervisory responsibility; and

(c) An affirmation by both brokers acknowledging that they are jointly responsible for the professional real estate activity during the dates of the authorization.

(4) The authorizing principal real estate broker may end the authorization before the termination date by filing an amended authorization before the termination date.

(5) The written authorization required by this rule must be received by the Agency before the effective date of such authorization on an Agency-approved form. The commissioner may allow a later filing for good cause shown.

(6) The Agency will maintain the written authorization as an Agency record.

(7) This rule provides an exception to OAR 863-014-0095(7), which prohibits a principal broker from engaging in professional real estate activities under more than one registered business name. That is, a supervising principal broker may conduct professional real estate activity under both the authorizing principal broker's registered business name and the supervising principal broker's registered business name if the parties meet the requirements contained in this rule. This exception does not allow a principal broker to conduct professional real estate activity under more than these two registered business names.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.026
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; Renumbered from 863-015-0085, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0090
Authorization to Temporarily Supervise

(1) As used in ORS 696.022 and this rule, the following definitions apply:

(a) "Sole principal real estate broker" means a principal real estate broker who conducts professional real estate activity not in conjunction with other principal real estate brokers; and

(b) "Supervise" means to conduct the sole principal real estate broker's professional real estate activity, including supervising the professional real estate activity of any real estate brokers and property managers associated with the sole principal real estate broker. It does not include conducting professional real estate activity in conjunction with any other principal real estate broker.

(2) A real estate broker who is associated with a sole principal real estate broker may temporarily supervise the sole principal broker's professional real estate activity only if:

(a) The sole principal broker provides written authorization as required by this rule; and

(b) The real estate broker accepts the supervisory responsibility in writing.

(3) The written authorization must contain the following information:

(a) Authorization by the sole principal real estate broker, including the effective date and termination date of such authorization, which may not exceed 90 days;

(b) An affirmation by the real estate broker acknowledging that the real estate broker:

(A) Has acquired at least three years of active experience as a real estate broker;

(B) Accepts the supervisory responsibility;

(C) Is bound by and subject to all the statutory and rule requirements of a principal real estate broker during the period of authorization.

(c) An affirmation by both the sole principal real estate broker and the real estate broker acknowledging that they are jointly responsible for the real estate broker's supervision of the professional real estate activity during the dates of the authorization.

(4) The sole principal real estate broker may end the authorization before the termination date by filing an amended authorization before the termination date.

(5) The written authorization required by this rule must be received by the Agency before the effective date of such authorization on an Agency-approved form. The commissioner may allow a later filing for good cause shown.

(6) The Agency will maintain the written authorization as an Agency record.

Stat. Auth.: ORS 696.385 & 183.335
Stats. Implemented: 2009 OL Ch. 324, Sec. 2
Hist.: REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0095
Business Name Registration

(1) If a principal real estate broker wishes to conduct real estate business in a name other than the licensee's legal name, the principal broker must first register the business name with the Agency. For the purposes of this rule, "business name" means an assumed name or the name of a business entity, such as a corporation, partnership, limited liability company, or other business entity recognized by law. A licensee must maintain the registered business name in active status with the Oregon Secretary of State's Corporation Division.

(2) To register a business name, the principal broker must submit to the Agency on an Agency-approved form the following:

(a) The business name in which the licensee wishes to conduct real estate business,

(b) Written authority to register the business name;

(c) A copy of the registration filed with the Oregon Secretary of State Business Registry; and

(d) The fee authorized by ORS 696.270.

(3) A licensee who wishes to use a registered business name must submit to the Agency the following:

(a) The registered business name the licensee wishes to use; and

(b) Written authorization from the licensee who registered the business name.

(4) Business names registered with the Agency do not expire and need not be renewed by the licensee. Any change in the business name registered with the Agency will be treated as the registration of a new business name, and the change in business name must be registered with the Agency together with the fee authorized by ORS 696.270.

(5) If a licensee wishes to transfer the right to use a business name that is registered with the Agency, the licensee acquiring the right to use the name must file a change of business name registration with the Agency together with the fee authorized by ORS 696.270. A licensee must notify the Agency in writing if the licensee terminates its use of a business name.

(6) A business name registration becomes void when the Agency receives notice of termination of the use of a business name. A business name registration becomes void when no licensees are affiliated with the registered business name. A business name registration may be reactivated within one year from the voiding of a registration, unless a new user has registered the business name, without paying the fee authorized by ORS 696.270.

(7) Except as provided in OAR 863-014-0085 and this section, no real estate broker or principal broker may engage in professional real estate activities under more than one registered business name. A principal broker may engage in professional real estate activities under more than one registered business name if the business entity is an affiliated or subsidiary organization as described in OAR 863-014-0061.

Stat. Auth.: ORS 696.026 & 696.385
Stats. Implemented: ORS 696.026
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0095, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0100
Branch Office Registration

(1) Before engaging in professional real estate activity from a branch office, a principal real estate broker must provide to the commissioner on an Agency-approved form the branch office street and mailing addresses and the fee authorized by ORS 696.270.

(2) For the purposes of ORS 696.270, a branch office registration does not require renewal.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.026 & 696.200
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0100, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-014-0160
Deceased or Incapacitated Broker

(1) If the Agency issues a temporary license under ORS 696.205, the licensee may only close or terminate the transactions that are in various stages of completion or termination at the broker's death or incapacity. The activities authorized under the temporary license include, but are not limited to:

(a) Terminating all listings and buyer's service agreements in which there were no outstanding offers or earnest money receipts when the broker died or became incapacitated;

(b) Completing all negotiations between buyers and sellers on open transactions;

(c) Depositing and withdrawing monies from the clients' trust account in connection with the completion of all transactions pending when the broker died or became incapacitated;

(d) Promptly paying all real estate commissions owing after closing all transactions, both to the decedent broker's estate and to participating real estate brokers entitled to commissions resulting from the transactions; and

(e) Disbursing earnest moneys or other funds according to any outstanding earnest money receipt or other agreement.

(2) The holder of a temporary license may not enter into any new listing or sale agreements or conduct professional real estate activity for others who are not principals in a current contract with the deceased or incapacitated broker.

(3) The holder of a temporary license is subject to ORS Chapter 696 and its implementing rules while engaging in professional real estate activity under the terms of the temporary license.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.205
Hist.: REC 46, f. & ef. 1-22-76; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0092; Renumbered from 863-015-0160, REA 5-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0000
Applicability and Purpose

(1) This division applies to real estate brokers and principal real estate brokers, as those terms are defined by ORS 696.010.

(2) The purposes of this division are:

(a) To specify the regulations for licensees engaged in professional real estate activities, as that term is defined in ORS 696.010;

(b) To protect the owners, buyers, and sellers of real estate; and

(c) To make the principal real estate broker responsible for establishing a system of recordkeeping that:

(A) Provides the Agency with access to the licensees' records and

(B) Complies with the requirements contained in OAR chapter 863 and ORS Chapter 696.

(3) The Agency's goal is to encourage real estate licensees to comply with the applicable statutes and implementing rules through education and, if necessary, through progressive discipline, as provided in OAR chapter 863, division 27.

(4) Section (3) of this rule does not limit the Agency's authority to reprimand, suspend, or revoke a license pursuant to ORS 696.301 or assess civil penalties as authorized by 696.990.

Stat. Auth.: ORS 696.385
Stat. Implemented: ORS 696.015
Hist.: REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0003
Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Addendum" means additional material attached to and made part of a document. The addendum must refer to the document and be dated and signed or otherwise acknowledged by all the parties.

(2) "Agent" is defined in ORS 696.800.

(3) "Agency" is defined in ORS 696.010.

(4) "Bank" is defined in ORS 696.010.

(5) "Banking day" means each day a financial institution is required to be open for the normal conduct of its business but does not include Saturday, Sunday, or any legal holiday under ORS 187.010.

(6) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(7) "Branch office" is defined in ORS 696.010.

(8) "Buyer" is defined in ORS 696.800.

(9) "Clients' Trust Account" means an account in a "bank," as defined in ORS 696.010, that is subject to the provisions of ORS 696.241.

(10) "Closing" means the transfer of all property titles and the disbursement or distributions of all monies and documents for a real estate transaction.

(11) "Commissioner" is defined in ORS 696.010.

(12) "Compensation" is defined in ORS 696.010.

(13) "Competitive market analysis" is defined in ORS 696.010.

(14) "Confidential information" is defined in ORS 696.800.

(15) "Day" or "days" means each calendar day, including legal holidays under ORS 187.010.

(16) "Disclosed limited agency" is defined in ORS 696.800.

(17) "First contact with a represented party" means the initial contact by a licensee, whether in person, by telephone, over the Internet, or by electronic mail, electronic bulletin board, or similar electronic method, with an individual who is represented by a real estate licensee or can reasonably be assumed from the circumstances to be represented or seeking representation.

(18) "Letter opinion" is defined in ORS 696.010.

(19) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(20) "Listing agreement" is defined in ORS 696.800.

(21) "Offer" is defined in ORS 696.800.

(22) "Offering price" is defined in ORS 696.800.

(23) "Principal" is defined in ORS 696.800.

(24) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(25) "Real estate" is defined in ORS 696.010.

(26) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010.

(27) "Real estate broker" is defined in ORS 696.010 and includes a principal real estate broker, as that term is defined in 696.010, unless the context requires otherwise.

(28) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010, unless the context requires otherwise.

(29) "Real property" is defined in ORS 696.800.

(30) "Real property transaction" is defined in ORS 696.800.

(31) "Registered business name" is defined in ORS 696.010.

(32) "Sale" and "sold" are defined in ORS 696.800.

(33) "Seller" is defined in ORS 696.800.

(34) "Timely" means as soon as is practicable under the circumstances.

Stat. Auth.: ORS 696.385 & 183.335
Stats. Implemented: ORS 696.010
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; Renumbered from 863-015-0120, REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0150
Closing Real Estate Transactions

(1) Unless all parties to the transaction agree in writing to delegate the closing function to an escrow agent licensed in Oregon, an attorney, or another real estate broker engaged in the transaction, a principal broker must promptly close any real estate transaction in which the broker is the listing broker.

(2) A real estate broker associated with a principal real estate broker may handle a closing function only if authorized in writing by the principal real estate broker and only under the principal real estate broker's direct supervision. A copy of the written authorization bearing the principal real estate broker's signature must be filed with the commissioner.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.022
Hist.: REC 19, f. 8-5-64; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0060; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0186
Clients' Trust Accounts — Disbursal of Disputed Funds

(1) A principal real estate broker may disburse disputed funds in a clients' trust account using the procedures in this rule or may disburse funds in a clients' trust account under the terms of a lawful contractual agreement, by law, or under the provisions of ORS Chapter 696, ORS Chapter 105, or OAR 863-025-0025.

(2) For purposes of ORS 696.241(10) and this rule, "disputed funds" are funds in a clients' trust account delivered by a person to a principal real estate broker pursuant to a written contract and the parties to such contract dispute the disbursal of the funds.

(3) As soon as practicable after receiving a demand by one of the parties for the disbursal of funds in a clients' trust account, the principal real estate broker must deliver written notice to all parties that a demand has been made for disbursal of the funds, and that such funds may be disbursed to the party who delivered the funds within 20 calendar days of the date of the demand.

(4) The written notice must include substantially the following information:

(a) A party has made a demand for disbursal of funds, and the principal real estate broker may disburse such funds from the clients' trust account to the party who delivered the funds, unless:

(A) The parties enter into a written agreement regarding disbursal of the funds and deliver such agreement to the principal real estate broker within 20 calendar days of the date of the demand for disbursal; or

(B) A party provides proof to the principal real estate broker that the party has filed a legal claim to such funds within 20 calendar days of the date of the demand for disbursal;

(b) The principal real estate broker has no legal authority to resolve questions of law or fact regarding disputed funds in a clients' trust account;

(c) The disbursal of the funds from the clients' trust account to the party who delivered the funds will end the responsibility of the principal real estate broker to account for the funds but will not affect any right or claim a person may have to such funds; and

(d) Both parties may wish to seek legal advice on the matter.

(5) Regardless of whether a party disputes the disbursal of funds as outlined in this rule, if the parties have not entered into a written agreement regarding such disbursal, or if a party has failed to provide proof of filing a legal claim, the principal real estate broker may disburse the disputed funds to the person who delivered the funds within 20 calendar days of the date of the demand for disbursal.

(6) Nothing in this rule prevents a principal real estate broker from disbursing such funds pursuant to:

(a) The terms of the original contract between the parties;

(b) Any subsequent agreement between the parties regarding the disbursal of funds; or

(c) The requirements of law.

(7) Nothing in this rule prevents the broker from filing an action to interplead the disputed funds.

(8) Real estate licensees with property management clients' trust accounts must review and follow the requirements for handling client funds under the Residential Landlord and Tenant statutes in ORS Chapter 90. For any other non-real estate sales transaction disputes, the principal real estate broker must review the terms of the written contract for handling disputed funds.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.241
696.810, 696.990 & 696.800 - 696.855
Hist.: REA 4-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-29-06; REA 1-2006, f. 6-29-06, cert.ef. 6-30-06; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0188
Compensation Agreements

Pursuant to ORS 696.582, only a principal real estate broker may enter into a compensation agreement with a principal to a real estate transaction.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.290 & 696.582
Hist: REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0210
Disclosed Limited Agency Agreement

(1) Disclosed limited agency agreements required by ORS 696.815 must be in writing, signed and dated by the parties to be bound or by their duly appointed real estate agents.

(2) Each disclosed limited agency agreement must contain the following:

(a) The name under which the representation will take place, which must be the registered business name or, if none, the licensed name of the principal broker;

(b) Identification of any existing listing or service agreement between the parties to the disclosed limited agency agreement;

(c) The name(s) of the licensee(s), including the principal real estate broker, who will represent the client; and

(d) A plain language description of the requirements of ORS 696.815;

(e) Full disclosure of the duties and responsibilities of an agent who represents more than one party to a real estate transaction. This requirement can be met by providing the client with a copy of the initial agency disclosure pamphlet required by ORS 696.820, discussing the portion of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More that One Party to a Transaction" with the client, and incorporating the pamphlet into the disclosed limited agency agreement by reference; and

(f) Consent and agreement between the parties to the disclosed limited agency agreement regarding representation of the client in future transactions.

(3) Use of a disclosed limited agency agreement for sellers in substantially the following form is prima facie evidence of compliance with sections (1) and (2) of this rule:

Property Address _____
Addendum to Listing Agreement Dated _____
Real Estate Firm _____
DISCLOSED LIMITED AGENCY AGREEMENT FOR SELLER
The Parties to this Disclosed Limited Agency Agreement are:
Listing Agent (print) _____
Listing Agent's Principal Broker (print) _____
Seller (print) _____
Seller (print) _____
The Parties to this Agreement understand that Oregon law allows a single real estate agent to act as a disclosed limited agent — to represent both the seller and the buyer in the same real estate transaction, or multiple buyers who want to purchase the same property. It is also understood that when different agents associated with the same principal broker (the broker who directly supervises the other agents) establish agency relationships with the buyer and seller in a real estate transaction, the agents' principal broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. The other agents shall continue to represent only the party with whom they have an established agency relationship, unless all parties agree otherwise in writing.
In consideration of the above understanding, and the mutual promises and benefits exchanged here and in the Listing Agreement, the Parties now agree as follows:
(1) Seller acknowledge they have received the initial agency disclosure pamphlet required by ORS 696.820 and have read and discussed with the Listing Agent that part of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to A Transaction." The initial agency disclosure pamphlet is hereby incorporated into this Disclosed Limited Agency Agreement by reference.
(2) Seller, having discussed with the Listing Agent the duties and responsibilities of an agent who represents more than one party to a transaction, consent and agree as follows:
(a) The Listing Agent and the Listing Agent's Principal Broker, in addition to representing Seller, may represent one or more buyers in a transaction involving the listed property;
(b) In a transaction involving the listed property where the buyer is represented by an agent who works in the same real estate business as the Listing Agent and who is supervised by the Listing Agent's Principal Broker, the Principal Broker may represent both Seller and Buyer. In such a situation, the Listing Agent will continue to represent only the Seller and the other agent will represent only the Buyer, consistent with the applicable duties and responsibilities as set out in the initial agency disclosure pamphlet; and
(c) In all other cases, the Listing Agent and the Listing Agent's Principal Broker shall represent Seller exclusively.
Seller signature _____
Date _____
Seller signature _____
Date _____
Listing Agent signature _____
Date _____
(On their own and on behalf of Principal Broker)
Broker initial and review date_____

(4) Use of a disclosed limited agency agreement for buyers in substantially the following form is prima facie evidence of compliance with sections (1) and (2) of this rule.

Property Address _____
Addendum to Buyer Service Agreement Dated _____
Real Estate Firm _____
DISCLOSED LIMITED AGENCY AGREEMENT FOR BUYER
The Parties to this Disclosed Limited Agency Agreement are:
Buyer's Agent (print) _____
Buyer's Agent's Principal Broker (print)_____
Buyer (print) _____
Buyer (print) _____
The Parties to this Agreement understand that Oregon law allows a single real estate agent to act as a disclosed limited agent — to represent both the seller and the buyer in the same real estate transaction, or multiple buyers who want to purchase the same property. It is also understood that when different agents associated with the same principal broker (the broker who directly supervises the other agents) establish agency relationships with the buyer and seller in a real estate transaction, the agents' principal broker shall be the only broker acting as a disclosed limited agent representing both seller and buyer. The other agents shall continue to represent only the party with whom they have an established agency relationship, unless all parties agree otherwise in writing.
In consideration of the above understanding, and the mutual promises and benefits exchanged here and, if applicable, in the Buyer Service Agreement, the Parties now agree as follows:
(1) Buyer(s) acknowledge they have received the initial agency disclosure pamphlet required by ORS 696.820 and have read and discussed with the Buyer's Agent that part of the pamphlet entitled "Duties and Responsibilities of an Agent Who Represents More than One Party to A Transaction." The initial agency disclosure pamphlet is hereby incorporated into this Disclosed Limited Agency Agreement by reference.
(2) Buyer(s), having discussed with Buyer's Agent the duties and responsibilities of an agent who represents more than one party to a transaction, consent and agree as follows:
(a) Buyer's Agent and the Buyer's Agent's Principal Broker, in addition to representing Buyer, may represent the seller or another buyer in any transaction involving Buyer;
(b) In a transaction where the seller is represented by an agent who works in the same real estate business as the Buyer's Agent and who is supervised by the Buyer's Agent's Principal Broker, the Principal Broker may represent both seller and Buyer. In such a situation, the Buyer's Agent will continue to represent only the Buyer and the other agent will represent only the Seller, consistent with the applicable duties and responsibilities set out in the initial agency disclosure pamphlet;
(c) In all other cases, the Buyer's Agent and the Buyer's Agent's Principal Broker shall represent Buyer exclusively.
Buyer signature_____
Date _____
Buyer signature _____
Date _____
Buyer's Agent signature_____
Date _____
(On their own and on behalf of Principal Broker)
Broker initial and review date_____
Stat. Auth.: ORS 696.385
Stat. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0250
Professional Real Estate Activity Records

(1) Complete and adequate records of professional real estate activity include complete, legible, and permanent copies of all documents required by law or voluntarily generated during a real estate transaction, including all offers received by or through brokers or principal brokers to the client, including, but not limited to, the following:

(a) A copy of any written agreement creating an agency relationship between a real estate broker or principal real estate broker and a client that must be signed by all parties to the agreement.

(b) A copy of any written acknowledgment of an agency relationship between a real estate broker or principal real estate broker and a client that must be signed by all parties to such acknowledgment.

(c) A copy of any written agreement for the listing, sale, purchase, rental, lease, lease option, or exchange of real property generated by a real estate broker or principal real estate broker while engaging in professional real estate activity that must be signed by all parties to such agreement.

(d) A copy of any receipt issued by a real estate broker or principal real estate broker to evidence acceptance of funds or documents.

(e) A copy of any vouchers or bills or obligations paid by the real estate broker or principal real estate broker for the account of a client or customer.

(f) A copy of any other document within the scope of the agency relationship provided to or received by a client through a real estate broker or principal real estate broker during the term of an agency relationship.

(g) All financial records as required in OAR 863-015-0255 and 863-015-0275.

(2) In any real estate transaction in which a principal real estate broker performed the closing, the principal real estate broker must retain a copy of any closing statement showing a receipts, disbursements and adjustments, which must evidence the signature of the seller(s) and the buyer(s).

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.280
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0255
Clients' Trust Account Records Requirements and Document Transmittal Requirements

(1) This rule applies to clients' trust fund accounts that hold funds from transactions involving the sale, purchase, lease option, or exchange of real property. The purpose of clients' trust accounts is to preserve clients' monies and keep them segregated from the broker's general and personal funds.

(2) Principal brokers must retain and store the records described in this rule as required by OAR 863-015-0250 and 863-015-0260. However, where separate general business or clients' trust accounts or both are maintained at branch offices, the financial records described in this rule may be maintained and located either at the principal broker's main office or, if the principal real estate principal broker or branch office manager conducts the real estate business from that branch office, at that branch office.

(3) A real estate broker must transmit to the real estate broker's principal real estate broker within three banking days of receipt any money, checks, drafts, warrants, promissory notes, or other consideration and any documents received by the licensee in any professional real estate activity in which the licensee is engaged. Absent the buyer's written instructions to the contrary, the real estate broker must transmit all earnest monies to the principal real estate broker within three banking days of receipt.

(4) If a real estate broker or principal broker receives a check as earnest money in a transaction, he or she may hold the check un-deposited until the offer is accepted or rejected, provided that the written sale agreement states that the real estate broker or principal broker is holding the check un-deposited and further states where and when the check will be deposited upon acceptance of the offer.

(5) The real estate broker or principal broker must deposit a check held pursuant to section (4) into a clients' trust account established under ORS 696.241 or transmit the check to a licensed neutral escrow depository located within this state before the close of the third banking day following acceptance of the offer or a subsequent counter offer. The principal broker must track the earnest money deposit from the buyer to the principal broker and to the escrow depository.

(6) All other funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any real estate broker or principal broker while engaged in professional real estate activity, must be deposited before the close of business of the fifth banking day following the date the real estate broker or principal broker receives the funds into a neutral escrow depository located within this state or into a clients' trust account established under ORS 696.241. The principal broker must retain a copy of each executed agreement required under ORS 696.241 and OAR 863-015-0265 for interest-bearing clients' trust accounts.

(7) For all funds received under sections (3) and (4) of this rule, the principal broker must comply with the following requirements:

(a) Account for all funds received,

(b) Maintain a copy of any check received, and

(c) Maintain a dated, acknowledged receipt for any check returned to the offeror.

(8) Every deposit made under ORS 696.241 must be made with deposit slips identifying each offer or transaction by a written notation of the file reference assigned to the offer or transaction.

(9) Principal brokers must maintain a complete ledger account and record all funds received in their professional real estate activity. This ledger account must show:

(a) From whom the funds were received,

(b) The date the funds were received,

(c) The date the funds were deposited,

(d) Where the funds were deposited, and

(e) When the transaction has been completed or the offer has failed, the final disposition of the funds.

(10) If a real estate licensee is a principal in an offer or transaction, all earnest money or other deposits must be handled as provided in OAR 863-015-0145.

(11) Checks used to disburse funds from a clients' trust account must be pre-numbered, issued from one numbering sequence, and bear the words "Clients' Trust Account" upon the face thereof. Principal brokers must account for all checks, including voided checks, as a part of the records they maintain.

(12) Principal brokers must record and track the transfer of promissory notes and other forms of consideration by a ledger account or by other means including, but not limited to, written proof of transmittal or receipt retained in their offer or transaction file.

(13) If a principal broker accepts a credit card payment as funds in a real estate transaction:

(a) The face amount of the credit card payment, without reducing the face amount by any merchant's discount and processing fee charged to the principal broker, is the amount he or she must maintain, use, and refund as necessary; or

(b) The face amount of the credit card payment, reduced by any merchant's discount and processing fee, may be maintained and used by the principal broker when he or she has a separate written agreement signed by the credit card user authorizing this reduction. The face amount, including any merchant's discount and processing fees paid by the credit card user, must be refunded to the credit card user when a refund is necessary;

(c) The principal broker may not benefit from any of the merchant's discounts or processing fees generated by the use of a credit card;

(d) A principal broker's clients' trust account may not be charged or debited for any merchant's discount or processing fees for use of the credit card in such transaction.

(14) All funds deposited into a clients' trust account established under ORS 696.241 and not disbursed or transferred to a neutral escrow depository pursuant to the sale agreement may only be disbursed:

(a) To individuals, as directed by order of court of competent jurisdiction;

(b) To individuals, as directed in writing by one or more principals; or

(c) To the court, upon filing by the principal broker of an interpleader action for disputed earnest money funds.

(15) A principal broker may not use any form of debit card on clients' trust accounts.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.241 & 696.280
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0260
Records Retention

(1) Principal real estate brokers must maintain and store complete and accurate records of professional real estate activity, including any items generated through e-mail or other electronic means, pursuant to ORS 696.280 and as follows:

(a) Records of professional real estate activity may be stored at the principal broker's main office, and records of professional real estate activity originating at a branch office may be maintained and stored at either that branch office or at the principal broker's main office.

(b) A principal real estate broker may store records of professional real estate activity in a single location other than his or her office, main office, or branch office, in which the records are readily available for inspection, if the principal real estate broker first:

(A) Notifies the commissioner in writing of the intended removal of such records, includes the address of the new location for such records, and

(B) Authorizes the commissioner in writing to inspect such records at the new location. Such authorization must include the name of any necessary contact and the means of gaining access to the records for an inspection. The principal real estate broker must notify the commissioner of any change in the contact or means of access within ten days after such change occurs.

(2) A principal real estate broker must maintain at the broker's office a means of viewing copies of documents or records. A principal real estate broker must provide, at his or her expense, a paper copy of any document or record the Agency requests.

(3) A principal real estate broker may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, clients' trust account records, and other documents executed by him or her or obtained by him or her in connection with any professional real estate activity transaction under the following conditions:

(a) The electronic image storage must be non-erasable "write once, read many" ("WORM") that does not allow changes to the stored document or record;

(b) The stored document or record is made or preserved as part of and in the regular course of business;

(c) The original record from which the stored document or record was copied was made or prepared by the principal broker, or its employees at or near the time of the act, condition, or event reflected in the record;

(d) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage;

(e) The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date-ordered arrangement of stored documents or records to ensure a consistent and logical flow of paperwork to preclude unnecessary search time; and

(f) At least once each month, the broker backs up any data that is stored in the computerized system necessary to produce the records. The back up data must be retained for no less than 60 days and must be made available to the commissioner or to the commissioner's authorized representatives on demand.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.280
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-015-0275
Clients' Trust Account Reconciliation and Records

A principal real estate broker must reconcile each clients' trust account at least once each month. The reconciliation must comply with all of the following conditions:

(1) The reconciliation must have three components:

(a) The bank statement balance, adjusted for outstanding checks and other reconciling bank items;

(b) The balance of the receipts and disbursements journal or check book register as of the bank statement closing date; and

(c) The sum of all the balances of the individual trust account ledgers as of the bank statement closing date.

(2) The balances of each component of the reconciliation must be equal to and reconciled with each other. If any adjustment is needed, the adjustment must be clearly identified and explained.

(3) The principal broker must verify, sign, and date the reconciliation when completed.

(4) Outstanding checks must be listed by check number, issue date, payee, and amount.

(5) The principal broker must preserve and file in logical sequence the reconciliation worksheet, bank statements, and all supporting documentation, including but not limited to, copies of the receipts and disbursements journal or check book register and a listing of each individual clients' trust fund account with a balance as of the reconciliation date. If these records are computerized, they must be printed out for filing with the reconciliation.

(6) All reconciling items must be identified and cleared promptly.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.280 & 696.241
Hist.: REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 1-1992, f. 1-13-92, cert. ef. 2-1-92; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0245; REA 6-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0000
Application and Purpose

(1) This division sets forth the requirements and process for licensing real estate property managers, as that term is defined in ORS 696.010.

(2) The purpose of this division is to specify the requirements for obtaining a real estate property manager's license.

Stat. Auth.: ORS 696.385
Stat. Implemented:
Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0003
Definitions

As used in this division, unless the context requires otherwise, the following definitions apply to this division:

(1) "Agency" is defined in ORS 696.010.

(2) "Board" means the Real Estate Board established pursuant to ORS 696.405.

(3) "Branch office" is defined in ORS 696.010.

(4) "Commissioner" is defined in ORS 696.010.

(5) "Licensed Name" means the name of a real estate licensee as it appears on the current, valid real estate license issued to the licensee pursuant to ORS 696.020.

(6) "Management of rental real estate" is defined in ORS 696.010.

(7) "Principal broker" means "principal real estate broker," as defined in ORS 696.010.

(8) "Property manager" means "real estate property manager," as defined in ORS 696.010.

(9) "Real estate activity," "professional real estate activity," and "real estate business" mean "professional real estate activity" as defined in ORS 696.010, which includes managing rental real estate.

(10) "Real estate broker" is defined in ORS 696.010.

(11) "Real estate licensee" and "licensee" mean a "real estate licensee" as defined in ORS 696.010.

(12) "Registered business name" is defined in ORS 696.010.

Stat. Auth.: ORS 696.385
Stat. Implemented: ORS 696.010 & 696.020
Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0015
Background Check Application and Fingerprint Card

(1) Applicants for a property manager's license must submit to a background check, except applicants who are currently licensed as a real estate broker or principal real estate broker or who are eligible for renewal of such licenses. The background check includes a criminal background check as provided in OAR chapter 863, division 5. The applicant must apply for the background check in writing on an Agency-approved form with all information provided by the applicant and verified by the applicant.

(2) The background check application must include, but is not limited to, the following information:

(a) The applicant's legal name, residence address, and telephone number;

(b) The applicant's date and place of birth;

(c) The applicant's Social Security Number;

(d) Whether the applicant:

(A) Has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor;

(B) Has ever been refused a real estate license or any other occupational or professional license in any other state or country;

(C) Has ever had a real estate or any other occupational or professional license revoked or suspended; or

(D) Has ever been fined or reprimanded as such a licensee; and

(e) Any other information the commissioner considers necessary to evaluate the applicant's trustworthiness and competency to engage in the management of rental real estate in a manner that protects the public interest.

(3) As part of any application submitted under section (2) of this rule, the applicant must submit one completed fingerprint card on the form prescribed by the Oregon State Police and FBI and an additional fee sufficient

to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(4) The Agency must receive the background check application, fingerprint card, and processing fee before it will issue a license.

(5) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The commissioner will keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(6) If the Agency determines that additional information is necessary in order to process the application, the Agency may request such information in writing, and the applicant must provide the requested information in order to complete the application. If the applicant fails to provide the requested information, the Agency may determine that the application is incomplete, which will result in termination of the application.

(7) An applicant who has otherwise qualified for licensing may not be considered for any real estate license until the background check process and review has been completed, including but not limited to the Agency's receipt of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. If an individual who has had a successfully completed background check process and review does not successfully complete the remaining portions of the entire licensing application process within twelve months from the date of the successfully completed background check process and review, the successfully completed background check process and review is no longer valid.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0030
License Issue, Term, Form, and Inspection

(1) The Agency will issue a property manager's license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.022 and 696.790 and receiving:

(a) The license application form required by OAR 863-024-0010, and

(b) The fees authorized by ORS 696.270.

(2) A licensee may engage in property management from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered, or suspended.

(3) A licensee may hold only one of the following Oregon real estate licenses at any time:

(a) Real estate broker,

(b) Principal real estate broker, or

(c) Property manager.

(4) The license expiration date is the last day of the month of a licensee's birth month.

(5) The license term is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee's birth month.

(6) The license will include the following information:

(a) The licensee's legal name,

(b) The license number, effective date, and expiration date,

(c) The name under which the licensee conducts real estate business or the registered business name,

(d) The licensee's business address,

(e) The seal of the Real Estate Agency, and

(f) Any other information the Agency deems appropriate.

(7) Each license must be available for inspection in the licensee's principal place of business. If a licensee is associated with a principal real estate broker, the principal broker must make the license available for inspection in the licensee's principal place of business, which is:

(a) The principal broker's principal place of business, or

(b) A branch office.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020, 696.022 & 696.270
Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0075
Reissuing Suspended License

(1) The Agency may reissue an unexpired property manager's license that has been suspended by order of the commissioner if the licensee asks that it be reissued and pays the required fee within 30 days after the close of the suspension period.

(2) If the licensee fails to act within 30 days, the license becomes inactive and may be reactivated only pursuant to OAR 863-024-0065.

(3) If the license expires before the request for reissuance, the Agency will renew the license within the 30-day period only pursuant to OAR 863-024-0050.

(4) A license reissued under this rule is effective for licensing purposes when the Agency receives all required forms and fees.

(5) If the license has had a status other than active for two or more consecutive years, the licensee must comply with the reactivation requirements of OAR 863-024-0065.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0085
Authorization to Control Property Manager's Business

(1) A property manager may authorize another property manager to control and supervise his or her property management activity during the property manager's absence for a period not to exceed 90 days.

(2) Both licensees have joint responsibility for all property management activity conducted during the authorizing property manager's absence.

(3) The written authorization required by this rule must contain the following information:

(a) The authorizing property manager's authorization, including the effective date and termination date of such authorization, which may not exceed 90 days;

(b) An affirmation by the supervising property manager acknowledging that the property manager accepts the supervisory responsibility, and

(c) An affirmation by both property managers acknowledging that they are jointly responsible for the property management activity during the dates of the authorization.

(4) The authorizing property manager may end the authorization before the termination date by filing an amended authorization before the termination date.

(5) The written authorization required by this rule must be received by the Agency before the effective date of such authorization on an Agency-approved form. The commissioner may allow a later filing for good cause shown.

(6) The Agency will maintain the written authorization as an Agency record.

(7) This rule provides an exception to OAR 863-014-0095(7), which prohibits a principal broker from engaging in professional real estate activities under more than one registered business name. That is, a supervising principal broker may conduct professional real estate activity under both the authorizing principal broker's registered business name and the supervising principal broker's registered business name if the parties meet the requirements contained in this rule. This exception does not allow a principal broker to conduct professional real estate activity under more than these two registered business names.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.026
Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-024-0100
Branch Office Registration

(1) Before a property manager may engage in the management of rental real estate from a branch office, the property manager must provide to the commissioner on an Agency-approved form the branch office street and mailing addresses and the fee authorized by ORS 696.270.

(2) For the purposes of ORS 696.270, a branch office registration does not require renewal.

Stat. Auth.: ORS 696.385
Stats. Implemented: ORS 696.026 & 696.200
Hist.: REA 7-2008, f. 12-15-08, cert. ef. 1-1-09; REA 1-2009, f. 12-15-09, cert. ef. 1-1-10

863-049-0000
Applicability and Purpose

This division applies to escrow agents and those who wish to become escrow agents. Its purpose is to set forth the requirements and processes for initial licensing, changes in ownership and individuals in charge of escrow operations, notice to the Agency of other changes, and license renewal.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0005
Definitions

As used in this division, unless the context requires otherwise:

(1) "Agency" means the Oregon Real Estate Agency.

(2) "Bank" is defined in ORS 706.008.

(3) "Commissioner" means Oregon Real Estate Commissioner.

(4) "Escrow" is defined in ORS 696.505.

(5) "Escrow agent" is defined in ORS 696.505.

(6) "Escrow operations" means any activity that is subject to regulation under ORS 696.505 to 696.590.

(7) "Escrow trust account" is defined in section 1, chapter 174, Oregon Laws 2009.

(8) "Trust funds" is defined in section 1, chapter 174, Oregon Laws 2009.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0010
Initial License Application Form and Content

(1) An applicant for an escrow agent's license may be either a legal entity or an individual, but the requirements for each are slightly different. All applicants must submit:

(a) An initial license application on an Agency-approved form;

(b) Additional information required by OAR 863-049-0015 for legal entities or OAR 863-049-0020 for individuals;

(c) The information required by OAR 863-049-0025 concerning criminal records checks and fingerprint cards; and

(d) The fees authorized by ORS 696.530 and OAR 863-005-0090.

(2) The application form for all applicants must contain the following information:

(a) The applicant's legal name;

(b) The assumed business name, if any, as registered with Oregon Secretary of State;

(c) The applicant's Federal Tax ID Number;

(d) The applicant's fiscal year end;

(e) The applicant's main office address, phone number, FAX number, and if applicable, Web site address;

(f) If the applicant has any branch offices, the address, phone number, and FAX number of such offices;

(g) The authorized contact for the applicant, including the individual's name, title, address, phone number and, if applicable, e-mail address and FAX number;

(h) The name, title, date, and signature of the individual authorized to submit the application and a certification that this individual is so authorized; and

(i) For a legal entity, the application form must also contain the names of the following:

(A) Any individual or legal entity holding an ownership interest in the escrow agent of more than five percent,

(B) All corporate officers in charge of escrow operations, and

(C) All individuals in charge of escrow operations.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0015
Additional Information for Legal Entities

(1) In addition to the license application form, an applicant that is a legal entity must submit the following:

(a) A corporate surety bond in the amount required by ORS 696.525 or one of the following:

(A) Evidence of a deposit in an amount equal to the surety bond as provided in ORS 696.527, or

(B) A written request to the commissioner for a waiver of the surety bond or deposit, as provided in ORS 696.527(4);

(b) A document signed and dated by the individual authorized to submit the application containing the following:

(A) A general plan and description of the character of the business;

(B) A history of the formation of the escrow business, including when the business was established; and

(C) Except as provided in section (2) of this rule, a description of:

(i) The experience or training of the applicant's employees in the escrow business,

(ii) Information showing that the entity has at least three years of collective experience among its personnel in administering escrows in Oregon or in a state with comparable escrow laws,

(iii) The applicant's escrow business in another state, or

(iv) A testimonial of an escrow agent licensed in this state concerning the applicant's training and escrow experience.

(c) Information about the applicant's financial resources prepared by a certified public accountant in accordance with Generally Accepted Accounting Principles;

(d) Resumes of the individuals submitting the fingerprint cards and criminal records check clearance applications required by this division;

(e) A resolution of the entity authorizing the individual to sign and submit documents;

(f) A certificate of existence shown by current documentation from the Oregon Secretary of State or other appropriate state agency that the applicant is active and in good standing; and

(g) Current documentation from the Oregon Secretary of State that any assumed business name the escrow agent intends to use in its escrow operations is active and in good standing.

(2) If the applicant does not meet the three-year experience requirement contained in this rule, the applicant may seek a waiver from the commissioner by submitting information showing that the applicant has other qualifications sufficient to ensure the protection of the public.

(3) The Agency may require the applicant to submit any additional information that the Agency considers necessary to demonstrate the applicant's qualifications to transact escrow business.

(4) Every license application must be accompanied by the license fee authorized by ORS 696.530. The fee applies to all periods of the year. The Agency does not pro-rate license fees.

(5) Every license application must be accompanied by criminal records check clearance applications and fingerprint cards as specified in OAR 863-049-0025 (Criminal Records Check Clearance Application and Fingerprint Card) and an additional fee as specified in 863-005-0090 sufficient to recover the costs of processing any required fingerprint information and securing any criminal offender information for the following:

(a) Any individual holding an ownership interest in the escrow agent of more than five percent,

(b) All corporate officers in charge of escrow operations, and

(c) All individuals in charge of escrow operations.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0020
Additional Information for Individual Applicants

(1) In addition to the license application form, an individual applicant must submit the following documents:

(a) A corporate surety bond in the amount required by ORS 696.525 or one of the following:

(A) Evidence of a deposit in an amount equal to the surety bond as provided in ORS 696.527, or

(B) A written request to the commissioner for a waiver of the surety bond or deposit, as provided in ORS 696.527(4);

(b) A document signed and dated by the individual submitting the application containing the following information:

(A) A general plan and description of the character of the business;

(B) A history of the formation of the escrow business, including when the business was established; and

(C) Except as provided in section (2) of this rule, a description of:

(i) The experience or training of the applicant's employees in the escrow business,

(ii) Information showing that the individual has at least three years of experience administering escrows in Oregon or in a state with comparable escrow laws,

(iii) The applicant's escrow business in another state, or

(iv) A testimonial of an escrow agent licensed in this state concerning the applicant's training and escrow experience.

(c) Information about the applicant's financial resources prepared by a certified public accountant in accordance with Generally Accepted Accounting Principles;

(d) Evidence that the individual is 18 years or older; and

(e) Resumes of the individuals submitting the fingerprint cards and criminal records check clearance applications required by this division;

(2) If the individual applicant does not meet the three-year experience requirement contained in this rule, the applicant may seek a waiver from the commissioner by submitting information showing that the applicant has other qualifications sufficient to ensure the protection of the public.

(3) The Agency may require the applicant to submit any additional information that the Agency considers necessary to demonstrate the applicant's qualifications to transact escrow business.

(4) The license application must be accompanied by the license fee authorized by ORS 696.530. The fee applies to all periods of the year. The Agency does not pro-rate license fees.

(5) Every license application must be accompanied by criminal records check clearance applications and fingerprint cards as specified in OAR 863-049-0025 (Criminal Records Check Clearance Application and Fingerprint Card) and an additional fee as specified in 863-005-0090 sufficient to recover the costs of processing any required fingerprint information and securing any criminal offender information pertaining to the applicant for the following:

(a) The license applicant and

(b) All individuals in charge of the escrow operations.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0025
Criminal Records Check Clearance Application and Fingerprint Card

(1) The Agency conducts a criminal records check, makes a criminal background fitness determination, and either approves or denies a criminal background check clearance application under the provisions of OAR chapter 863, division 5. The Agency conducts this process on certain individuals, owners, or employees of an escrow agent license applicant as part of the initial application review and approval process. The Agency conducts this criminal records check process on certain individuals, owners, or employees of an escrow agent licensee as part of the application for changes in ownership or individuals who are in charge of escrow operations under OAR 863-049-045.

(2) As used in this rule, "applicant" means the individual applying for a criminal records check clearance under OAR chapter 863, division 5.

(3) The applicant must apply for a criminal records check clearance in writing on an Agency-approved form with all information provided and verified by the applicant.

(4) The criminal records check clearance application must include, but is not limited to, the following information:

(a) The applicant's legal name, residence address, and telephone number;

(b) The applicant's date and place of birth;

(c) The applicant's Social Security Number; and

(d) Whether the applicant has ever been convicted of or is under arrest, investigation, or indictment for a felony or misdemeanor.

(5) The commissioner may require additional information from the applicant that the commissioner considers necessary for protecting the public.

(6) As provided in OAR 863-005-0090, all fingerprint cards, photographs, records, reports, and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The Agency will keep such information segregated from other information on the escrow agent applicant or licensee and maintain such information in a secure place.

(7) If the Agency determines that additional information is necessary to process the application, the Agency may request such information in writing, and the applicant must provide the requested information in order to complete the application. If the applicant fails to provide the requested information, the Agency may determine that the application is incomplete and deny the application.

(8) An escrow agent license applicant who has otherwise qualified for the escrow agent's license may not be considered for such license until each criminal records check clearance application has been approved or denied.

(9) If the Agency denies an individual's criminal records check clearance application, the Agency will not approve the escrow license application.

(10) For the purposes of the Agency's final approval of an initial application pursuant to OAR 863-049-0010 or a change of ownership pursuant to 863-049-0045, an approved criminal background check clearance for an individual is valid for 12 months.

Stat. Auth.: ORS 696.541 & 696.790
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09; Renumbered from 863-050-0240 by REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0030
License Issue, Term, and Form

(1) The Agency will issue an escrow agent's license to an applicant after determining that the applicant meets the license requirements contained in ORS 696.505 to 696.590 and this division and receiving:

(a) The license application form and documents required under this division, and

(b) The fees authorized by ORS 696.530 and OAR 863-005-0090.

(2) A licensee may engage in escrow operations from the date the license is issued until the license expires or is revoked, surrendered, or suspended.

(3) All escrow agents' licenses expire on June 30 of each year. A license may be renewed by filing a license renewal application as provided in OAR 863-049-0035 and paying the required fee.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511, 696.530 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0035
License Renewal

(1) An escrow agent's license expires on June 30 of each year. A licensee may not engage in escrow operations after a license expires.

(2) The Agency will renew an escrow agent's license when the Agency has received the following:

(a) The renewal fee authorized by ORS 696.530, and

(b) An Agency-approved renewal application form that includes the training certification and contact information required by ORS 696.511(6).

(3) A licensee has a 30-day grace period after June 30 in which to renew the expired license. The licensee may not engage in escrow operations during that time. No late fee is required for late renewal.

(4) If the Agency renews an expired license during the 30-day grace period, the renewed license is effective as of the renewal date and is not retroactive. The renewed license does not authorize any escrow operations that occurred between July 1and the license renewal date.

(5) If the licensee fails to renew a license by the end of the 30-day grace period but wishes to engage in escrow operations, the licensee must submit a new initial license application pursuant to OAR 863-049-0010 and pay all required fees.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511, 696.530 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0040
Notice to Agency of Changes

(1) An escrow agent must notify the Agency within five calendar days on an Agency-approved form of the following changes in the information contained in an escrow agent license application: main or branch office location changes, branch office establishment, and branch office closure.

(2) An escrow agent must notify the Agency on an Agency-approved form ten business days before ceasing business operations.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0045
Application for Approval of Changes to Ownership or Individuals in Charge of Escrow Operations

(1) An escrow agent must apply to the Agency for approval of changes in ownership or changes to individuals in charge of escrow operations. The application must be submitted on an Agency-approved form and include resumes, criminal records check clearance applications, fingerprint cards, and fees required under OAR 863-005-0090.

(2) The following changes are subject to this rule:

(a) Any individual who will hold an ownership interest in the escrow agent of more than five percent;

(b) Corporate officers who will be in charge of escrow operations for an escrow agent; and

(c) Other individuals who will be in charge of escrow operations for an escrow agent.

(3) The licensee may not allow the proposed change in ownership interest in (2)(a) of this rule to occur until the Agency approves the criminal records check clearance and notifies the licensee in writing.

(4) A licensee must submit an application for a change to corporate officers or individuals in charge of escrow operations under (2)(b) or (c) of this rule no later than five business days after the change.

(5) If the Agency denies a criminal records check clearance application submitted under (4) of this rule, the Agency will submit written notice to the individual and to the licensee, and the licensee must immediately remove the individual who was denied clearance from any duties as a corporate officer of individual in charge of the licensee's escrow operations.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.511 & 2009 OL Ch. 174, Sec. 2
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0050
Letters of Credit

(1) For a certified, annually renewable letter of credit to be satisfactory to the commissioner under ORS 696.527 in lieu of a surety bond or deposit, the letter of credit must:

(a) Be executed by a bank;

(b) Name the State of Oregon Real Estate Agency as beneficiary;

(c) Make no reference to any other conditional agreement, document, or entity;

(d) Be annually renewable, without amendment, for successive one-year periods from the stated expiration or any future expiration date until such time as notice is given in accordance with this section;

(e) Provide for no less than sixty (60) calendar days notice to the Agency as beneficiary of any election not to renew the letter of credit; and

(f) Be payable by sight draft or upon presentation at an office of the bank by an authorized representative of the beneficiary accompanied by a signed statement certifying that "The attached order from the Commissioner of the Oregon Real Estate Agency represents that the escrow agent is in violation of ORS 696.505–696.590."

(2) The commissioner may require that a Letter of Credit include additional terms and conditions.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.527
Hist.: REA 2-2004(Temp), f. & cert. ef. 1-15-04 thru 6-25-04; REA 4-2004, f. 4-28-04 cert. ef. 5-3-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09; Renumbered from 863-050-0035 by REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-049-0055
Annual Report and Financial Statements

(1) An escrow agent must submit to the Agency by March 31 of each year an Annual Report for the previous calendar year consisting of the following:

(a) A schedule of the amount of trust funds received and disbursed each month on collection escrows and the amount of trust funds received and disbursed each month on closing escrows. The schedule must include the beginning balance and the ending balance of each such account and be prepared based upon the individual escrow ledgers for such accounts;

(b) A list of closing escrows that have been open for more than twelve months as of December 31 of the previous year, showing the escrow number, date opened, names of principals, the escrow ledger balance, and a statement of the reason the escrow has remained open for more than one year;

(c) The amount of clients' trust funds received and disbursed each month by the escrow agent while acting as a trustee under a trust deed pursuant to ORS 86.705 to 86.795. The schedule must include the beginning balance and the ending balance for each account. The schedule must be prepared from the outstanding individual escrow ledgers for such accounts;

(d) An executed general authorization to inspect all clients' trust accounts set up as required by ORS 696.578(1) on an Agency-approved form;

(e) A list of outstanding checks as of December 31 of the previous year, listed by check number, issue date, payee, and amount, for all escrow trust accounts; and

(f) Any other information the Agency deems necessary to administer the provisions of ORS 696.505 to 696.590.

(2) An escrow agent must submit to the Agency, not later than 150 days after the end of the agent's tax or accounting year, a set of the agent's financial statements as follows:

(a) The financial statements must be prepared in accordance with generally accepted accounting principals by a certified public accountant or other qualified person approved by the Agency.

(b) The person preparing the financial statements must provide a statement of the type of the presentation made and include all appropriate notes to the financial statement.

(c) The financial statements must include the following:

(A) A balance sheet as of the agent's year end;

(B) Statement of profit and loss;

(C) Statement of cash flows;

(D) Statement of retained earnings; and

(E) Any other changes in capital accounts for the year then ended.

(d) As part of the report submitted under this rule, the escrow agent must authorize the commissioner or the commissioner's authorized representative to examine and verify any asset or liability shown on the balance sheet. The authorization must be in writing and submitted to the Agency with the report.

(3) The commissioner may grant an extension of time, to be determined by the commissioner, for filing reports submitted under sections (2) or (3) of this rule if the agent so requests in writing and provides sufficient reason why the agent cannot file the reports by the specified date.

(4) The reports required by this rule must be signed by the escrow agent or appropriate corporate officer of the escrow agent attesting to the accuracy of the information contained in the report.

Stat. Auth.: ORS 696.541
Stats. Implemented: ORS 696.534
Hist.: REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

863-050-0150
Annual Report; Financial Statements; Audit or Examination Expenses

(1) The escrow agent must pay to the Agency the reasonable expenses of an audit or examination as authorized by ORS 696.541.

(2) The Commissioner may require an escrow agent to submit to the Commissioner an independent audit by a certified public accountant or a public accountant, conducted at the escrow agent's expense. The Commissioner may specify the nature and scope of the independent audit. If an escrow agent submits a required independent audit to the Commissioner or the Commissioner's authorized representative, this does not preclude any subsequent audit within the same year.

Stat. Auth.: ORS 696.385, 696.541
Stats. Implemented: ORS 696.534 & 696.541
Hist.: REC 29, f. 12-9-70, ef. 1-10-71; REC 34, f. 2-8-73, ef. 3-1-73; REC 5-1978, f. 11-15-78, ef. 1-1-79; REC 2-1981, f. 10-30-81, ef. 11-1-81; REC 6-1984, f. 6-18-84, ef. 7-1-84; REA 2-1990, f. 4-18-90, cert. ef. 7-1-90; REA 5-1992, f. 8-4-92, cert. ef. 9-1-92; REA 2-1997, f. 6-18-97, cert. ef. 7-1-97; REA 5-2003, f. 12-24-03, cert. ef. 1-1-04; REA 10-2008, f. 12-15-08, cert. ef. 1-1-09

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Secretary of State, Elections Division
Chapter 165

Rule Caption: Adoption of Secret ballot Waiver Form when Casting Ballot using Facsimile Machine.
Adm. Order No.: ELECT 18-2009
Filed with Sec. of State: 12-4-2009
Certified to be Effective: 12-4-09
Notice Publication Date: 11-1-2009
Rules Adopted: 165-007-0300
Subject: This proposed rule designates the SEL 531, Facsimile Vote Secret Ballot Waiver Form, as the form for a long term absent elector who is serving in or has been discharged for not more than 30 days from the Armed Forces or the Merchant Marine to use a waive the right to a secret ballot when casting a ballot using a facsimile machine. Additionally, this rule requires each county clerk to incorporate into their security Plan methods for ensuring the secrecy of ballots cast using a facsimile machine to the greatest extent possible.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-0300
Facsimile Vote Secret Ballot Waiver Form

(1) The Secretary of State designates form SEL 531, Facsimile Vote Secret Ballot Waiver Form, as the form to be used by a long term absent elector who is serving in or has been discharged for not more than 30 days from the Armed Forces or the Merchant Marine when casting a ballot using a facsimile machine.

(2) The ballot will not be counted unless the completed SEL 531 is received in the office of the county clerk not later than 8 pm on the day of the election, accompanied by a return identification envelope, transmitted by facsimile, containing the signature of the elector and the signature is matched against the signature on the elector's most current voter registration card.

(3) County clerks shall incorporate into their Security Plan, required to be filed with the Secretary of State not later than January 31st of every year, methods for ensuring the secrecy of ballots cast using a facsimile machine to the greatest extent possible. Acceptable methods include but are not limited to:

(a) Using a separate dedicated facsimile machine with limited staff access;

(b) Assigning a dedicated employee to monitor the facsimile machine; or

(c) Adjusting the facsimile machine settings to store items until a set time, rather than automatically printing.

Stat. Auth.: ORS 246.150
Stats. Implemented: OL 2009 Ch. 619 (HB 2511
Hist.: ELECT 18-2009, f. & cert. ef. 12-4-09

Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Amends rule regarding the Restricted Transitional Teaching License and makes changes effective January 1, 2010.
Adm. Order No.: TSPC 7-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 10-1-2009
Rules Amended: 584-060-0162
Subject: Amends rule to state the Restricted Transitional Teaching License (RTL) is issued jointly to an applicant and district, clarifies new civil rights requirement, requires applicant show substantial preparation in the subject-matter area, clarifies district responsibility regarding mentors, explains the RTL will be issued for one year at a time for a maximum of three years with special renewal conditions, and upon expiration of the RTL, recipients must meet the requirements of the Initial I Teaching License or qualify for an Emergency Teaching License based on provisions in section (7).
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-060-0162
Restricted Transitional Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Restricted Transitional Teaching License.

(2) This license is issued jointly to an applicant and a district for up to three years and is not renewable.

(3) This license is valid for teaching with the requesting employer only at the designated grade levels and subject-matter endorsement areas specifically requested by the employer. This license may not be transferred to another employer without a specific request from the new district along with a duplicate license application to issue the new license.

(4) To be eligible for a Restricted Transitional Teaching License, the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a bachelor's degree or higher from a regionally accredited institution or approved foreign equivalent. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure;

(c) Submit evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on the commission-adopted *Protecting Student and Civil Rights in the Education Environment licensure test prior to renewal of this license*;

(d) Show substantial preparation in the subject-matter area in which licensure is requested;

(e) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(f) Submit a letter from the employing district describing the particular need in relation to the applicant's teacher qualifications. The district must agree to provide a mentor and identify that mentor in the letter of application. The district must attest that circumstances prevent hiring a suitable teacher holding an unrestricted full-time license appropriate for the assignment to be filled.

(g) Submit a resume, and any other evidence required by the Commission as proof of substantial completion of academic preparation or substantial work experience in the area in which the co-applicant educator is are seeking licensure.

(5) Restricted Transitional 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 C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Proof of admission and enrollment or proof of pending enrollment into a program for licensure in the area in which the applicant is teaching.

(b) Second Renewal: The applicant must submit:

(A) A C-1 application and renewal fees;

(B) A letter of support from the co-applicant district; and

(C) Significant proof of progress toward completion of their Initial I Teaching License requirements.

(c) Renewal under these conditions is not subject to the 120-day grace period and must be submitted sufficiently in advance of the license expiration date to ensure continuity of licensure. Failure to submit a timely application is grounds for denial of a renewal pursuant to this subsection and may be grounds for discipline under OAR 584-020-0040.

(d) The Executive Director may deny renewal of the license upon failure to show progress in the licensure program needed for the next stage license.

(6) Upon expiration of the Restricted Transitional Teaching License, recipients of this license must meet all the requirements of the Initial I Teaching License for which they may apply at any time or qualify for an Emergency Teaching License under the provisions provided below.

(7) Emergency Teaching License: When the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for the Initial I Teaching License, within three years, an extension for up to one year may be issued upon joint application from an educator and the employing district. The applicant must complete a C-1 and fees for an Emergency Teaching and provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the Initial I Teaching License upon expiration of the Emergency Teaching License issued pursuant to this section.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232
Hist.: TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 7-2009, f. 12-15-09, cert. ef. 1-1-10

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Rule Caption: Amends and adopts rules relating to teacher and administrator license requirements, teacher preparation, serving without proper licensure.
Adm. Order No.: TSPC 8-2009
Filed with Sec. of State: 12-15-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 6-1-2009
Rules Adopted: 584-060-0220, 584-065-0035
Rules Amended: 584-010-0020, 584-017-0200, 584-017-0201, 584-021-0165, 584-036-0055, 584-036-0081, 584-038-0300, 584-050-0006, 584-050-0030, 584-050-0035, 584-052-0015, 584-060-0012, 584-060-0013, 584-060-0071, 584-060-0171, 584-060-0181, 584-070-0012, 584-070-0111, 584-070-0112, 584-070-0310, 584-080-0022, 584-080-0151, 584-080-0152, 584-080-0153, 584-080-0161
Rules Repealed: 584-065-0030, 584-065-0040
Subject: (1) Adopts 584-060-0220 *International Visiting Teacher License* & 584-065-0035 *Knowledge, Skills & Abilities for Special Education Endorsement*.

(2) 584-017-0200 *Verification of Program Completion:* Amends requirements regarding storage of program completion files and candidates are to be reported in the year when all licensure requirements are complete.

(3) 584-017-0201 *Substitute License When Program is Not Complete:* Clarifies issuance of non-renewable unrestricted license valid for three years only without completion of licensure requirements.

(4) 584-036-0055 *Fees:* Updates fees regarding new licenses, renewal fees, and late fees.

(5) 584-036-0081 *Conditional Assignment Permits:* Clarifies duration and special limitations of CAPS.

(6) 584-050-0006: *Criteria for Denying Issuance or Reinstatement of License:* Amends rule to include working without proper licensure.

(7) 584-050-0030 *Serving Without Proper Licensure:* Clarifies when the Commission or the Executive Director will issue a notice of opportunity for a hearing to an educator.

(8) 584-050-0035 *Must be Licensed, Registered or Certified at all Times While Employed:* States individuals must be licensed, registered, or certified to begin school employment.

(9) 584-052-0015 *Preparation in Another State:* Amends requirements for licensure.

(10) 584-060-0012 *Initial I Teaching License Requirements:* Amends requirements for applicants who completed out-of-state teacher prep and renewal requirements.

(11) 584-060-0013 *Initial II Teaching License Requirements:* Clarifies eligibility for an Initial II Teaching license.

(12) 584-060-0071 *Endorsements With Special Requirements:* Amends endorsement qualifications for Early Intervention and Early Childhood Special Education.

(13) 584-060-0181 *Substitute Teaching License:* Clarifies requirement for license Notwithstanding OAR 584-017-0201.

(14) 584-070-0012 *Initial I School Counselor License:* Updates related to acceptable teaching experience.

(15) 584-070-0112 *Restricted Transitional School Counselor License:* Amends rule to require licensee be enrolled in approved counselor program in any state or have a master's degree in a counseling-related field.

(16) 584-080-0022 *Continuing Administrator License (CAL):* Clarifies requirement for out-of-state advance program.

(17) 584-080-0151 *Transitional Administrator License:* Removes requirement to complete an approved graduate program under (5) (b) and updates requirement for new commission-approved Civil Rights test.

(18) Updates several rules regarding commission-adopted Civil Rights and Professional Ethics Test.

(19) Updates obsolete rule language and other housekeeping amendments.

(20) Repeals rules 584-065-0030, & 584-065-0040.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-010-0020
Procedure for On-Site Review of Licensure Programs

(1) Pre-visit Reports:

(a) Units scheduled for a state on-site program review visit will provide a pre-visit report containing the documentation outlined in subsections (A) and (B) below to the Commission at least 60 days in advance of the on-site visit.

(b) Units scheduled for a joint NCATE and state on-site program review will provide a pre-visit report containing the documentation outlined in subsections (A) and (B) below to the Commission at the same time the unit provides the Conceptual Framework to NCATE:

(A) Information about all educational licensure preparation programs; and

(B) Evidence of compliance with program standards, including but not limited to data demonstrating evidence of candidate:

(i) Content knowledge;

(ii) Clinical field experience;

(iii) Competency; and

(iv) Follow-up after program completion.

(2) Commission Staff Responsibility: At least 120 days prior to the scheduled on-site visit, the Commission staff will:

(a) Furnish the unit with copies of applicable rules, policies and procedures;

(b) Appoint a program review committee. Every attempt will be made to include representatives from a broad sector of educators including teachers, administrators and teacher educators;

(c) Set the dates for the visit; and

(d) Appoint a chair of the program review committee, if other than the Coordinator of Teacher Education, who works with the unit, is responsible for program review committee assignments and completing the written program review report.

(3) Program Review Committee Responsibilities Prior to the On-Site Visit:

(a) Prior to the visit the program review committee will review:

(A) The unit's annual reports; and

(B) The pre-visit report.

(b) The committee chair will:

(A) Review the exhibits on site;

(B) Complete a pre-visit audit; and

(C) Inform the unit of any additional information needed to complete the visit.

(4) Program Review Committee Responsibilities During the On-Site Visit: During the on-site visit, the program review committee will:

(a) Conduct an on-site visit;

(b) Reach consensus about whether the evidence supporting the program elements meets Commission standards; and

(c) Conduct an exit review with the unit.

(5) Committee Chair Responsibilities: Following the on-site visit the program review committee chair will:

(a) Ensure completion of the written report based on the findings of the committee members;

(b) Circulate a draft of the report to program review committee members for their review and input;

(c) Send a draft of the final report to the unit head for review and response; and

(d) Consult with the Executive Director regarding recommendations to the Commission pursuant to OAR 584-017-0025.

(6) The Final Report: The final report shall:

(a) Cite evidence showing compliance with or deviation from each standard that applies to the unit's programs; and

(b) Contain a list of contacts that were made and exhibits that were reviewed; and

(c) Be sent to the unit head and the chief executive officer of the institution along with the Executive Director's recommendations prior to the Commission meeting at which the report will be considered.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.147
Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 16, f. 12-19-77, ef. 1-1-78; TS 3-1984, f. & ef. 8-3-84; TS 1-1987, f. & ef. 3-3-87; TS 1-1991, f. & cert. ef. 1-2-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-017-0200
Verification of Program Completion

The unit assures that candidates have completed the program successfully.

(1) The unit documents that candidates for licensure have acquired the knowledge and demonstrated the competencies required for the authorization level(s) and endorsement(s).

(2) The unit documents that candidates for licensure have completed the required practica successfully.

(3) The unit attests that candidates comply with Standards for Competent and Ethical Performance of Oregon Educators in OAR 584 division 20.

(4) The unit attests that the candidates have passed the licensure tests required for the authorization levels and endorsements for which the unit is recommending. Evidence of program completion is stored in each student's appropriate files including a copy of the C-2 form filed with the Commission as verification of the student's having met all licensure requirements.

(5) Program completion for purposes of reporting under Title II of the Higher Education Act (HEA) means the latest date at which a candidate completes all of the requirements for an Initial **I** Teaching License.

(a) All candidates completing an approved program must be reported to the Commission for Title II HEA reporting purposes in the year in which all requirements are completed whether the candidate applies for licensure with TSPC.

(6) Candidates for an Initial **I** Teaching License will hold a minimum of a bachelor's degree from a regionally accredited institution or from an institution that is deemed to offer a degree comparable to a regionally accredited institution as approved by the Oregon Office of Degree Authorization, including but not limited to a foreign equivalent of such a degree.

(7) Candidates for a Continuing Teaching License will hold a master's or higher degree in arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 4-2007, f. & cert. ef. 6-14-07; TSPC 8-2009, f. & cert. ef. 12-15-09

584-017-0201
Substitute License When Program is Not Complete

(1) The commission will issue a non-renewable unrestricted Substitute Teaching License to a qualified candidate for whom the unit has submitted documentation of completion of academic requirements but without completion of other licensure requirements.

(2) The Substitute Teaching License will be valid for three years only and will be issued pursuant to OAR 584-060-0181. These candidates will be reported by the unit as a program completer in the year that all of the candidate's licensure requirements are completed.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.125

Hist.: TSPC 3-2000, f. 7-17-00, cert. ef. 9-1-00; Renumbered from 584-010-0130, TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-021-0165
Verifying Knowledge of Laws Prohibiting Discrimination

(1) An applicant may submit an affidavit for the first school nurse certificate assuring that he or she has read the *Protecting Student and Civil Rights in the Educational Environment* study guide. For renewal, the applicant must complete the commission-adopted civil rights and professional ethics test.

(2) An applicant residing outside of the state and not employed by an Oregon school may renew or reinstate an Oregon school nurse certificate upon submission of evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on a test of knowledge of U.S. and Oregon civil rights laws and professional ethics prior to any next licensure.

Publications referenced are available on the agency web site at: http://www.rela.nesinc.com/OR_viewSG_opener.asp
Stat. Auth.: ORS 342
Stats. Implemented: ORS 183, 342.123 & 342.455 - 342.495
Hist.: TS 4-1982, f. & ef. 7-22-82; TS 7-1982(Temp), f. & ef. 12-9-82; TS 1-1983, f. & ef. 2-9-83; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 8-2009, f. & cert. ef. 12-15-09

584-036-0055
Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) If the applicant is eligible for the license, registration, or certificate for which application is made and the license, registration or certificate is issued within 90 days of original application, the commission shall issue the license, without additional charge with the following exceptions:

(a) If the commission determines the application is incomplete and fails to notify the applicant in less than one calendar week, the commission will extend the 90 days by an amount equal to the number of days the commission delayed notifying the applicant of incomplete items.

(b) For renewable licenses with a 120 day grace period, the original application fee remains good throughout the 120 days.

(c) If the commission fails to issue the license within 90 days due to commission backlog, the fee shall remain good until the license is issued or 120 days, whichever is less.

(3) The fee for evaluating an initial application:

(a) Initial I License (3 years): $100;

(b) Initial I Teaching License (18 months): $50;

(c) Initial II License (3 years): $100;

(d) Basic License (3 years): $100;

(e) Continuing License (5 years): $100;

(f) Standard License (5 years): $100;

(g) Restricted Transitional License (**1 year or** 3 years): $100;

(h) Limited License (3 years): $100;

(i) American Indian Language License (3 years): $100;

(j) Substitute License (3 years): $100;

(k) Restricted Substitute License (3 years, 60 days per year): $100;

(l) Exceptional Administrator License (3 years): $100;

(m) Three-Year Career and Technical Education License (3 years): $100;

(n) Five-Year Career and Technical Education License (5 years): $100;

(o) NCLB Alternative Route License (3 years): $100;

(p) Emergency Teaching License (term at discretion of Executive Director): $100;

(q) School Nurse Certification (3 years): $100;

(r) International Visiting Teaching License (1 year) $100.

(4) The fee for evaluating all applications for a first Oregon license based on completion of an out-of-state educator preparation program or an out of state license is $120 regardless of the license issued.

(5) The fee for registration of a charter school teacher or administrator is $75 which includes the fee for required criminal records and fingerprinting costs.

(6) The fee for evaluating an application for renewal of any license or certification is $100 except as follows:

(a) Renewal of a one-year Restricted Transitional Teaching License is $25;

(b) Renewal of a charter school registration is $25;

(c) Renewal of an International Visiting Teacher License is $25.

(7) The fee for each of the following circumstances is $20:

(a) A duplicate license, registration, or certificate for any reason;

(b) An approved extension to a provisional license; and]

(c) Adding a district to an existing Restricted Teaching or Substitute License.

(8) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is $100. No additional fee is required to add an endorsement or authorization in conjunction with an application for renewal or reinstatement of a license.

(9) The fee to evaluate an application for reinstatement of an expired license or certificate is $100 plus a late application fee of $25 for each month or portion of a month that the license or certificate has been expired to a maximum of $200 total.

(a) The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certification.

(b) Late fees may only be imposed one time following the expiration of a license or school nurse certificate. If the applicant does not initially qualify for the license or certificate the applicant is seeking to reinstate, no additional late fees will be imposed upon application for subsequent licenses so long as the applicant has a current active license, registration or certification in effect at the time of application.

(10) The fee for evaluating an application for reinstatement of a suspended license or certificate is $100 in addition to the $100 application fee for a total of $200. The fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license or certificate.

(11) The fee for evaluating an application for reinstatement of a suspended charter school registration is $50 and does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired registration.

(12) In addition to the application fees required by this rule, the Commission shall collect a late application fee not to exceed $25 per month up to a maximum of $125 from an applicant who fails to make timely application for renewal of the license, certificate or registration.

(13) The fee for evaluating an application for reinstatement of a revoked license or certificate is $150 in addition to the $100 application fee for a total of $250. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certificate.

(14) The fee for evaluating an application for reinstatement of a revoked charter school registration is $150 in addition to the $25 application fee for a total of $175. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(15) Forfeiture for a check which the applicant's bank will not honor is $25, unrelated to any evaluation fees. The total amount due shall be paid in cash, credit, or Money Order at the Commission's office.

(16) The fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries is $100.

(17) The fee for alternative assessment in lieu of the test for licensure endorsement is $100.

(18) The fee for expedited service for an emergency or other license, registration or certificate is $99 plus the fee for the license registration or certificate application as defined in this administrative rule.

(19) The fee to evaluate an application for reinstatement of an expired charter school registration is $25 plus a late application fee of $25 for each month or portion of a month that the registration has been expired to a maximum of $125 total. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(20) The fee for a criminal records check including fingerprinting is $62.

(21) The fee for a "highly qualified teacher" evaluation is $50.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200, 342.400 & 342.985
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 1-2009(Temp), f. & cert. ef. 2-27-09 thru 8-25-09; Administrative correction 9-29-09; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-036-0081
Conditional Assignment Permits

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a school district, registered charter school or registered private school in Oregon may request a conditional assignment permit (CAP) for any educator holding a Initial, Continuing, Basic, Standard or Five-year License.

(2) Use of a conditional assignment permit by a charter school or private school is voluntary. However, a CAP may be necessary for an educator teaching out of field in order for the educator to use that experience for addition of a new subject-matter endorsement or grade authorization area.

(3) The CAP is required when teaching out-of-field under any of the following circumstances:

(a) Assignment at any grade level not held on the underlying license;
EXAMPLE: A high school authorized teacher teaching in grade 4 would require a CAP for any amount of time teaching outside of her grade level.

(b) Teaching assignments for more than 10 hours weekly in one subject-matter area without the appropriate subject-matter endorsement;
EXAMPLE : A physical education teacher without a health endorsement teaching health three periods of the day would require a CAP for health. If only teaching two periods a day; that would fall under the 10 hours per week threshold.

(c) Teaching in more than one unendorsed subject-matter endorsement area; or
EXAMPLE : If the physical education teacher above was teaching one period of health and one period of math; then a CAP would be required for both areas regardless of the 10 hours per week rule. The 10 hours per week rule applies to one subject only.

(d) Moving from one license to another;
EXAMPLE: A teacher moving to administration; an administrator moving to teaching (if educator does not hold a valid teaching license); a teacher moving to school psychology.

(4) Duration of the CAP: The CAP is <u>not</u> a license, but only temporary conditional approval to teach out-of-field under the following conditions:

(a) One year only for endorsements requiring only a test and experience to be added to a teaching license.

(b) Three years only for endorsements requiring an academic program.

(c) The CAP will not be "back dated." Time spent on assignments where the district failed to request the CAP; will be deducted from the allowable CAP total (either one year or three years). Violation of this provision may be grounds for disciplinary action by the commission (see subsection (8) below.)

(d) The CAP is not renewable and is not eligible for a 120 day extension beyond its expiration date.

(5) The district, charter school or private school applying for a CAP is assumed to have informed the educator for which the CAP is being requested. Failure to inform the educator may result in an invalid CAP upon a finding by the Commission that the educator did not grant the district, charter school or private school permission to add the CAP to the educator's license.

(6) Licenses not eligible for a CAP include, but are not limited to the following provisional licenses:

(a) Any Restricted Transitional;
(b) Limited Teaching License;
(c) American Indian Language;
(d) Teaching Associate License;
(e) Career and Technical Education Teaching License;
(f) NCLB Alternative Route License;
(g) Substitute Teaching License;
(h) Restricted Substitute Teaching License; or
(i) Exceptional Administrator License.

(7) Districts and educators who violate the provisions of this rule may be subject to discipline pursuant to OAR 584-020-0040 or forfeiture of state school funds pursuant to ORS 342.173 and OAR 584-050-0060 to 584-050-0070.

(8) Other Special CAP Limitations:

(a) An administrator, school counselor, or school psychologist who has never held a non-provisional teaching license may not be issued a CAP to teach.

(b) An educator seeking conditional assignment as an administrator must hold a master's degree in education to be eligible for the CAP.

(c) An educator seeking conditional assignment in either school counseling or school psychology must hold at least a bachelor's degree or master's degree in the respective field of counseling or psychology.

(d) Educators holding a Basic or Standard Teaching License must only seek a CAP for school counseling if the assignment exceeds .50 FTE.

(9) The conditional assignment permit is restricted to use within the district, charter school or private school that has applied for it. However, a new district, charter school or private school may request the same type of conditional assignment so long as there is time remaining since the date the CAP was first issued.

(10) A district, charter school or private school must:

(a) Apply for a CAP by October 1 for the fall term or otherwise within two weeks after the assignment has begun; and

(b) Agree to provide professional assistance specific to the assignment for the educator during the first year of the conditional assignment.

(11) CAPs submitted in error by the district, charter school or private school may be removed upon contacting TSPC in writing and indicating the nature of the error.

(12) A CAP cannot be renewed or later re-issued for the same authorization level or specialty endorsement approved.

(13) After a CAP has expired, the educator must have completed all requirements necessary to add the appropriate endorsement, grade-level authorization or new licensure program in order to continue working in the area in which the educator is not properly licensed. Continuing to work as an educator on an expired CAP is a violation of licensure law and is unauthorized. The license-holder or the assigning administrator or both may be subject to sanctions by the commission pursuant to OAR 584-020-0040.

(14) Districts, charter schools or private schools and co-applicant educators may jointly petition the Executive Director for a hardship extension for up to one year under the following conditions:

(a) The district, charter school or private school and educator must explain hardship and the exact circumstances that have prevented the educator from obtaining the endorsement, authorization level or license needed to remain in the conditional assignment; and

(b) The educator has made significant progress toward completing the requirements which includes but is not limited to:

(A) Having taken any applicable subject-matter tests at least two times; or

(B) Has completed at least half of the coursework for any program required to continue to teach the subject; or

(C) Has taken steps toward completing an alternative assessment as part of meeting the CAP requirements; and

(c) The educator and the district, charter school or private school has a plan for completing the requirements for the assignment within the next calendar year.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.143, 342.153, 342.165, 342.223 - 42.232
Hist.: TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 6-2007, f. & cert. ef. 9-12-07; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-038-0300
Basic Hearing Impaired

(1) Forty-five quarter hours designed to develop competence in educating hearing impaired learners, to include:

(a) Structure and function of the ear;
(b) Speech and audiology;
(c) Language and communication;
(d) Diagnostic and prescriptive techniques;
(e) Educational implications of subnormal hearing and deafness;
(f) Education of exceptional children and/or youth; and
(g) Classroom management and student discipline.
(2) Supervised teaching or internship with the hearing impaired.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TSPC 8-2009, f. & cert. ef. 12-15-09

584-050-0006
Criteria for Denying Issuance or Reinstatement of Licenses

(1) The Executive Director may deny issuance of a license, certificate or registration, renewal of a license, certificate or registration; or reinstatement of a license, certificate or registration under the conditions set forth in subsection (3) below.

(2) The Executive Director may not deny reinstatement of a license that has been revoked. Reinstatement of a revoked license or registration is subject to OAR 584-050-0015.

(3) Notice of denial and right to a hearing may be issued by the Executive Director when any of the following conditions exist:

(a) The applicant submits a falsified application;

(b) The applicant has been convicted of any felony, misdemeanor, or major traffic offense;

(c) The applicant has been convicted of a crime listed in ORS 342.143(3)(a), or any substantially equivalent offense under the laws of another state;

(d) The Executive Director has evidence that the applicant may lack fitness to serve as an educator;

(e) The applicant refuses to consent to criminal records checks or refuses to be fingerprinted upon request; or

(f) The applicant has served in violation of OAR 584-050-0030 *Must be Licensed, Registered or Certified at All Times While Employed*.

(4) In a case not covered by this rule, the Executive Director will refer the application to the Commission for action.

Stat. Auth.: ORS 181 & 342
Stat. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TS 6-1993, f. & cert. ef. 12-7-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1998, f. & cert. ef. 6-5-98; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 8-2009, f. & cert. ef. 12-15-09

584-050-0030
Serving Without Proper Licensure

(1) TSPC may deny a license if a person has served in violation of licensure assignment. Such denial shall extend *either* for one year from the date of application for licensure or for a period equal to the time served without licensure, whichever is less. The Executive Director may issue a notice of intent to deny the license and of opportunity for a hearing to the educator.

(2) Licensed persons must be assigned in accordance with the authorizations and endorsement(s) they hold or under provisions of OAR 584-036-0081, *Conditional Assignment Permits*.

(3) Persons who serve in violation of licensure assignment rules and administrators who assign licensed persons in violation of licensure assignment rules may have such action considered as evidence of gross neglect of duty under ORS 342.175 and OAR 548-020-0040.

(4) TSPC may revoke or deny any license upon evidence that the holder or applicant knowingly made false statements to a prospective employing school district concerning the individual's licensure status or qualifications for assignment. (See also, OAR 584-020-0040.)

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 8-2009, f. & cert. ef. 12-15-09

584-050-0035
Must be Licensed, Registered or Certified at All Times While Employed

(1) Any person hired to fill a position in a school district, education service district, or charter school for which a license or registration is required pursuant to ORS Chapter 342, must hold a valid license or registration appropriate for the assignment on the date the employment begins and at all times while working as a public school, education service district or charter school employee. (See OAR 584-036-0010 *Personnel Required to Hold Licenses, Certificates or Charter School Registrations*.)

(2) An application for licensure, registration or certification is insufficient to begin employment. If necessary, the employer may request an expedited Emergency License in cases where the application may not be processed immediately due to backlog.

(3) Failure to maintain proper licensure, registration or certification may constitute gross neglect of duty pursuant to OAR 584-020-0040(4)(r).

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1980, f. & ef. 3-19-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 8-2009, f. & cert. ef. 12-15-09

584-052-0015
Preparation in Another State

(1) If an applicant has completed an out-of-state educator licensure preparation program and the candidate is fully eligible for the out-of-state license for which the applicant is applying, the applicant's preparation may be evaluated by the Commission. In such cases, the Commission may require the applicant to:

(a) Present the out-of-state license prior to evaluation for issuance of an Oregon license as proof of program completion;

(b) Provide evidence that the out-of-state program was completed and compelling evidence to the Executive Director why the applicant is not eligible for the out-of-state evidence; or

(c) Seek evaluation and recommendation from a comparable Oregon-approved program.

(2) Applicants holding a non-provisional educator license or certificate issued by another state that is functionally equivalent to an Oregon educator license may be eligible for an unrestricted equivalent provisional license under the terms and conditions associated with that license.

(3) Applicants who have completed all of the requirements for any of Oregon's educator licenses may qualify upon first licensure for that license.

(4) Applicants taking out-of-state licensure programs must qualify for the license in the state in which the licensure or certification program is approved unless the applicant is willing to be subject to subsection (1)(b) above.

(5) Applicants applying to add an endorsement to an Oregon non-provisional license do not need to hold or earn an out-of-state licensure equivalent, but may request that the Commission evaluate their transcripts to determine whether the program completed is comparable to current Oregon program for that same endorsement.

(6) If the applicant does not meet requirements for unrestricted non-provisional licensure, the Commission may issue an emergency or restricted provisional license when the license being requested is one in which there are insufficient applicants and when the employing district submits verification of extenuating circumstances.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1981, f. & ef. 4-8-81; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 3-1987(Temp), f. & ef. 8-4-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-060-0012
Initial I Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial I Teaching License for three years. The first license will be issued for three years plus time to the applicant's birthday.

(2) The Initial I Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0051 and 584-060-0052 for Authorization Levels.)

(3) To be eligible for an Initial I Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program approved by the commission in Oregon, or complete a state-approved teacher preparation program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and

(d) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment.

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.)

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See 584-060-0002(7) for definition of Basic Skills Tests.)

(f) Obtain a passing score on a test of knowledge of U.S. and Oregon civil rights laws and professional ethics; and

(g) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application.

(4) Applicants who have completed programs from states other than Oregon will be required to submit:

(a) A C-2 form from the institution granting program completion;

(b) Transcripts, verifying completion of the teacher education program; and

(c) A license from another state valid for unrestricted full time teaching.

(A) A teaching license issued by the U.S. Department of Defense will be considered as a license from another state.

(B) Completion of alternative route teaching programs resulting in licensure through school districts or other avenues are subject to Executive Director approval.

(5) The Initial I Teaching License may be renewed two times for three years upon showing progress toward completion of the Initial II eligibility requirements as described in OAR 584-060-0013 during the life of the Initial I Teaching License under the following conditions:

(a) The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment.

(b) The educator must qualify for an Initial II Teaching License upon expiration of ten years following the date the first Initial or Initial I Teaching License is issued. A one-year unconditional extension may be obtained if the educator was issued an Initial Teaching License prior to October 13, 2003 **and** is unable to meet all requirements within the nine year period. (See, OAR 584-060-0013 Initial II Teaching License.)

(c) In circumstances not covered by subsection (b) above, the Executive Director may grant an extension to the Initial I Teaching License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the teacher was unable to complete the requirements for the Initial II Teaching License during the life of the Initial I Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165 & 342.136

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07; Administrative correction 10-16-07; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 6-2009, f. & cert. ef. 11-2-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-060-0013
Initial II Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial II Teaching License for three years.

(2) To be eligible for an Initial II Teaching License, and if the first unrestricted teaching license issued by any state was granted on the basis of a completed teacher preparation program culminating in a bachelor's degree, the applicant must:

(a) Complete a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; or

(b) In lieu of a master's degree, a candidate must complete graduate level coursework germane to the license or directly germane to public school employment as follows:

(A) At least ten semester hours or fifteen quarter hours in subject-matter coursework; and

(B) At least ten semester hours or fifteen quarter hours in graduate-level education-related coursework; and

(C) At least ten semester hours or fifteen quarter hours in graduate-level electives.

(3) To be eligible for an Initial II Teaching License, and if the first unrestricted teaching license issued by any state was granted on the basis of a post-baccalaureate completed teacher preparation program whether the program culminates in a master's degree, the applicant must complete one of the following (a)–(c):

(a) Six semester hours or nine quarter hours of graduate level academic credit from a regionally accredited college or university, or the graduate level credit must:

(A) Be completed after the first unrestricted teaching license issued by any state has first been issued; and

(B) Be germane to the teaching license or directly germane to public school employment; and

(C) May include pedagogy, or content related to an existing endorsement or authorization, or content related to a new endorsement or authorization. (Completion of this required coursework does not guarantee completion of commission approved endorsement requirements offered by any Oregon college or university)

(b) A commission-approved school district program determined to be equivalent to (a) above; or

(c) Any commission-approved professional assessment.

(d) In all cases, the combination of a post-baccalaureate program and the additional hours required by this subsection must be equivalent to a master's degree or 45 quarter hours or 30 semester hours.

(4) The Initial II Teaching License may be renewed repeatedly for three years upon completion of:

(a) All the requirements in either subsections (2) or (3) above; and

(b) A professional development plan in accordance with OAR 584-090.

(5) A teacher may choose to become eligible for the Continuing Teaching License in lieu of obtaining the Initial II Teaching License. (See OAR 584-060-0022.)

(6) Teachers issued Initial Teaching Licenses prior to July 1, 2005 must meet the requirements of this rule prior to the expiration of ten (10) years from the date the first Initial Teaching License was issued. The additional year granted to licensees holding an Initial Teaching License prior to October 13, 2003, will be included in the ten year calculation for meeting the requirements of this rule.

(7) This rule applies to all Initial or Initial I Teaching Licenses issued after December 1998.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165 & 342.136

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-060-0071
Endorsements With Special Requirements

(1) There are several specialties in which endorsement of a teaching license must apply to more than one level of authorization.

(a) Multiple-subject endorsement is not required at any level for these specialties, meaning that a subject mastery test is required, but the Multiple Subjects Examination (MSE) is not. However, passage of the MSE alone, will not qualify an applicant for addition of the multiple subjects endorsement on licenses endorsed in specialty areas provided for under this rule.

(b) Passage of the MSE may be necessary in order for a newly hired teacher with a special education or an ESOL endorsement to meet the definition of highly qualified under the federal No Child Left Behind Act (NCLBA) or under the Individuals with Disabilities Education Improvement Act (IDEIA) in the position in which they are hired.

(2)(a) Teachers of the following specialty areas must qualify, through approved academic preparation in the desired authorization levels and through supervised work experience or student teaching, for authorization at any of the following two levels: early childhood and elementary; or elementary and middle-level; or middle-level and high school:

(A) Art;

(B) Bilingual education with English for speakers of other languages (ESOL);

(C) ESOL;

(D) Music;

(E) Physical education;

(F) Adaptive physical education;

(G) Reading; and

(H) Special education.

(b) Candidates completing a practica experience at either early childhood or elementary and at either middle or high school level shall qualify for authorization for prekindergarten (pre k) through grade twelve (12).

(c) Teachers of special education must complete preparation in the full continuum of disabilities: mild, moderate, and severe.

(3) Library media specialists must qualify, through approved academic preparation and through supervised work experience or student teaching, for authorization at all four levels: early childhood, elementary, middle-level, and high school.

(4)(a) Special education endorsements in the following areas must qualify, through approved academic preparation and through supervised work experience or student teaching, for authorization at all four levels: early childhood, elementary, middle-level, and high school:

(A) Communication disorders;

(B) Hearing impairments; or

(C) Visual impairments.

(b) Teachers applying for the visual impairments endorsement must demonstrate proficiency in reading and writing Braille by obtaining a certificate of competency from the National Library Service for the Blind and Physically Handicapped or an equivalent certificate currently approved by the commission.

(c) Teachers applying for the communication disorders endorsement may obtain authorization at all four levels by earning a certificate of clinical competence from the American Speech and Hearing Association or successor approved by the commission.

(5) Candidates for endorsements in Early Intervention and Early Childhood Special Education must qualify for the Early Childhood Authorization only by:

(a) Completing preparation in psychological foundations and methods appropriate for Early Childhood Education/Early Intervention;

(b) Completing a supervised practicum in early intervention and early childhood special education; and

(c) Documenting knowledge of the endorsement by passing the required commission-approved licensure examination in Special Education; Preschool/Early Childhood.

(d) The commission-approved licensure Multiple Subjects Examination (MSE) is required for Early Childhood Education/Early Intervention endorsement.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-060-0171
Limited Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Limited Teaching License.

(2) This license, issued for three years and renewable, is valid at any level and designated for one or more highly specialized subjects of instruction for which the commission does not issue a specific endorsement. The Executive Director has the authority to grant a Limited Teaching License for an exception to some discreet subjects within an established endorsement upon a showing of district need. Requests for exceptions to established endorsements may be submitted to the commission for approval at the Executive Director's discretion.

(3) This license is valid for substitute teaching at any level but only in subjects listed on the license.

(4) To be eligible for a Limited Teaching License the applicant must have:

(a) Transcripts documenting an accredited associate's degree or its approved equivalent in objectively evaluated post-secondary education related to the intended subject of instruction,

(b) Submit evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on the commission-adopted *Protecting Student and Civil Rights in the Education Environment licensure test* prior to the first renewal of this license; and

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.

(5) The Limited Teaching License is restricted to use within a district that has applied for it jointly with the teacher, whose qualifications and job description are subject to commission approval.

(6) Upon application, the co-applicant district must describe its particular need in relation to the co-applicant teacher's documented qualifications, agree to provide a mentor up to the first renewal of the license, and attest that circumstances prevent hiring a suitable teacher holding any other full-time license appropriate for the role to be filled.

(7) To be eligible for renewal of the Limited Teaching License, an applicant must:

(a) For the first renewal only:

(A) The district must identify the mentor assigned to the teacher including a signed statement from a district administrator attesting to the teacher's progress during the first three years of the license.

(B) The educator must receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; or in lieu of a passing score on basic skills, the district must submit a letter from the district that includes a statement from the principal verifying that the students taught by the teacher continue to make satisfactory academic progress; and

(C) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

(b) For all subsequent renewals:

(A) Provide a statement from the district attesting that the teacher's assignment is exactly the same as originally requested; and

(B) Establish, maintain and report a professional development plan in accordance with OAR 584-090-0020.

(C) A teacher with a Limited Teaching License who works less than .5 FTE during the school year, averaged out over the entire year, need not report continuing professional development.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430 & 342.985
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TPSC 6-2003(Temp), f. & cert. ef 11-13-03 thru 5-9-04; TSPC 3-2004, f. & cert. ef. 5-14-04; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-060-0181
Substitute Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Substitute Teaching License. This license, issued for three years and renewable, is valid at any level in any specialty to substitute for a teacher who is temporarily unable to work.

(2) To be eligible for a Substitute Teaching License, the applicant must:

(a) Have a bachelor's degree or higher from a regionally accredited institution or an approved foreign equivalent related to teaching at one or more levels. Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Notwithstanding OAR 584-017-0201, hold an unrestricted license for full-time teaching in any state or submit proof of completion of an approved teacher education program in any state.

(c) Demonstrate knowledge of applicable civil rights laws;

(d) Furnish fingerprints in the manner prescribed by the commission if the applicant has not been fingerprinted or has not held an active license issued by the commission in the past three years; and

(3) The holder of a Substitute Teaching License may not continuously replace an individual teacher absent for more than three consecutive months without obtaining a full-time license. If the educator is only lacking recency to qualify for the full-time license, the educator must complete coursework to qualify for the long-term placement.

(4) To be eligible for renewal of the Substitute Teaching License an applicant must:

(a) Show evidence of having obtained a passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree;

(b) Obtain a passing score on a test of knowledge of U.S. and Oregon civil rights laws and professional ethics;

(5) A district and co-applicant educator may apply for an Emergency Teaching License for the holder of a Substitute Teaching License if the district is unable to obtain a regularly licensed teacher for any position lasting more than three consecutive months. The Emergency Teaching License will allow the educator to teach for time beyond the allowed timelines stated in subsection (3) above. The Executive Director may approve the Emergency Teaching License upon proof of the district's emergency.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430 & 342.985
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 5-2004, f. & cert. ef. 8-25-04; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-060-0220
International Visiting Teacher License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified and eligible applicant may be granted an International Visiting Teacher License. The intent of this license is to provide up to a three-year cultural exchange of teachers and teaching strategies between Oregon and a participating country other than the United States.

(2) This license is issued for one year and is renewable up to two times.

(3) This license is valid for substitute teaching only at the grade authorization levels and subject-matter endorsement areas listed on the license.

(4) The International Visiting Teacher License is restricted to use within the district that has applied for it jointly with the teacher and is valid

for teaching with the requesting employer only at the designated grade authorization levels and subject-matter endorsement areas requested by the employer and listed on the license. If the license is endorsed in a core academic area, the licensee may be considered to be "highly qualified" pursuant to federal law.

(5) To be eligible for the International Visiting Teacher License, the applicant must co-apply with the requesting district and submit the following materials as part of the application packet:

(a) A letter from the co-applying district specifying the grade levels and subject-matter endorsement areas in which the district would like the applicant to teach and a brief description of the plan for supervision and mentoring the district has in place including the name of the mentor assigned to the applicant once licensed;

(b) Transcript evaluation or some other convincing evidence that the applicant holds the equivalent of a U.S. baccalaureate or higher degree and proof that the applicant has completed a professional teacher preparation program in their country. The transcript and other evidence submitted will be evaluated for subject-matter competency in the subject-area in which the license is being requested;

(c) A copy of all professional teaching credentials held by the applicant;

(d)(A) Evidence that the applicant has completed the equivalent of three full years, (not less than 27 months) of teaching experience; or

(B) Proof of participation in the Cultural Exchange Program in a J-1 Visa status monitored by the Oregon Department of Education. Proof of participation must include verification from the Oregon Department of Education;

(e) Submit the completed "Sample Questions" in the *Protecting Student and Civil Rights in the Education Environment* study guide. The applicant must obtain a passing score on the commission-adopted *Protecting Student and Civil Rights in the Education Environment licensure test* prior to the first renewal of this license; and

(f) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(6) To be eligible for a one-year renewal of the International Visiting Teaching License, an applicant must:

(a) Submit an application packet for renewal;

(b) A PEER form verifying the applicant's assignment;

(c) A passing score on a test of knowledge of U.S. and Oregon civil rights laws and professional ethics as approved by the Commission; and

(d) Submit a letter from the co-applying school district attesting to the following:

(A) That the teacher's assignment will remain within the scope of grades and subjects on the license;

(B) The plan for supervision and mentoring remains in place and update the name of the mentor if appropriate.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430 & 342.985
Hist.: TSPC 8-2009, f. & cert. ef. 12-15-09

584-065-0035
Knowledge, Skills and Abilities for Special Education Endorsement

(1) **Definitions**:

(a) "Individual with exceptional learning needs" means individuals with disabilities and individuals with exceptional gifts and talents.

(b) "Exceptional Condition" means both single and co-existing conditions. These may be two or more disabling conditions or exceptional gifts or talents coexisting with one or more disabling condition.

(c) "Special Curricula" denotes curricular areas not routinely emphasized or addressed in general curricula, e.g., social, communication, motor, independence, self-advocacy.

(2) **Authorizations**: Candidates for endorsements special education shall qualify for two levels of authorization by:

(a) Completing preparation in developmental psychology and methods appropriate for early childhood and elementary education, OR elementary and middle level, OR middle level and high school authorizations;

(b) Documenting knowledge of the endorsement by passing the commission-approved test for special education;

(A) The Multiple Subjects Examination (MSE) is not required to obtain the license;

(B) However, the MSE is required in order for special educators licensed to teach in grades preK through 8 to be meet the federal definition of "highly qualified" teacher;

(c) Candidates completing a practica experience at either early childhood or elementary and at either middle or high school levels shall qualify for authorization for pre-kindergarten through grade twelve.

(3) **Field Experience**:

(a) Candidates progress through a series of developmentally sequenced field experiences for the full range of ages, types and levels of abilities (mild, moderate and severe), and collaborative opportunities that are appropriate to the license or roles for which they are preparing.

(b) These field and clinical experiences are supervised by qualified professionals who are either licensed as special educators or eligible for licensure as special educators.

(4) Candidates for special education endorsements must complete an approved academic program for special education and will demonstrate competency through OAR 584-017-0185 in the following standards:

(a) **Standard 1**: **Foundations**: Candidates understand the field as an evolving and changing discipline based on philosophies, evidence-based principles and theories, relevant laws and policies, diverse and historical points of view, and human issues that have historically influenced and continue to influence the field of special education and the education and treatment of individuals with exceptional needs both in school and society. Candidates:

(A) Understand how these influence professional practice, including assessment, instructional planning, implementation, and program evaluation;

(B) Understand how issues of human diversity can impact families, cultures, and schools, and how these complex human issues can interact with issues in the delivery of special education services;

(C) Understand the relationships of organizations of special education to the organizations and functions of schools, school systems, and other agencies; and

(D) Use this knowledge as a ground upon which to construct their own personal understandings and philosophies of special education.

(b) **Standard 2**: **Development and Characteristics of Learners**. Candidates know and demonstrate respect for their students first as unique human beings. Candidates:

(A) Understand the similarities and differences in human development and the characteristics between and among individuals with and without exceptional learning needs;

(B) Understand how exceptional conditions can interact with the domains of human development and they use this knowledge to respond to the varying abilities and behaviors of individual's with exceptional learning needs; and

(C) Understand how the experiences of individuals with exceptional learning needs can impact families, as well as the individual's ability to learn, interact socially, and live as fulfilled contributing members of the community.

(c) **Standard 3**: **Individual Learning Differences**. Candidates understand the effects that an exceptional condition can have on an individual's learning in school and throughout life. Candidates:

(A) Understand that the beliefs, traditions, and values across and within cultures can affect relationships among and between students, their families, and the school community;

(B) Are active and resourceful in seeking to understand how primary language, culture, and familial backgrounds interact with the individual's exceptional condition to impact the individual's academic and social abilities, attitudes, values, interests, and career options; and

(C) Demonstrate that the understanding of these learning differences and their possible interactions provide the foundation upon which special educators individualize instruction to provide meaningful and challenging learning for individuals with exceptional learning needs.

(d) **Standard 4**: **Instructional Strategies**. Candidates posses a repertoire of evidence-based instructional strategies to individualize instruction for individuals with exceptional learning needs. Candidates:

(A) Select, adapt, and use these instructional strategies to promote challenging learning results in general and special curricula and to appropriately modify learning environments for individuals with exceptional learning needs;

(B) Enhance the learning of critical thinking, problem solving, and performance skills of individuals with exceptional learning needs, and increase students' self-awareness, self-management, self-control, self-reliance, and self-esteem; and

(C) Emphasize the development, maintenance, and generalization of knowledge and skills across environments, settings, and the lifespan.

(e) **Standard 5**: **Learning Environments and Social Interactions**. Candidates actively create learning environments for individuals with

exceptional learning needs that foster cultural understanding, safety and emotional well being, positive social interactions, and active engagement of individuals with exceptional learning needs. Candidates:

(A) Foster environments in which diversity is valued and individuals are taught to live harmoniously and productively in a culturally diverse world;

(B) Shape environments to encourage the independence, self-motivation, self-direction, personal empowerment, and self-advocacy of individuals with exceptional learning needs;

(C) Help their general education colleagues integrate individuals with exceptional learning needs in regular environments and engage them in meaningful learning activities and interactions;

(D) Use direct motivational and instructional interventions with individuals with exceptional learning needs to teach them to respond effectively to current expectations;

(E) Demonstrate the ability to safely intervene with individuals with exceptional learning needs in crisis; and

(F) Demonstrate the ability to coordinate all these efforts and provide guidance and direction to para-professionals and others, such as classroom volunteers and tutors.

(f) **Standard 6**: **Language**. Candidates understand typical and atypical language development and the ways in which exceptional conditions can interact with an individual's experience with and use of language. Candidates:

(A) Use individualized strategies to enhance language development and teach communication skills to individuals with exceptional learning needs;

(B) Are familiar with augmentative, alternative, and assistive technologies to support and enhance communication of individuals with exceptional need;

(C) Match their communication methods to an individual's language proficiency and cultural and linguistic differences; and

(D) Provide effective language models, and they use communication strategies and resources to facilitate understanding of subject matter for individuals with exceptional learning needs whose primary language is not the dominant language.

(g) **Standard 7**: **Instructional Planning**. Individualized decision-making and instruction is at the center of special education practice. Candidates:

(A) Develop long-range individualized instructional plans anchored in both general and special curricula;

(B) Systematically translate these individualized plans into carefully selected shorter-range goals and objectives taking into consideration an individual's abilities and needs, the learning environment, and a myriad of cultural and linguistic factors;

(C) Understand that individualized instructional plans emphasize explicit modeling and efficient guided practice to assure acquisition and fluency through maintenance and generalization;

(D) Demonstrate that understanding these factors as well as the implications of an individual's exceptional condition, guides the special educator's selection, adaptation, and creation of materials, and the use of powerful instructional variables;

(E) Demonstrate the ability to modify instructional plans based on ongoing analysis of the individual's learning progress;

(F) Facilitate this instructional planning in a collaborative context including the individuals with exceptionalities, families, professional colleagues, and personnel from other agencies as appropriate;

(G) Develop a variety of individualized transition plans, such as transitions from preschool to elementary school and from secondary settings to a variety of postsecondary work and learning contexts; and

(H) Are comfortable using appropriate technologies to support instructional planning and individualized instruction.

(h) **Standard 8**: **Assessment**. Assessment is integral to the decision-making and teaching of special educators and candidates use multiple types of assessment information for a variety of educational decisions. Candidates:

(A) Use the results of assessments to help identify exceptional learning needs and to develop and implement individualized instructional programs, as well as to adjust instruction in response to ongoing learning progress;

(B) Understand the legal policies and ethical principles of measurement and assessment related to referral, eligibility, program planning, instruction, and placement for individuals with exceptional learning needs, including those from culturally and linguistically diverse backgrounds;

(C) Understand measurement theory and practices for addressing issues of validity, reliability, norms, bias, and interpretation of assessment results;

(D) Understand the appropriate use and limitations of various types of assessments;

(E) Collaborate with families and other colleagues to assure non-biased, meaningful assessments and decision-making;

(F) Conduct formal and informal assessments of behavior, learning, achievement, and environments to design learning experiences that support the growth and development of individuals with exceptional learning needs;

(G) Use assessment information to identify supports and adaptations required for individuals with exceptional learning needs to access the general curriculum and to participate in school, system, and statewide assessment programs;

(H) Regularly monitor the progress of individuals with exceptional learning needs in general and special curricula; and

(I) Use appropriate technologies to support their assessments.

(i) **Standard 9**: **Professional and Ethical Practice**. Candidates are guided by the profession's ethical and professional practice standards. Candidates:

(A) Practice in multiple roles and complex situations across wide age and developmental ranges;

(B) Understand that their practice requires ongoing attention to legal matters along with serious professional and ethical considerations;

(C) Engage in professional activities and participate in learning communities that benefit individuals with exceptional learning needs, their families, colleagues, and their own professional growth;

(D) View themselves as lifelong learners and regularly reflect on and adjust their practice;

(E) Are aware of how their own and others attitudes, behaviors, and ways of communicating can influence their practice;

(F) Understand that culture and language can interact with exceptionalities, and are sensitive to the many aspects of diversity of individuals with exceptional learning needs and their families;

(G) Actively plan and engage in activities that foster their professional growth and keep them current with evidence-based best practices; and

(H) Know their own limits of practice and practice within them.

(j) **Standard 10**: **Collaboration**. Candidates routinely and effectively collaborate with families, other educators, related service providers, and personnel from community agencies in culturally responsive ways. This collaboration assures that the needs of individuals with exceptional learning needs are addressed throughout schooling. Candidates:

(A) Embrace their special role as advocate for individuals with exceptional learning needs;

(B) Promote and advocate the learning and well being of individuals with exceptional learning needs across a wide range of settings and a range of different learning experiences;

(C) Are viewed as specialists by a myriad of people who actively seek their collaboration to effectively include and teach individuals with exceptional learning needs;

(D) Are a resource to their colleagues in understanding the laws and policies relevant to Individuals with exceptional learning needs; and

(E) Use collaboration to facilitate the successful transitions of individuals with exceptional learning needs across settings and services.

(5) **Valid to Teach**: This endorsement is valid to teach: Any assignment requiring a special education teacher for students with the full range of disabilities from mild to severe within the grade authorizations held on the educator's license.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120-342.143, 342.153, 342.165 & 342.223 - 342.232
Hist.: TSPC 8-2009, f. & cert. ef. 12-15-09

584-070-0012
Initial I School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial I School Counselor License for three years.

(2) The Initial I School Counselor License is valid as designated for regular counseling at early childhood and elementary grade levels; at elementary and middle-level grade levels; or at middle and high school grade levels, or at all four levels.

(a) The license is also valid for substitute counseling at any level; and

(b) The license is also valid for substitute teaching at any level in any specialty.

(3) To be eligible for an Initial I School Counselor License, an applicant must satisfy all of the following general preparation requirements:

(a) A teaching experience satisfied in one of the following ways:

(A) Two academic years of experience as a full-time licensed teacher in a public education setting or in a regionally accredited private school in any state or other U.S. jurisdiction; or

(B) Completion of a practicum approved by the commission in teaching at any grade authorization level, as part of an initial graduate program or separately; or

(C) Other evidence of educational experience approved by the Executive Director.

(b) A master's or higher degree in counseling, education, or related behavioral sciences from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with any equally accredited bachelor's degree;

(c) Completion in Oregon or another U.S. jurisdiction, as part of the master's degree or separately, of an initial graduate program in school counseling at an institution approved for counselor education by the commission;

(d) A passing score as currently specified by the commission on a test of professional knowledge for school counselors, or five years of experience counseling full time on a nonprovisional license valid for the assignment in a public school or regionally accredited private school in any U.S. jurisdiction before holding any Oregon license;

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See OAR 584-036-0080 and 584-036-0082 for information related to Basic Skills Tests.)

(f) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics; and

(g) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(4) The Initial I School Counselor License may be renewed two times for three years upon showing progress toward completion of the renewal requirements as described in OAR 584-070-0014 during the life of the Initial I School Counselor License under the following conditions:

(a) The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment; and

(b) The educator must qualify for an Initial II School Counselor License upon expiration of ten years following the date the first Initial School Counselor License was issued if the license was issued prior to July 1, 2005. All School Counselor Licenses issued after June 30, 2005 must qualify for an Initial II School Counselor License upon the expiration of nine years following the date the first Initial School Counselor License was issued; and

(c) If the Initial I School Counselor license was issued on the basis of an out-of-state nonprovisional license rather than completion of an Oregon-approved program; the educator must have completed any incomplete requirements in subsection (3) above;

(d) If the educator is eligible for application of OAR 584-048-0062, Special Provisions for Renewal of Personnel Service Licenses.

(5) The Executive Director may grant an extension to the Initial I School Counselor License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the school counselor was unable to complete the requirements for the Initial II School Counselor License during the life of the Initial I School Counselor License.

(6) School counselor licenses are authorized for grade levels that are the same as those used to authorize teachers (see OAR 584-060-0051 and 584-060-0052), except that the levels are authorized in pairs: early childhood and elementary (ECE/ELE); or middle-level and high school (ML/HS).

(a) Early childhood and elementary authorization is valid up through grade eight in any school.

(b) Middle level and high school authorization is valid in grades five through twelve in any school.

(c) The Initial I School Counselor License is authorized for either two or four grade authorization levels, i.e., one or both pairs, on the basis of professional education, experience, previous licensure, and specialized academic course work verified by one of the following:

(A) Evidence verified by an Oregon-approved School Counseling Program; or

(B) An out-of-state non-provisional School Counselor License valid for all grade levels;

(7) On an Initial I School Counselor License authorized for only two levels, the remaining pair of levels can be added prior to attainment of the Initial II School Counselor or the Continuing School Counselor License. The remaining levels will be added upon acquisition of practical experience in one of two ways:

(a) A practicum of four (4) semester hours or six (6) quarter hours at either or both of the paired new grade authorization levels, entailing a minimum of 200 clock hours, in an institution approved to prepare for those grade authorization levels; or

(b) One academic year at either or both of the paired new grade authorization levels as permitted in subsection (8) below.

(8) A counselor authorized for only one of the paired grade authorization levels may counsel in the remaining unauthorized grade levels for a period of not more than three years while pursuing authorization at the other paired authorization grade levels upon request for a conditional assignment permit pursuant to OAR 584-036-0081.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-070-0111

Transitional School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant **may** be granted a Transitional School Counselor License.

(2)(a) The Transitional School Counselor License is issued for three years and is non-renewable except under extenuating circumstances described below in subsection 6 of this rule.

(b) The educator must qualify for an Initial II School Counselor License upon expiration of ten years following the date the first Initial or Transitional School Counselor License was issued if the license was issued prior to July 1, 2005.

(c) All School Counselor Licenses issued after June 30, 2005 must qualify for an Initial II School Counselor License upon the expiration of nine years following the date the first Initial or Transitional School Counselor License was issued.

(3) The Transitional School Counselor License is valid for regular or substitute school counseling at all age or grade levels. Applicants who wish to counsel more than three years will be advised on how they can qualify for the Initial I or the Initial II School Counselor License, for which they may apply at any time.

(4) To be eligible for a Transitional School Counselor License, the applicant must have:

(a)(A) A master's or higher degree in counseling, education, or related behavioral sciences, including but not limited to social work or psychology, from a regionally accredited institution or an approved foreign equivalent; or

(B) Have held an unrestricted school counseling license in any state;

(b) Submit evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on the commission-adopted *Protecting Student and Civil Rights in the Education Environment licensure test* prior to issuance of any next stage license; and

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(5) The Transitional School Counselor License will not be restricted as to employer if the applicant has held an unrestricted license for school counseling in any state.

(6)(a) Upon filing an application and fee in the form and manner required by the commission; a restricted extension to the Transitional School Counselor License may be issued for up to one year.

(b) To be eligible for the restricted extension the following must be filed:

(A) A joint application between the educator and the employing school district;

(B) A description of the extenuating circumstances that have prevented the educator from completing the requirements for the Initial I or Initial II School Counselor License within the life of the Transitional School Counselor License; and

(C) A description of the steps the district will take to ensure the applicant will qualify for the Initial I or Initial II School Counselor License upon expiration of the restricted extension to the Transitional School Counselor License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127 & 342.165

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-070-0112
Restricted Transitional School Counselor License

(1) Upon filing a correct and complete application with a co-applicant district in form and manner prescribed by the commission, a qualified applicant may be granted a Restricted Transitional School Counselor License.

(2) The Restricted Transitional School Counselor is issued for three years and is non-renewable.

(3) The Restricted Transitional School Counselor License will be restricted for use within a district that has applied for it jointly with the counselor and may not be used for substitute teaching unless the educator also holds another license valid for substitute teaching issued by the commission.

(4) To be eligible for a Restricted Transitional School Counselor License, the applicant must have all of the following:

(a) An application that includes the following:

(A) A joint request by an employing district; and

(B) The applicant counselor's qualifications summarized on a submitted resume; and

(C) A statement from the district describing the circumstances that prevent hiring a school counselor with an unrestricted license for the position being filled; and

(b) A bachelor's or higher degree from a regionally accredited institution or approved foreign equivalent;

(c) Demonstrated knowledge of applicable civil rights laws or a sign affidavit indicating the applicant has read the Discrimination and the Oregon Educator publication. The knowledge of civil rights laws requirement must be fulfilled prior to issuance of any next stage license;

(d) Furnished fingerprints and passed a background check in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.); and

(e) One of the following:

(A) Be enrolled in a school counselor program approved for school counseling licensure by any state and have completed approximately one-half of the program; or

(B) Has been a full-time certified Child Development Specialist (CDS) for at least three academic years; or

(C) Has a master's degree in a counseling-related field.

(5) The Restricted Transitional School Counselor License is not transferable to another district. However, another district may co-apply for a Restricted Transitional School Counselor License for any time remaining in the three years from the date the first Restricted Transitional School Counselor License was issued. A C-1 application and full fee must accompany the request.

(6)(a) Upon filing an application and fee in the form and manner required by the commission; a restricted extension to the Restricted Transitional School Counselor License may be issued for up to one year.

(b) To be eligible for the restricted extension the following must be filed:

(A) A joint application between the educator and the employing school district;

(B) A description of the extenuating circumstances that have prevented the educator from completing the requirements for the Initial I or Initial II School Counselor License within the life of the Restricted Transitional School Counselor License; and

(C) A description of the steps the district will take to ensure the applicant will qualify for the Initial I or Initial II School Counselor License upon expiration of the restricted extension to the Restricted Transitional School Counselor License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127 & 342.165
Hist.: TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-070-0310
Limited Student Service License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Limited Student Service License. This license, issued for three years and renewable, is valid at any authorization level and designated for a specialized type of direct service to students for which the commission at its discretion may not require a counselor or psychologist license. It is not valid for substitution of any kind.

(2) To be eligible for a Limited Student Service License the applicant must:

(a) Have a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally valid master's degree or other specialized preparation related to the intended service role and ordinarily equivalent to one academic year of graduate study. Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Submit evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on the commission-adopted *Protecting Student and Civil Rights in the Education Environment licensure test* prior to renewal of this license; and

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(3) The Limited Student Service License is restricted to use within a district that has applied for it jointly with the applicant, whose qualifications and job description are subject to commission approval. Upon application, the co-applicant district must describe its particular need in relation to the co-applicant specialist's qualifications summarized on a submitted resume, agree to provide a mentor during the first year of the assignment, and attest that the role to be filled has been structured so as not to require a licensed school counselor or psychologist.

(4) The holder of a Limited Student Service License shall use only the title specifically approved by the commission and shall not use any unapproved title or imply any unapproved function. Titles such as "advisor" or "student service specialist" or "student assistance specialist" will more readily be approved. The following provisos apply:

(a) No holder of a limited license shall use a title containing words derived from "psychology" nor claim to be a psychologist or to render psychological services without obtaining a school psychologist license from the commission unless licensed as a psychologist or psychologist associate by the Board of Psychologist Examiners. Under ORS 675.990(1)(b), a violation of this subsection is a Class A misdemeanor.

(b) The commission at its discretion may consider a title indicating a therapeutic student service role like counseling or social work, for a specialist who has a corresponding master's or doctor's degree, if the applicant is licensed by the Board of Licensed Professional Counselors and Therapists or is demonstrably prevented from gaining admission to a graduate program in school counseling or school psychology and therefore cannot reasonably be required to apply for a non-renewable transitional license.

(c) The commission will ordinarily approve an appropriate social work title for an applicant licensed by the Board of Clinical Social Workers.

(5) To be eligible for renewal of the Limited Student Service License, an applicant must obtain a passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree. The applicant must also obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-080-0022
Continuing Administrator License (CAL)

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing Administrator License.

(2) The Continuing Administrator License is issued for five (5) years and is renewable repeatedly under conditions specified below.

(3) The Continuing Administrator License is valid for school administration at all age or grade levels in any position and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing Administrator License, an applicant must satisfy all of the following provisions within this subsection. The applicant must:

(a) Educator Fitness: Possess the personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Master's Degree: Hold a master's degree or higher;

(c) Program of Advanced Competency: Complete beyond both the master's degree and beyond the initial graduate program in school administration, an advanced program in administrative competencies consisting of at least eighteen (18) semester hours or twenty-seven (27) quarter hours of graduate credit or the equivalent.

(A) Advanced Program Waiver: Exceptionally, the applicant may qualify for waiver of the advanced institutional program or the assessment of advanced competencies by having a regionally accredited doctor's degree in school administration or educational leadership;

(B) Out-of-State Advanced Program:

(i) If the eighteen (18) semester hours or twenty-seven (27) quarter hours beyond the master's degree, required in subsection (c) above, was completed out-of-state, no additional validation will be required so long as the applicant also has five (5) years of administrative experience on any unrestricted out-of-state administrator license or an Oregon license appropriate for the assignment.

(ii) The out-of-state experience may be cumulative and need not be continuous in one state.

(iii) If the applicant does not have five (5) years of administrative experience, the advanced program will be evaluated by the Commission to determine equivalency. The evaluation will be based upon an established rubric representing the equivalent programs offered by Oregon approved administrator preparation programs.

(iv) After TSPC evaluation, additional coursework may be required to acquire the Continuing Administrator License.

(d) Fingerprints: Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement.); and

(e) Civil Rights: A passing score on a test of knowledge of U.S. and Oregon civil rights laws and professional ethics. An emergency license will be issued for ninety (90) days during which time the applicant must complete the civil rights requirement;

(f) Professional Knowledge Test: A passing score on a test of professional administrator knowledge or completion of alternative assessment pursuant to OAR 584-052-0030 et seq. approved by the Commission; and

(g) Experience on an Administrative License: Have three (3) years of one-half time or more experience on any administrator license appropriate for the assignment in a public or accredited private school setting.

(5) The Continuing Administrator License may be renewed for five (5) years upon completion of professional development pursuant to OAR 584 division 90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 8-2009, f. & cert. ef. 12-15-09

584-080-0151
Transitional Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an unrestricted Transitional Administrator License.

(2) The Transitional Administrator License is valid for regular or substitute administration at all age or grade levels and it is also valid for substitute teaching at any level in any specialty.

(3) The Transitional Administrator License is only valid for three years and upon expiration, the educator must qualify for either the Initial or Continuing Administrator License.

(4) To be eligible for a Transitional Administrator License, the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution or approved foreign equivalent;

(c) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state must submit evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics prior to any further licensure; and

(d) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(5) The Transitional Administrator License will not be restricted as to employer if:

(a) The applicant has three academic years of experience as a full-time licensed educator on any license appropriate for the assignment in a public school or regionally accredited private school in any state or other U.S. jurisdiction; and

(b) The applicant has held an unrestricted license for school administration in any state.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140 & 342.165
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-080-0152
Transitional Superintendent License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant shall be granted a Transitional Superintendent License.

(2) The Transitional Superintendent License is not restricted as to employer and is issued only for three years, and cannot be renewed or reissued.

(3) The Transitional Superintendent License is valid for the position of superintendent when issued to a person who has been a superintendent on regular assignment and license in any state. The license is also valid for substitute teaching at any authorization level in any specialty.

(4) To be eligible for a Transitional Superintendent License, the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's degree or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution;

(c) Have been employed as a superintendent for five years or more in any state before holding an Oregon license;

(d) Hold a valid superintendent's license from that state based upon completion of an approved program;

(e) Furnish fingerprints in the manner prescribed by the Commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(f) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state must submit evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics prior to any further licensure.

(5) While holding this license, an applicant must complete an Oregon school law and finance class.

(6) Upon completion of the requirements in subsections (4) and (5) above, in addition to three consecutive years of full-time experience as a superintendent in the State of Oregon, the applicant shall qualify for a Continuing Administrator License as defined in OAR 584-080-0022.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140, & 342.165
Hist.: TPSC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-080-0153
Restricted Transitional Administrator License

(1) Upon filing a correct and complete joint application with a co-applicant employing school district in form and manner prescribed by the commission, a qualified applicant may be granted a Restricted Transitional Administrator License.

(2) The Restricted Transitional Administrator License is valid for regular or substitute administration at all age or grade levels and is restricted to the district from which the co-application is received.

(3) The Restricted Transitional Administrator License is not valid for substitute teaching at any level in any specialty.

(4) The Restricted Transitional Administrator License is only valid for three years and is not renewable. Upon expiration of the license, the educator must qualify for the Initial Administrator License.

(5) To be eligible for a Restricted Transitional Administrator License, the applicant must have all of the following:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's degree or higher from a regionally accredited institution or approved foreign equivalent;

(c) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state must submit the evidence the applicant has reviewed the *Protecting Student and Civil Rights in the Education Environment* study guide and test framework. The applicant must obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics prior to any further licensure;

(d) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(e) Submit a letter from the employing district describing the particular need in relation to the applicant's administrator qualifications, which must be summarized, on a submitted resume. The district must agree to provide a mentor and attest that circumstances prevent hiring a suitable administrator holding an unrestricted full-time license appropriate for the assignment.

(6) Upon filing an application and fee in the form and manner required by the commission; a restricted extension for the Restricted Transitional Administrator License may be issued for up to one year upon joint application from an educator and the employing district when the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for an Initial or Continuing Administrator License.

(a) If the extenuating circumstances are due to the lack of due diligence in completing licensure requirements by the applicant, only enough time to prevent the district from experiencing a true hardship may be granted at the Executive Director's discretion.

(b) The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the regular license upon expiration of the extended Restricted Transitional Administrator License.

(c) Additionally, an applicant may be eligible for an extension of the Restricted Transitional Administrator License, upon joint application with the same or another co-applicant district, if the applicant has completed all the requirements for the Initial Administrator License except for the experience described in OAR 584-080-0012.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140 & 342.165
Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09

584-080-0161
Exceptional Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, an unconventionally qualified applicant may be granted an Exceptional Administrator License at the sole discretion of the commission as permitted under ORS 342.200.

(2) The Exceptional Administrator License is issued for three years and renewable under conditions that the Executive Director may specify, is valid only for a designated position with a job description approved by the Executive Director.

(3) To be eligible for an Exceptional Administrator License the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution or approved foreign equivalent;

(c) Demonstrate extraordinary professional experience that compensates for lack of experience in prekindergarten-12 schools;

(d) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state must submit evidence the applicant has reviewed the Protecting Student and Civil Rights in the Education Environment study guide and test framework. The applicant must obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics prior to any further licensure; and

(e) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(4) Experience that included supervising teachers or working directly with students in some educational setting shall be required as a qualification for any Exceptional Administrator License to be used for supervising teachers or working directly with students in Oregon schools.

(5) The Exceptional Administrator License will be restricted to use in a district that has applied for it jointly with the administrator.

(a) Upon application, the co-applicant district must describe its particular need in relation to the co-applicant administrator's qualifications summarized on a submitted resume; and

(b) The district must attest that no suitable candidate with any unrestricted administrator license is comparably qualified and available for the role to be filled.

(6) The Exceptional Administrator License may be renewed the first time upon demonstration of the following:

(a) A passing score on the test of professional administrator knowledge approved by the Commission for the Continuing Administrator License; and

(b) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

(7) After the first renewal, the Exceptional Administrator License may be continuously renewed upon completing continuing professional development requirements in accordance with OAR 584-090.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127, 342.140, 342.165 & 342.200
Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09

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Water Resources Department
Chapter 690

Rule Caption: Suspension of temporary rules related to recordation of exempt groundwater use with the Oregon Water Resources Department.
Adm. Order No.: WRD 5-2009(Temp)
Filed with Sec. of State: 11-23-2009
Certified to be Effective: 11-23-09 thru 12-27-09
Notice Publication Date:
Rules Suspended: 690-180-0005, 690-180-0010, 690-180-0100, 690-180-0200
Subject: Pursuant to the passage of SB 788 (Chapter 819, 2009 Oregon Laws), owners of land on which a groundwater well is drilled for an exempt groundwater use are required to record the exempt groundwater use with the Oregon Water Resource Department (Department) in accordance with standards established by the Department. Temporary rules contained in OAR chapter 690, division 180 provided the guidance and standards necessary for landowners to meet the requirements of SB 788 until permanent rules could be adopted. The Oregon Water Resources Commission (Commission) adopted permanent rules (OAR chapter 690, division 190) on November 19, 2009. The suspension of OAR chapter 690, division 180, which is the purpose of this temporary rulemaking, coincides with the adoption of the permanent rules by the Commission.
Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-180-0005
Purpose and Applicability

(1) These rules describe the requirements under which the Oregon Water Resources Department will administer and enforce the provisions of ORS 537.545 as amended by SB 788 (75th Oregon Legislative Assembly). Funds collected will be used to assist the state in evaluating groundwater supplies, conduct groundwater studies, carry out groundwater monitoring and process groundwater data.

(2) These rules apply to:

(a) An owner of land on which a well is drilled to allow groundwater use for a purpose that is exempt under ORS 537.545.

(b) A well that is drilled to allow groundwater use for a purpose that is exempt under ORS 537.545 and completed on or after July 23, 2009. This includes construction of a new well and converting an existing well.

Stat. Auth.: ORS 536.027
Stats. Implemented: ORS 537.545
Hist.: WRD 3-2009(Temp), f. & cert. ef. 7-30-09 thru 12-27-09; WRD 4-2009(Temp) f. & cert. ef. 9-2-09 thru 12-27-09; Suspended by WRD 5-2009(Temp), f. & cert. ef. 11-23-09 thru 12-27-09

690-180-0010
Definitions

(1) "Converting" means changing the use of an existing well or hole not previously used to withdraw water such that the well or hole can be used to seek or withdraw water.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Director of the Water Resources Department.

(4) "Recording fee" means the fee, in the amount established under ORS 537.545, as amended by SB 788 (75th Oregon Legislative Assembly), that shall accompany the filing of an exempt groundwater use with the Department.

(5) "Landowner" means the owner of land at the time a well that is subject to these rules is completed.

(6) "Well completion" means the end of construction date reported on the water supply well report.

Stat. Auth.: ORS 536.027
Stats. Implemented: ORS 537.545
Hist.: WRD 3-2009(Temp), f. & cert. ef. 7-30-09 thru 12-27-09; Suspended by WRD 5-2009(Temp), f. & cert. ef. 11-23-09 thru 12-27-09

690-180-0100
Recording Requirements

Landowners shall submit the following information and recording fee to the Department no later than 30 days after well completion:

(1) A map showing the location of the completed well, that includes:

(a) Tax lot map with map reference number or Department approved electronic mapping program.

(b) Location of the well(s) with distances indicated from an identified property or survey corner.

(c) The direction of north marked on the map.

(d) Identify each well by Well Identification Number.

(e) Location of well(s) in relation to driveways, access roads and nearest structures.

(f) Street address of well site if available.

(2) A recording fee in the amount established under ORS 537.545, as amended by SB 788 (75th Oregon Legislative Assembly).

(3) Any other information that the Department deems appropriate for recording purposes.

Stat. Auth.: ORS 536.027
Stats. Implemented: ORS 537.545
Hist.: WRD 3-2009(Temp), f. & cert. ef. 7-30-09 thru 12-27-09; Suspended by WRD 5-2009(Temp), f. & cert. ef. 11-23-09 thru 12-27-09

690-180-0200
Compliance and Enforcement

(1) If the Department determines that a landowner has not met the requirements of these rules, the Department shall notify the landowner of the specific nature of the requirements that have not been met.

(2) Failure to meet the requirements of these rules may result in formal enforcement action(s). These action(s) include:

(a) Establishing a specified time for bringing the landowner into compliance,

(b) Assessment of a civil penalty following procedures outlined in OAR 690-260 rules. Violations under these rules are considered as Class III Minor violations, or

(c) Any other action authorized by law.

Stat. Auth.: ORS 536.027 & 536.900
Stats. Implemented: ORS 537.545
Hist.: WRD 3-2009(Temp), f. & cert. ef. 7-30-09 thru 12-27-09; Suspended by WRD 5-2009(Temp), f. & cert. ef. 11-23-09 thru 12-27-09

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Rule Caption: Requirements for recording exempt groundwater use with the Oregon Water Resources Department.
Adm. Order No.: WRD 6-2009
Filed with Sec. of State: 11-23-2009
Certified to be Effective: 11-23-09
Notice Publication Date: 9-1-2009
Rules Adopted: 690-190-0005, 690-190-0010, 690-190-0100, 690-190-0200
Subject: Senate Bill 788 (Chapter 819, 2009 Oregon Laws) amends ORS 537.545 and directs the Oregon Water Resources Commission to adopt rules to implement provisions of the bill that require owners of land on which an exempt groundwater use well is drilled to submit to the Oregon Water Resources Department a map showing the exact location of the well on the tax lot and a recording fee of $300. These rules provide the guidance and standards necessary for landowners to comply with SB 788.
Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-190-0005
Purpose and Applicability

(1) These rules describe the requirements under which the Oregon Water Resources Department will administer and enforce the provisions of ORS 537.545 relating to the recording of exempt groundwater use. Moneys from fees collected and deposited to the credit of the Water Resources Department Water Right Operating Fund shall be used for the purpose of evaluating groundwater supplies, conducting groundwater studies, carrying out groundwater monitoring, processing groundwater data and the administration and enforcement of ORS 537.545 and these rules.

(2) These rules apply to:

(a) Any owner of land on which a well is completed after July 22, 2009 to allow groundwater use for purposes that are exempt under ORS 537.545.

(b) Each new well that is completed or existing well that is converted to allow groundwater use for purposes that are exempt under ORS 537.545. This includes wells that are drilled to replace an existing well.

(3) These rules do not apply to:

(a) A well that is repaired, deepened, or altered.

(b) A water supply well that is permanently abandoned pursuant to OAR 690-220 within 30 days of well completion.

Stat. Auth.: ORS 536.027
Stats. Implemented: ORS 537.545
Hist.: WRD 6-2009, f. & cert. 11-23-09

690-190-0010
Definitions

(1) "Converting" has the same meaning as defined in ORS 537.515(3).

(2) "Department" means the Oregon Water Resources Department.

(3) "Director" means the Director of the Oregon Water Resources Department.

(4) "Recording " means the filing of a map locating any new or converted well that is completed to allow groundwater use for purposes that are exempt under ORS 537.545, and the fee, in the amount established under 537.545, for each new or converted well that is completed.

(5) "Landowner" means the owner of land at the time a well(s) subject to these rules is completed.

(6) "Well Completion" means the end of construction date reported on the water

supply well report.

(7) "Well Identification Number" means the stamped well number on the stainless steel label that is attached to the well.

Stat. Auth.: ORS 536.027
Stats. Implemented: ORS 537.545
Hist.: WRD 6-2009, f. & cert. 11-23-09

690-190-0100
Recording Requirements

The landowner shall submit the following to the Department no later than 30 days after well completion:

(1) A tax lot map showing the location of the completed well, that includes:

(a) A map reference number (Township, Range and Section).

(b) Location of the completed well with distances (north/south and east/west) indicated from an identified property boundary, property corner or survey corner. Multiple wells may be shown on one tax lot map.

(c) Location of well(s) in relation to nearest driveway, access road and permanent structures.

(d) The direction of north marked on the map.

(e) Well Identification Number for each completed well.

(f) Street address of the completed well if available.

(2) A map submitted under a Department-approved electronic mapping program satisfies the requirements under section (1).

(3) A recording fee in the amount established under ORS 537.545.

Stat. Auth.: ORS 536.027
Stats. Implemented: ORS 537.545
Hist.: WRD 6-2009, f. & cert. 11-23-09

690-190-0200
Compliance and Enforcement

(1) If the Department determines that a landowner has not met the requirements of these rules, the Department shall notify the landowner of the specific nature of the requirements that have not been met.

(2) The Department shall, within 60 days of receipt of the map and fee, notify the landowner of the recording requirements that have not been met.

(3) Failure to meet the requirements of these rules may result in formal enforcement action(s). This action(s) may include:

(a) Establishing a specified time for bringing the landowner into compliance,

(b) Assessment of a civil penalty following procedures outlined in OAR 690-260 rules. Violations under these rules are considered as Class III Minor violations, or

(c) Any other action authorized by law.

Stat. Auth.: ORS 536.027 & 536.900
Stats. Implemented: ORS 537.545
Hist.: WRD 6-2009, f. & cert. 11-23-09

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Rule Caption: Standards, requirements, and fees related to the administration of dams.
Adm. Order No.: WRD 7-2009
Filed with Sec. of State: 12-7-2009
Certified to be Effective: 1-1-10
Notice Publication Date: 12-1-2009
Rules Adopted: 690-020-0100, 690-020-0200
Rules Amended: 690-020-0022, 690-020-0025, 690-020-0029, 690-020-0035
Rules Ren. & Amend: 690-020-0021 to 690-020-0000, 690-020-0039 to 690-020-0050
Subject: Provisions in Senate Bill 788 (Chapter 819, 2009 Oregon Laws) authorize the Oregon Water Resources Department (Department) to charge a dam owner an annual fee based upon the dam's hazard rating as determined by the Department. These rules implement the dam safety and fee provisions of SB 788.
Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-020-0000
Purpose and Applicability

(1) These rules describe the standards and requirements under which the department will administer and enforce the design, construction, maintenance, inspection, and fees regarding dams in Oregon. The purpose is to provide the guidance necessary for dams to be constructed and operated in a manner that will ensure the protection of life and property and to provide the department with the resources necessary to manage and support the construction and safe operation of dams in accordance with these rules.

(2) These rules apply to:

(a) Dams that are not subject to ORS 540.350 to 540.390 as described in ORS 540.400.

(b) Dams that are subject to ORS 540.350 to 540.390 and which exceed the statutory limits as described in ORS 540.400(1) & (2).

(3) These rules do not apply to metal or reinforced concrete water storage tanks or various types of tanks that are part of water treatment facilities.

Stat. Auth.: ORS 540.350 - 540.400, 536.050
Stats. Implemented: ORS 183, 540, 536
Hist.: WRD 12-1986, f. & ef. 10-3-86; WRD 12-1994, f. & cert. ef. 11-7-94; Renumbered from 690-020-0021, WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

690-020-0022
Definitions

The following definitions apply in OAR 690, Division 20:

(1) "Abutment" means a natural valley or canyon side against which the dam is built;

(2) "Acre-foot" means the equivalent volume of one acre covered with one foot of water (325,900 gallons);

(3) "Conduit" means a closed conveyance used to release water through a dam;

(4) "Cutoff Trench" means a trench excavated beneath the dam foundation and backfilled with low permeability material to retard water seepage;

(5) "Dam" means a hydraulic structure built above the natural ground grade line that is used to impound water. Dams include wastewater lagoons and other hydraulic structures that store water, attenuate floods, and divert water into canals;

(6) "Dam Crest" means the top of the dam;

(7) "Department" means the Oregon Water Resources Department;

(8) "Director" means the Director of the Oregon Water Resources Department;

(9) "Embankment" means an engineered earth fill;

(10) "Emergency Spillway" means an overflow structure constructed to bypass flood water and prevent overtopping the dam crest. Often, dams have two spillways. The lower elevation spillway that spills first is referred to as the principle spillway. The higher elevation spillway is referred to as the emergency spillway;

(11) "Foundation" means the ground surface upon which a dam is constructed;

(12) "Freeboard" means the vertical distance between the designed high-water level in the reservoir and the dam crest;

(13) "Gate" or "Valve" means a permanent device for regulating water flow through the dam;

(14) "Hazard Rating" means the rating established by the department for a large dam that pertains to the potential level and degree of damage to life and property downstream of a dam in the event dam failure results in a catastrophic release of water;

(15) "Large Dam" for dam safety purposes, means a dam with a height of 10 feet or more and impounding 3,000,000 gallons (9.2 acre-feet) or more of water;

(16) "Significant dam work" means an activity to repair, rehabilitate, enlarge or otherwise alter a dam in which: 1) at least 30% of the fill material is impacted by the activity, 2) a spillway is being enlarged or repaired that affects the height or hydraulics of the spillway, 3) dam height and/or reservoir size is being increased, 4) a low level outlet conduit or inlet gate is being reworked with excavation or 5) any other activity that could affect the integrity of the dam or its auxiliary works;

(17) "Small dam" for dam safety purposes, means a dam with a height of less than 10 feet or impounding less than 3,000,000 gallons (9.2 acre-feet) of water; and

(18) "Tank" means a fully-enclosed (bottom and sides) hydraulic structure made from metal, reinforced concrete, rigid fiberglass, or plastic that provides its own water-sealing and structural stability.

Stat. Auth.: ORS 183 & 540
Stats. Implemented: ORS 183 & 540, 536
Hist.: WRD 12-1986, f. & ef. 10-3-86; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

690-020-0025
General Requirements for all Dams

(1) The director may require any information or data in addition to that outlined herein which the director finds necessary for determining the safety of the proposed structure.

(2) Whenever possible, precipitation and runoff records shall be submitted as part of the design for new or significant dam work on existing dams. If records are not available for the basin in which the dam is located, the hydrological/hydraulic criteria used in the design shall be submitted.

(3) The director may include as part of any permit to construct a dam limitations and conditions that pertain to construction, operation, maintenance, and the protection of lives and property. These limitations and conditions become, by reference, part of the certificate and remain in effect throughout the life of the water right.

(4) Approved plans and specifications for construction are, by reference, considered limitations and conditions placed on the water right permit and water right certificate. The director retains the authority to place additional limitations and conditions on the water right relative to operation and maintenance.

(5) Dams constructed or operated in violation of limitations and conditions included in the permit or certificate are subject to restricted use and permit cancellation procedures. The certificate affirms the applicant's right to store water subject to the limitations and conditions therein.

(6) An outlet conduit with a minimum diameter of 8" must be installed in any instream reservoir to permit drainage of the reservoir and for passage of flow to downstream prior rights. The director may waive this requirement if the director determines that the conduit is not needed for dam safety and will not be needed to pass flow for the benefit of other water rights, minimum perennial streamflows, or if the director determines an adequate alternative for passing flow is provided. Adequate alternatives must be capable of passing flow in sufficient quantity to satisfy downstream needs, and can include pumps, by-pass channels and siphons. Conduit material should be chosen based on design and site condition requirements. Acceptable conduit materials include reinforced concrete cylinder pipe;

cast-in-place, reinforced concrete; appropriate PVC; concrete-encased corrugated metal pipe or plastic pipe; ductile iron; and cast iron. All joints should be water tight. The conduit valve should be installed at the upstream end and should be industry-manufactured with specifications consistent to the applied usage. Special provisions should be made for pressure conduits gated on the downstream end.

(7) The department shall determine the height of a dam by calculating the vertical distance (measured in feet) between the center point of the dam crest relative to and above the stream channel and the lower of either the natural soil surface that was in place prior to the construction of the dam or where a channel incision exists, the bottom of the channel incision. This measurement is to be taken at the maximum section along the dam's longitudinal axis.

(8) The department shall determine water impoundment volumes (in acre-feet or millions of gallons) as follows:

(a) For dams impounding water for an authorized beneficial use, the impoundment volume indicated in the area-capacity curve from the bottom of the reservoir to the spillway crest. For dams with multiple spillways, 'spillway crest' is referring to the crest of the principle or lower elevation spillway.

(b) For wastewater treatment lagoons, the impoundment volume indicated in the wastewater lagoon plans and specifications, and

(c) For diversion or flood control dams, the impoundment volume calculated at full reservoir at the dam emergency (highest elevation) spillway crest level.

Stat. Auth.: ORS 540.350 - 540.400
Stats. Implemented: ORS 183, 536 & 543
Hist.: WRD 3, f. & ef. 2-18-77; WRD 12-1986, f. & ef. 10-3-86; WRD 12-1994, f. & cert. ef. 11-7-94; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

690-020-0029
Small Dams, Recommended Minimum Standards

The following information is presented for the applicant's assistance in constructing small earthfill dams:

(1) It is recommended that the crest width of the dam be not less than 8 feet.

(2) It is recommended that the upstream slope of the dam be no steeper than 3:1.

(3) It is recommended that the downstream slope of the dam be no steeper than 2:1.

(4) It is recommended that the spillway channel be constructed around the dam, not over the top of the fill. The spillway is commonly excavated in natural material and, if necessary, lined to prevent erosion. The spillway should be large enough to pass the 50-year flood flow without overtopping the dam. Assistance is available from the department in sizing the spillway. Flow passing through the spillway should be returned to the creek channel at a sufficient distance downstream to prevent erosion of the dam's embankment.

(5) It is recommended that all brush, stumps, roots, and organic matter should be cleared from the area to be occupied by the dam. All such material should also be removed from the borrow area.

(6) It is recommended that the outlet pipe be encased with concrete or other method to allow for proper compaction and the prevention of uncontrolled seepage.

(7) Embankment material should be spread parallel with the dam axis in layers not exceeding eight inches in thickness and adequately compacted with sheepfoot roller or other similar equipment.

(8) It is recommended that prior to construction the dam owner have the dam's potential hazard to downstream properties studied using methods listed in 690-020-0100. It is recommended that any dam with a potential significant or high hazard rating be designed by a registered engineer familiar with dam engineering. It is advisable for any dam nearing or surpassing the dam height or storage thresholds for a "large dam" to be designed by a registered engineer.

Stat. Auth.: ORS 183 & 540
Stats. Implemented: ORS 183 & 540
Hist.: WRD 12-1986, f. & ef. 10-3-86; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

690-020-0035
Dams Over the Statutory Limits; Minimum Engineering Design Requirements

All maps, plans, and specifications for the construction of new large dams or significant dam work for existing large dams, must be prepared by a professional engineer licensed to practice in the State of Oregon.

(2) Before initiating design, the engineer shall obtain design criteria from the department.

(3) No newly constructed large dam shall be permitted to store water until written approval is received from the department. Approval will be given after construction has been completed and is certified by the supervising engineer to have been constructed in accordance with the approved plans and specifications.

(4) Design documents shall include the following:

(a) Plans:

(A) Plans for dams submitted for approval must accurately portray the work to be accomplished and be of sufficient detail to adequately define all features of the project. Plans must be submitted on good-quality mylar or vellum and must be neatly and accurately drawn to a scale sufficiently large, with an adequate number of views, for the drawing to be readily interpreted. To meet the requirements of this subsection, the director may allow plans for dams to be submitted electronically. The format of the plans in terms of file type, projection and other details must be approved by the department.

(B) Several sheets may be used to eliminate the necessity of large bulky drawings. No map or plan should be larger than 24 x 36 inches. The following information will be required:

(i) A contour map of the reservoir site which will show the location of the dam by quarter-quarter section, township, range and tax lot; and the name and location of the stream flowing through the reservoir. Government survey lines must be indicated on this map, along with a survey tie to the dam axis from a government land corner. Area and capacity curves and/or tables of the proposed reservoir must be shown;

(ii) A map of the drainage basin showing the location of the dam and reservoir and the streams within the drainage area. This map may be prepared from existing reliable topographical maps and it must include: the number of square miles of drainage area; a brief description of the area; the percentage of bare and timbered lands; and general characteristics of the watershed, whether precipitous, rolling, or comparatively flat. The estimated discharge as well as the spillway capacity at different reservoir water levels should also be provided in the plans or specifications. Extraneous information can also be included in specifications or a separate hydrology report as to not clutter up the map;

(iii) A topographic map of the dam site with contour intervals not to exceed 5 feet. A plan of the dam should be superimposed on this map showing the location of spillways, outlet conduits, and other relevant auxiliary structures;

(iv) A profile of the dam site taken on the axis of the dam and a profile of the spillway along its axis. The profile should also show the location of the outlet conduit and spillway. A log showing the classification of materials encountered below the surface as shown by test pits or borings;

(v) A cross section of the dam at maximum section showing complete details and dimensions;

(vi) Plans showing sections of the outlet conduit, control works, and spillways. These sections should be in sufficient number and detail to make definite all features of the structure.

(b) Specifications. All plans for dams must be accompanied by construction and material specifications:

(A) The specifications shall describe in detail the methods and/or performance criteria to be followed in performing each class of work and shall set forth the requirements for the various types of material to be used in permanent construction;

(B) The specifications must contain a provision for supervision by the engineer during construction and for inspection by the director or director's authorized representative at any time during the construction period;

(C) The specifications must also contain a provision to the effect that plans or specifications shall not be altered or changed without the written approval of the director or the director's authorized representative.

(5) Construction: Construction should be supervised by an engineer licensed to practice in Oregon. As a minimum the following notices and construction reports shall be submitted to the Department:

(a) Notice of beginning of construction;

(b) Notice of intent to begin placement of fill materials;

(c) Completion report including test results, "as-built" drawings, and certificate of completion in accordance with approved plans and specifications.

(6) During the design process for any newly constructed dams or for significant dam work to existing dams that involves potentially changing the volume or rate of water released during failure, the dam owner or owner's representative must submit to the department an inundation analysis using methods described in 690-020-100. The department shall use this analysis to determine the hazard rating of the dam in accordance with 690-020-100.

(a) If a dam is rated as high hazard, an emergency action plan is required and the plan must be reviewed and approved by the department.

(b) The inundation/evacuation map for the dam must be developed using methods described in 690-020-100(2) and must be reviewed and approved by the department.

Stat. Auth.: ORS 540.350 - 540.400
Stats. Implemented: ORS 183, 536 & 540
Hist.: WRD 3, f. & ef. 2-18-77; WRD 12-1986, f. & ef. 10-3-86; WRD 12-1994, f. & cert. ef. 11-7-94; WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

690-020-0050
Enforcement Procedures

The director shall maintain a program of inspecting existing dams. When any structure is found to be in violation of the terms and conditions of the permit or certificate or directly threatens life or property, or when any structure is found where lack of maintenance or unauthorized alterations could lead to a direct threat to life or property, the department shall notify the owner in writing of the violation and the action necessary to bring the structure up to design, operation, or maintenance standards. Failure by the owner to perform the required action may result in proceedings for one or more of the following:

(1) Notice and opportunity for a contested case hearing as provided for in ORS 540.350(5).

(2) Cancellation of the permit.

(3) Posting of the structure to prevent storage or to limit operation until the owner has complied with the requested action required to fulfill conditions of the permit or certificate.

(4) Instituting legal action by the District Attorney or Attorney General to have the facility declared a public nuisance.

(5) Issuance of an order to prevent storage or to breach the embankment as provided for in ORS 540.370.

(6) Any other enforcement action permitted by law.

Stat. Auth.: ORS 183 & 540
Stats. Implemented: ORS 183 & 540
Hist.: WRD 12-1986, f. & ef. 10-3-86; Renumbered from 690-020-0039, WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

690-020-0100
Hazard Rating

(1) Hazard ratings for "large dams" are classified by the department as "high hazard", "significant hazard", or "low hazard" as follows:

(a) High Hazard: This rating indicates that if the dam fails there is a strong plausibility for loss of life. The plausibility is established because of inhabited infrastructure (such as homes and business) downstream that would be inundated to such a degree see 690-020-0100(2)(d) for specific criteria that it would put the person who inhabits the structure in jeopardy. Any factor that puts a strong probability of people being downstream in an inundation area of a dam failure shall be considered. The department shall endeavor to inspect this class of dams on an annual basis.

(b) Significant Hazard: This rating indicates that if a dam fails, infrastructure (such as roads, power lines or other largely uninhabited buildings) would be damaged or destroyed due to inundation and flooding. The department shall endeavor to inspect this class of dams at least once every three years.

(c) Low Hazard: This rating indicates that if the dam fails there is little plausibility for loss of life, and human infrastructure that could be affected by inundation downstream is minor or non-existent. The department shall endeavor to inspect this class of dams at least once every six years.

(2) The department shall utilize inundation of infrastructure study results as a primary factor to determine the hazard rating of dams. Methods and modeling acceptable for inundation of infrastructure studies include:

(a) Hydraulic Modeling: Use of one-, two-, or three-dimensional modeling software (such as HEC-RAS, FLO-2D or MIKE) and hydrologic, topographic, and other data to estimate inundation of infrastructure downstream of dams.

(b) Hydrologic Routing Modeling: Use of modeling software such as HEC-HMS with hydrologic routing methods such as the Muskingum and Modified-Puls methods along with hydrologic and topographic data.

(c) Simplified Methods such as SMPDBK and the Washington State Method: "Dam Breach Analysis and Downstream Hazard Classification" may be used. A dam owner may request information on these methods from the department. Use of these or other simplified methods is only to be used in hazard ratings for dams, not for emergency action planning.

(d) Depth of inundation to trigger different hazard ratings: A depth of at least two feet over the finished floors of buildings or road surface of infrastructure is required to establish a "high hazard" rating. Any depth of water over the floorboards of structural buildings such as homes, barns, pump houses or storage sheds can establish a "significant hazard" rating. For roads, a depth of two feet or evidence of depth and velocity capable of creating damage can be used to establish a "significant hazard" rating.

(e) Specific data, methods and results for all methods must be reviewed and approved by the department prior to revising a hazard rating.

(3) The hazard rating of a dam shall remain in effect until the rating is revised by the department using one of the methods described in section 2. A dam owner may request that the department revise a hazard rating. The owner must provide information in support of the request. If the supporting information includes results and/or analysis using the methods described in subsections 2(a) or (b), the information must be prepared by an engineer licensed in Oregon and familiar with hydraulic and hydrologic modeling; if the information includes results and/or analysis using the methods described in subsection 2(c), the information must be prepared by a licensed engineer or a practicing hydrologist familiar with hydraulic and hydrologic calculations.

(4) Exceptions to Hazard rating methods:

(a) Small dams are not assigned a hazard rating.

(b) Situations in which there are heavy recreational or other uses downstream, a dam may be rated as "high hazard" because of probable loss of life regardless of downstream infrastructure presence.

Stat. Auth.: ORS 183 & 540
Stats. Implemented: ORS 183 & 536, 540
Hist.: WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

690-020-0200
Fees for Dams

(1) Owners of a large dam shall submit to the department an annual fee in the amount and on the basis established under ORS 536.050.

(2) Dam owners who fail to pay an annual fee on or before six months after the billing date may be required to pay a late fee in the amount established under ORS 536.050.

(3) If a dam owner fails to pay the annual fee or late fee charged by the department, the department may, after giving the dam owner notice by certified mail, place a lien on the real property where the dam is located for the fees owed by the dam owner.

(4) Dams that are subject to the annual fee include dams partially or wholly in the State of Oregon that meet the definition of "dam" under OAR 690-020-0020.

(5) Multiple large dams connected together and separated only by embankments or other manmade materials (common with sewage lagoons) will count as one dam for fee purposes.

(6) Owners Exempt from Fee Requirements include:

(a) Owners of a "small dam",

(b) Owners whose dams that are directly controlled or regulated for safety by an agency of the U.S. Federal Government and the agency that controls or regulates the dam has its own safety program that meets the following criteria:

(A) The program must allow for control of the design and construction process for dams under their control with licensed engineers designing and reviewing any major design or repair. Copies of all design drawings and construction records should be forwarded to the department for tracking and archival purposes.

(B) The program must have a regular dam inspection program that is either conducted by or directly supervised by a licensed engineer with expertise in dam safety. Formal documented dam inspections for high hazard dams should occur at least once per year. For significant hazard dams, inspections shall occur at least once every 3 years and for low hazard dams, once every 6 years. Other more frequent inspections and reports on dam conditions may be necessary depending on the condition of individual dams. Copies of mutually agreed upon inspections and reports should be forwarded to the department for archival and tracking purposes.

(C) The federal agency in charge of the dam via regulation or control must also have a regular maintenance program or be able to require maintenance activity from the regulated party that will address problems discovered in the inspection program.

(D) The federal agency must have a memorandum of understanding or agreement with the department that outlines how the federal agency meets the criteria in paragraphs (b)(A)–(C), and must agree to meet at least annually with the department to review the state of the federal program for continued exemption purposes.

Stat. Auth.: ORS 536.050
Stats. Implemented: ORS 536.050
Hist.: WRD 7-2009, f. 12-7-09, cert. ef. 1-1-10

Rule Caption: Fees related to applications to the Oregon Water Resources Department requesting modification of a groundwater registration.
Adm. Order No.: WRD 8-2009
Filed with Sec. of State: 12-8-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 10-1-2009
Rules Amended: 690-382-0400
Subject: Provisions in Senate Bill 788 (Chapter 819, 2009 Oregon Laws) revised the upper limit of fees that the Commission may authorize the Department to charge applicants requesting modifications of a groundwater registration. These rules implement these provisions of SB 788.
Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-382-0400
Application for Modification of Certificate of Registration

Each application for modification of a certificate of registration shall be prepared in ink or printed on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on the certificate of registration.

(4) Certificate of registration number for the registration to be modified.

(5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration.

(6) Source of water as described on the certificate of registration.

(7) Date of priority.

(8) The authorized and proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.

(9) The authorized and proposed use of water, if applicable.

(10) The authorized and proposed place of use identified by its location within the public land survey and tax lot number, if applicable.

(11) A map prepared pursuant to OAR 690-380-3100, except it need not be prepared by a water rights examiner.

(12) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those modifications that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(13) For a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the ground water body developed or proposed to be developed.

(14) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.

(15) An oath that the information contained in the application is true and accurate.

(16) The following information related to the authority of the applicant to pursue the proposed modification:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-382-0700(4) and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in OAR 690-382-0700(5) to demonstrate that the applicant is authorized to pursue the modification;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition of a modification under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(17) The signature of the applicant, and if an entity, the title of the person signing the form.

(18) The appropriate fee required under ORS 537.610 as follows:

(a) For examination of an application to only change the place of use under a certificate of registration, $775.

(b) For examination of all other applications to modify a certificate of registration, $1,125.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)
Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 8-2009, f. 12-8-09, cert. ef. 12-15-09

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Rule Caption: Fees related to certain applications to the Oregon Water Resources Department requesting a limited license.
Adm. Order No.: WRD 9-2009
Filed with Sec. of State: 12-8-2009
Certified to be Effective: 12-15-09
Notice Publication Date: 10-1-2009
Rules Amended: 690-340-0030
Subject: By statute, fees associated with applications to the Oregon Water Resources Department requesting a limited license are established by the Oregon Water Resources Commission, This rulemaking amends the fee structure for requesting a limited license for the use of water for Aquifer Storage and Recovery testing purposes, for Artificial Groundwater recharge purposes, and for all other limited license filings.
Rules Coordinator: Ruben Ochoa—(503) 986-0874

690-340-0030
Limited License

(1) A request for a limited license shall be submitted on a form provided by the Water Resources Department, and shall be accompanied by the following:

(a) The fee for examination and recording:

(A) $1,000 for a limited license filing requesting the use of water for Aquifer Storage and Recovery testing purposes.

(B) $500 for renewal of a limited license for Aquifer Storage and Recovery testing purposes.

(C) $500 for modification of a limited license for Aquifer Storage and Recovery testing purposes.

(D) $1,000 for a limited license filing requesting the use of water for Artificial Groundwater Recharge purposes.

(E) For all other limited license filings, $250 for the first point of diversion plus $25 for each additional point of diversion; and

(b) A completed water availability statement from the local watermaster on forms provided by the department; and

(c) A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = 1 mile, showing:

(A) The locations of all proposed points of diversion referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;

(B) The general course of the source for the proposed use, if applicable;

(C) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field.

(2) The Director shall provide notice of the request to the public in the same manner as other water use applications, but may approve the license after 14 days from the date of mailing of the weekly public notice, upon a finding that the proposed water use will not impair or be detrimental to the public interest.

(3) Each limited license shall be limited to an area within a single drainage basin.

(4) Except for a licensee using water under a limited license issued in conjunction with an enforcement order, the licensee shall give notice to the watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.

(5) The licensee shall maintain a record of use, including the total number of hours of pumping, an estimate of the total quantity pumped, and the categories of beneficial use to which the water is applied. The record of use shall be submitted to the watermaster upon request.

(6) The Director may revoke the right to use water for any reason described in ORS 537.143(2). Such revocation may be prompted by field regulatory activities or by any other reason.

(7) A limited license does not receive a priority date and is not protected under ORS 540.045.

Stat. Auth.: ORS 536.027, 595 & 654

Stats. Implemented: ORS 537.143 & 537.144

Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0082; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0046; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 9-2009, f. 12-8-09, cert. ef. 12-15-09

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
123-008-0005	12-1-2009	Amend	1-1-2010
123-008-0010	12-1-2009	Amend	1-1-2010
123-008-0015	12-1-2009	Amend	1-1-2010
123-008-0020	12-1-2009	Amend	1-1-2010
123-008-0025	12-1-2009	Amend	1-1-2010
123-008-0030	12-1-2009	Amend	1-1-2010
123-017-0007	12-1-2009	Amend	1-1-2010
123-017-0008	12-1-2009	Amend	1-1-2010
123-017-0010	12-1-2009	Amend	1-1-2010
123-017-0015	12-1-2009	Amend	1-1-2010
123-017-0025	12-1-2009	Amend	1-1-2010
123-017-0030	12-1-2009	Amend	1-1-2010
123-017-0035	12-1-2009	Amend	1-1-2010
123-017-0037	12-1-2009	Amend	1-1-2010
123-017-0040	12-1-2009	Repeal	1-1-2010
123-017-0055	12-1-2009	Amend	1-1-2010
123-022-0070	12-1-2009	Amend	1-1-2010
123-022-0080	12-1-2009	Amend	1-1-2010
123-022-0090	12-1-2009	Amend	1-1-2010
123-022-0100	12-1-2009	Amend	1-1-2010
123-022-0110	12-1-2009	Amend	1-1-2010
123-024-0011	12-1-2009	Amend	1-1-2010
123-024-0031	12-1-2009	Amend	1-1-2010
123-024-0046	12-1-2009	Adopt	1-1-2010
123-043-0000	12-1-2009	Amend	1-1-2010
123-043-0010	12-1-2009	Amend	1-1-2010
123-043-0015	12-1-2009	Amend	1-1-2010
123-043-0025	12-1-2009	Amend	1-1-2010
123-043-0035	12-1-2009	Amend	1-1-2010
123-043-0045	12-1-2009	Repeal	1-1-2010
123-043-0055	12-1-2009	Amend	1-1-2010
123-043-0065	12-1-2009	Amend	1-1-2010
123-043-0075	12-1-2009	Amend	1-1-2010
123-043-0085	12-1-2009	Amend	1-1-2010
123-043-0095	12-1-2009	Amend	1-1-2010
123-043-0102	12-1-2009	Amend	1-1-2010
123-043-0105	12-1-2009	Amend	1-1-2010
123-043-0115	12-1-2009	Amend	1-1-2010
123-070-1000	12-1-2009	Amend	1-1-2010
123-070-1100	12-1-2009	Amend	1-1-2010
123-070-1150	12-1-2009	Amend	1-1-2010
123-070-1200	12-1-2009	Repeal	1-1-2010
123-070-1300	12-1-2009	Amend	1-1-2010
123-070-1500	12-1-2009	Amend	1-1-2010
123-070-1600	12-1-2009	Amend	1-1-2010
123-070-1700	12-1-2009	Repeal	1-1-2010
123-070-1800	12-1-2009	Amend	1-1-2010
123-070-1900	12-1-2009	Amend	1-1-2010
123-070-2000	12-1-2009	Repeal	1-1-2010
123-070-2300	12-1-2009	Amend	1-1-2010
123-070-2400	12-1-2009	Amend	1-1-2010
125-045-0210	11-19-2009	Amend	1-1-2010
125-045-0215	11-19-2009	Amend	1-1-2010
125-045-0225	11-19-2009	Amend	1-1-2010
137-045-0010	1-1-2010	Amend	1-1-2010
137-045-0015	1-1-2010	Amend	1-1-2010
137-045-0020	1-1-2010	Amend	1-1-2010
137-045-0030	1-1-2010	Amend	1-1-2010
137-045-0035	1-1-2010	Amend	1-1-2010
137-045-0050	1-1-2010	Amend	1-1-2010
137-045-0052	1-1-2010	Amend	1-1-2010
137-045-0060	1-1-2010	Amend	1-1-2010
137-045-0070	1-1-2010	Amend	1-1-2010
137-046-0110	1-1-2010	Amend	1-1-2010
137-046-0210	1-1-2010	Amend	1-1-2010
137-047-0250	1-1-2010	Amend	1-1-2010
137-047-0255	1-1-2010	Amend	1-1-2010
137-047-0260	1-1-2010	Amend	1-1-2010
137-047-0261	1-1-2010	Amend	1-1-2010
137-047-0262	1-1-2010	Amend	1-1-2010
137-047-0263	1-1-2010	Amend	1-1-2010
137-047-0270	1-1-2010	Amend	1-1-2010
137-047-0280	1-1-2010	Amend	1-1-2010
137-047-0300	1-1-2010	Amend	1-1-2010
137-047-0310	1-1-2010	Amend	1-1-2010
137-047-0470	1-1-2010	Amend	1-1-2010
137-047-0550	1-1-2010	Amend	1-1-2010
137-047-0600	1-1-2010	Amend	1-1-2010
137-047-0640	1-1-2010	Amend	1-1-2010
137-047-0800	1-1-2010	Amend	1-1-2010
137-048-0130	1-1-2010	Amend	1-1-2010
137-048-0200	1-1-2010	Amend	1-1-2010
137-048-0210	1-1-2010	Amend	1-1-2010
137-048-0220	1-1-2010	Amend	1-1-2010
137-048-0250	1-1-2010	Amend	1-1-2010
137-048-0260	1-1-2010	Amend	1-1-2010
137-048-0300	1-1-2010	Amend	1-1-2010
137-048-0310	1-1-2010	Amend	1-1-2010
137-048-0320	1-1-2010	Amend	1-1-2010
137-049-0150	1-1-2010	Amend	1-1-2010
137-049-0200	1-1-2010	Amend	1-1-2010
137-049-0210	1-1-2010	Amend	1-1-2010
137-049-0220	1-1-2010	Amend	1-1-2010
137-049-0260	1-1-2010	Amend	1-1-2010
137-049-0270	1-1-2010	Amend	1-1-2010
137-049-0290	1-1-2010	Amend	1-1-2010
137-049-0320	1-1-2010	Amend	1-1-2010
137-049-0330	1-1-2010	Amend	1-1-2010
137-049-0350	1-1-2010	Amend	1-1-2010
137-049-0360	1-1-2010	Amend	1-1-2010
137-049-0390	1-1-2010	Amend	1-1-2010
137-049-0400	1-1-2010	Amend	1-1-2010
137-049-0430	1-1-2010	Amend	1-1-2010
137-049-0440	1-1-2010	Amend	1-1-2010
137-049-0620	1-1-2010	Amend	1-1-2010
137-049-0645	1-1-2010	Amend	1-1-2010
137-049-0650	1-1-2010	Amend	1-1-2010
137-049-0670	1-1-2010	Amend	1-1-2010
137-049-0680	1-1-2010	Amend	1-1-2010
137-049-0800	1-1-2010	Amend	1-1-2010
137-049-0815	1-1-2010	Amend	1-1-2010
137-049-0820	1-1-2010	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
137-049-0860	1-1-2010	Amend	1-1-2010
137-050-0320	1-4-2010	Repeal	1-1-2010
137-050-0330	1-4-2010	Repeal	1-1-2010
137-050-0333	1-4-2010	Repeal	1-1-2010
137-050-0335	1-4-2010	Repeal	1-1-2010
137-050-0340	1-4-2010	Repeal	1-1-2010
137-050-0350	1-4-2010	Repeal	1-1-2010
137-050-0360	1-4-2010	Repeal	1-1-2010
137-050-0370	1-4-2010	Repeal	1-1-2010
137-050-0390	1-4-2010	Repeal	1-1-2010
137-050-0400	1-4-2010	Repeal	1-1-2010
137-050-0405	1-4-2010	Repeal	1-1-2010
137-050-0410	1-4-2010	Repeal	1-1-2010
137-050-0420	1-4-2010	Repeal	1-1-2010
137-050-0430	1-4-2010	Repeal	1-1-2010
137-050-0450	1-4-2010	Repeal	1-1-2010
137-050-0455	1-4-2010	Repeal	1-1-2010
137-050-0465	1-4-2010	Repeal	1-1-2010
137-050-0475	1-4-2010	Repeal	1-1-2010
137-050-0485	1-4-2010	Repeal	1-1-2010
137-050-0490	1-4-2010	Repeal	1-1-2010
137-050-0700	1-4-2010	Adopt	1-1-2010
137-050-0710	1-4-2010	Adopt	1-1-2010
137-050-0715	1-4-2010	Adopt	1-1-2010
137-050-0720	1-4-2010	Adopt	1-1-2010
137-050-0725	1-4-2010	Adopt	1-1-2010
137-050-0730	1-4-2010	Adopt	1-1-2010
137-050-0735	1-4-2010	Adopt	1-1-2010
137-050-0740	1-4-2010	Adopt	1-1-2010
137-050-0745	1-4-2010	Adopt	1-1-2010
137-050-0750	1-4-2010	Adopt	1-1-2010
137-050-0755	1-4-2010	Adopt	1-1-2010
137-050-0760	1-4-2010	Adopt(T)	1-1-2010
137-050-0765	1-4-2010	Adopt	1-1-2010
141-085-0506	1-1-2010	Amend	1-1-2010
141-085-0510	1-1-2010	Amend	1-1-2010
141-085-0515	1-1-2010	Amend	1-1-2010
141-085-0530	1-1-2010	Amend	1-1-2010
141-085-0534	1-1-2010	Adopt	1-1-2010
141-085-0535	1-1-2010	Amend	1-1-2010
141-085-0545	1-1-2010	Amend	1-1-2010
141-085-0550	1-1-2010	Amend	1-1-2010
141-085-0555	1-1-2010	Amend	1-1-2010
141-085-0565	1-1-2010	Amend	1-1-2010
141-085-0570	1-1-2010	Am. & Ren.	1-1-2010
141-085-0575	1-1-2010	Amend	1-1-2010
141-085-0585	1-1-2010	Amend	1-1-2010
141-085-0590	1-1-2010	Amend	1-1-2010
141-085-0665	1-1-2010	Amend	1-1-2010
141-085-0670	1-1-2010	Repeal	1-1-2010
141-085-0675	1-1-2010	Amend	1-1-2010
141-085-0680	1-1-2010	Amend	1-1-2010
141-085-0685	1-1-2010	Amend	1-1-2010
141-085-0690	1-1-2010	Amend	1-1-2010
141-085-0700	1-1-2010	Amend	1-1-2010
141-085-0705	1-1-2010	Amend	1-1-2010
141-085-0720	1-1-2010	Amend	1-1-2010
141-085-0725	1-1-2010	Amend	1-1-2010
141-085-0730	1-1-2010	Amend	1-1-2010
141-085-0735	1-1-2010	Amend	1-1-2010
141-085-0745	1-1-2010	Amend	1-1-2010
141-085-0750	1-1-2010	Amend	1-1-2010
141-089-0095	1-1-2010	Adopt	1-1-2010
141-089-0350	1-1-2010	Repeal	1-1-2010
141-089-0355	1-1-2010	Repeal	1-1-2010
141-089-0360	1-1-2010	Repeal	1-1-2010
141-089-0365	1-1-2010	Repeal	1-1-2010
141-089-0370	1-1-2010	Repeal	1-1-2010
141-089-0375	1-1-2010	Repeal	1-1-2010
141-089-0380	1-1-2010	Repeal	1-1-2010
141-089-0385	1-1-2010	Repeal	1-1-2010
141-089-0390	1-1-2010	Repeal	1-1-2010
141-142-0010	12-15-2009	Adopt	1-1-2010
141-142-0015	12-15-2009	Adopt	1-1-2010
141-142-0020	12-15-2009	Adopt	1-1-2010
141-142-0025	12-15-2009	Adopt	1-1-2010
141-142-0030	12-15-2009	Adopt	1-1-2010
141-142-0035	12-15-2009	Adopt	1-1-2010
141-142-0040	12-15-2009	Adopt	1-1-2010
161-002-0000	1-1-2010	Amend(T)	1-1-2010
161-025-0060	1-1-2010	Amend(T)	1-1-2010
165-007-0300	12-4-2009	Adopt	1-1-2010
170-040-0110	11-19-2009	Adopt	1-1-2010
213-017-0004	12-13-2009	Amend	1-1-2010
213-017-0004(T)	12-13-2009	Repeal	1-1-2010
213-017-0006	12-13-2009	Amend	1-1-2010
213-017-0006(T)	12-13-2009	Repeal	1-1-2010
213-017-0009(T)	1-1-2010	Suspend	1-1-2010
213-018-0022	12-13-2009	Adopt	1-1-2010
213-018-0022(T)	12-13-2009	Repeal	1-1-2010
259-008-0000	12-15-2009	Amend	1-1-2010
259-008-0025	12-15-2009	Amend	1-1-2010
259-008-0025(T)	12-15-2009	Repeal	1-1-2010
259-009-0005	12-15-2009	Amend(T)	1-1-2010
259-009-0062	12-15-2009	Amend(T)	1-1-2010
291-070-0130	11-20-2009	Amend	1-1-2010
291-084-0010	11-20-2009	Repeal	1-1-2010
291-084-0020	11-20-2009	Repeal	1-1-2010
291-084-0030	11-20-2009	Repeal	1-1-2010
291-084-0040	11-20-2009	Repeal	1-1-2010
291-097-0005	11-20-2009	Amend	1-1-2010
291-097-0010	11-20-2009	Amend	1-1-2010
291-097-0015	11-20-2009	Amend	1-1-2010
291-097-0020	11-20-2009	Amend	1-1-2010
291-097-0023	11-20-2009	Adopt	1-1-2010
291-097-0025	11-20-2009	Amend	1-1-2010
291-097-0040	11-20-2009	Amend	1-1-2010
291-097-0080	11-20-2009	Amend	1-1-2010
291-097-0100	11-20-2009	Amend	1-1-2010
309-041-0550	12-9-2009	Renumber	1-1-2010
309-041-0560	12-9-2009	Renumber	1-1-2010
309-041-0570	12-9-2009	Renumber	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
309-041-0580	12-9-2009	Renumber	1-1-2010
309-041-0590	12-9-2009	Renumber	1-1-2010
309-041-0600	12-9-2009	Renumber	1-1-2010
309-041-0610	12-9-2009	Renumber	1-1-2010
309-041-0620	12-9-2009	Renumber	1-1-2010
309-041-0630	12-9-2009	Renumber	1-1-2010
309-041-0640	12-9-2009	Renumber	1-1-2010
309-041-0650	12-9-2009	Renumber	1-1-2010
309-041-0660	12-9-2009	Renumber	1-1-2010
309-041-0670	12-9-2009	Renumber	1-1-2010
309-041-0680	12-9-2009	Renumber	1-1-2010
309-041-0690	12-9-2009	Renumber	1-1-2010
309-041-0700	12-9-2009	Renumber	1-1-2010
309-041-0710	12-9-2009	Renumber	1-1-2010
309-041-0715	12-9-2009	Renumber	1-1-2010
309-041-0720	12-9-2009	Renumber	1-1-2010
309-041-0730	12-9-2009	Renumber	1-1-2010
309-041-0740	12-9-2009	Renumber	1-1-2010
309-041-0750	12-9-2009	Renumber	1-1-2010
309-041-0760	12-9-2009	Renumber	1-1-2010
309-041-0770	12-9-2009	Renumber	1-1-2010
309-041-0780	12-9-2009	Renumber	1-1-2010
309-041-0790	12-9-2009	Renumber	1-1-2010
309-041-0800	12-9-2009	Renumber	1-1-2010
309-041-0805	12-9-2009	Renumber	1-1-2010
309-041-0810	12-9-2009	Renumber	1-1-2010
309-041-0820	12-9-2009	Renumber	1-1-2010
309-041-0830	12-9-2009	Renumber	1-1-2010
331-705-0060	12-1-2009	Amend(T)	1-1-2010
333-270-0010	12-3-2009	Adopt	1-1-2010
333-270-0020	12-3-2009	Adopt	1-1-2010
333-270-0030	12-3-2009	Adopt	1-1-2010
333-270-0040	12-3-2009	Adopt	1-1-2010
333-270-0050	12-3-2009	Adopt	1-1-2010
333-270-0060	12-3-2009	Adopt	1-1-2010
333-270-0070	12-3-2009	Adopt	1-1-2010
333-270-0080	12-3-2009	Adopt	1-1-2010
335-070-0065	11-16-2009	Amend	1-1-2010
335-095-0060	11-16-2009	Amend	1-1-2010
345-001-0010	11-24-2009	Amend	1-1-2010
345-024-0590	11-24-2009	Amend	1-1-2010
410-120-0030	1-1-2010	Amend	1-1-2010
410-120-0030(T)	1-1-2010	Repeal	1-1-2010
410-120-1200	1-1-2010	Amend	1-1-2010
410-120-1210	1-1-2010	Amend	1-1-2010
410-120-1230	1-1-2010	Amend	1-1-2010
410-120-1295	12-4-2009	Amend(T)	1-1-2010
410-120-1295	1-1-2010	Amend	1-1-2010
410-120-1295(T)	12-4-2009	Suspend	1-1-2010
410-120-1340	1-1-2010	Amend	1-1-2010
410-120-1380	1-1-2010	Amend	1-1-2010
410-120-1570	1-1-2010	Amend	1-1-2010
410-120-1600	1-1-2010	Amend	1-1-2010
410-121-0000	1-1-2010	Amend	1-1-2010
410-121-0030	1-1-2010	Amend	1-1-2010
410-121-0032	1-1-2010	Amend	1-1-2010
410-121-0040	1-1-2010	Amend	1-1-2010
410-121-0060	1-1-2010	Amend	1-1-2010
410-121-0100	1-1-2010	Amend	1-1-2010
410-121-0135	1-1-2010	Amend	1-1-2010
410-121-0420	1-1-2010	Amend	1-1-2010
410-122-0182	1-1-2010	Amend	1-1-2010
410-122-0203	1-1-2010	Amend	1-1-2010
410-122-0660	1-1-2010	Amend	1-1-2010
410-122-0662	1-1-2010	Amend	1-1-2010
410-123-1000	1-1-2010	Amend	1-1-2010
410-123-1160	1-1-2010	Amend	1-1-2010
410-123-1220	1-1-2010	Amend	1-1-2010
410-123-1260	1-1-2010	Amend	1-1-2010
410-136-0245	1-1-2010	Adopt	1-1-2010
410-138-0009	1-1-2010	Amend	1-1-2010
410-138-0020	1-1-2010	Amend	1-1-2010
410-138-0300	11-16-2009	Amend(T)	1-1-2010
410-138-0300	1-1-2010	Amend	1-1-2010
410-138-0300(T)	1-1-2010	Repeal	1-1-2010
410-138-0320	1-1-2010	Repeal	1-1-2010
410-138-0340	11-16-2009	Suspend	1-1-2010
410-138-0340	1-1-2010	Repeal	1-1-2010
410-138-0360	11-16-2009	Amend(T)	1-1-2010
410-138-0360	1-1-2010	Amend	1-1-2010
410-138-0360(T)	1-1-2010	Repeal	1-1-2010
410-138-0380	11-16-2009	Amend(T)	1-1-2010
410-138-0380	1-1-2010	Amend	1-1-2010
410-138-0380(T)	1-1-2010	Repeal	1-1-2010
410-138-0390	11-16-2009	Adopt(T)	1-1-2010
410-138-0390	1-1-2010	Adopt	1-1-2010
410-138-0390(T)	1-1-2010	Repeal	1-1-2010
410-138-0520	1-1-2010	Repeal	1-1-2010
410-138-0560	1-1-2010	Amend	1-1-2010
410-138-0620	1-1-2010	Repeal	1-1-2010
410-138-0680	1-1-2010	Amend	1-1-2010
410-138-0720	1-1-2010	Repeal	1-1-2010
410-140-0050	1-1-2010	Amend	1-1-2010
410-140-0115	1-1-2010	Repeal	1-1-2010
410-140-0140	1-1-2010	Amend	1-1-2010
410-140-0160	1-1-2010	Amend	1-1-2010
410-140-0200	1-1-2010	Amend	1-1-2010
410-140-0260	1-1-2010	Amend	1-1-2010
410-141-0000	1-1-2010	Amend	1-1-2010
410-141-0261	1-1-2010	Amend	1-1-2010
410-141-0263	1-1-2010	Amend	1-1-2010
410-141-0264	1-1-2010	Amend	1-1-2010
410-141-0405	1-1-2010	Amend	1-1-2010
410-141-0420	1-1-2010	Amend	1-1-2010
410-141-0520	1-1-2010	Amend(T)	1-1-2010
410-141-0520(T)	1-1-2010	Suspend	1-1-2010
410-146-0021	1-1-2010	Amend	1-1-2010
410-146-0085	1-1-2010	Amend	1-1-2010
410-146-0240	1-1-2010	Amend	1-1-2010
410-146-0340	1-1-2010	Repeal	1-1-2010
410-147-0120	1-1-2010	Amend	1-1-2010
410-147-0320	1-1-2010	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
410-147-0400	1-1-2010	Amend	1-1-2010
410-147-0620	1-1-2010	Repeal	1-1-2010
410-149-0000	1-1-2010	Repeal	1-1-2010
410-149-0020	1-1-2010	Repeal	1-1-2010
410-149-0040	1-1-2010	Repeal	1-1-2010
410-149-0060	1-1-2010	Repeal	1-1-2010
410-149-0080	1-1-2010	Repeal	1-1-2010
410-150-0080	1-1-2010	Amend	1-1-2010
410-150-0120	1-1-2010	Repeal	1-1-2010
410-150-0160	1-1-2010	Repeal	1-1-2010
410-150-0240	1-1-2010	Repeal	1-1-2010
411-031-0040	12-1-2009	Amend(T)	1-1-2010
411-070-0000	12-1-2009	Amend	1-1-2010
411-070-0005	12-1-2009	Amend	1-1-2010
411-070-0005(T)	12-1-2009	Repeal	1-1-2010
411-070-0010	12-1-2009	Amend	1-1-2010
411-070-0025	12-1-2009	Amend	1-1-2010
411-070-0027	12-1-2009	Amend	1-1-2010
411-070-0029	12-1-2009	Amend	1-1-2010
411-070-0033	12-1-2009	Amend	1-1-2010
411-070-0035	12-1-2009	Amend	1-1-2010
411-070-0040	12-1-2009	Amend	1-1-2010
411-070-0043	12-1-2009	Amend	1-1-2010
411-070-0080	12-1-2009	Amend	1-1-2010
411-070-0110	12-1-2009	Amend	1-1-2010
411-070-0125	12-1-2009	Amend	1-1-2010
411-070-0130	12-1-2009	Amend	1-1-2010
411-070-0300	12-1-2009	Amend	1-1-2010
411-070-0350	12-1-2009	Amend	1-1-2010
411-070-0359	12-1-2009	Amend	1-1-2010
411-070-0415	12-1-2009	Amend	1-1-2010
411-070-0417	12-1-2009	Amend	1-1-2010
411-070-0430	12-1-2009	Amend	1-1-2010
411-070-0442	12-1-2009	Amend	1-1-2010
411-070-0442(T)	12-1-2009	Repeal	1-1-2010
411-070-0452	12-1-2009	Amend	1-1-2010
411-070-0470	12-1-2009	Amend	1-1-2010
415-052-0100	12-3-2009	Adopt	1-1-2010
415-052-0105	12-3-2009	Adopt	1-1-2010
415-052-0110	12-3-2009	Adopt	1-1-2010
415-060-0030	1-1-2010	Amend	1-1-2010
416-530-0090	12-16-2009	Amend	1-1-2010
436-001-0003	1-1-2010	Amend	1-1-2010
436-001-0019	1-1-2010	Amend	1-1-2010
436-001-0265	1-1-2010	Am. & Ren.	1-1-2010
436-001-0265	1-1-2010	Am. & Ren.	1-1-2010
436-001-0420	1-1-2010	Adopt	1-1-2010
436-001-0430	1-1-2010	Adopt	1-1-2010
436-001-0440	1-1-2010	Adopt	1-1-2010
436-009-0010	1-1-2010	Amend	1-1-2010
436-009-0070	1-1-2010	Amend	1-1-2010
436-010-0008	1-1-2010	Amend	1-1-2010
436-010-0240	1-1-2010	Amend	1-1-2010
436-010-0265	1-1-2010	Amend	1-1-2010
436-010-0280	1-1-2010	Amend	1-1-2010
436-030-0002	1-1-2010	Amend	1-1-2010
436-030-0003	1-1-2010	Amend	1-1-2010
436-030-0005	1-1-2010	Amend	1-1-2010
436-030-0007	1-1-2010	Amend	1-1-2010
436-030-0009	1-1-2010	Repeal	1-1-2010
436-030-0015	1-1-2010	Amend	1-1-2010
436-030-0017	1-1-2010	Amend	1-1-2010
436-030-0020	1-1-2010	Amend	1-1-2010
436-030-0034	1-1-2010	Amend	1-1-2010
436-030-0065	1-1-2010	Amend	1-1-2010
436-030-0115	1-1-2010	Amend	1-1-2010
436-030-0135	1-1-2010	Amend	1-1-2010
436-030-0145	1-1-2010	Amend	1-1-2010
436-030-0155	1-1-2010	Amend	1-1-2010
436-030-0165	1-1-2010	Amend	1-1-2010
436-030-0185	1-1-2010	Amend	1-1-2010
436-030-0580	1-1-2010	Amend	1-1-2010
436-060-0003	1-1-2010	Amend	1-1-2010
436-060-0008	1-1-2010	Amend	1-1-2010
436-060-0009	1-1-2010	Amend	1-1-2010
436-060-0010	1-1-2010	Amend	1-1-2010
436-060-0012	1-1-2010	Adopt	1-1-2010
436-060-0015	1-1-2010	Amend	1-1-2010
436-060-0017	1-1-2010	Amend	1-1-2010
436-060-0018	1-1-2010	Amend	1-1-2010
436-060-0020	1-1-2010	Amend	1-1-2010
436-060-0025	1-1-2010	Amend	1-1-2010
436-060-0035	1-1-2010	Amend	1-1-2010
436-060-0095	1-1-2010	Amend	1-1-2010
436-060-0105	1-1-2010	Amend	1-1-2010
436-060-0135	1-1-2010	Amend	1-1-2010
436-060-0137	1-1-2010	Amend	1-1-2010
436-060-0140	1-1-2010	Amend	1-1-2010
436-060-0147	1-1-2010	Amend	1-1-2010
436-060-0150	1-1-2010	Amend	1-1-2010
436-060-0153	1-1-2010	Amend	1-1-2010
436-060-0155	1-1-2010	Amend	1-1-2010
436-060-0180	1-1-2010	Amend	1-1-2010
436-060-0195	1-1-2010	Amend	1-1-2010
436-060-0200	1-1-2010	Amend	1-1-2010
436-060-0400	1-1-2010	Adopt	1-1-2010
436-060-0500	1-1-2010	Amend	1-1-2010
436-060-0510	1-1-2010	Amend	1-1-2010
436-075-0110	1-1-2010	Repeal	1-1-2010
436-105-0003	1-1-2010	Amend	1-1-2010
436-105-0005	1-1-2010	Amend	1-1-2010
436-105-0500	1-1-2010	Amend	1-1-2010
436-105-0520	1-1-2010	Amend	1-1-2010
436-105-0540	1-1-2010	Amend	1-1-2010
436-105-0550	1-1-2010	Amend	1-1-2010
436-110-0005	1-1-2010	Amend	1-1-2010
436-110-0310	1-1-2010	Amend	1-1-2010
436-110-0325	1-1-2010	Amend	1-1-2010
436-110-0330	1-1-2010	Amend	1-1-2010
436-110-0335	1-1-2010	Amend	1-1-2010
436-110-0336	1-1-2010	Amend	1-1-2010
436-110-0337	1-1-2010	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
436-110-0345	1-1-2010	Amend	1-1-2010
436-110-0347	1-1-2010	Amend	1-1-2010
436-110-0350	1-1-2010	Amend	1-1-2010
436-110-0900	1-1-2010	Amend	1-1-2010
436-120-0004	1-1-2010	Amend	1-1-2010
436-120-0005	1-1-2010	Amend	1-1-2010
436-120-0007	1-1-2010	Amend	1-1-2010
436-120-0008	1-1-2010	Amend	1-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010
436-120-0340	1-1-2010	Amend	1-1-2010
436-120-0350	1-1-2010	Am. & Ren.	1-1-2010
436-120-0350	1-1-2010	Am. & Ren.	1-1-2010
436-120-0360	1-1-2010	Am. & Ren.	1-1-2010
436-120-0410	1-1-2010	Amend	1-1-2010
436-120-0440	1-1-2010	Amend	1-1-2010
436-120-0500	1-1-2010	Amend	1-1-2010
436-120-0510	1-1-2010	Amend	1-1-2010
436-120-0720	1-1-2010	Amend	1-1-2010
436-120-0800	1-1-2010	Amend	1-1-2010
436-120-0810	1-1-2010	Amend	1-1-2010
436-120-0820	1-1-2010	Amend	1-1-2010
436-120-0830	1-1-2010	Amend	1-1-2010
436-120-0840	1-1-2010	Amend	1-1-2010
436-120-0900	1-1-2010	Amend	1-1-2010
436-120-0915	1-1-2010	Amend	1-1-2010
436-150-0005	1-1-2010	Amend	1-1-2010
436-150-0010	1-1-2010	Amend	1-1-2010
436-150-0030	1-1-2010	Amend	1-1-2010
436-160-0310	1-1-2010	Amend	1-1-2010
436-160-0340	1-1-2010	Amend	1-1-2010
441-505-3046	12-7-2009	Amend	1-1-2010
441-505-3046(T)	12-7-2009	Repeal	1-1-2010
441-710-0540	12-7-2009	Amend	1-1-2010
441-710-0540(T)	12-7-2009	Repeal	1-1-2010
441-730-0246	12-7-2009	Amend	1-1-2010
441-730-0246(T)	12-7-2009	Repeal	1-1-2010
441-850-0042	12-7-2009	Amend	1-1-2010
441-850-0042(T)	12-7-2009	Repeal	1-1-2010
441-860-0020	1-1-2010	Amend	1-1-2010
441-860-0030	1-1-2010	Amend	1-1-2010
441-860-0050	1-1-2010	Amend	1-1-2010
441-860-0101	1-1-2010	Adopt	1-1-2010
441-860-0400	1-1-2010	Adopt	1-1-2010
459-017-0060	12-1-2009	Amend	1-1-2010
461-135-1100	12-1-2009	Amend(T)	1-1-2010
461-135-1100(T)	12-1-2009	Suspend	1-1-2010
461-135-1195	11-16-2009	Amend(T)	1-1-2010
461-145-0550	11-24-2009	Amend(T)	1-1-2010
461-150-0090	12-1-2009	Amend(T)	1-1-2010
575-031-0025	11-24-2009	Amend(T)	1-1-2010
579-020-0006	12-15-2009	Amend	1-1-2010
581-001-0053	12-10-2009	Amend	1-1-2010
581-015-2000	12-10-2009	Amend	1-1-2010
581-015-2090	12-10-2009	Amend	1-1-2010
581-015-2270	12-10-2009	Amend	1-1-2010
581-015-2275	12-10-2009	Amend	1-1-2010
581-015-2440	12-10-2009	Amend	1-1-2010
581-015-2570	12-10-2009	Amend	1-1-2010
581-015-2571	12-10-2009	Adopt	1-1-2010
581-015-2572	12-10-2009	Adopt	1-1-2010
581-015-2573	12-10-2009	Adopt	1-1-2010
581-015-2574	12-10-2009	Adopt	1-1-2010
581-015-2735	12-10-2009	Amend	1-1-2010
581-016-0520	12-10-2009	Amend	1-1-2010
581-016-0526	12-10-2009	Amend	1-1-2010
581-016-0536	12-10-2009	Amend	1-1-2010
581-016-0537	12-10-2009	Amend	1-1-2010
581-016-0538	12-10-2009	Amend	1-1-2010
581-016-0541	12-10-2009	Amend	1-1-2010
581-016-0560	12-10-2009	Amend	1-1-2010
581-016-0890	12-10-2009	Repeal	1-1-2010
581-016-0900	12-10-2009	Repeal	1-1-2010
581-016-0910	12-10-2009	Repeal	1-1-2010
581-016-0920	12-10-2009	Repeal	1-1-2010
581-016-0930	12-10-2009	Repeal	1-1-2010
581-016-0940	12-10-2009	Repeal	1-1-2010
581-016-0950	12-10-2009	Repeal	1-1-2010
581-016-0960	12-10-2009	Repeal	1-1-2010
581-016-0970	12-10-2009	Repeal	1-1-2010
581-016-0980	12-10-2009	Repeal	1-1-2010
581-016-0990	12-10-2009	Repeal	1-1-2010
581-016-1000	12-10-2009	Repeal	1-1-2010
581-016-1010	12-10-2009	Repeal	1-1-2010
581-016-1020	12-10-2009	Repeal	1-1-2010
581-016-1030	12-10-2009	Repeal	1-1-2010
581-016-1040	12-10-2009	Repeal	1-1-2010
581-016-1050	12-10-2009	Repeal	1-1-2010
581-020-0301	12-10-2009	Amend(T)	1-1-2010
581-020-0333	12-10-2009	Adopt(T)	1-1-2010
581-020-0335	12-10-2009	Adopt(T)	1-1-2010
581-020-0337	12-10-2009	Adopt(T)	1-1-2010
581-020-0359	12-10-2009	Amend(T)	1-1-2010
581-020-0362	12-10-2009	Adopt(T)	1-1-2010
581-021-0037	12-10-2009	Amend	1-1-2010
581-021-0110	12-10-2009	Amend	1-1-2010
581-021-0500	12-10-2009	Amend	1-1-2010
581-021-0500	12-10-2009	Amend	1-1-2010
581-022-0610	12-10-2009	Amend	1-1-2010
581-022-0615	12-10-2009	Amend	1-1-2010
581-022-0615(T)	12-10-2009	Repeal	1-1-2010
581-022-1130	12-10-2009	Amend	1-1-2010
581-022-1133	12-10-2009	Adopt	1-1-2010
581-022-1134	12-10-2009	Amend	1-1-2010
581-022-1135	12-10-2009	Amend	1-1-2010
581-022-1215	12-10-2009	Adopt	1-1-2010
581-022-1440	12-10-2009	Amend	1-1-2010
581-023-0006	12-10-2009	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
581-023-0018	12-10-2009	Amend	1-1-2010
581-045-0522	12-10-2009	Amend	1-1-2010
581-045-0586	12-10-2009	Amend	1-1-2010
584-010-0020	12-15-2009	Amend	1-1-2010
584-017-0200	12-15-2009	Amend	1-1-2010
584-017-0201	12-15-2009	Amend	1-1-2010
584-021-0165	12-15-2009	Amend	1-1-2010
584-036-0055	12-15-2009	Amend	1-1-2010
584-036-0081	12-15-2009	Amend	1-1-2010
584-038-0300	12-15-2009	Amend	1-1-2010
584-050-0006	12-15-2009	Amend	1-1-2010
584-050-0030	12-15-2009	Amend	1-1-2010
584-050-0035	12-15-2009	Amend	1-1-2010
584-052-0015	12-15-2009	Amend	1-1-2010
584-060-0012	12-15-2009	Amend	1-1-2010
584-060-0013	12-15-2009	Amend	1-1-2010
584-060-0071	12-15-2009	Amend	1-1-2010
584-060-0162	1-1-2010	Amend	1-1-2010
584-060-0171	12-15-2009	Amend	1-1-2010
584-060-0181	12-15-2009	Amend	1-1-2010
584-060-0220	12-15-2009	Adopt	1-1-2010
584-065-0030	12-15-2009	Repeal	1-1-2010
584-065-0035	12-15-2009	Adopt	1-1-2010
584-065-0040	12-15-2009	Repeal	1-1-2010
584-070-0012	12-15-2009	Amend	1-1-2010
584-070-0111	12-15-2009	Amend	1-1-2010
584-070-0112	12-15-2009	Amend	1-1-2010
584-070-0310	12-15-2009	Amend	1-1-2010
584-080-0022	12-15-2009	Amend	1-1-2010
584-080-0151	12-15-2009	Amend	1-1-2010
584-080-0152	12-15-2009	Amend	1-1-2010
584-080-0153	12-15-2009	Amend	1-1-2010
584-080-0161	12-15-2009	Amend	1-1-2010
589-007-0700	12-14-2009	Adopt	1-1-2010
603-057-0160	12-7-2009	Amend	1-1-2010
635-006-0001	1-1-2010	Amend	1-1-2010
635-006-0020	1-1-2010	Amend	1-1-2010
635-006-0910	1-1-2010	Amend	1-1-2010
635-006-1025	1-1-2010	Amend	1-1-2010
635-006-1075	1-1-2010	Amend	1-1-2010
635-006-1085	1-1-2010	Amend	1-1-2010
635-007-0605	1-1-2010	Amend	1-1-2010
635-007-0910	1-1-2010	Amend	1-1-2010
635-008-0145	1-1-2010	Amend	1-1-2010
635-011-0100	1-1-2010	Amend	1-1-2010
635-013-0003	1-1-2010	Amend	1-1-2010
635-013-0004	1-1-2010	Amend	1-1-2010
635-014-0080	1-1-2010	Amend	1-1-2010
635-014-0090	1-1-2010	Amend	1-1-2010
635-016-0080	1-1-2010	Amend	1-1-2010
635-016-0090	11-19-2009	Amend(T)	1-1-2010
635-016-0090	1-1-2010	Amend	1-1-2010
635-016-0090(T)	11-19-2009	Suspend	1-1-2010
635-017-0080	1-1-2010	Amend	1-1-2010
635-017-0090	1-1-2010	Amend	1-1-2010
635-017-0095	1-1-2010	Amend	1-1-2010
635-018-0080	1-1-2010	Amend	1-1-2010
635-018-0090	1-1-2010	Amend	1-1-2010
635-019-0080	1-1-2010	Amend	1-1-2010
635-019-0090	1-1-2010	Amend	1-1-2010
635-021-0080	1-1-2010	Amend	1-1-2010
635-021-0090	1-1-2010	Amend	1-1-2010
635-023-0080	1-1-2010	Amend	1-1-2010
635-023-0090	1-1-2010	Amend	1-1-2010
635-023-0095	1-1-2010	Amend	1-1-2010
635-023-0125	1-1-2010	Amend	1-1-2010
635-023-0128	1-1-2010	Amend	1-1-2010
635-023-0130	1-1-2010	Amend	1-1-2010
635-023-0134	1-1-2010	Amend	1-1-2010
635-039-0080	1-1-2010	Amend	1-1-2010
635-039-0090	1-1-2010	Amend	1-1-2010
635-048-0080	12-15-2009	Amend	1-1-2010
635-055-0000	12-15-2009	Amend	1-1-2010
635-055-0035	12-15-2009	Amend	1-1-2010
635-055-0037	12-15-2009	Amend	1-1-2010
635-055-0070	12-15-2009	Amend	1-1-2010
635-090-0030	1-1-2010	Amend	1-1-2010
635-090-0050	1-1-2010	Amend	1-1-2010
635-600-0000	1-1-2010	Amend	1-1-2010
635-600-0005	1-1-2010	Amend	1-1-2010
635-600-0010	1-1-2010	Amend	1-1-2010
635-600-0030	1-1-2010	Amend	1-1-2010
635-600-0040	1-1-2010	Amend	1-1-2010
660-033-0120	12-7-2009	Amend	1-1-2010
660-033-0130	12-7-2009	Amend	1-1-2010
660-036-0005	11-25-2009	Adopt	1-1-2010
690-020-0021	1-1-2010	Am. & Ren.	1-1-2010
690-020-0022	1-1-2010	Amend	1-1-2010
690-020-0025	1-1-2010	Amend	1-1-2010
690-020-0029	1-1-2010	Amend	1-1-2010
690-020-0035	1-1-2010	Amend	1-1-2010
690-020-0039	1-1-2010	Am. & Ren.	1-1-2010
690-020-0100	1-1-2010	Adopt	1-1-2010
690-020-0200	1-1-2010	Adopt	1-1-2010
690-180-0005	11-23-2009	Suspend	1-1-2010
690-180-0010	11-23-2009	Suspend	1-1-2010
690-180-0100	11-23-2009	Suspend	1-1-2010
690-180-0200	11-23-2009	Suspend	1-1-2010
690-190-0005	11-23-2009	Adopt	1-1-2010
690-190-0010	11-23-2009	Adopt	1-1-2010
690-190-0100	11-23-2009	Adopt	1-1-2010
690-190-0200	11-23-2009	Adopt	1-1-2010
690-340-0030	12-15-2009	Amend	1-1-2010
690-382-0400	12-15-2009	Amend	1-1-2010
731-035-0020	11-17-2009	Amend	1-1-2010
731-035-0050	11-17-2009	Amend	1-1-2010
731-035-0060	11-17-2009	Amend	1-1-2010
731-035-0070	11-17-2009	Amend	1-1-2010
734-065-0005	11-17-2009	Repeal	1-1-2010
734-065-0010	11-17-2009	Amend	1-1-2010
734-065-0015	11-17-2009	Amend	1-1-2010
734-065-0020	11-17-2009	Amend	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
734-065-0025	11-17-2009	Amend	1-1-2010
734-065-0030	11-17-2009	Repeal	1-1-2010
734-065-0035	11-17-2009	Amend	1-1-2010
734-065-0040	11-17-2009	Amend	1-1-2010
734-065-0045	11-17-2009	Amend	1-1-2010
734-065-0050	11-17-2009	Amend	1-1-2010
736-004-0005	12-8-2009	Amend	1-1-2010
736-004-0010	12-8-2009	Amend	1-1-2010
736-004-0015	12-8-2009	Amend	1-1-2010
736-004-0020	12-8-2009	Amend	1-1-2010
736-004-0025	12-8-2009	Amend	1-1-2010
736-004-0030	12-8-2009	Amend	1-1-2010
736-004-0035	12-8-2009	Adopt	1-1-2010
736-004-0060	12-8-2009	Amend	1-1-2010
736-004-0062	12-8-2009	Amend	1-1-2010
736-004-0065	12-8-2009	Amend	1-1-2010
736-004-0080	12-8-2009	Repeal	1-1-2010
736-004-0085	12-8-2009	Amend	1-1-2010
736-004-0090	12-8-2009	Amend	1-1-2010
736-004-0095	12-8-2009	Amend	1-1-2010
736-004-0110	12-8-2009	Amend	1-1-2010
736-004-0115	12-8-2009	Amend	1-1-2010
736-004-0120	12-8-2009	Adopt	1-1-2010
736-004-0125	12-8-2009	Adopt	1-1-2010
736-009-0005	12-8-2009	Repeal	1-1-2010
736-009-0006	12-8-2009	Adopt	1-1-2010
736-009-0010	12-8-2009	Repeal	1-1-2010
736-009-0015	12-8-2009	Repeal	1-1-2010
736-009-0020	12-8-2009	Amend	1-1-2010
736-009-0021	12-8-2009	Adopt	1-1-2010
736-009-0022	12-8-2009	Adopt	1-1-2010
736-009-0025	12-8-2009	Amend	1-1-2010
736-009-0030	12-8-2009	Amend	1-1-2010
736-140-0005	12-8-2009	Adopt	1-1-2010
736-140-0015	12-8-2009	Adopt	1-1-2010
736-146-0010	12-4-2009	Amend	1-1-2010
736-146-0012	12-4-2009	Amend	1-1-2010
736-146-0015	12-4-2009	Amend	1-1-2010
736-146-0020	12-4-2009	Amend	1-1-2010
736-146-0025	12-4-2009	Repeal	1-1-2010
736-146-0030	12-4-2009	Repeal	1-1-2010
736-146-0040	12-4-2009	Repeal	1-1-2010
736-146-0050	12-4-2009	Amend	1-1-2010
736-146-0060	12-4-2009	Amend	1-1-2010
736-146-0070	12-4-2009	Amend	1-1-2010
736-146-0080	12-4-2009	Amend	1-1-2010
736-146-0090	12-4-2009	Amend	1-1-2010
736-146-0100	12-4-2009	Amend	1-1-2010
736-146-0110	12-4-2009	Amend	1-1-2010
736-146-0120	12-4-2009	Amend	1-1-2010
736-146-0130	12-4-2009	Amend	1-1-2010
736-146-0140	12-4-2009	Amend	1-1-2010
736-147-0010	12-4-2009	Amend	1-1-2010
736-147-0020	12-4-2009	Repeal	1-1-2010
736-147-0030	12-4-2009	Amend	1-1-2010
736-147-0040	12-4-2009	Adopt	1-1-2010
736-147-0050	12-4-2009	Amend	1-1-2010
736-147-0060	12-4-2009	Amend	1-1-2010
736-147-0070	12-4-2009	Adopt	1-1-2010
736-148-0010	12-4-2009	Amend	1-1-2010
736-148-0020	12-4-2009	Amend	1-1-2010
736-149-0010	12-4-2009	Amend	1-1-2010
801-001-0035	1-1-2010	Amend	1-1-2010
801-005-0010	1-1-2010	Amend	1-1-2010
801-010-0010	1-1-2010	Amend	1-1-2010
801-010-0060	1-1-2010	Amend	1-1-2010
801-010-0075	1-1-2010	Amend	1-1-2010
801-010-0080	1-1-2010	Amend	1-1-2010
801-010-0100	1-1-2010	Amend	1-1-2010
801-010-0120	1-1-2010	Amend	1-1-2010
801-010-0345	1-1-2010	Amend	1-1-2010
801-020-0690	1-1-2010	Amend	1-1-2010
801-030-0020	1-1-2010	Amend	1-1-2010
801-040-0010	1-1-2010	Amend	1-1-2010
801-050-0005	1-1-2010	Amend	1-1-2010
801-050-0010	1-1-2010	Amend	1-1-2010
801-050-0020	1-1-2010	Amend	1-1-2010
801-050-0030	1-1-2010	Amend	1-1-2010
801-050-0035	1-1-2010	Amend	1-1-2010
801-050-0040	1-1-2010	Amend	1-1-2010
801-050-0065	1-1-2010	Amend	1-1-2010
801-050-0070	1-1-2010	Amend	1-1-2010
801-050-0080	1-1-2010	Amend	1-1-2010
804-020-0003	12-11-2009	Amend	1-1-2010
804-022-0025	12-11-2009	Adopt	1-1-2010
804-030-0000	12-11-2009	Amend	1-1-2010
804-040-0000	12-11-2009	Amend	1-1-2010
808-003-0610	12-1-2009	Amend(T)	1-1-2010
809-055-0000	12-11-2009	Amend	1-1-2010
812-001-0200	1-1-2010	Amend	1-1-2010
812-003-0120	1-1-2010	Amend	1-1-2010
812-003-0140	1-1-2010	Amend	1-1-2010
812-004-0320	1-1-2010	Amend	1-1-2010
812-008-0070	1-1-2010	Amend	1-1-2010
812-008-0110	1-1-2010	Amend	1-1-2010
812-008-0202	1-1-2010	Amend	1-1-2010
812-020-0062	1-1-2010	Amend	1-1-2010
813-041-0000	12-15-2009	Amend(T)	1-1-2010
813-041-0005	12-15-2009	Amend(T)	1-1-2010
813-041-0010	12-15-2009	Amend(T)	1-1-2010
813-041-0015	12-15-2009	Amend(T)	1-1-2010
813-041-0020	12-15-2009	Amend(T)	1-1-2010
813-041-0025	12-15-2009	Amend(T)	1-1-2010
813-041-0027	12-15-2009	Adopt(T)	1-1-2010
813-041-0030	12-15-2009	Amend(T)	1-1-2010
813-041-0035	12-15-2009	Adopt(T)	1-1-2010
836-011-0000	12-9-2009	Amend	1-1-2010
837-040-0010	4-1-2010	Amend	1-1-2010
837-040-0020	4-1-2010	Amend	1-1-2010
837-040-0140	4-1-2010	Amend	1-1-2010
837-046-0000	11-21-2009	Adopt	1-1-2010
837-046-0020	11-21-2009	Adopt	1-1-2010

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
837-046-0040	11-21-2009	Adopt	1-1-2010
837-046-0060	11-21-2009	Adopt	1-1-2010
837-046-0080	11-21-2009	Adopt	1-1-2010
837-046-0100	11-21-2009	Adopt	1-1-2010
837-046-0120	11-21-2009	Adopt	1-1-2010
837-046-0140	11-21-2009	Adopt	1-1-2010
837-046-0160	11-21-2009	Adopt	1-1-2010
837-046-0180	11-21-2009	Adopt	1-1-2010
837-090-1145	11-18-2009	Amend	1-1-2010
839-001-0495	1-1-2010	Amend	1-1-2010
839-001-0496	1-1-2010	Amend	1-1-2010
839-001-0515	1-1-2010	Amend	1-1-2010
839-001-0520	1-1-2010	Amend	1-1-2010
839-001-0700	1-1-2010	Amend	1-1-2010
839-001-0750	1-1-2010	Repeal	1-1-2010
839-021-0070	1-1-2010	Amend	1-1-2010
839-021-0280	1-1-2010	Amend	1-1-2010
839-021-0290	1-1-2010	Amend	1-1-2010
839-025-0010	1-1-2010	Amend	1-1-2010
839-025-0013	1-1-2010	Amend	1-1-2010
839-025-0013(T)	1-1-2010	Repeal	1-1-2010
839-025-0015	1-1-2010	Amend	1-1-2010
839-025-0020	1-1-2010	Amend	1-1-2010
839-025-0020(T)	1-1-2010	Repeal	1-1-2010
839-025-0030	1-1-2010	Amend	1-1-2010
839-025-0030(T)	1-1-2010	Repeal	1-1-2010
839-025-0035	1-1-2010	Amend	1-1-2010
839-025-0035(T)	1-1-2010	Repeal	1-1-2010
839-025-0085	1-1-2010	Amend	1-1-2010
839-025-0085(T)	1-1-2010	Repeal	1-1-2010
839-025-0200	1-1-2010	Amend	1-1-2010
839-025-0200(T)	1-1-2010	Repeal	1-1-2010
839-025-0210	1-1-2010	Amend	1-1-2010
839-025-0210(T)	1-1-2010	Repeal	1-1-2010
839-025-0530	1-1-2010	Amend	1-1-2010
839-025-0530(T)	1-1-2010	Repeal	1-1-2010
839-025-0700	11-23-2009	Amend	1-1-2010
850-060-0225	1-1-2010	Amend	1-1-2010
850-060-0226	1-1-2010	Amend	1-1-2010
852-005-0015	12-11-2009	Adopt	1-1-2010
852-010-0080	12-11-2009	Amend	1-1-2010
852-020-0035	12-11-2009	Amend	1-1-2010
852-020-0060	12-11-2009	Amend	1-1-2010
852-050-0006	12-11-2009	Amend	1-1-2010
860-036-0010	11-24-2009	Amend	1-1-2010
860-036-0030	11-24-2009	Amend	1-1-2010
863-014-0000	1-1-2010	Amend	1-1-2010
863-014-0003	1-1-2010	Amend	1-1-2010
863-014-0005	1-1-2010	Amend	1-1-2010
863-014-0010	1-1-2010	Amend	1-1-2010
863-014-0015	1-1-2010	Amend	1-1-2010
863-014-0030	1-1-2010	Amend	1-1-2010
863-014-0038	1-1-2010	Repeal	1-1-2010
863-014-0042	1-1-2010	Amend	1-1-2010
863-014-0055	1-1-2010	Amend	1-1-2010
863-014-0063	1-1-2010	Amend	1-1-2010
863-014-0065	1-1-2010	Amend	1-1-2010
863-014-0085	1-1-2010	Amend	1-1-2010
863-014-0090	1-1-2010	Adopt	1-1-2010
863-014-0095	1-1-2010	Amend	1-1-2010
863-014-0100	1-1-2010	Amend	1-1-2010
863-014-0160	1-1-2010	Amend	1-1-2010
863-015-0000	1-1-2010	Amend	1-1-2010
863-015-0003	1-1-2010	Amend	1-1-2010
863-015-0150	1-1-2010	Amend	1-1-2010
863-015-0186	1-1-2010	Amend	1-1-2010
863-015-0188	1-1-2010	Amend	1-1-2010
863-015-0210	1-1-2010	Amend	1-1-2010
863-015-0250	1-1-2010	Amend	1-1-2010
863-015-0255	1-1-2010	Amend	1-1-2010
863-015-0260	1-1-2010	Amend	1-1-2010
863-015-0275	1-1-2010	Amend	1-1-2010
863-024-0000	1-1-2010	Amend	1-1-2010
863-024-0003	1-1-2010	Amend	1-1-2010
863-024-0015	1-1-2010	Amend	1-1-2010
863-024-0030	1-1-2010	Amend	1-1-2010
863-024-0075	1-1-2010	Amend	1-1-2010
863-024-0085	1-1-2010	Amend	1-1-2010
863-024-0100	1-1-2010	Amend	1-1-2010
863-049-0000	1-1-2010	Adopt	1-1-2010
863-049-0005	1-1-2010	Adopt	1-1-2010
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863-049-0015	1-1-2010	Adopt	1-1-2010
863-049-0020	1-1-2010	Adopt	1-1-2010
863-049-0030	1-1-2010	Adopt	1-1-2010
863-049-0035	1-1-2010	Adopt	1-1-2010
863-049-0040	1-1-2010	Adopt	1-1-2010
863-049-0045	1-1-2010	Adopt	1-1-2010
863-049-0055	1-1-2010	Adopt	1-1-2010
863-050-0035	1-1-2010	Am. & Ren.	1-1-2010
863-050-0150	1-1-2010	Amend	1-1-2010
863-050-0240	1-1-2010	Am. & Ren.	1-1-2010