

OREGON BULLETIN

Supplements the 2011 *Oregon Administrative Rules Compilation*

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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

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

Locating Administrative Rules Unit Publications

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

2010–2011 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, 2010	January 1, 2011
January 14, 2011	February 1, 2011
February 15, 2011	March 1, 2011
March 15, 2011	April 1, 2011
April 15, 2011	May 1, 2011
May 13, 2011	June 1, 2011
June 15, 2011	July 1, 2011
July 15, 2011	August 1, 2011
August 15, 2011	September 1, 2011
September 15, 2011	October 1, 2011
October 14, 2011	November 1, 2011
November 15, 2011	December 1, 2011

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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TABLE OF CONTENTS

	<i>Page</i>
Information and Publication Schedule	2
Table of Contents	3
Executive Orders	4
Other Notices	5–7
Notices of Proposed Rulemaking Hearings/Notices	
The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.	
Board of Architect Examiners, Chapter 806	8
Board of Examiners for Engineering and Land Surveying, Chapter 820	8
Board of Massage Therapists, Chapter 334	8, 9
Construction Contractors Board, Chapter 812	9
County Fair Commission, Chapter 621	9
Department of Agriculture, Chapter 603	9
Department of Agriculture, Oregon Processed Vegetable Commission, Chapter 647	10
Oregon Salmon Commission, Chapter 646	10
Department of Consumer and Business Services, Workers' Compensation Division, Chapter 436	10
Department of Corrections, Chapter 291	10, 11
Department of Human Services, Seniors and People with Disabilities Division, Chapter 411	11
Department of Public Safety Standards and Training, Chapter 259	11
Department of Transportation, Highway Division, Chapter 734	11, 12
Motor Carrier Transportation Division, Chapter 740	12
Land Conservation and Development Department, Chapter 660	12
Landscape Architect Board, Chapter 804	12
Landscape Contractors Board, Chapter 808	12
Oregon Department of Education, Chapter 581	12, 13
Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services, Chapter 309	13
Office of Private Health Partnerships, Chapter 442	13
Oregon Educators Benefit Board, Chapter 111	13
Oregon Housing and Community Services Department, Chapter 813	13, 14
Oregon State Lottery, Chapter 177	14
Oregon University System, Western Oregon University, Chapter 574	14
Public Utility Commission, Chapter 860	14
Racing Commission, Chapter 462	14, 15
Secretary of State, Corporation Division, Chapter 160	15
Teacher Standards and Practices Commission, Chapter 584	15
Veterinary Medical Examining Board, Chapter 875	15
Administrative Rules	
The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.	
Board of Parole and Post-Prison Supervision, Chapter 255	16
Construction Contractors Board, Chapter 812	16–20
Department of Agriculture, Oregon Albacore Commission, Chapter 972	20
Department of Consumer and Business Services, Building Codes Division, Chapter 918	21–30
Division of Finance and Corporate Securities, Chapter 441	31
Insurance Division, Chapter 836	31–39
Workers' Compensation Division, Chapter 436	39–55
Department of Corrections, Chapter 291	55–70
Department of Energy, Chapter 330	70–72
Department of Environmental Quality, Chapter 340	72–89
Department of Fish and Wildlife, Chapter 635	89–93
Department of Forestry, Chapter 629	93, 94
Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs, Chapter 461	94–97
Department of Oregon State Police, Chapter 257	97, 98
Department of Oregon State Police, Office of State Fire Marshal, Chapter 837	98–102
Department of Public Safety Standards and Training, Chapter 259	102–105
Department of State Lands, Chapter 141	106–140
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735	140
Motor Carrier Transportation Division, Chapter 740	140, 141
Transportation Safety Division, Chapter 737	141, 142
Employment Department, Chapter 471	142–144
Oregon Health Authority, Addictions and Mental Health Division: Addiction Services, Chapter 415	144–149
Division of Medical Assistance Programs, Chapter 410	149
Office of Private Health Partnerships, Chapter 442	149–158
Public Employees' Benefit Board, Chapter 101	158–161
Public Health Division, Chapter 333	161–165
Oregon Health Licensing Agency, Chapter 331	165
Oregon Health Licensing Agency, Board of Cosmetology, Chapter 817	165–167
Environmental Health Registration Board, Chapter 338	167, 168
Oregon Housing and Community Services Department, Chapter 813	168–171
Oregon Liquor Control Commission, Chapter 845	171–173
Oregon State Lottery, Chapter 177	173
Oregon State Marine Board, Chapter 250	174
Oregon State Treasury, Chapter 170	174, 175
Public Utility Commission, Chapter 860	175–178
Secretary of State, Elections Division, Chapter 165	178, 179
Teacher Standards and Practices Commission, Chapter 584	179–183
Veterinary Medical Examining Board, Chapter 875	183, 184
OAR Revision Cumulative Index	185–209

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11 - 03

AUTHORIZATION FOR OREGON BUSINESS DEVELOPMENT DEPARTMENT dba BUSINESS OREGON ACCESS TO LAW ENFORCEMENT DATA SYSTEM

ORS 181.010(6) and OAR 257-010-0025(1)(b) authorize the Governor to allow Law Enforcement Data System access to designated state and local agencies which require such information "for agency employment purposes, licensing purposes or other demonstrated needs when designated by order of the Governor." Executive Order No. 90-05 grants such access to a number of state agencies and establishes the conditions under which such access is authorized. Subsequent Executive Orders have authorized access for additional state and local agencies for various purposes.

The Oregon Business Development Department dba Business Oregon requires access to the Oregon State Police criminal offender information system in order to conduct background investigations on prospective employees and service providers.

THEREFORE, IT IS ORDERED AND DIRECTED:

1. Pursuant to ORS 181.010(6) and OAR 257-010-0025(1)(b), I hereby authorize the Oregon State Police to provide the Oregon Business Development Department with access to the Oregon State Police criminal offender information system solely for the purpose of conducting background investigations on prospective employees or service providers for specific identified positions involved with cash receipting and depositing, payroll preparation functions, mail services, access to personal information about employees or members of the public, system administrator access to IT systems, or access to tax or financial information about individuals or business entities.

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

Done at Salem, Oregon, this 3rd day of March, 2011.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 11 - 04

DETERMINATION OF A STATE OF EMERGENCY IN CURRY COUNTY DUE TO TSUNAMI WAVE DAMAGE

Pursuant to ORS 401.165, I find that a threat to life, safety and property exists due to tsunami wave action that occurred in Curry County, Oregon on March 11, 2011. The damaging waves destroyed infrastructure in the Port of Brookings as well as other areas of the County. The damages have closed the Port indefinitely, which impacts the economy of the entire area.

NOW THEREFORE, IT IS ORDERED AND DIRECTED:

1. The Office of Emergency Management (OEM) has activated the State's Emergency Operations Plan. The Office of Emergency Management will coordinate damage assessment activities with the County and other agencies as warranted.

2. A Governor's Recovery Cabinet will be formed to look at ways to assist the County as they recover from this devastating event. The Governor's Recovery Cabinet will be made up of State Agencies who may have a role in the recovery, whether it is infrastructure repair or economic relief in the way of technical assistance, grants and or loans to the affected parties.

3. The Office of Emergency Management will coordinate for appropriate avenues of federal assistance that may be available to assist the County as they recover from this event after damage assessment information is tabulated.

Done at Salem, Oregon, this 15th day of March, 2011.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

APRIL 7 INFORMATION MEETING, OPPORTUNITY TO COMMENT PROPOSED SETTLEMENT FOR FORMER FRONTIER LEATHER AND KEN FOSTER FARM SITES

COMMENTS DUE: 5 p.m., Monday, May 2, 2011

PROJECT LOCATION: The former Frontier Leather site is located at 15104 SW Oregon Street (formerly 1210 NE Oregon Street), in Sherwood, Oregon. The Ken Foster Farm property is a 40-acre tract of former pasture land located at 23000 to 23500 SE Murdock Road in the southeast corner of Sherwood.

INFORMATION MEETING: 6:30 p.m. to 8 p.m., Thursday, April 7; Clackamas Community College, Wilsonville Campus; Room 112; 29353 SW Town Center Loop East, Wilsonville.

PROPOSAL: DEQ proposes to enter into a settlement with two potentially liable parties for cleanup of these sites. The parties are Linke Enterprises, the owner and former operator of the Frontier Leather site, and Don Nelson who worked for Frontier Leather Company as plant manager from 1966 to 1972 and as general manager from 1972 until 1988.

The settlement would be in the form of a consent judgment. The settlement would require the parties to pay DEQ specified amounts to be used by DEQ for future cleanup and wetlands restoration of these sites. In return, the settling parties would receive a covenant not to sue from the State of Oregon and contribution protection as to third parties regarding the matters addressed by the settlement.

The proposed settlement amount is less than needed to completely cleanup chromium contamination at both sites. Because the contamination does not present a significant risk to human health at either site, DEQ intends to use the settlement funds primarily for cleanup and restoration of wetland habitat at each site.

HIGHLIGHTS: The Frontier Leather Company began operating a tannery at the site in 1947. The company constructed two three-acre sedimentation lagoons between late 1964 to early 1965. The company discharged wastewater to these sedimentation lagoons intermittently between 1965 and 1982. The company stockpiled chromium-treated hide splits on Tax Lot 600 and buried an estimated 21,000 cubic yards of chromium-containing wastes at the facility between 1971 and 1974. Some of the hide splits were later covered with approximately two feet of soil but portions of the landfill was not adequately consolidated and capped to control possible direct contact or surface water runoff.

Cleanup of a portion of the tannery began in 2002 under a prospective purchaser agreement between Pacific III, LLC and DEQ. The former tannery building, wastewater treatment facility, and former battery manufacturing building were located on these land parcels and have been removed. The prospective purchaser agreement defined the cleanup required by Pacific III LLC in exchange for DEQ limiting the company's future liability for cleanup costs at the site. DEQ approved the required work the company did on each parcel.

In 2002, DEQ designated the part of the Frontier Leather facility property that was not included in the prospective purchaser agreement as a DEQ orphan site. An orphan site is one where the party or parties responsible for the contamination are unknown, unable or unwilling to pay for needed investigation and cleanup.

DEQ completed an investigation and feasibility study during 2003 and 2004 but did not finalize a cleanup plan because of lack of funds to complete the work.

DEQ uncovered records from the former tannery indicating that tannery wastes were land-applied to a 40-acre tract of former pasture land at Ken Foster Farms during the 1960s. Ken Foster was an employee of the Frontier Leather Company. The farmland was later subdivided into eleven smaller tracts and redeveloped as very-low-density residential properties.

DEQ initiated evaluation of the farm land and referred the site to the US Environmental Protection Agency for further evaluation. Investigations of the farm confirmed the presence of high concentrations of chromium in surface soils consistent with land application of the tannery wastes. EPA also found contamination in a wetland pond at this site. In 2007, EPA published findings of their assessment of the former Ken Foster Farm site.

DEQ completed a risk assessment for the Ken Foster Farm site in 2007, and concluded that the site did not pose a significant risk to human health, but could present an unacceptable risk to birds and other wildlife through contact with soil.

HOW TO COMMENT: Send written comments on the proposed settlement by 5 p.m. May 2, 2011, to DEQ Project Manager Mark Pugh, DEQ Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, Oregon 97201, or e-mail to pugh.mark@deq.state.or.us

View the proposed settlement at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCcontroller.ashx?SourceId=2638&SourceIdType=11>

Please call, File Review Specialist Dawn Weinberger at 503-229-6729 to schedule an appointment to review the project files. If you have any questions, please contact the project manager at 503-229-5587.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. If DEQ then determines to enter into the settlement with Linke Enterprises and Don Nelson, a consent judgment will be filed with the Washington County Circuit Court. The court must approve the consent judgment for it to take effect.

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

People with hearing impairments may call 711.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DETERMINATION AND UPLAND SOURCE CONTROL DECISION FOR THE FORMER MAR COM SOUTH SITE, ECSI #2350

COMMENTS DUE: April 30, 2011

PROJECT LOCATION: 8970 North Bradford Street, Portland
PROPOSAL: Pursuant to 465.320, the Oregon Department of Environmental Quality (DEQ) invites public comment on DEQ's proposal to issue a no further action (NFA) determination and source control decision for the upland portion of the Former Mar Com South Site.

HIGHLIGHTS: The 7.3-acre site is located in the St. Johns area of north Portland adjacent to the Willamette River adjacent to the Port of Portland auto storage facility and Cathedral Park. Historic operations at the site primarily included boat, ship and barge construction and repair, but other activities included sawmill, warehouse, machine shop, furniture repair and commercial marine operations. Currently, there are no buildings located on the site. DEQ, the former property tenant and the current property owners conducted various soil, groundwater and stormwater investigations at the site. In 2010, DEQ and the property owner completed a Remedial Investigation, Risk Assessment and an upland Source Control Evaluation for the site. In September and October 2008, two areas of soil contaminated with petroleum hydrocarbons and polycyclic aromatic hydrocarbons (PAHs) and spent sandblast grit were excavated and removed as an interim remedial action. The grit, which contained some metals, was removed because of its erosion potential to the Willamette River. A total of 124.51 tons of grit and 864 cubic yards of soil were transported to Hillsboro Landfill for disposal. Post-excitation sampling and residual risk assessments indicate low levels of contamination remaining on site but do not pose unacceptable risk to human or ecological receptors. Stormwater and other contaminant transport pathways to the river were also evaluated for the upland portion of the site and determined to not be of concern. Required site improvements under the City of Portland Greenway program have also been implemented. Areas of the site along the beach will be evaluated in 2011 and potential future actions will be under EPA jurisdiction. Current site zoning is industrial, and the site is expected to be redeveloped for industrial use. Based on this information, DEQ proposes to issue a no further action determination and source

OTHER NOTICES

control decision for the upland portion of the Former Mar Com South site.

HOW TO COMMENT: The project file may be reviewed by appointment at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201. Contact Dawn Weinburger at (503) 229-6729 to review project records. Written comments should be sent to the project manager, Mike Romero (503-229-5563) by 4:30 PM on April 30, 2011. To access site summary information in DEQ's Environmental Cleanup Site Information (ECSI) database, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter ECSI#2350 in the Site ID box and click "Submit" at the bottom of the page.

THE NEXT STEP: DEQ will consider all comments received and make a final 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.

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

REQUEST FOR COMMENTS PROPOSED APPROVAL OF CLEANUP AT ROSS ISLAND SAND AND GRAVEL SITE

COMMENTS DUE: 5 p.m., April 30, 2011

PROJECT LOCATION: Willamette River Mile 15

PROPOSAL: The Department of Environmental Quality invites public comment on the proposed conditional approval of environmental cleanup action at the Ross Island Sand and Gravel site. This is also known as a conditional no further action determination. DEQ is also proposing to issue Ross Island Sand and Gravel a Certificate of Completion for remedial action obligations described in their Consent Order with DEQ.

HIGHLIGHTS: Ross Island Sand and Gravel is a major supplier of aggregate in the Portland area. From the 1920s until the summer of 2001, the company mined and processed sand and gravel from the Willamette River at the site. To meet site reclamation requirements, Ross Island Sand and Gravel began importing fill material in the early 1980s. Some of the material the company obtained from Port of Portland shipyards was determined to be unsuitable for unconfined open water disposal due to the presence of contaminants. This material was placed in depressions within the lagoon and covered with clean material creating "confined aquatic disposal" sites. In 1999, DEQ discovered that Ross Island Sand and Gravel mining activities had extended into one of the capped areas resulting in a breach of a confined cell.

Between 1999 and 2002, Ross Island Sand and Gravel and the Port of Portland conducted environmental investigations at the site which identified the following contamination as potentially posing unacceptable risk to human health and the environment:

- Elevated concentrations of zinc and arsenic in surface soil samples collected in the vicinity of the processing plant.
- Polynuclear aromatic hydrocarbons (PAHs) detected in surface soil immediately adjacent to the southern portion of the lagoon at concentrations that could pose a threat to fish and wildlife within the lagoon if the soil migrated to the lagoon by erosion.
- Contaminated material removed from lagoon disposal cell 5 during mining activities that were relocated to the eastern portion of the main process settling pond.
- PAHs detected at levels slightly exceeding USEPA Ambient Water Quality Criteria in a grab groundwater sample collected adjacent to the southern portion of the lagoon.
- Elevated concentrations of PAHs, metals, and polychlorinated biphenyls (PCBs) detected in a limited number of surface sediment samples collected from the southern portion of the lagoon where

reclamation filling has occurred and in the vicinity of the recapped breach area.

- Elevated pH detected at several locations along the southern shoreline of the lagoon assumed to result from the placement of concrete wastes as fill.

- Highly contaminated material present in the five confined disposal cells used for management of material dredged from Port of Portland facilities.

Ross Island Sand and Gravel completed the following cleanup at each of these sites in compliance with the December 2005 DEQ Record of Decision:

- In summer 2000, closed the eastern portion of the settling pond where contaminated material mined from CAD cell 5 and covered it with clean sediments dredged from the western portion of the settling pond.

- In June and July 2007, removed approximately 900 cubic yards of metals-impacted soil from the processing plant area and placed it in a prepared cell located within the capped former settling pond and capped it with clean soil.

- In summer and fall 2007 installed a variety of erosion control measures in the southern shoreline areas immediately adjacent to the lagoon. Measures included: installation of drainage berms, slope stabilization, and covering with clean fill.

- In May 2007, sampled groundwater in the southern shoreline area. Contaminant concentrations did not exceed conservative screening levels and no further action for groundwater was determined to be necessary.

- Between 2001 and 2010, placed approximately 2,400,000 tons of fill in the lagoon achieving a minimum 3-foot cap of clean material over contaminated sediment and further stabilizing slopes adjacent to the southern bench area.

Ross Island Sand and Gravel prepared a *Long-Term Monitoring/Maintenance and Contingency Plan* for the site addressing each aspect of the cleanup. In addition to regular monitoring and maintenance of the cleanup components, inspections of caps and stormwater controls will be conducted after any extreme events including: seismic events of magnitude 6 or greater, rainfall exceeding 3.4 inches or greater in a 24-hour period, and Willamette River levels of 18 ft or greater.

Based on evaluation of the actions described above, DEQ is proposing that no further action be required at the Ross Island Sand and Gravel site and that Ross Island Sand and Gravel be issued a certificate of completion for obligations under DEQ Consent Order No. WMCVC-NWR-99-09. The proposed cleanup approval is conditional because of the need to maintain engineering controls and conduct long-term monitoring and maintenance of cleanup measure at the site.

HOW TO COMMENT: A memorandum describing the basis for the no further action and certificate of completion proposal is available on DEQ's web page: <http://www.deq.state.or.us/lq/cu/nwr/rossisland/index.htm>. Complete site files are available for public review at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files, call 503- 229-6729. Send written comments to Project Manager Jennifer Sutter, DEQ Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or sutter.jennifer@deq.state.or.us, by Saturday, April 30, 2011. Contact Jennifer at 503-229-6148.

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

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

People with hearing impairments may call 711.

OTHER NOTICES

A CHANCE TO COMMENT ON DEQ STAFF REPORT RECOMMENDING A FINAL REMEDY AND THE PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AT THE PROPERTY AT 13660 SW FARMINGTON ROAD IN BEAVERTON, OREGON

COMMENTS DUE: May 2, 2011

PROJECT LOCATION: 13660 SW Farmington Road, Beaverton, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is recommending soil removal, limited soil and groundwater treatment, and institutional controls as a final remedy for the Former Farmington Texaco site property located at 13660 SW Farmington Road, Beaverton, Oregon. The site is located in Section 16, Township 1 South, Range 1 West, of the Willamette Baseline and Meridian (hereafter the "Property"). Work will be performed under a Consent Judgment for a Prospective Purchaser Agreement (PPA) with the Tualatin Hills Parks and Recreation District ("Tualatin Hills")

HIGHLIGHTS: Tualatin Hills is acquiring the Property for park development. Several petroleum-related contaminants are present in soil and groundwater beneath the property which could pose a risk to public health or the environment. Before purchase of the property, Tualatin Hills will enter into a PPA with DEQ. The PPA will outline the cleanup work to be performed by Tualatin Hills after it acquires the property and will provide certain limits and protections for future environmental liability.

The site was used as a retail petroleum fuel facility and automotive shop that operated until 1993. Releases of petroleum substances into soil and groundwater were first discovered at the site in 1991. Investigations and other removal actions have taken place at the site. However, concentrations of various petroleum substances at the site continue to exceed DEQ screening levels for the proposed (park) use. Tualatin Hills has conducted additional investigations and evaluations, and has proposed actions to address the remaining contamination.

DEQ has prepared a staff report approving the cleanup action proposed by Tualatin Hills, which includes soil removal, in-place soil and groundwater treatment, and institutional controls to prevent construction, excavation, and future park worker contact with residual contamination. Unacceptable risks to recreational users were not identified. The staff report is available online at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under ECSI site number 5546. The Consent Judgment will require Tualatin Hills to conduct remedial actions discussed above, and will agree to provide access to the Property for any additional investigation and removal or remedial actions that may be required.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The PPA is a tool that facilitates the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a property with existing contamination. DEQ has approved more than 125 PPAs throughout the state since the program began.

The proposed Consent Judgment will provide Tualatin Hills with a release from liability for claims by the State of Oregon under ORS §465.255 relating to any historical releases of hazardous substances at or from the Property. The proposed Consent Judgment will also provide Tualatin Hills with protection from potential contribution actions by third parties for recovery of remedial action costs associated with any historical releases at or from the Property. DEQ retains all existing rights it may have as to all other parties potentially liable for any releases. The Consent Judgment is available online at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under ECSI site number 5546.

HOW TO COMMENT: Written comments concerning DEQ's staff report and recommended remedial action should be sent to Rebecca Wells-Albers at DEQ's Northwest Region Office, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201-4987. Written comments concerning the proposed Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204 or by email at landman.charlie@deq.state.or.us. Comments must be received by DEQ by 5:00 pm May 2, 2011. Questions regarding the staff report and recommended remedial action may be directed to Ms. Wells-Albers by calling (503) 229-5585 or by email at wells-albers.rebecca@deq.state.or.us. Questions regarding the Consent Judgment may be directed to Mr. Landman by calling (503) 229-6461 or email at landman.charlie@deq.state.or.us. DEQ will conduct a public meeting to discuss the proposed PPA and staff report on April 20, 2011, at 7 PM at the Tualatin Valley Fire & Rescue Fire station located at 13730 SW Butner Road, Beaverton Oregon, 97005. DEQ will present information about the PPA and the staff report at this meeting.

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

OPPORTUNITY TO COMMENT PROPOSED NO FURTHER ACTION FOSSIL AIR ROUTE SURVEILLANCE RADAR WHEELER COUNTY, OREGON

COMMENT DUE: May 2, 2011

PROJECT LOCATION: Snowboard Ridge, 20 miles SW of Fossil

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a No Further Action (NFA) determination for the Fossil Air Route Surveillance Radar site located 20 miles SW of Fossil, Oregon.

The Voluntary Cleanup Program has reviewed assessment activities performed at the site. Contamination associated primarily with insulation oil spillage. Assessment of areas of potential concern identified during a site evaluation was performed in August 2006. Based on the results of the assessments, additional cleanup is not required at the site.

Additional information concerning site-specific investigations and remedial actions is available in DEQ's Environmental Cleanup Site Information (ECSI) database located on the web at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 5502.

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

HOW TO COMMENT: The public comment period will end on May 2, 2011. Please address all comments and/or inquiries to project manager at the following address:

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

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

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

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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**Board of Architect Examiners
Chapter 806**

Rule Caption: Board's Biennial Budget.

Date:	Time:	Location:
4-28-11	9 a.m.	205 Liberty St. NE, #A OBAA Conference Rm. Salem, OR 97301

Hearing Officer: Patrick Bickler

Stat. Auth.: ORS 671.125 & 182.462

Stats. Implemented: ORS 671.125 & 182.462

Proposed Amendments: 806-001-0003

Last Date for Comment: 4-28-11, Close of Hearing

Summary: To adopt the Board's 2011-13 biennial budget, with an expenditure limit of \$821,000. A copy of the proposed budget and/or rule amendment is available on the Board's website of www.orbae.com or by contracting the agency rules coordinator.

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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Rule Caption: Disallowed CPE.

Date:	Time:	Location:
4-28-11	9:30 a.m.	205 Liberty St. NE, #A OBAA Conference Rm. Salem, OR 97301

Hearing Officer: Patrick Bickler

Stat. Auth.: ORS 671.125, 671.080 & 671.085

Other Auth.: OAR 806-010-0145

Stats. Implemented: ORS 671.125, 671.080 & 671.085

Proposed Amendments: 806-010-0105

Last Date for Comment: 4-28-11, Close of Hearing

Summary: Each year, the Board reviews/audits a random selection of license renewal applications to verify the continuing professional education (CPE) reported on those forms by licensees. Licensees report CPE on an honor system during the renewal cycle, but must

be in conformance with the requirements outlined in rule. After its review of the reported CPE, the Board has the right to disallow any of the CPE reported if it does not meet the rule requirements. The rules require licensees to have and maintain documentation to verify the CPE they report for a period of two renewal cycles in case they are selected for Board review of the CPE reported on their license renewal application form. The most common reasons the Board disallows CPE is for lack of verification. Other reasons have been because it is not an allowed CPE activity or because it is not a health, safety, and welfare subject. These requirements are outlined in rule and are within the control of the licensee who obtains/reports CPE for license renewal. If the Board disallows CPE, licensees are given a period of time to make up the disallowed CPE, and the time period frequently overlaps with the next renewal cycle and takes extra administrative efforts to monitor and verify and assure the timelines are met and prepare for the Board to consider action when/if the requirements are not ultimately met. This rule amendment assesses a \$100 fee for reporting CPE on license renewals that the Board disallows only if this means that the licensee has insufficient CPE to otherwise qualify for license renewal and is given additional period of time to obtain CPE to make up for the disallowed CPE.

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 Examiners for Engineering and Land Surveying
Chapter 820**

Rule Caption: Clarify CPD requirements, adopt the 2011-2013 budget, and housekeeping.

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

Hearing Officer: Grant Davis

Stat. Auth.: ORS 182.462, 670.310, 672.153, 672.155, & 672.255

Stats. Implemented: ORS 672.002-672.325

Proposed Amendments: 820-010-0305, 820-010-0325, 820-010-0635

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

Summary: OAR 820-010-0305 — Fees: The proposed amendment deletes the fee for the "inactive" status. The Board does not charge a fee to maintain the inactive status.

OAR 820-010-0325 — Budget: To adopt the budget approved by the Board for the 2011-2013 biennium.

OAR 820-010-0635 — Continuing Professional Development: Clarifies the continuing professional development (CPD) requirements as a condition of renewing a registration.

Rules Coordinator: Mari Lopez

Address: 670 Hawthorne Ave. SE, Suite 220, Salem OR 97301

Telephone: (503) 362-2666

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**Board of Massage Therapists
Chapter 334**

Rule Caption: Adopt 2011-2013 biennial budget, remove definition of "agency."

Date:	Time:	Location:
5-13-11	9 a.m.	Central Oregon Community College Boyle Education Center 2600 NW College Way Bend, OR 97701

Hearing Officer: Kathy Calise

Stat. Auth.: ORS 182.460, 687.011 & 687.121

Stats. Implemented: ORS 182.460, 687.011 & 687.121

Proposed Amendments: 334-001-0012, 334-001-0060

Last Date for Comment: 5-13-11, Close of Hearing

NOTICES OF PROPOSED RULEMAKING

Summary: The Oregon Board of Massage Therapists (Board) is permanently amending the 2011–2013 biennium budget, to address the financial operations of the agency.

The Board is permanently amending the definitions to remove the word “agency” as the current definition is erroneous and the word is referenced in common terms.

Rules Coordinator: Diana Nott

Address: 748 Hawthorne Ave. NE, Salem, Oregon 97301

Telephone: (503) 365-8657 ext. 1

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Construction Contractors Board
Chapter 812

Rule Caption: Housekeeping, fees for duplicate licenses and record changes, independent contractor status changes, and license/certification cards.

Date:	Time:	Location:
4-26-11	11 a.m.	West Salem Roth’s IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Rob Hernandez

Stat. Auth.: ORS 87.093, 670.310, 701.235, 701.238, 701.325, 701.330, 701.350, 701.355 & 701.530

Stats. Implemented: ORS 87.007, 87.058, 87.093, 192.440(4)(a), 279C.460, 646.605, 670.310, 701, 701.035, 701.056, 701.063, 701.068, 701.073, 701.088, 701.105, 701.117, 701.119, 701.131, 701.235, 701.238, 701.325, 701.330, 701.350, 701.355, 701.485, 701.515 & 701.530

Proposed Adoptions: 812-003-0321, 812-007-0031, 812-007-0032, 812-008-0065, 812-008-0077, 812-025-0032, 812-030-0223, 812-030-0235

Proposed Amendments: 812-001-0200, 812-002-0640, 812-002-0700, 812-003-0310, 812-003-0320, 812-008-0209

Last Date for Comment: 4-26-11, Close of Hearing

Summary: • 812-001-0200 is amended to reference a revised form of notice. Key revisions are in the section “A license requires the contractor to maintain a surety bond and liability insurance.” The revised notice advises that the surety bond is not intended as a safety net for consumer damages. Consumers with large projects may wish to look into performance bonds.

• 812-002-0640 is amended because language is no longer necessary due to another rule amendment (812-003-0290) February 2011.

• 812-002-0700 is amended to correct the statute reference.

• 812-003-0310 is amended adds a \$10 fee to replace a license and pocket card.

• 812-003-0320 is amended to allow contractors to electronically change independent contractor class without charge and rewrites for clarity. CCB will still charge contractors \$20 to submit a paper change form.

• 812-007-0031, 812-008-0077, 812-025-0032, 812-030-0223 are adopted to establish a \$10 fee to replace a license and pocket card.

• 812-003-0321 is adopted to recognize that the exempt-nonexempt status of a contractor may change from time to time. The rule requires the licensed contractor to notify CCB within 30 days of the change.

• 812-007-0032 is adopted to require LBP licensees to notify the Board of any mailing or e-mail address change. Notification needs to occur within 10 days of the change. There is no charge for making the change to the Board’s records.

• 812-008-0209 is amended to comply with ORS 105.838(1) that becomes effective 4/1/11; which requires before a person can sell a home, the home must be equipped with one or more properly functioning carbon monoxide detectors.

• 812-008-0065 is adopted to require certified home inspectors to notify the board of any mailing or e-mail address change. Notification needs to occur within 10 days of the change. There is no charge for making the change to the board’s records.

• 812-030-0235 is adopted to require certified locksmiths to notify the board of any mailing or e-mail address change. Notification needs to occur within 10 days of the change. There is no charge for making the change to the board’s records.

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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County Fair Commission
Chapter 621

Rule Caption: Specifies what a County Fair Board must do to comply with a policy related to professional development.

Date:	Time:	Location:
4-16-11	9 a.m.	Benton County Fairgrounds 110 SW 53rd St. Corvallis, OR

Hearing Officer: Les Carlsen

Stat. Auth.: ORS 565.405–565.455

Stats. Implemented: ORS 565.405–565.455

Proposed Amendments: 621-001-0005

Last Date for Comment: 4-16-11, Close of Hearing

Summary: The proposed rule outlines what a county fair must do to comply with the required policy related to professional development. Specifically the rule requires that a county fair must have at least one representative participate in the following activities: (1) Oregon Fairs Association annual convention; (2) Oregon Fairs Association annual spring leadership conference; and (3) and area meeting of the Oregon Fairs Association.

Rules Coordinator: John McCulley

Address: County Fair Commission, P.O. Box 2042, Salem, OR 97308

Telephone: (503) 370-7019

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Department of Agriculture
Chapter 603

Rule Caption: Changes fee reimbursing the Department for statutorily required commission oversight functions; changes fee appointment.

Date:	Time:	Location:
4-26-11	3 p.m.	635 Capitol St. NE Hearings Room Salem, OR 97301

Hearing Officer: Jim Cramer

Stat. Auth.: ORS 561.190, 576.066(1)(e)

Stats. Implemented: ORS 573.320(3)

Proposed Amendments: 603-042-0020

Last Date for Comment: 4-27-11, 5 p.m.

Summary: Revises rule to ensure the Oregon Department of Agriculture is reimbursed for all costs of supervisory and administrative functions that the Department is required by law to perform with regard to commodity commissions. For the first time in 10 years, the fee paid by all 25 commodity commissions will be increased to a total of \$250,000 to cover all program costs. The rule revision also modifies the formula for apportioning the fee among the commissions. The revised formula uses an initial charge of 2.3% of an individual commission’s annual assessment income, with adjustments to pick up the difference between the first charge and the total \$250,000 fee. The revised formula sets a maximum fee per commission of \$35,000. A minimum flat fee of \$750 is set for commissions with \$30,000 or less annual assessment income.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

NOTICES OF PROPOSED RULEMAKING

Department of Agriculture, Oregon Processed Vegetable Commission Chapter 647

Rule Caption: Amend rules related to assessment rates.

Date: 4-20-11 **Time:** 7:30 p.m. **Location:** 3415 Commercial St. SE Salem, OR

Hearing Officer: Gary Hull

Stat. Auth.: ORS 576.051–576.595

Stats. Implemented: ORS 576.051–576.595

Proposed Amendments: 647-010-0010

Last Date for Comment: 4-20-11, Close of Hearing

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

Rules Coordinator: John McCulley

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

Telephone: (503) 370-7019

Department of Agriculture, Oregon Salmon Commission Chapter 646

Rule Caption: Amend per diem rate for Oregon Salmon Commission commissioners from \$30.00 to \$50.00.

Date: 4-22-11 **Time:** 9 a.m. **Location:** U.S. Fish & Wildlife Service
2127 SE Marine Science Dr.
Newport, OR

Hearing Officer: Nancy Fitzpatrick

Stat. Auth.: ORS 675.304

Other Auth.: Motion made by OR Salmon Commission Board at 5-25-10 mtg. in Newport, OR.

Stats. Implemented: ORS 292.495, 576.206(7) & 576.265

Proposed Amendments: 646-040-0000

Last Date for Comment: 4-22-11, Close of Hearing

Summary: Sets per diem for commissioners at \$50.00. The 2009 Oregon Legislature approved HB 2458 which amended ORS 576.265 to exempt commodity commissions from the per diem limits set in ORS 292.495.

Rules Coordinator: Nancy Fitzpatrick

Address: Department of Agriculture, Salmon Commission, PO Box 983, Lincoln City, OR 97367

Telephone: (541) 994-2647

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

Rule Caption: Reporting and remittance of workers' compensation premium assessment.

Date: 4-20-11 **Time:** 1:30 p.m.* **Location:** Labor & Industries Bldg., Rm. F
350 Winter St. NE
Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.726(4), 656.612 & 656.614

Stats. Implemented: ORS 656.612 & 656.614

Proposed Amendments: Rules in 463-085

Last Date for Comment: 4-25-11

Summary: *NOTE: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so. Written testimony will be accepted through April 25, 2011.

The agency proposes to amend OAR chapter 436, division 085, "Premium Assessment." These proposed rules:

- Clarify some of the reporting and remittance requirements through the use of plain language and removal of obsolete information.

- Define "exempted earned premium" and "self-insured employer group."

- List key criteria for annual reporting eligibility.

Address questions or requests for paper copies of the rules to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; e-mail fred.h.bruyns@state.or.us. Proposed rules are available on the Workers' Compensation Division's website: <http://wcd.oregon.gov/policy/rules/rules.html#proprules>

Rules Coordinator: Fred Bruyns

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

Telephone: (503) 947-7717

Department of Corrections Chapter 291

Rule Caption: Transfer of Offenders Between Community Corrections Agencies.

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

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

Proposed Amendments: 291-019-0110, 291-019-0130, 291-019-0150

Proposed Repeals: 291-019-0047

Last Date for Comment: 4-25-11

Summary: Modification of these rules is necessary for to include low risk offenders in a practice that previously only addressed limited risk offenders. Other changes are necessary for housekeeping purposes.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: Mail for inmates that contains clippings or copies in which the subject is nude or partially nude.

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

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Proposed Amendments: 291-131-0020, 291-131-0025, 291-131-0035, 291-131-0037

Last Date for Comment: 4-25-11

Summary: These rule amendments are necessary to clearly establish department policy that incoming and outgoing mail to inmates that contains clippings or copies in which a subject is nude or partially nude is prohibited.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: Interstate Compact for Adult Offenders.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Proposed Adoptions: 291-180-0251, 291-180-0261

Proposed Repeals: 291-180-0115, 291-180-0125, 291-180-0135, 291-180-0145, 291-180-0155, 291-180-0165, 291-180-0175, 291-180-0185, 291-180-0195, 291-180-0205, 291-180-0215, 291-180-0225, 291-180-0235, 291-180-0245, 291-180-0255, 291-180-0285, 291-180-0295, 291-180-0305, 291-180-0315, 291-180-0325, 291-180-0335, 291-180-0345, 291-180-0355, 291-180-0365, 291-180-0375, 291-180-0385, 291-180-0395, 291-180-0405, 291-180-0415, 291-180-0425, 291-180-0435, 291-180-0445, 291-180-0455, 291-180-0465, 291-180-0475, 291-180-0485, 291-180-0495, 291-180-0505, 291-180-0515, 291-180-0525, 291-180-0535, 291-180-0545, 291-180-0555, 291-180-0565, 291-180-0575, 291-180-0585, 291-180-0595, 291-180-0605, 291-180-0615, 291-180-0625, 291-180-0635, 291-180-0645, 291-180-0655, 291-180-0665

Last Date for Comment: 4-25-11

NOTICES OF PROPOSED RULEMAKING

Summary: The Department of Corrections fully participates in the Interstate Compact for Adult Offender Supervision (ICAOS). These rule modifications are necessary so that the department may adopt by reference the most current rules published by the Interstate Compact for Adult Offender Supervision (ICAOS).

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

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

Rule Caption: Disability Determination Services Rates of Payment — Medical.

Date:	Time:	Location:
4-19-11	4 p.m.	Human Services Bldg. 500 Summer St. NE Rooms 137AB Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Proposed Adoptions: 411-200-0035

Proposed Amendments: 411-200-0010, 411-200-0020, 411-200-0030, 411-200-0040

Last Date for Comment: 4-22-11, 5 p.m.

Summary: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD), Disability Determination Services (DDS) is proposing to amend the rules relating to rates of payment in OAR chapter 411, division 200 to:

- Revise the statutory authority to accurately reflect the position of DDS within SPD;
- Clarify language and definitions for consistency and uniformity to align with DHS standards;
- Reorganize and create subsections to clarify specific medical components;
- Clarify wording for maximum fees permitted;
- Clarify entities eligible for authorized reimbursements;
- Make a distinction between vendors, consultants, and contractors;
- Add electronic documents as a kind of medical evidence where appropriate;
- Reiterate the limits and extent of medical fees for consultants and contractors;
- Clarify reimbursements for general and Office of Disability Adjudication Review file reviews;
- Clarify reimbursement limits for certain scheduled services; and
- Include rules specific to certified translators.

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

Rule Caption: Support Services for Adults with Developmental Disabilities.

Date:	Time:	Location:
4-19-11	2:30 p.m.	Human Services Bldg. 500 Summer St. NE Rooms 137AB Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 409.050 & 410.070

Other Auth.: ORS 291.261

Stats. Implemented: ORS 427.005, 427.007 & 430.610–430.695

Proposed Amendments: 411-340-0030, 411-340-0040, 411-340-0120

Proposed Repeals: 411-340-0030(T), 411-340-0040(T), 411-340-0060(T), 411-340-0120(T)

Last Date for Comment: 4-21-11, 5 p.m.

Summary: In response to legislatively required budget reductions effective October 1, 2010, the Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to permanently amend various support services rules in OAR chapter 411, division 340 to change:

- The certification period for support services brokerages and provider organizations; and
- The specific internal brokerage operations around the routing of written incident reports, the approval of revisions to the Individual Support Plan (ISP), and the required review of ISPs.

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

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Update public record request procedures and fees.

Stat. Auth.: ORS 181.640 & 192.440

Stats. Implemented: ORS 181.640 & 192.440

Proposed Amendments: 259-025-0000

Last Date for Comment: 4-21-11, Close of Business

Summary: This proposed rule update removes language referring to obsolete practice and establishes a more comprehensive fee schedule, taking into consideration the labor and materials needed to fulfill a request. Language is also added that allows DPSST to withhold records until payment is received.

Rules Coordinator: Linsay Bassler

Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

Department of Transportation, Highway Division Chapter 734

Rule Caption: ODOT intends to adopt and amend rules relating to pilot cars and general permit provisions.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060 & 823.011

Stats. Implemented: ORS 816.350, 818.030, 818.170, 818.200, 818.225, & 818.230

Proposed Adoptions: 734-075-0085

Proposed Amendments: 734-070-0005, 734-070-0010, 734-070-0025, 734-071-0010, 734-072-0010, 734-072-0015, 734-072-0020, 734-072-0022, 734-072-0023, 734-072-0030, 734-073-0050, 734-073-0056, 734-073-0065, 734-074-0020, 734-074-0023, 734-074-0051, 734-075-0035, 734-076-0005, 734-076-0015, 734-076-0075, 734-076-0115, 734-076-0165, 734-076-0175, 734-077-0010, 734-078-0020, 734-079-0005, 734-079-0015, 734-082-0035, 734-082-0040, 734-082-0070, 734-082-0080

Proposed Repeals: 734-075-0065, 734-075-0075, 734-075-0080

Last Date for Comment: 4-21-11

Summary: These rules describe variance permit conditions and requirements. Corrective revisions conform the rules to Secretary of State standards. Other changes are needed to ensure motor carriers understand the ultimate liability for damage caused during an over-size movement resides solely with the motor carrier, even if the carrier followed the Departments suggested route as listed on the variance permit. The proposed amendments clarify that the motor carrier is responsible for determining adequate clearance and would require pilot cars to use over-height poles for loads exceeding 14 feet 6 inches high when the permittee chooses not to sign a declaration of liability with the department for all damages. The rules are needed to provide the carrier with a reasonable industry approach to check load

NOTICES OF PROPOSED RULEMAKING

height and clearly designate liability for damages that may occur during the movement of the permitted load.

The new rule will add the current general permit provisions written for variance permits issued for non-divisible loads and Road Use Assessment Fees in OAR 734-082 and apply the provisions to the movement of over-dimension mobile home and modular building units in OAR 734-075. The rule is needed to strengthen existing rules by adding bond and insurance requirements along with all other permit provisions.

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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Department of Transportation, Motor Carrier Transportation Division Chapter 740

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

Stat. Auth.: ORS 153.022, 183.616, 183.619, 823.011, 825.232, 825.252 & 825.258

Stats. Implemented: ORS 153.018, 823.011, 825.210, 825.250, 825.252, 825.258 & 825.260

Proposed Amendments: 740-100-0010, 740-100-0020, 740-100-0065, 740-100-0070, 740-100-0080, 740-100-0085 740-100-0090, 740-100-0100, 740-110-0010

Last Date for Comment: 4-21-11

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

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Motor Carrier Transportation Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 986-3171

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Land Conservation and Development Department Chapter 660

Rule Caption: Metropolitan Greenhouse Gas Reduction Targets.

Date:	Time:	Location:
4-21-11	9 a.m.	635 Capitol St. NE Basement Hearing Rm. Salem, OR

Hearing Officer: LCDR

Stat. Auth.: ORS 197.040, 2009 OL Ch. 865, §37(6) (HB 2001), 2010 OL Ch. 85, §5 (SB 1059)

Stats. Implemented: 2009 OL Ch. 865, §37(6) (HB 2001), 2010 OL Ch. 85, §5 (SB 1059)

Proposed Adoptions: 660-044-0000, 660-044-0005, 660-044-0010, 660-044-0020, 660-044-0025, 660-044-0030, 660-044-0035

Last Date for Comment: 4-21-11

Summary: These rules set targets for reducing greenhouse gas emissions from light vehicle travel for each of the state's metropolitan areas for the year 2035 to aid in meeting the state goal in ORS

468A.205 to reduce the state's greenhouse gas emissions in 2050 to 75 percent below 1990 levels.

The targets provide guidance to local governments in metropolitan areas on the level of reduction in greenhouse gas emissions to plan for as they conduct land use and transportation scenario planning. Land use and transportation scenario planning to meet the targets is required of the Portland metropolitan area and is encouraged, but not required, in other metropolitan areas.

Land use and transportation scenario planning is intended to be a means for local governments in metropolitan areas to explore ways that urban development patterns and transportation systems would need to be changed to achieve significant reductions in greenhouse gas emissions from light vehicle travel. Scenario planning is a means to address benefits and costs of different actions to accomplish reductions in ways that allow communities to assess how communities meet other important needs, including accommodating economic development and housing needs, expanding transportation options, and reducing transportation costs.

Rules Coordinator: Casaria Tuttle

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

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

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Landscape Architect Board Chapter 804

Rule Caption: Adoption of the biennial budget for 2011-13 with a spending limitation of \$341,035.

Date:	Time:	Location:
5-6-11	10 a.m.	707 13th St. Conference Rm. Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 671.415, 182.462 & 670.310

Stats. Implemented: ORS 671.415 & 182.462

Proposed Amendments: 804-001-0002

Last Date for Comment: 5-6-11, 5 p.m.

Summary: The Administrative Rule revision will adopt the 2011-13 biennial budget for the Board with a spending limit of \$341,035. Individuals may request a copy of the budget by contacting Board staff.

Rules Coordinator: Marilou Arrobang

Address: Landscape Architect Board, 707 13th St. SE, Suite 261, Salem, OR 97301

Telephone: (503) 589-0093

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Landscape Contractors Board Chapter 808

Rule Caption: Removes requirement to submit pay stub with Verification Form.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.565

Proposed Amendments: 808-003-0018

Last Date for Comment: 4-22-11, 5 p.m.

Summary: Removes requirement to submit pay stub with Verification Form.

Rules Coordinator: Kim Gladwill-Rowley

Address: 2111 Front St. NE, Suite 2-101, Salem, OR 97301

Telephone: (503) 378-5909 ext. 223

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Oregon Department of Education Chapter 581

Rule Caption: Modifies appeals procedure relating to special education complaint investigations.

Stat. Auth.: ORS 343.041

Stats. Implemented: ORS 343.041

Proposed Amendments: 581-001-0005, 581-015-2030

Last Date for Comment: 4-21-11, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: Generally the Superintendent of Public Instruction allows a person entitled to judicial review of a final order to request reconsideration of a final order issued by the Superintendent. However, the Department recently was notified by the federal Office of Special Education Programs that for those orders relating to special education complaint investigations this allowance violates the federal Individuals with Disabilities Act. The rule amendments will bring Oregon into compliance with federal law.

Rules Coordinator: Diane Roth
Address: 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5791

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**Oregon Health Authority,
Addictions and Mental Health Division:
Mental Health Services
Chapter 309**

Rule Caption: Informed Consent and Significant Procedures in State Institutions.

Date: 4-15-11 **Time:** 10:30 a.m. **Location:** 500 Summer St. NE
Room 137A
Salem, OR 97301

Hearing Officer: Richard Luthe
Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 179.321, 183.458, 426.070 & 426.385
Proposed Adoptions: 309-114-0012, 309-114-0040, 309-114-0050, 309-114-0060, 309-114-0070

Proposed Amendments: 309-114-0000, 309-114-0005, 309-114-0010, 309-114-0015, 309-114-0020, 309-114-0025, 309-114-0030

Proposed Repeals: 309-114-0005(T), 309-114-0020(T), 309-114-0025(T), 309-114-0030(T), 309-114-0040(T), 309-114-0050(T), 309-114-0060(T), 309-114-0070(T)

Last Date for Comment: 4-22-11

Summary: These rules relate to the administration of significant procedures to individuals in state institutions operated by the Addictions and Mental Health Division of the Oregon Health Authority, under the following circumstances:

- With informed consent;
- Without informed consent in emergencies; and
- Involuntarily for good cause.

These rules also address the processes of independent evaluations and contested case hearings related to significant procedures.

Rules Coordinator: Richard Luthe
Address: Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E-86, Salem, OR 97301
Telephone: (503) 945-7652

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**Oregon Health Authority,
Office of Private Health Partnerships
Chapter 442**

Rule Caption: Amend FHIAP self-employment rules.

Stat. Auth.: ORS 735.724, 735.734 & 735.720–735.740

Stats. Implemented: ORS 735.720–735.740

Proposed Amendments: 442-005-0030, 442-005-0070, 442-005-0240

Last Date for Comment: 4-21-11

Summary: 442-005-0030 — to enable approved FHIAP members to enroll in health insurance more quickly.

- 442-005-0070 — to streamline and clarify income determination.
- 442-005-0240 — to clarify pend status.

Rules Coordinator: Margaret Moran
Address: Oregon Health Authority, Office of Private Health Partnerships, 250 Church St. SE, Suite 200, Salem, OR 97301
Telephone: (503) 378-5664

**Oregon Health Authority,
Oregon Educators Benefit Board
Chapter 111**

Rule Caption: Revise definition of eligible employee and correct language related to the term benefit plan.

Date: 4-21-11 **Time:** 10 a.m. **Location:** PEBB/OEBB Boardroom
1225 Ferry St. SE
Salem, OR 97301

Hearing Officer: OEBB Staff
Stat. Auth.: ORS 243.860–243.886

Stats. Implemented: ORS 243.864(1)(a)

Proposed Amendments: 111-010-0015

Last Date for Comment: 4-29-11, 5 p.m.

Summary: At the December Board meeting, the OEBB Board approved a request to expand eligibility to certain part-time employees. This revision to OAR 111-010-0015 includes a revised definition of eligible employee to include this group. In addition, we are correcting terminology used in the definition of “benefit plan” to use the statutory phrase.

Rules Coordinator: April Kelly
Address: 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-6588

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Rule Caption: Amends OEBB’s qualified status change rule.

Date: 4-21-11 **Time:** 10 a.m. **Location:** PEBB/OEBB Boardroom
1225 Ferry St. SE
Salem, OR 97301

Hearing Officer: OEBB Staff
Stat. Auth.: ORS 243.860–243.886

Stats. Implemented: ORS 243.864

Proposed Amendments: 111-040-0040

Last Date for Comment: 4-29-11, 5 p.m.

Summary: OAR 111-040-0040 is amended to include a qualified status change which allows an OEBB member to make a change to their benefit selections outside of the annual open enrollment when their spouse/domestic partner’s annual open enrollment or plan year is different from OEBB’s.

Rules Coordinator: April Kelly
Address: 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-6588

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Rule Caption: Amends OEBB’s Eligibility and Policy Term Violation rules.

Date: 4-21-11 **Time:** 10 a.m. **Location:** PEBB/OEBB Boardroom
1225 Ferry St. SE
Salem, OR 97301

Hearing Officer: OEBB Staff
Stat. Auth.: ORS 243.860–243.886

Stats. Implemented: ORS 243.864(1)(a)

Proposed Amendments: 111-080-0040, 111-080-0045, 111-080-0050

Last Date for Comment: 4-29-11, 5 p.m.

Summary: Amendments to 111-080-0040, 0045 and 0050 include the addition of new terminology used by OEBB to define an intentional and unintentional violation, as well as the consequences of each should they occur.

Rules Coordinator: April Kelly
Address: 1225 Ferry St. SE, Salem, OR 97301
Telephone: (503) 378-6588

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**Oregon Housing and Community Services Department
Chapter 813**

Rule Caption: Allows the Department to appoint a representative for contested case hearings on assessed civil penalties.

NOTICES OF PROPOSED RULEMAKING

Date: 4-27-11
Time: 10 a.m.
Location: 725 Summer St. NE,
Room 124A
Salem, OR 97301

Hearing Officer: Theresa Wingard

Stat. Auth.: ORS 183.452

Stats. Implemented: ORS 183.452 & 2005 OL Ch. 619, Sec 4

Proposed Adoptions: 813-001-0060

Last Date for Comment: 5-9-11, 5 p.m.

Summary: 813-001-0060 — Allows an employee to appear on behalf of the Department in contested case hearings conducted by the Department, by the Office of Administrative Hearings or by another agency on civil penalties assessed by the Department against a landlord or owner of a manufactured dwelling park. Establishes actions employee may be involved in during the hearing.

Rules Coordinator: Sandy McDonnell

Address: 725 Summer Street NE, Suite B, Salem Oregon 97301-1266

Telephone: (503) 986-2012

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Oregon State Lottery
Chapter 177

Rule Caption: Amendments clarify that smoking includes non-tobacco substances.

Date: 4-19-11
Time: 10:30–11 a.m.
Location: Oregon Lottery
500 Airport Rd. SE
Salem, OR

Hearing Officer: Larry Trott

Stat. Auth.: ORS 461

Other Auth.: OR Constitution, Article XV, Sec. 4(4)

Stats. Implemented: ORS 461.200 & 461.300

Proposed Amendments: 177-040-0005, 177-045-0000, 177-045-0010

Last Date for Comment: 4-19-11, 11 a.m.

Summary: The Oregon State Lottery has initiated permanent rulemaking to amend the above referenced administrative rules.

Substantive amendments are being made to clarify that Lottery tickets and shares may not be sold in an environment where Lottery employees, representatives, or agents are exposed to secondhand smoke from the smoking of any substance, and not just from the smoking of tobacco.

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 University System,
Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees and general service fees.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Proposed Amendments: 574-050-0005

Last Date for Comment: 4-21-11

Summary: Amendments will allow for increases, additions, and revisions of special course fees and general service 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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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of a Rulemaking to Adopt Federal Pipeline Safety Regulation Amendments.

Stat. Auth.: ORS 183, 756.040 & 757.039

Stats. Implemented: ORS 757.039

Proposed Amendments: 860-024-0020, 860-024-0021

Last Date for Comment: 4-22-11, 5 p.m.

Summary: The proposed rules adopt published US Department of Transportation (USDOT) amendments associated with the construction, operation and maintenance of intrastate gas pipelines and liquefied natural gas facilities. The amendments being adopted are from the Code of Federal Regulations, CFR Title 49, Part 192 (7 amendments) and Part 193 (3 amendments).

Pursuant to ORS 757.039(3), the Commission has agreements with USDOT to enforce federal pipeline safety regulations pertaining to pipeline facilities in Oregon. As a condition of those agreements, the Commission must annually certify to USDOT that the Commission adopted or is in the process of adopting all current federal pipeline safety regulations applicable to intrastate gas pipelines and liquefied natural gas facilities. This rulemaking is necessary to update the Commission's gas safety rules to be current with federal gas pipeline safety regulations.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 549 on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://www.puc.state.or.us/PUC/eFiling/fcindex.shtml>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16665>

Rules Coordinator: Diane Davis

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

Telephone: (503) 378-4372

.....
Racing Commission
Chapter 462

Rule Caption: Proposed rulemaking will edit OARs to provide more detailed direction to licensees regarding regulatory expectations.

Date: 4-21-11
Time: 10:30 a.m.–12:30 p.m.
Location: 800 NE Oregon St.,
Room 221
Portland, OR 97232

Hearing Officer: Charles Williamson

Stat. Auth.: ORS 462.270(3), 462.700 & 462.725

Stats. Implemented: ORS 462.142 & ORS 462.725

Proposed Amendments: 462-210-0030, 462-210-0040, 462-220-0030

Last Date for Comment: 4-21-11, Close of Hearing

Summary: AMEND: Amendment #1: 462-210-0030 (Establishing an Account): Remove language pertaining to player account balance requirements.

Amendment #2: 462-210-0040(3)(a)(A) (Operation of an Account): Amends the section to state, "Cash deposit made at an approved outlet, or other deposit mechanisms as approved by the commission; or"

Amendment #3: 462-210-0040(13) (Operation of an Account): Amends section to read, "Upon request the account wagering center shall provide on an annual basis, at no cost, a written statement of an individual's account activity. Unless written notice to the contrary is received by the account wagering center within fourteen (14) days of the date that any statement is sent to an account holder, the statement will be deemed accepted as correct."

Amendment #4: 462-220-0030(1) (Approval of the License for a Hub Operation): Adds (1)(a) and (1)(a)(A) which state: (1)(a) "A license may range from one to three years and should be so noted in the application submitted" and, (1)(a)(A) "The daily licensing fee

NOTICES OF PROPOSED RULEMAKING

is to be remitted no later than June 30 of each year licensing is being requested or has been granted for.”

Amendment #5: 462-220-0030(6)(a) (Approval of the License for a Hub Operation): Removes “with an FDIC insured bank” and replaces it with, “into an insured account”

Amendment #6: 462-220-0030(9) and (9)(a) (Approval of the License for a Hub Operation): Amends (9) and (9)(a) to read as follows:

(9) An applicant must provide the following to the commission:

(a) Access to customer call monitoring, account holder detail, and electronic wagering data;

Amendment #7: 462-220-0030(10) (Approval of the License for a Hub Operation): Adds new sub-section (10) which reads: “An applicant must maintain all customer account related documentation for a period of not less than one year, audio recording for a period of not less than three months.

Rules Coordinator: Nancy A. Artmann

Address: 800 NE Oregon St., Suite 310, Portland, OR 97232

Telephone: (971) 673-0211

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

Rule Caption: Updates current name availability rules.

Stat. Auth.: ORS 56.022, 58, 60, 62, 63, 65, 68, 70, 128, 183, 554 & 648

Stats. Implemented: ORS 58.085, 60.094, 62.131, 63.094, 65.094, 68.735, 70.010, 128.580, 554.005 & 648.051

Proposed Amendments: 160-010-0010, 160-010-0013, 160-010-0014

Last Date for Comment: 4-21-11

Summary: These rules detail the criteria used to determine if business names may be registered with the Corporation Division. The statutory standard is that names may only be registered if they are distinguishable on record. These rules define what does and what does not make a name distinguishable.

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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**Teacher Standards and Practices Commission
Chapter 584**

Rule Caption: Amends licensure fees, adopts Licensed Conditional Assignment (LCA), and clarifies eligibility for Social Worker license for out-of-state applicants.

Date:
4-22-11

Time:
1–3 p.m.

Location:
TSPC Office
465 Commercial St. NE
Salem, OR 97301

Hearing Officer: Lynn Beaton

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120–342.430, 342.455–342.495 & 342.553

Proposed Amendments: 584-020-0040, 584-036-0055, 584-070-0431

Last Date for Comment: 5-12-11, 12 p.m.

Summary: 584-020-0040 — *Grounds for Disciplinary Action* — Adds the citation for the specific statute referring to an educator’s privilege relating to confidentiality of student information.

584-036-0055 — *Fees* — Reduces proposed fee for potential License of Conditional Assignment (LCA) to \$25. Adds Initial Social Worker License Fee [\$100].

584-070-0431 — *Transitional School Social Worker License for First Time Out-of-State Applicants* — Clarifies that applicant must not have previously held an Oregon social worker or school social worker license. Eligibility includes qualified applicant must hold an unrestricted school social worker license in any other state or jurisdiction.

Rules Coordinator: Lynn Beaton

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

Telephone: (503) 373-0981

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**Veterinary Medical Examining Board
Chapter 875**

Rule Caption: Allows veterinarians to waive physical exams for animals presented for vaccines only.

Date:
4-14-11

Time:
6:30–8 p.m.

Location:
800 NE Oregon St.
Room 1A
Portland, OR 97232

Hearing Officer: Lori Makinen

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.130

Proposed Amendments: 875-015-0030

Last Date for Comment: 4-30-11

Summary: Allows a veterinarian to waive the physical examination of an apparently healthy animal presented for vaccination only. Administration of vaccine without a physical examination will not establish a Veterinary-Client-Patient-Relationship (VCPR).

Rules Coordinator: Lori V. Makinen

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

Telephone: (971) 673-0224

ADMINISTRATIVE RULES

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Amends division 20 to update who can schedule business meetings.

Adm. Order No.: PAR 3-2011

Filed with Sec. of State: 3-3-2011

Certified to be Effective: 3-4-11

Notice Publication Date: 2-1-2011

Rules Amended: 255-020-0005, 255-020-0015

Subject: Division 20 is being updated to include authority that the vice-chairperson may schedule business meetings.

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

255-020-0005

Scheduling

The chairperson or vice-chairperson of the Board shall schedule regular business meetings and shall schedule additional business meetings as necessary or upon the request of a majority of the Board members.

Stat. Auth.: ORS 137.320, 137.370, 144.005, 144.025, 144.035, 144.050, 144.079, 144.120, 144.140, 144.305, 144.343 & 144.783

Stats. Implemented: ORS 137.320, 137.370, 144.005, 144.025, 144.035, 144.050, 144.079, 144.120, 144.140, 144.305, 144.343 & 144.783

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 5-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 3-2011, f. 3-3-11, cert. ef. 3-4-11

255-020-0015

Matters for Consideration; Majority Vote

At business meetings, the chairperson, chairperson's designee, Board members, agency staff, or invited guests shall present matters relating to Board policy and administration for consideration. A decision at a business meeting requires a majority of affirmative votes.

Stat. Auth.: ORS 137.320, 137.370, 144.005, 144.025, 144.035, 144.050, 144.079, 144.120, 144.140, 144.305, 144.343 & 144.783

Stats. Implemented: ORS 137.320, 137.370, 144.005, 144.025, 144.035, 144.050, 144.079, 144.120, 144.140, 144.305, 144.343 & 144.783

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 5-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 3-1991(Temp), f. & cert. ef. 5-1-91; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 3-2011, f. 3-3-11, cert. ef. 3-4-11

Construction Contractors Board Chapter 812

Rule Caption: HPA form, clarify language licensing/renewals, home inspector continuing education, locksmith penalties, LBPR license surrender.

Adm. Order No.: CCB 1-2011

Filed with Sec. of State: 2-28-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 2-1-2011

Rules Adopted: 812-007-0323

Rules Amended: 812-001-0200, 812-001-0290, 812-005-0800, 812-006-0150, 812-006-0250, 812-008-0070, 812-008-0072, 812-008-0074

Rules Repealed: 812-001-0200(T), 812-007-0323(T)

Subject: • 812-001-0200 is amended to update the form used by contractors to comply with the Homebuyers Protection Act (HPA). Consistent with the new law that takes effect January 1, 2011 (Chapter 77 OR Laws 2010 [HB 3689]); the homebuyer will no longer be able to waive the HPA's protections. CCB adopted a new revised form dated December 1, 2010, to comply with the notice requirement of the law. This rule, as amended, will incorporate the new revised form.

• 812-003-0290 is amended to clarify current language and address four separate situations. The four situations involve licenses that are either up for renewal or have lapsed. The intended rule amendments attempt to describe these situations and how they will be treated. The four situations are:

• Subsection (4) – Timely license renewal, all requirements met – effective date of license is expiration date;

• Subsection (5) – License renewal application after expiration date but within two years, continuous bond and insurance – effective date of license is expiration date – license is backdated;

• Subsection (6) – License renewal application after expiration date but within two years, no continuous bond or insurance – effective date of license is new completion date – license is reissued;

• Subsection (7) – License renewal application more than two years after expiration date – license cannot be renewed or reissued; new license issued.

• 812-005-0800 is amended to set forth the sanctions for violating the locksmith statutes and rules. These rules implement the provisions of ORS 701.475-701.490 (HB 3127, Oregon Laws 2009, chapter 781), regarding certification of locksmiths, enforcement of which becomes effective July 1, 2010. CCB certifies individuals who advertise or work as a locksmith. The individual must pass a test demonstrating competency. A business that offers locksmith services must be a licensed contractor and employ certified locksmiths. The certified locksmith must comply with the standards of professional conduct (OAR 812-030-0300).

• 812-006-0150 is amended to allow training providers to offer more than 16 hours of training.

• 812-006-0250 is amended to expand on the criteria for training provider evaluation because the CCB manual has been expanded to: 1) expand information relating to construction contractor laws and regulations; and 2) add building exterior shell training (BEST).

• 812-007-0323 is adopted to allow certified lead-based paint renovation (LBPR) contractors to offer to surrender their licenses.

• 812-008-0070 is amended to recognize that some continuing education (CE) will not result in yielding a completion certificate. This will allow for the home inspector to offer other proof he or she completed the CE.

• 812-008-0072 is amended to add providers that the agency will recognize as providing CE. Specifically, this – together with changes to OAR 812-008-0074 – will allow home inspectors to use lead-based paint renovation training and CORE classes as qualifying CE.

• 812-008-0074 was recently amended to add “construction” and “renovation.” CORE would fall within these terms. The amendment specifically adds “lead-based paint” for clarity. The rule specifies which providers must provide completion certificates within 30 days (those approved by CCB). The rule deletes unnecessary language for retroactive credit – this was adopted as part of the original rule to implement the program initially.

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 January 1, 2010. 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 1, 2010.

(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 87.007, 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

ADMINISTRATIVE RULES

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; CCB 1-2010, f. & cert. ef. 2-1-10; CCB 16-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

812-003-0290

License Renewal, Reissue, New Issue; Effective Dates; Term

(1) Except as provided in section (3) of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.

(2) In order to obtain a renewed or reissued license, a contractor must provide the following:

- (a) A completed application form;
- (b) Proof of insurance;
- (c) A commercial or residential bond, or both (as indicated by the contractor's endorsement(s));
- (d) Where authorized by ORS 701.088, a letter of credit or cash deposit in lieu of the bond; and
- (e) An application fee.

(3) If agency error causes the delayed receipt of the required documents or fee, the agency may renew or reissue the license with an effective date before the date on which all requirements were satisfied. Otherwise, all documents and fees must be received by the agency before the agency may renew or reissue the license.

(4) If a contractor satisfies all requirements for license renewal before the expiration date:

- (a) The license is renewed; and
- (b) The effective date of the license is the expiration date.

(5) If a contractor continuously maintains a bond and insurance and satisfies all requirements for renewal within two years after the expiration date:

- (a) The license is renewed and backdated; and
- (b) The effective date of the license is the expiration date.

(6) If a contractor fails to continuously maintain a bond or insurance but satisfies all requirements for renewal within two years after the expiration date:

- (a) The license is reissued; and
- (b) The effective date of the license is the date when all requirements for reissue are met.

(7) If a contractor satisfies all requirements for renewal more than two years after the expiration date, the license cannot be renewed or reissued. The contractor must apply for a new license under OAR 812-030-0260.

(8) Notwithstanding sections (4) through (6) of this section, licenses that expire before July 1, 2008, may not renew on or after July 1, 2008, except by complying with the renewal requirements set forth in OAR 812-003-0280 and with the bond and insurance requirements set forth in OAR 812-003-0152, 812-003-0153, 812-003-0171, and 812-003-0221. The effective date of the renewal will be the date upon which all requirements for renewal are met, including but not limited to, proof of insurance coverage and bond or letter of credit or cash deposit. Such licenses will not be backdated to the previous expiration date.

(9) Licenses will be reissued or renewed for a period of two years.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04, CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 11-2010(Temp), f. & cert. ef. 6-4-10 thru 11-30-10; CCB 14-2010, f. 8-24-10, cert. ef. 9-1-10; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have

occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.026 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4)(a) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.

(b) A "complaint for damages" as used in section (4) of this rule includes, but is not limited to:

(A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or

(B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.345; and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of OAR 812-003-0320: First offense warning, second offense \$50, subsequent offenses \$200.

(12) Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.

(13) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(14) Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(15) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(16) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by ORS 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(17) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(18) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license

ADMINISTRATIVE RULES

for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(19) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(20) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(21) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840;

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(22) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(23) When, as set forth in ORS 701.098(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(24) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(25) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(26) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(27) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(28) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(29) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(30) Violation of work practice standards for lead-based paint (LBP) activity pursuant to OAR 812-007-0140 or 812-007-0240 first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 plus suspension of license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(31) Violation of work practice standards for LBP renovation pursuant to OAR 812-007-0340 or violation of recordkeeping and reporting requirements pursuant to OAR 333-070-0110: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000 and suspension of the certified LBP renovation contractor license for up to one year. The civil penalty is payable to the Construction Contractors Board LBP Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(32) Violation of OAR 812-007-0100, 812-007-0200 or 812-007-0300: first offense, \$1,000; second offense, \$3,000; and third offense, \$5,000. The civil penalty is payable to the Construction Contractors Board Lead-Based Paint (LBP) Activities Fund as provided in ORS 701.995 and OAR 812-007-0025.

(33) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(34) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(35) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(36) Violation of 701.098(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

(37) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

(38) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(39) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or ORS 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

(40) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(41) Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

(42) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; \$200 first offense, \$400 second offense; \$600 for the third offense; \$1,000 for each subsequent offense.

(43) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss submitted to the insurance company: first offense, \$500; second offense, \$1,000; third and subsequent offenses, \$5,000.

(44) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, \$2,000; second and subsequent offenses, \$5,000.

(45) Undertaking, offering to undertake, or submitting a bid to work as a locksmith when an individual is not certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(46) Undertaking, offering to undertake, or submitting a bid to provide locksmith services when a business is not a licensed construction contractor or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(47) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the individual is a locksmith, unless an individual is certified as a locksmith or otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(48) Using the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the business providing locksmith services, unless a business (a) is a licensed construction contractor and (b) is owned by or employs a certified locksmith or is otherwise exempt under ORS 701.490: first offense, \$1,000; second offense, \$3,000; third offense, \$5,000.

(49) Violating any applicable provision of the rules in division 30, including violating any standard of professional conduct other than OAR 812-030-0300(4): first offense, \$1,000; second offense, \$3,000; third offense, \$5,000 and revocation of the certificate.

(50) Violating OAR 812-030-0300(4): first offense, \$200; second offense, \$500; third offense, \$1,000.

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

ADMINISTRATIVE RULES

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, 701.480, 701.485, 701.510, 701.515, 701.992 & 701.995

Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; ; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 13-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 17-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 19-2008, f. & cert. ef. 11-20-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09; CCB 4-2009, f. 5-6-09, cert. ef. 6-1-09; CCB 6-2009, f. & cert. ef. 9-1-09; CCB 2-2010, f. & cert. ef. 2-1-10; CCB 8-2010, f. & cert. ef. 4-28-10; CCB 13-2010(Temp), f. & cert. ef. 7-7-10 thru 1-2-11; Administrative correction 1-25-11; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

812-006-0150

Training Requirements

(1) The training required in ORS 701.122 shall cover the subjects listed in OAR 812-006-0250.

(2) Training shall consist of at least 16 hours.

(3) Training must be provided by a provider approved by the agency as provided in OAR 812-006-0200.

(4) A person seeking to take the training shall:

(a) Pay any fees required by the training provider; and

(b) Provide approved government-issued picture identification to the training provider.

Stat. Auth.: ORS 670.310, 701.122 & 701.235

Stats. Implemented: ORS 701.122

Hist.: CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

812-006-0250

Training Subjects

(1) The agency may evaluate and approve training based on written evaluation criteria approved by the Training and Education Committee and made available to providers. The agency may revoke a provider's right to offer training if a provider's training does not meet the approved criteria.

(2) The hours of training required under OAR 812-006-0150 shall consist of the following topics:

(a) Construction Contractors Board:

(A) Role and authority, licensing requirements, application procedures and major divisions and functions;

(B) Dispute resolution processes;

(C) Business entities;

(D) Mandatory consumer notices;

(E) Rights and responsibilities of consumers and contractors;

(F) Independent contractor requirements;

(G) Exempt and non-exempt contractors;

(H) License endorsements and requirements for bonds and insurance;

(I) Special licenses;

(J) Written contract requirements;

(K) Warranty and maintenance schedule requirements;

(L) Enforcement program; and

(b) Employer requirements and employee's rights:

(A) State agencies that regulate workplace issues;

(B) Information and resources on employer requirements, employee's rights, workers' compensation insurance, and required workplace postings;

(C) Civil rights;

(D) Title VII, child labor, and important state and federal wage and hour laws;

(E) Current minimum wage rate requirements;

(F) Prevailing wage rate law; and

(G) Employees and independent contractors.

(c) Taxes, record keeping and business practices:

(A) Required employment forms;

(B) Identification numbers;

(C) Cost of employees;

(D) Importance of good record keeping;

(E) Ways to organize records;

(F) Required tax forms and reporting times;

(G) Professional help;

(H) Profit and cash flow; and

(I) Requirements for business licenses.

(d) Building codes:

(A) Applicable codes;

(B) Building codes books;

(C) Code revisions;

(D) Specialty licenses and inspections;

(E) Required and exempt permit work;

(F) Permit applications permit violation penalties;

(G) Required inspections;

(H) Inspection procedures;

(I) Final inspections and occupancy permits; and

(J) Red tag/stop work orders.

(e) Oregon Occupational Safety and Health Division:

(A) OR-OSHA regulations, job site inspections and resources;

(B) Equipment basics and maintenance;

(C) Job site record keeping;

(D) General safety practices; and

(E) Responsibilities and relationships among contractors and subcontractors on a job site.

(f) Sound environmental practices and laws:

(A) Environmental friendly materials;

(B) Good recycling, reduction and reuse methods;

(C) Hazardous waste and special waste found in new and old construction;

(D) Laws and regulations governing environmental hazards, proper handling and disposal methods of environmental hazards and job site debris;

(E) Governmental agencies that regulate environmental conditions at a job site;

(F) Environmental violation penalties;

(G) Site preparation including construction activities that impact rivers;

(H) Soil erosion; and

(I) Wetlands, water quality, sewage and underground storage/heating oil tanks.

(g) Contract law:

(A) Clear and concise contracts;

(B) Four elements of contract law;

(C) Three elements of a construction contract;

(D) Breach of contract;

(E) Minor and major breach of contract;

(F) Written and verbal contracts and change orders;

(G) Contractor responsibilities for work of self and others;

(H) Partnering, negotiation, mediation, arbitration and litigation; and

(I) Buyer's Right to Cancel.

(h) Oregon construction lien law:

(A) Purpose;

(B) Required notices;

(C) Lien law procedures;

(D) Steps and timelines to perfect a lien and foreclose; and

(E) Important lien law differences of other states.

(i) Project management, estimating and scheduling:

(A) Importance of project management and consequences for failing to do so;

(B) Simple written budgets that include cost, overhead and profit; and

(C) Simple project schedules and consequences of improper job scheduling.

(j) Building Exterior Shell Training (BEST):

(A) Need for BEST;

(B) Contractor's responsibility to construct weather-resistant building exterior shell;

(C) Purpose of building exterior shell;

(D) Primary components of building exterior shell;

(E) Basic moisture management concepts;

(F) Exterior wall assemblies; and

(G) Best practices for building exterior shell construction.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.122

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 3-1997, f. & cert. ef. 10-3-97; CCB 3-1998, f. & cert. ef. 2-26-98; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; CCB 6-2006, f.

ADMINISTRATIVE RULES

5-25-06, cert. ef. 6-1-06; Renumbered from 812-006-0050, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

812-007-0323

License Surrender

A certified LBP renovation contractor may request that the board accept the surrender of its license.

- (1) The license remains in effect until the board accepts the surrender.
 - (2) If the board accepts the surrender, the board will notify the licensee of the date the license terminates.
 - (3) The board will not accept the surrender if an investigation of or disciplinary action against the licensee is pending.
 - (4) The licensee must cease renovating target housing or child-occupied facilities from the date the license terminates through the remainder of the license period.
 - (5) The board will not reinstate the surrendered license.
- Stat. Auth.: ORS 670.310, 701.235 & 701.351
Stats. Implemented: ORS 701.350 & 701.351
Hist.: CCB 18-2010(Temp), f. & cert. ef. 12-22-10 thru 6-19-11; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

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 or other proof of completion 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 & 701.351
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; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

812-008-0072

Approved Continuing Education Units

The following continuing education units (CEUs) are approved:

(1) One CEU for each completed clock hour of instruction of approved subject matter in OAR 812-008-0074(1) given by the following:

- (a) Education providers approved under OAR 812-008-0074(3).
- (b) Accredited colleges or universities.
- (c) Federal, state or local government agencies.
- (d) Education providers approved or accredited by federal, state or local government agencies.

(2) One CEU for accompanying a plumbing, electrical, or heating and air conditioning contractor who is licensed with the Building Codes Division, on a repair or maintenance job that lasts a minimum of four hours. No more than one CEU shall be granted in each of the three areas per two-year renewal period for a total of three CEUs.

(3) One CEU for each year completed for serving as an officer of an Oregon or national home inspector professional trade association.

(4) One CEU for each Home Inspector Advisory Committee meeting attended as a Construction Contractors Board Home Inspector Advisory Committee member.

Stat. Auth.: ORS 670.310, 701.235 & 701.350
Stats. Implemented: ORS 701.350 & 701.351
Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

812-008-0074

Approved Course Subjects and Education Providers

(1) The following subject areas are approved for continuing education units: Report writing, communication skills, business practices, legal issues, ethics, home inspector study guide items, building codes, construction, renovation, lead-based paint and home inspector standards of practice.

(2) If applicable, a foreign company applying to be an education provider must be authorized by the Oregon Corporation Division to do business in Oregon. All education provider applicants must register their

assumed business name(s) used in Oregon with the Oregon Corporation Division.

(3) Education provider applicants shall complete an application form prescribed by the agency that shall include but is not limited to the following information:

- (a) Evidence that the education provider applicant complies with section (2) of this rule.
- (b) An outline that demonstrates the goals and objectives of the education program are appropriate for Oregon Home Inspectors;
- (c) Certification that the courses intended for Oregon Home Inspectors are in the approved subject matter stated in OAR 812-008-0074(1).
- (d) Certification that the instructors are qualified and have:
 - (A) Experience in subject matter.
 - (B) Licenses, certificates, and/or degrees in subject matter.
 - (C) Background in training or adult education; and
 - (D) Knowledge of home inspection industry.
- (e) Certification that the criteria used by the education provider to approve and evaluate instructors and courses are stringent and ongoing.

(4) Education providers offering continuing education units as defined in 812-008-0072(1)(a) shall provide completion certificates to course attendees within 30 days from the date of course completion. Course completion certificates shall include but are not limited to the following:

- (a) Education provider's name;
 - (b) Attendee's name;
 - (c) Date of course;
 - (d) Subject areas covered in course;
 - (e) Number of clock hours or continuing education units; and
 - (f) Signature of education program designee.
- (5) The agency may terminate a provider's program if they do not meet the agency's approved criteria.

Stat. Auth.: ORS 670.310, 701.235 & 701.350
Stats. Implemented: ORS 701.350 & 701.351
Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 14-2010, f. 8-24-10, cert. ef. 9-1-10; CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11; CCB 1-2011, f. 2-28-11, cert. ef. 3-1-11

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**Department of Agriculture,
Oregon Albacore Commission
Chapter 972**

Rule Caption: Amend per diem rate for Oregon Albacore Commission commissioners from \$30.00 to \$100.00.

Adm. Order No.: AC 1-2011

Filed with Sec. of State: 3-7-2011

Certified to be Effective: 3-7-11

Notice Publication Date: 6-1-2010

Rules Amended: 972-040-0000

Subject: Sets per diem for commissioners at \$100. The 2009 Oregon Legislature approved HB 2458 which amended ORS 576.265 to exempt commodity commissions from the per diem limits set in ORS 292.495.

Rules Coordinator: Nancy Fitzpatrick—(541) 994-2647

972-040-0000

Per Diem Compensation

(1) Subject to the availability of funds in the budget of the commission, the Oregon Albacore Commission must pay any member of the commission, other than a member who is employed in full-time public service, compensation for each day or portion thereof during which the member is actually engaged in the performance of official commission duties.

(2) The rate of compensation is \$100 per day.

(3) In order to receive compensation, a member must submit to the Oregon Albacore Commission a written claim for compensation by the 15th day of the calendar month following the quarter for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 292.495, 576.206 & 576.416
Stats. Implemented: ORS 576.206(7) & 576.265
Hist.: AC 1-2008, f. & cert. ef. 1-23-08; AC 1-2011, f. & cert. ef. 3-7-11

ADMINISTRATIVE RULES

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

Rule Caption: Adopts 2011 Oregon Electrical Specialty Code.

Adm. Order No.: BCD 3-2011

Filed with Sec. of State: 3-11-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 2-1-2011

Rules Amended: 918-251-0000, 918-305-0005, 918-305-0100, 918-305-0105

Rules Repealed: 918-251-0010, 918-251-0020, 918-251-0050, 918-251-0060, 918-251-0080, 918-305-0110, 918-305-0120, 918-305-0130, 918-305-0150, 918-305-0160, 918-305-0165, 918-305-0180, 918-305-0190, 918-305-0205, 918-305-0210, 918-305-0250, 918-305-0265, 918-305-0270, 918-305-0280, 918-305-0290, 918-305-0300, 918-305-0310, 918-305-0320

Subject: These rules adopt the 2011 Oregon Electrical Specialty Code based upon the 2011 edition of the NFPA 70, National Electrical Code with Oregon specific amendments. Additionally, the rules include some non-substantive housekeeping changes to administrative rule that provide clarity and consistency among the Division's rules.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-251-0000

Reasonable Notice to Interested Parties

Before the adoption, amendment or repeal of any rule relating to the Electrical Safety Law under ORS 479.510 to 479.990, the Building Codes Division must give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.335 at least 21 days before the effective date;

(2) By notifying persons and organizations on the interested parties mailing list established under ORS 183.335(8) and OAR 918-001-0210.

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 183.335

Hist.: DC 56, f. & ef. 11-20-76; DC 4-1984, f. & ef. 1-17-84; Renumbered from 814-022-0000; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-250-0000; BCD 16-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 3-2011, f. 3-11-11, cert. ef. 4-1-11

918-305-0005

Interpretations

All electrical interpretations dated prior to April 1, 2011, issued by the Building Codes Division are withdrawn.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 3-2011, f. 3-11-11, cert. ef. 4-1-11

918-305-0100

Adoption of Oregon Electrical Specialty Code

(1) Effective April 1, 2011, the **2011 Oregon Electrical Specialty Code** consists of the following:

(a) **2011 Edition of the NFPA 70, National Electrical Code (NEC)**, and further amended by the division in Table 1-E;

(b) **2007 Edition of the IEEE C2-2007, National Electrical Safety Code (NESC)**; and

(c) The electrical provisions of the **Oregon Elevator Specialty Code** adopted in OAR 918-400-0455.

(2) In the event of a conflict between the NEC and NESC requirements, the NEC requirement, as amended in subsection (1)(a) of this rule, applies.

(3) As used in this rule:

(a) "ANSI" is the American National Standards Institute;

(b) "ASME" is the American Society of Mechanical Engineers;

(c) "IEEE" is the Institute of Electrical and Electronics Engineers;

and

(d) "NFPA" is the National Fire Protection Association.

NOTE: Table 1-E is printed at the end of Division 305 and is available on the division's website at <http://www.bcd.oregon.gov/rules.html#oar>

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0600; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0010; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 3-2011, f. 3-11-11, cert. ef. 4-1-11

918-305-0105

Amendments to the Oregon Electrical Specialty Code

The **Oregon Electrical Specialty Code** is adopted and amended pursuant to OAR chapter 918, Division 8. Amendments adopted for inclusion into the Oregon Electrical Specialty Code are placed in this rule, showing the section reference and a descriptive caption.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 3-2011, f. 3-11-11, cert. ef. 4-1-11

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Rule Caption: Adopts the 2010 Oregon Energy Efficiency Specialty Code.

Adm. Order No.: BCD 4-2011

Filed with Sec. of State: 3-11-2011

Certified to be Effective: 3-11-11

Notice Publication Date: 3-1-2010

Rules Adopted: 918-460-0500, 918-460-0510

Rules Amended: 918-251-0090, 918-305-0030, 918-460-0000, 918-674-0033

Subject: These rules implement Senate Bill 79 (2009) requiring the director of the Department of Consumer and Business Services to improve the energy efficiency of commercial structures. The rules bring the code requirements up to date by adopting the 2009 edition of the International Energy Conservation Code (IECC) with Oregon specific amendments as the Oregon Energy Efficiency Specialty Code (OEESC). The rules also make various housekeeping changes necessary to adopt the OEESC as a stand alone code, adding new headings, and correcting references to Chapter 13 of the OSSC in favor of citing the OEESC.

The Division failed to submit a copy of these adopted rules to Legislative Counsel within the 10-day period required by ORS 183.715(1); therefore, the Division is amending the May 14, 2010 filing. The content of these rules have not changed and are effective retroactive July 1, 2010.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-251-0090

Definitions

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010. For purposes of OAR chapter 918, divisions 251 through 311, unless otherwise specified, the following apply:

(1) "Appliance" as applied to the limited maintenance specialty contractor license established by ORS 479.630, means any built-in or permanently-connected electrical utilization equipment, not including lighting fixtures, other than industrial, that is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, etc.

(2) "Approved" when referring to electrical product certification means approved in Oregon or for Oregon by the Electrical and Elevator Board.

(3) "Balance of system" as it relates to renewable electrical energy systems are those products, equipment, and systems for the conversion, control and storage of electrical energy.

(4) "Board" means Electrical and Elevator Board.

(5) "Building" means a structure that stands alone or that is isolated from adjoining structures by area separation walls as identified in Chapter 7 of the Oregon Structural Specialty Code adopted in OAR chapter 918, division 460, with all openings therein protected by approved fire doors as required.

(6) "Certification Mark" is identification on an electrical product indicating that the product has been certified under ORS 479.760.

(7) "Certified Electrical Product" is an electrical product certified under ORS 479.760 to which a label or other identifying mark.

(8) "Continuously Employ" means a person, including a person leased from a worker leasing company licensed under ORS 656.850, during time periods when electrical work for which they are responsible is performed, devotes their entire time of employment to tasks of supervising, designing, laying out, planning, controlling, and making electrical installations for the electrical contractor for which the supervisor is registered as signing supervisor.

(9) "Custom Made" means electrical products that are designed for a specific purpose and location.

ADMINISTRATIVE RULES

(10) "Document" means prepare records itemizing what was checked, why it was checked, when it was done, how it was checked, what was determined, and who did the work.

(11) "Electrical Specialty Code" means the National Electrical Code with Oregon amendments.

(12) "Electrical Specialty Code Inspector," formerly referred to as "A-Level Electrical Inspector," is a person certified to inspect under the **Oregon Electrical Specialty Code**.

(13) "Energy generation," as it relates to renewable electrical energy generation equipment, are those products, equipment, and systems in renewable electrical energy systems that produce or convert electrical energy.

(14) "Engineer" is an individual who has completed a minimum four-year degree program in electrical engineering or electrical technology with power specialty, from an accredited college or university and has received a Bachelor of Science degree.

(15) "Field Evaluation" means the evaluation of electrical products by an approved field evaluation firm.

(16) "Indorsement" is a designation within the restricted energy electrical area showing qualifications and training regarding a product area. It determines the scope of restricted energy electrical activity authorized under a restricted energy electrical license.

(17) "Industrial Electronic Equipment" means a device, appliance, motor, or machine regulated, operated, or controlled through fiber optics or by a combination of electron tubes, capacitors, resistors, impedance transformer, and relays; the control circuit, and/or the power circuits having electrons flowing through a vacuum, metallic vapor, gas tubes, or transistors as used in an industrial plant.

(18) "Industrial Plant", for purposes of licensing and electrical master permit inspection program, means an establishment engaged in industrial production, or service, or a school, hospital, sewer plant, water plant, commercial office building, building occupied by the state or a local government entity, or an institution. For purposes of the elevator program, "industrial plant" does not include a school, hospital, commercial office building, building occupied by the state or a local government entity, or an institution where the elevators are accessible to and used by persons other than the employees of that building.

(19) "Installation" includes external and field wiring, service contracts or warranties by the seller or manufacturer concerning the longevity of the equipment or parts after the original installation. It does not include "start-up" activities where new equipment is placed in service, and that type of work related to delivering and setting in place a piece of machinery.

(20) "Inverter", as it relates to renewable electrical energy generation equipment, is a product, equipment or system that converts direct current into alternating current.

(21) "Jurisdictional Inspector" is a state or municipal inspector having inspection responsibility within their jurisdiction over electrical products or their installation, or both.

(22) "Labeled" means a label, symbol or other identifying mark of a Nationally Recognized Testing Laboratory (NRTL), field evaluation firm or the division that is attached to an electrical product indicating the product is manufactured according to approved standards and tested or evaluated for specific end uses or both.

(23) "Lighting Fixture" is a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamp to the power supply.

(24) "Limited Energy System" means those systems that include Class 1, Class 2 or Class 3 systems as defined by Section 725.2 of NFPA 70 (National Electrical Code) and audio systems, communication systems and power-limited fire alarm systems, covered in the **Oregon Electrical Specialty Code**.

(25) "Listed Product" means a product was examined and accepted by a Nationally Recognized Testing Laboratory (NRTL) to meet a particular product standard and is maintained on a list of the listing laboratory.

(26) "Maintain" means to preserve electrical equipment in a good sound condition.

(27) "Maintenance" Compare with repair, replacement, and maintain for definition.

(28) "Minimum Electrical Installation Safety Code" means the adopted **Oregon Electrical Specialty Code**.

(29) "Nationally Recognized Testing Laboratory (NRTL)" means a laboratory recognized by the Federal Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.7.

(30) "NEMA" means the National Electrical Manufacturers Association.

(31) "Off grid system" is a stand-alone system, connected to a structure, whose electrical systems are not connected to a utility-supplied electrical production and distribution network.

(32) "On grid system" is an electrical power system connected to a structure whose electrical systems are also connected to a utility-supplied electrical production and distribution network.

(33) "Plug-in Replacement" is a part, component or assembly designed to be inserted directly into a mating receptacle or socket such as printed circuit boards, control relays, control harnesses or other equipment connected by a cord or cable and plug assembly. A plug-in replacement does not have any field wiring that is connected to the plug-in part or assembly.

(34) "Power Circuitry" means that portion of the system, other than control, that provides electrical power to utilization equipment.

(35) "Registered Professional Electrical Engineer" is an individual licensed by the State of Oregon Board of Engineering Examiners as a professional electrical engineer under OAR chapter 820, division 10.

(36) "Renewable Electrical Energy System" as it relates to electrical energy generation, is the total components and subsystems that, in combination, convert wind energy, solar energy, micro-hydroelectricity, photovoltaic energy or fuel cell energy into electrical energy suitable for connection to a utilization load.

(37) "Repair" means to restore worn or damaged parts to a good, sound condition by means other than replacement.

(38) "Replacement" means substitution of complete units of damaged or worn equipment with similar new or used equipment of a size and rating that does not exceed the design capacity of the existing product.

(39) "Signing Supervising Electrician" or "Signing Supervisor" is a licensed supervising electrician who has been authorized by the electrical contractor to sign permits.

(40) "Similar Equipment," as applied to the limited maintenance specialty contractor license established by ORS 479.630(12), means components of light fixtures other than ballasts.

(41) "Special Deputy" means a person certified by the board or Chief Electrical Inspector to perform special deputy inspections allowed under ORS 479.760.

(42) "Stand-alone system" is a renewable electrical energy system that supplies power independently of an electrical production and distribution network.

(43) "Up to the load side of the inverter", as it relates to electrical energy generation equipment, is the renewable electrical energy system equipment up to the alternating current connection terminals of the inverter.

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

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.730

Hist.: DC 10, f. 4-13-72, ef. 5-1-72; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; Renumbered from 814-022-0105; BCA 44-1991, f. & cert. ef. 12-26-91; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-260-0005; BCD 4-1999, f. & cert. ef. 4-1-99; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-2000; BCD 5-2001, f. 6-7-01, cert. ef. 7-1-01; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03; BCD 15-2003, f. & cert. ef. 10-1-03; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04; BCD 3-2007, f. 3-30-07, cert. ef. 4-1-07; BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11

918-305-0030

Other Codes or Publications that Impact Electrical Installations

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010. Other codes and publications that impact electrical installations include, but are not limited to those listed below:

(1) Chapter 9 of the **Oregon Structural Specialty Code** (OSSC) relating to fire protection systems and Chapter 3 of the **Oregon Residential Specialty Code** relating to smoke alarm installations.

(2) ORS 455.420 requiring individual electric meters for dwelling units.

(3) The **Oregon Energy Efficiency Specialty Code** which addresses the energy efficiency issues of motors, electric lighting and other electric equipment; and

(4) Chapter 16 and 17 of the **Oregon Structural Specialty Code** which addresses the seismic requirements of nonstructural components and special inspection requirements.

(5) Publications and requirements of the serving utility.

(6) Public Law 101-336, the Americans with Disabilities Act, Part III; Department of Justice Regulations of Friday, July 26, 1991; 28 CFR Part 36, as amended January 1, 1995, including Americans with Disabilities Act

ADMINISTRATIVE RULES

Accessibility Guidelines (ADAAG) and Public Law 100-430, the Fair Housing Act and the regulations adopted thereunder.

(7) Chapter 11 of the **Oregon Structural Specialty Code** which relates to the Americans with Disabilities Act for mounting height requirements for electrical and communication receptacles located in affected buildings and structures.

(8) The interconnection of all net-metering facilities and solar photovoltaic systems operated as interconnected power production sources shall comply with the **Oregon Electrical Specialty Code**. In addition, the interconnection of all net-metering facilities utilizing solid-state inverters shall comply with OAR 860-039 Net Metering.

(9) **Oregon Manufactured Dwelling Installation Specialty Code**. The electrical installations shall be in accordance with the requirements of the **Oregon Electrical Specialty Code**.

(10) The electrical portions of the installation or product standards identified in OAR 918-306-0005. These standards are informational only and are to be used to clarify code intent. They may be used as installation guides when not specifically referenced or covered in the **Oregon Electrical Specialty Code**. Examples include, but are not limited to, the electrical sections of NFPA 20, NFPA 54, NFPA 99, NFPA 101, NFPA 110, NFPA 780 and NFPA 820.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730 & 757.262

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0610; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-290-0020; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 12-2000, f. 6-3-00, cert. ef. 7-1-00; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11

918-460-0000

Reasonable Notice to Interested Parties

Prior to the adoption, amendment, or repeal of any rule relating to the **Oregon Structural Specialty Code** or the **Oregon Energy Efficiency Specialty Code**, the Building Codes Division must give notice of the proposed action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(2) By notifying persons and organizations on the interested parties mailing list established under ORS 183.335(8) and OAR 918-001-0210.

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

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 183.335

Hist.: DC 63, f. & ef. 12-5-75; DC 9-1983, f. & ef. 3-15-83; Renumbered from 814-026-0000 & 814-026-0001; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11

918-460-0500

Adopted Oregon Energy Efficiency Specialty Code

(1) Effective July 1, 2010, the **2010 Oregon Energy Efficiency Specialty Code** is the 2009 edition of the International Energy Conservation Code, as published by the International Code Council, and amended by the Building Codes Division.

(2)(a) For the purposes of implementing a phase-in period for the **2010 Oregon Energy Efficiency Specialty Code**, Chapter 13 of the **2007 Oregon Structural Specialty Code** is adopted for the period beginning July 1, 2010 and ending September 30, 2010.

(b) During the phase-in period established in subsection (2)(a), all building departments in the state are required to accept plans for commercial structures designed to either the **2010 Oregon Energy Efficiency Specialty Code** or to Chapter 13 of the **2007 Oregon Structural Specialty Code**.

(c) Code requirements in effect at the time a plan review or permit application is filed controls the construction under the application unless the applicant agrees to be controlled by subsequent changes.

Stat. Auth.: ORS 455.020, 455.030, 455.110, 455.505 & 455.511

Stats. Implemented: ORS 455.110 & 455.511

Hist.: BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11

918-460-0510

Amendments to the Oregon Energy Efficiency Specialty Code

The **2010 Oregon Energy Efficiency Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **2010 Oregon Energy Efficiency Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

Stat. Auth.: ORS 455.030, 455.110 & 455.511

Stats. Implemented: ORS 455.030, 455.110 & 455.511

Hist.: BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11

918-674-0033

Specific Use Structures

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) When it can be demonstrated that compliance with strict requirements of the **Oregon Structural Specialty Code** or the **Oregon Residential Specialty Code** are impractical and the intent and purpose of the code can still be met without causing structural failure or risk of fire in employee protection only structures, equipment protection only structures, recreational use structures, and food service structures, the requirements of the code may be modified by the building official charged with administration of the prefabricated structures program.

(2) All new or converted food service structures shall provide required fire-resistive construction and suppression equipment including the structural elements necessary for any mechanical installations.

(3) The division may waive the formal plan review process required in the **Oregon Structural Specialty Code** or the **Oregon Residential Specialty Code** for specific use structures if the plans are prepared by an Oregon registered architect or engineer and it is found that the nature of the work applied for is such that plan review is not necessary to obtain minimum compliance with the code.

(4) If the division determines the work in a specific use structure is not of a highly technical nature and there is no unreasonable risk to life and safety, plans required by the **Oregon Structural Specialty Code** or the **Oregon Residential Specialty Code** may be prepared by a person who is not an Oregon registered architect or engineer.

(5) Specific use structures are exempt from the exterior envelope requirements of the **Oregon Energy Efficiency Specialty Code** provided the roof/ceiling assembly meets the prescriptive requirements of the code and the center of non-bullet-resistant window glass has a minimum U-factor of .35.

(6) Equipment protection only structures are exempt from all of the envelope requirements of the **Oregon Energy Efficiency Specialty Code**.

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

Stat. Auth.: ORS 455.010, 455.100 & 455.110

Stats. Implemented: ORS 455.110

Hist.: BCD 20-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04; BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 4-2011, f. & cert. ef. 3-11-11

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Rule Caption: Adopts the 2010 Oregon Mechanical Specialty Code; includes housekeeping changes to division rules.

Adm. Order No.: BCD 5-2011

Filed with Sec. of State: 3-11-2011

Certified to be Effective: 3-11-11

Notice Publication Date: 10-1-2009

Rules Amended: 918-440-0000, 918-440-0010, 918-440-0015, 918-440-0030, 918-440-0050, 918-440-0500, 918-440-0510

Rules Ren. & Amend: 918-440-0040 to 918-440-0012

Subject: The proposed rules adopt the 2009 Editions of the International Mechanical Code and the International Fuel Gas Code with Oregon amendments and shall be known as the 2010 Oregon Mechanical Specialty Code. The proposed rules also include housekeeping changes that improve readability and provide clarity and consistency among the division's rules.

The Division failed to submit a copy of these adopted rules to Legislative Counsel within the 10-day period required by ORS 183.715(1); therefore, the Division is amending the May 14, 2010 filing. The content of these rules have not changed and are effective retroactive July 1, 2010.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-440-0000

Reasonable Notice to Interested Parties: Mechanical Specialty Code

Prior to the adoption, amendment, or repeal of any rule relating to the **Oregon Mechanical Specialty Code**, the Building Codes Division shall give notice of the proposed action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date; and

(2) By mailing a copy of the notice to persons on the mailing list established pursuant to ORS 183.335 and OAR 918-001-0210.

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

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 183.335

Hist.: DC 63, f. & ef. 12-5-75; Renumbered from 814-027-0000; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11

ADMINISTRATIVE RULES

918-440-0010

Adopted Oregon Mechanical Specialty Code

(1) Effective July 1, 2010 the **2010 Oregon Mechanical Specialty Code** is the 2009 Editions of the International Mechanical Code and International Fuel Gas Code as published by the International Code Council and amended by the Building Codes Division.

(2) For the purposes of implementing a phase-in period for the **2010 Oregon Mechanical Specialty Code**, the **2007 Oregon Mechanical Specialty Code** is adopted for the period beginning July 1, 2010 and ending September 30, 2010.

(3) During the phase-in period established in subsection (2), all building departments in the state are required to accept plans designed to either the **2010 Oregon Mechanical Specialty Code** or to the **2007 Oregon Mechanical Specialty Code**.

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

Stat. Auth.: ORS 455.020, 455.030 & 455.110

Stats. Implemented: ORS 455.110

Hist.: DC 35, f. 6-5-74, ef. 6-25-74; DC 52(Temp), f. & ef. 7-3-75 thru 10-31-73; DC 62, f. 11-20-75, ef. 1-1-76; DC 68, f. 3-3-76, ef. 4-1-76; DC 75, f. 5-21-76, ef. 8-1-76; DC 85, f. 8-19-76, ef. 10-1-76; DC 22-1978, f. 9-1-78, ef. 10-1-78; DC 8-1979, f. 4-30-79, ef. 5-1-79/8-1-79/1-1-80; DC 14-1979, f. 12-27-79, ef. 1-1-80; DC 6-1980, f. 6-5-80, ef. 7-1-80; DC 11-1981, f. & ef. 7-20-81; DC 13-1981, f. 10-30-81; ef. 11-1-81; DC 14-1983, f. 6-23-83, ef. 8-1-83; DC 26-1984, f. 8-31-84, ef. 9-15-84; DC 10-1986, f. 6-30-86, ef. 7-1-86; DC 5-1987(Temp), f. & ef. 3-26-87; BCA 3-1987, f. & ef. 8-4-87; BCA 7-1987, f. & ef. 9-3-87; Renumbered from 814-027-0005; BCA 34-1989, f. 12-21-89, ef. 1-1-90; BCA 32-1991(Temp), f. & cert. ef. 9-30-91; BCA 6-1992, f. 3-24-92, cert. ef. 3-27-92; BCA 27-1992, f. 12-29-92, cert. ef. 1-1-93; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 18-2002, f. 7-26-02, cert. ef. 10-1-02; BCD 10-2004, f. 8-6-04 cert. ef. 10-1-04; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11

918-440-0012

Amendments to the Oregon Mechanical Specialty Code

The **2010 Oregon Mechanical Specialty Code** is adopted and amended pursuant to chapter 918, division 8. Amendments adopted for inclusion into the **2010 Oregon Mechanical Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

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

Stat. Auth.: ORS 455.030

Stats. Implemented: ORS 455.110

Hist.: BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 15-1999, f. & cert. ef. 10-6-99 thru 4-2-00; BCD 5-2000, f. 3-9-00, cert. ef. 4-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04; BCD 10-2004, f. 8-6-04 cert. ef. 10-1-04; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; Renumbered from 918-440-0040 by BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; Renumbered from 918-440-0040 by BCD 5-2011, f. & cert. ef. 3-11-11

918-440-0015

Refrigeration Installer Certification

All persons engaged in brazing or welding related to the installation, alteration or repair of refrigeration piping systems not regulated by the Oregon Boiler and Pressure Vessel Program under OAR chapter 918, division 225, shall be certified in accordance with the requirements of this rule.

(1) The minimum requirement for persons engaged in brazing or welding of refrigeration piping systems is a current and valid certification issued upon completion of a class by a division-approved certifying organization in brazing or welding in accordance with either:

(a) Section IX, Welding and Brazing Qualifications of the American Society of Mechanical Engineers publication, 2001 ASME Boiler and Pressure Vessel Code; or

(b) American Welding Society publication AWS B2.2-91, Standard for Brazing Procedure and Performance Qualification.

(2) Refrigeration systems installed in dwelling units regulated under the **Oregon Residential Specialty Code** are exempt from this rule.

(3) All refrigeration piping system requirements not regulated by OAR 918-225-0310, are subject to the **Oregon Mechanical Specialty Code**.

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

Stat. Auth.: ORS 455.020 & 455.720

Stats. Implemented: ORS 455.020 & 455.720

Hist.: BCD 34-2000, f. 12-27-00, cert. ef. 7-1-01; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11

918-440-0030

Energy Efficiency Rating (E.E.R.) System Single Family Residences

(1) Scope: These rules provide a voluntary energy efficiency rating system for single family residences to encourage voluntary energy conservation and the voluntary use in real estate transactions.

(2) Definitions:

(a) "E.E.R." means Energy Efficiency Rating;

(b) "Single Family Residence" means a structure designed as a residence for one family and sharing no common wall with another residence of any type.

(3) Energy Efficiency Rating: The Energy Efficiency Rating (E.E.R.) is to be determined by the following steps:

(a) Determine the total energy used in the residence over the last 12 months' period in thousands of BTUs:

(A) Determine electrical energy (KWH) used (source: Electrical bills or utility company). Multiply the total KWH by 3413 BTUs equals the total electric BTUs used. (Electric KWH) x 3413 = BTUs;

(B) Determine natural gas therms used (source: Gas bills or the gas company). Multiply the therms used by 100,000 then by 0.75 (Efficiency Factor). This equals the total gas BTUs used. (Gas therm) x 100,000 x 0.75 = BTUs;

(C) Determine heating oil BTU'S by multiplying total gallons by 140,000 then by 0.75 (Efficiency Factor). This equals the total oil BTUs used. (Oil Gallons) x 140,000 x 0.75 = BTUs;

(D) Total the types of energy BTUs used in the residence to determine total BTUs used in the 12 months. (Electrical BTUs + Gas BTUs = Oil BTUs = TOTAL BTUs.);

(E) Divide total BTU'S by one thousand equals total thousand's BTUs used:

TOTAL BTUs

1,000

= TOTAL THOUSAND BTUs USED

(b) Determine the square footage of living (heated) space of the residence. (Source: House plans, measurement, or county assessor.);

(c) Divide total thousand BTUs used by the square footage of living space. The results are the E.E.R. of the residence that year:

TOTAL THOUSAND BTUs USED

TOTAL SQUARE FEET LIVING SPACE

= E.E.R.

Stat. Auth.: ORS 469.700

Stats. Implemented: ORS 469.700

Hist.: DC 16-1978, f. 4-28-78, ef. 7-1-78; Renumbered from 814-027-0105; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11

918-440-0050

Mechanical Permit Fees

(1) Effective July 1, 1999, the Building Codes Division fees for administration of the **Oregon Mechanical Specialty Code** are found in **Table 1-A**. These fees are based on 130 percent of Table 3-A of the 1979 edition of the Uniform Mechanical Code as published by the International Conference of Building Officials, as authorized in ORS 455.210.

(2)(a) Amend **Table 1-A** Mechanical Permit fees as follows:

(b) Plan review fees shall be those fees specified in Section 106.5.4 of the **Oregon Mechanical Specialty Code** as adopted in OAR 918-440-0010.

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

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

Stat. Auth.: ORS 455.020 & 455.210

Stats. Implemented: ORS 455.210

Hist.: BCD 8-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; BCD 11-1999, f. 9-7-99, cert. ef. 10-1-99; BCD 15-1999, f. & cert. ef. 10-6-99 thru 4-2-00; BCD 5-2000, f. 3-9-00, cert. ef. 4-1-00; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11

918-440-0500

Purpose and Scope

(1) Scope.

(a) This rule establishes a uniform notification process for the lawful disposal of mercury thermostats by persons installing heating, ventilation or air conditioning systems.

(b) For the purposes of this rule, a "thermostat" is a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(2) The authority having jurisdiction shall notify heating, ventilation or air conditioning system installers at time of permit issuance of proper disposal for mercury thermostats.

(3) The written notification shall include the following language: "In accordance with ORS 455.355, the disposal of thermostats that contain mercury shall be in accordance with programs established by thermostat manufacturers, their representative or distributor, or by delivery to sites that will ensure that the mercury does not become part of the solid waste stream or wastewater."

Stat. Auth.: ORS 455.355

Stats. Implemented: ORS 455.355

Hist.: BCD 24-2002, f. 9-13-02 cert. ef. 1-1-03; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11

ADMINISTRATIVE RULES

918-440-0510

Prohibits Installation of Mercury Thermostats

Effective January 1, 2006 installing a thermostat containing mercury in commercial or residential buildings is not allowed. The installation of thermostats containing mercury on industrial equipment used for safety controls is allowed. For the purpose of this rule, a thermostat is defined in OAR 918-440-0500(1)(b).

Stat. Auth.: ORS 455.355

Stats. Implemented: ORS 455.355

Hist.: BCD 21-2005, f. 9-29-05, cert. ef. 1-1-06; BCD 3-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 5-2011, f. & cert. ef. 3-11-11

Rule Caption: Adopts the 2010 Oregon Structural Specialty Code.

Adm. Order No.: BCD 6-2010

Filed with Sec. of State: 3-11-2011

Certified to be Effective: 3-11-11

Notice Publication Date: 11-1-2009

Rules Amended: 918-460-0010, 918-460-0050

Rules Repealed: 918-460-0016

Subject: These rules adopt the 2009 edition of the International Building Code with Oregon amendments to be known as the 2010 Oregon Structural Specialty Code. The rules also include some non-substantive housekeeping changes to administrative rule that provide clarity and consistency among the division's rules. The rules allow for a phase-in period of approximately 90 days.

The Division failed to submit a copy of these adopted rules to Legislative Counsel within the 10-day period required by ORS 183.715(1); therefore, the Division is amending the May 14, 2010 filing. The content of these rules have not changed and are effective retroactive July 1, 2010.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-460-0010

Adopted Oregon Structural Specialty Code

(1) Effective July 1, 2010 the **2010 Oregon Structural Specialty Code** is the 2009 Edition of the **International Building Code**, as published by the International Code Council, and amended by the Building Codes Division.

(2)(a) For the purposes of implementing a phase-in period for the **2010 Oregon Structural Specialty Code**, the **2007 Oregon Structural Specialty Code** is adopted for the period beginning July 1, 2010 and ending September 30, 2010.

(b) During the phase-in period established in subsection (2)(a), all building departments in the state are required to accept plans for commercial structures designed to either the **2010 Oregon Structural Specialty Code** or to the **2007 Oregon Structural Specialty Code**.

(c) Code requirements in effect at the time a plan review or permit application is filed controls the construction under the application unless the applicant agrees to be controlled by subsequent changes.

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

Stat. Auth.: ORS 455.020, 455.110, 455.447 & 455.610

Stats. Implemented: ORS 455.110

Hist.: DC 34, f. 6-5-74, ef. 6-25-74; DC 36(Temp), f. & ef. 7-1-74; DC 37, f. 8-30-74, ef. 9-25-74; DC 45, f. 4-7-75, ef. 4-25-75; DC 51(Temp), f. & ef. 7-3-75 - 10-31-75; DC 61, f. 11-20-75, ef. 1-1-76; DC 67, f. & ef. 2-19-76; DC 68, f. 3-3-76, ef. 4-1-76; DC 76, f. 5-21-76, ef. 8-1-76; DC 77, f. 5-26-76, ef. 6-3-76; DC 84, f. 8-19-76, ef. 10-1-76; DC 102, f. & ef. 11-1-77; DC 104, f. 12-1-77, ef. 12-10-77; DC 2-1978, f. 1-20-78, ef. 3-1-78; DC 18-1978, f. 5-4-78, ef. 5-15-78; DC 5-1978(Temp), f. 2-22-78, ef. 3-1-78 thru 4-29-78; DC 29-1978, f. 10-27-78, ef. 1-1-79; DC 31-1978(Temp), f. 12-8-78, ef. 1-1-79; DC 33-1978(Temp), f. 12-27-78, ef. 1-1-79; DC 6-1979 (Temp), f. 3-13-79, ef. 4-1-79; DC 8-1979, f. 4-30-79, ef. 5-1-79/8-1-79/1-1-80; DC 12-1979(Temp), f. 7-2-79, ef. 8-1-79; DC 13-1979, f. 11-1-79, ef. 12-1-79; DC 7-1980, f. 6-5-80, ef. 7-1-80; DC 15-1980(Temp), f. & ef. 10-13-80; DC 11-1981, f. & ef. 7-20-81; DC 13-1981, f. 10-30-81, ef. 11-1-81; DC 15-1981, f. 10-30-81, ef. 1-1-82; DC 9-1982, f. & ef. 3-1-82; DC 14-1983, f. 6-23-83, ef. 8-1-83; DC 26-1984, f. 8-31-84, ef. 9-15-84; DC 35-1984, f. & ef. 11-28-84; DC 14-1985(Temp), f. & ef. 6-21-85; DC 21-1985, f. 12-18-85, ef. 1-1-86; DC 10-1986, f. 6-30-86, ef. 7-1-86; DC 19-1986, f. 10-31-86, ef. 11-1-86; DC 5-1987(Temp), f. & ef. 3-26-87; DC 12-1987(Temp), f. 4-21-87, ef. 4-24-87; BCA 7-1987, f. & ef. 9-3-1987; BCA 11-1987, f. & ef. 10-21-87; BCA 12-1987, f. & ef. 11-5-87; Renumbered from 814-026-0005; BCA 34-1989, f. 12-21-89, cert. ef. 1-1-90; BCA 30-1990, f. 12-21-90, cert. ef. 1-1-92; BCA 43-1991(Temp), f. 12-24-91, cert. ef. 1-1-92; BCA 3-1992(Temp), f. 3-4-92, cert. ef. 3-5-92; BCA 12-1992, f. 6-29-92, cert. ef. 7-1-92; BCA 27-1992, f. 12-29-92, cert. ef. 1-1-93; BCA 3-1993(Temp), f. & cert. ef. 3-3-93; BCA 19-1993(Temp), f. 8-26-93, cert. ef. 9-1-93; BCA 26-1993, f. 10-22-93, cert. ef. 11-1-93; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 6-2011, f. & cert. ef. 3-11-11

918-460-0050

Structural Permit Fees

(1) Effective July 1, 1999, the Building Codes Division fees for administration of the **Oregon Structural Specialty Code** are found in Table 1-A. These fees are based on 130 percent of Table 3-A of the 1979 edition of the Uniform Building Code as published by the International Conference of Building Officials, as authorized in ORS 455.210.

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

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

Stat. Auth.: ORS 455.020 & 455.210

Stats. Implemented: ORS 455.210

Hist.: BCD 8-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; BCD 11-1999, f. 9-7-99, cert. ef. 10-1-99; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 6-2011, f. & cert. ef. 3-11-11

Rule Caption: Establishes a certification renewal process as required by House Bill 3462 (2009).

Adm. Order No.: BCD 7-2011

Filed with Sec. of State: 3-11-2011

Certified to be Effective: 3-11-11

Notice Publication Date: 12-1-2009

Rules Adopted: 918-098-1028

Rules Amended: 918-098-1000, 918-098-1010, 918-098-1015, 918-098-1020, 918-098-1025, 918-098-1210, 918-098-1215, 918-098-1300, 918-098-1305, 918-098-1310, 918-098-1315, 918-098-1320, 918-098-1325, 918-098-1330, 918-098-1450

Subject: These rules implement the portions of House Bill 3462 (2009) that direct the division to establish a certification renewal procedure for Oregon-issued certifications. These rules require an Oregon Inspector Certification (OIC) for all building officials, inspectors, and plan reviewers and renewal of that certification every three years. The rules lay out the application requirements and fees for obtaining or renewing an OIC. The division will issue an OIC, at no charge, to those certification holders who were not required to have the OIC when that certification was developed in 2005 because of a "grandfather" clause. The rules also change the fee for obtaining Oregon Code Certifications (OCC), but do not require them to be renewed. However, if an OIC is not renewed, all OCC associated with it become invalid. The rules provide for a five year reinstatement period and require a legislative update class as part of the continuing education requirements for an OIC.

The Division failed to submit a copy of these adopted rules to Legislative Counsel within the 10-day period required by ORS 183.715(1); therefore, the Division is amending the May 14, 2010 filing. The content of these rules have not changed and are effective retroactive July 1, 2010.

Rules Coordinator: Stephanie Snyder—(503) 373-7438

918-098-1000

Purpose and Scope

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) These rules establish minimum training, experience, certification, and certification renewal requirements for building officials and persons who perform specialty code plan review and inspections in this state. The certification requirements for commercial plumbing and electrical inspectors are located in OAR 918-695-0400 through 918-695-0410 and 918-281-0000 through 918-281-0020.

(2) Nothing in these rules is intended to allow a person to violate statute or rule or change certification and licensing requirements set forth in statute.

(3) Nothing in these rules prevents the director from waiving procedural requirements in the rare circumstance where substantial compliance is impracticable.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 446.250, 455.622 & 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 18-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1010

Certification Requirements

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

ADMINISTRATIVE RULES

(1) Unless otherwise stated in this rule, every person who performs building official duties, building code inspections, or plan reviews must possess a valid Oregon Inspector Certification and either:

(a) A valid appropriate Oregon Code Certification for the work being performed, or

(b) A valid appropriate International Code Council certification for the work being performed and the minimum level of experience as follows:

(A) Two years of construction or inspection-related experience or its equivalent;

(B) An approved one year inspection-related education program and one year of construction or inspection-related experience;

(C) A degree from an approved two year inspection-related education program or its equivalent; or

(D) Be a registered Oregon architect, a certified Oregon professional engineer, or have a Bachelor's or Master's degree in architecture or civil or structural engineering.

(2) Notwithstanding section (1)(b) of this rule, a person may perform the duties of a building official with only the Oregon Inspector Certification providing it is valid and the person passes the International Code Council Certified Building Official Legal Management examination within six months of hire.

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

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 18-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1015

Scope of Work Allowed for Persons With An Oregon Inspector Certification and Oregon Code Certifications

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010. Persons who possess a valid Oregon Inspector Certification and a valid Oregon Code Certification may perform inspections and plan reviews based on the class designated on their certificate. The classes, other than electrical and plumbing inspector classifications found in OAR 918-281-0020 and 918-695-0400, are:

(1) Building Official. Persons certified as an Oregon Building Official may oversee jurisdictions' administration and enforcement of the state building code for those specialty codes assumed by the jurisdiction pursuant to ORS 455.148 or 455.150. Building officials may not perform plan reviews or inspections unless they possess the appropriate certification for the plan review or inspection being performed.

(2) Fire and Life Safety. Persons certified as fire and life safety plans examiners may review construction plans for compliance with the fire and life safety plan review provisions of the **Oregon Structural Specialty Code** and the **Oregon Fire Code** for any structure regulated by the **Oregon Structural Specialty Code**.

(3) A-Level.

(a) Persons certified as A-level structural plans examiners may:

(A) Review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code** and **Oregon Fire Code** for all work regulated by the **Oregon Structural Specialty Code**, except the fire and life safety plan review provisions for structures required to receive a state fire and life safety plan review; and

(B) Review construction plans for work that falls within the B-level structural plans examiner classification.

(b) Persons certified as A-level structural inspectors:

(A) Conduct construction inspections of all work regulated by the **Oregon Structural Specialty Code**; and

(B) Conduct inspections of work that falls within the B-level structural inspector classification.

(c) Persons certified as A-level mechanical inspectors may:

(A) Conduct construction inspections and may review construction plans for all work regulated by the **Oregon Mechanical Specialty Code**; and

(B) Conduct inspections and review construction plans for work that falls within the B-level mechanical inspector classification.

(4) B-Level.

(a) Persons certified as B-level structural plans examiners may review construction plans for compliance with the provisions of the **Oregon Structural Specialty Code** and **Oregon Fire Code** for work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

(b) Persons certified as B-level structural inspectors may conduct construction inspections of work regulated by the **Oregon Structural Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

(c) Persons certified as B-level mechanical inspectors may conduct construction inspections of work regulated by the **Oregon Mechanical Specialty Code**, except:

(A) Work in structures required to receive a state fire and life safety plan review; and

(B) Work in structures required to be designed by an Oregon registered architect or certified professional engineer pursuant to ORS chapter 671.

(d) Persons certified as B-level structural plans examiners, B-level structural inspectors, or B-level mechanical inspectors:

(A) May qualify to be certified to review construction plans or conduct inspections of structures regulated by the **Oregon Residential Specialty Code**; and

(B) May not be authorized to review construction plans or conduct inspections of structures that are outside the B-level classification without first obtaining the appropriate certification.

(5) One and two family dwelling or residential.

(a) Persons certified as one and two family dwelling or residential:

(A) Structural inspectors may conduct construction inspections of structural work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured structures and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling Installation Specialty Code**, the provisions of OAR chapter 918, division 500, or the Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 3282 but not the scope of work described in OAR 918-098-1305;

(B) Mechanical inspectors may conduct inspections of mechanical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings, and manufactured dwelling alterations under the **Oregon Manufactured Dwelling Installation Specialty Code** and the provisions of OAR chapter 918, division 500;

(C) Plumbing inspectors may conduct inspections of plumbing work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings; and

(D) Electrical inspectors may conduct inspections of electrical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings.

(b) Persons certified as a one-and-two family dwelling plans examiners may review construction plans for compliance with provisions of the **Oregon Residential Specialty Code**, excluding apartment buildings, and structures under the **Oregon Manufactured Dwelling Installation Specialty Code**. The provisions of OAR chapter 918, division 500, or the Manufactured Home Construction and Safety Standards located in 24 CFR 3280 and 3282.

(c) Persons certified as a one and two family dwelling or residential inspectors and plans examiners may not be authorized to review construction plans or conduct inspections of either A-level or B-level structures without the required commercial A-level or B-level certification.

(d) See OAR 918-098-1325 for additional requirements of one and two family dwelling residential inspectors and plans examiners performing manufactured dwelling alteration inspections or plan reviews.

(e) See OAR 918-098-1330 for additional requirements of one and two family dwelling residential inspectors performing manufactured structure accessory structure or accessory building inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 24-1978, f. & ef. 9-1-78; DC 10-1980, f. & ef. 9-10-80; DC 4-1983, f. & ef. 1-12-83; Renumbered from 814-003-0065; BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0065; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0060; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0060; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 13-2007, f. 12-28-07 cert. ef. 1-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

ADMINISTRATIVE RULES

918-098-1020

Expanded Scope of Work for Oregon A- or B-Level or Commercial Mechanical Inspectors

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Persons may conduct inspections of brazing or welding work related to the installation, alteration, or repair of refrigeration piping systems, except as regulated by the Oregon Boiler and Pressure Vessel Program under OAR chapter 918, division 225.

(2) To perform work under section (1) of this rule, these persons must successfully complete a training program in accordance with either Section IX, "Welding and Brazing Qualification" of the ASME Boiler and Pressure Vessel Code, or AWS B2.2, "Standard for Brazing Procedure and Performance Qualification" administered by a division-approved organization.

(3) Inspector certification for refrigeration piping in residential structures is not required.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 2-2001, f. 2-2-01, cert. ef. 7-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0900; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0900; Renumbered from 918-098-1080, BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1025

Oregon Inspector Certification and Oregon Code Certification Application Process; Testing Procedures

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1)(a) All persons who seek certification to perform the duties of a building official, inspector, or plans examiner must apply for the Oregon Inspector Certification as follows:

(A) Submit a division-approved application with the \$125 fee; and
(B) Successfully pass the Oregon Inspector Certification examination.

(b) Applicants for an Oregon Inspector Certification who fail the examination may reapply under this section to retest for a fee of \$80.

(2) Persons applying for an Oregon Code Certification under these rules, or under OAR 918-281-0020 and 918-695-0400 must:

(a) Submit a division-approved application demonstrating appropriate experience, as defined in OAR chapter 918, division 281, 695, or these rules;

(b) Pay the \$80.00 fee; and

(c) Successfully pass the appropriate Oregon Code Certification exam.

(3) Applicants for an Oregon Code Certification who fail the examination may reapply under section (2) of this rule to retest. Applicants may not retake the test for 30 days after each failed attempt.

(4) If an applicant fails to take the Oregon Inspector Certification exam or the Oregon Code Certification exam within 60 days of being approved to do so, the applicant must re-apply under section (1) or (2) of this rule.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1028

Oregon Inspector Certification Renewal Process

Effective July 1, 2010:

(1) All Oregon Inspector Certifications expire on November 1, 2010 and every three years thereafter.

(2)(a) Oregon Inspector Certification renewals must be completed on or prior to the certification expiration date by:

(A) Completing the renewal form;

(B) Completing all continuing education requirements; and

(C) Paying the certification renewal fee of \$125 for a three year term.

(b) A certification not renewed on or prior to the certification expiration date is expired.

(3) The division mails one renewal notification to the last known address of the licensee at least 45 days prior to certification expiration. It is the responsibility of the certification holder to notify the division of a change of address.

(4)(a) An expired certification may be reinstated up to 5 years from the certification expiration date by:

(A) Completing the reinstatement form;

(B) Completing all continuing education requirements; and

(C) Paying the certification renewal fee of \$125.

(b) A certification expired for more than 5 years from the certification expiration may not be reinstated and requires application as provided in OAR 918-098-1025(1).

(5) Anyone with an Oregon Code Certification issued prior to October 1, 2005, who does not already possess an Oregon Inspector Certification, will be issued an Oregon Inspector Certification without fee or testing requirements. This certification will expire on November 1, 2010 and must be renewed according to section (2) of this rule.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1210

Residential Plumbing Inspectors

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) A person possessing a "One and Two Family Dwelling Plumbing Inspector" certification prior to July 1, 2005, is considered a "Residential Plumbing Inspector" for the purpose of these rules.

(2) A person issued a residential plumbing inspector certification must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing residential plumbing inspections.

(3) A residential plumbing inspector may conduct inspections for:

(a) Plumbing work regulated by the **Oregon Residential Specialty Code**, except for apartment buildings and where connection to the building is not a separate plumbing system.

(b) Plumbing work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling Installation Specialty Code** and the provisions of OAR chapter 918, division 500.

(4) To qualify to perform work as a residential plumbing inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education, or training requirements:

(a) A valid division certification as an **Oregon Plumbing Specialty Code** inspector; or

(b) Two years of experience designing or installing plumbing systems as a journeyman plumber or its equivalent; or

(c) 2 years of experience as a plumbing inspector in another jurisdiction inspecting plumbing systems in commercial or residential structures for compliance with a recognized code for plumbing installations; or

(d) 90 quarter hours or 60 semester hours education and training in mechanical engineering, which includes designing and installing plumbing systems, through a college or community college; or

(e) Valid division certification as a one and two family dwelling or residential inspector under one or more provisions of the **Oregon Residential Specialty Code** and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the building official of the jurisdiction that employs the applicant that the applicant has completed a one and two family dwelling or residential plumbing inspector cross-training program that meets the minimum requirements established by the division.

(f) Any combination of experience designing, installing, or inspecting plumbing systems totaling 3 years.

(5) Persons certified by a nationally recognized certification body to inspect plumbing systems in commercial or residential structures according to a recognized code in plumbing installations may be granted 1 year of credit toward the experience requirements listed in subsections (4)(b) and (c) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0220; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0220; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1215

Residential Electrical Inspectors

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) A person possessing a "One and Two Family Dwelling Electrical Inspector" certification prior to July 1, 2005, is considered a "Residential Electrical Inspector" for the purpose of these rules.

ADMINISTRATIVE RULES

(2) A person issued a residential electrical inspector certification must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing residential electrical inspections.

(3) Residential electrical inspectors may conduct inspections for:

(a) Electrical work regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings; and

(b) Electrical work on manufactured dwelling alterations and manufactured structure accessory buildings and structures under the **Oregon Manufactured Dwelling Installation Specialty Code** and the provisions of OAR chapter 918, division 500.

(4) To qualify to perform work as a residential electrical inspector, individuals must demonstrate compliance with at least one of the following minimum experience, education, or training requirements:

(a) A valid division certification as an **Oregon Electrical Specialty Code** inspector; or

(b) 2 years of Experience installing electrical systems as a limited residential journeyman electrician or a general journeyman electricians license or their respective equivalents; or

(c) 2 years of experience as an electrical inspector in another jurisdiction inspecting electrical installations in commercial or residential structures for compliance with a recognized code for electrical installations; or

(d) 90 quarter hours or 60 semester hours education and training in electrical engineering, which includes designing and installing electrical systems, through a college or community college; or

(e) Valid division certification as a one and two family dwelling or residential inspector under one or more provisions of the **Oregon Residential Specialty Code**, and:

(A) 1 year of experience administering and enforcing another provision of the **Oregon Residential Specialty Code**; and

(B) Confirmation by the division that an applicant has completed a one and two family dwelling or residential electrical inspector cross-training program that meets the minimum requirements established by the division.

(f) Any combination of experience or education listed in subsections (a) through (d) of this section designing, installing, or inspecting electrical systems totaling 3 years.

(5) Persons certified by a nationally recognized certification body to inspect electrical installations in commercial or residential structures according to a recognized code in electrical installations may be granted 1 year of credit toward the experience requirements and may be considered as meeting some requirements of a division approved cross-training program, except the experience listed in subsections (4)(b) and (c) of this rule.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.622

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0230; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0230; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1300

Certifications Related to Manufactured Structures and Parks

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

Scope. The rules in OAR 918-098-1300 to 918-098-1330 relate to certifications for inspectors and plans examiners dealing with manufactured dwellings, recreational vehicles, manufactured dwelling parks, organizational camps, recreation parks, and picnic parks.

(1) A person issued a manufactured structure installation inspector, recreational vehicle inspector certification, manufactured structure construction inspector, or park and camp inspector certification must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

(2) Hiring Non-Certified Persons. The division or a jurisdiction may employ a person not meeting the minimum requirements of OAR 918-098-1305 through 918-098-1320 while the person is being trained or waiting to qualify to take the division examination. During this period, the person may only perform inspections or plan reviews under the direct supervision of appropriately certified trainers. Training must be provided by an inspector or plans examiner having a minimum of three years experience in the same certification or a person approved by the board. This rule does not waive the requirements of ORS 455.730 or permit the division or jurisdiction to hire or use persons whose certifications have lapsed or been revoked.

(3) Inspectors and plans examiners of prefabricated structures do not require special certifications but must have the appropriate certifications

required for performing inspections or plan reviews under the specific specialty code being used.

(4) Applicable definitions in OAR 918-098-1005 apply in addition to the following definitions that only apply to OAR 918-098-1300 through 918-098-1330:

(a) "Board" means the Residential and Manufactured Structures Board.

(b) "Building Construction," relating to experience qualifications, means site-built construction, prefabricated construction, or manufactured structure construction.

(c) "One Year," relating to experience qualifications, means 2,000 hours of work experience, 45 or more credit hours of schooling in the quarter system, or 30 or more credit hours of schooling in the semester system.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0130; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0300; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0300; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1305

Manufactured Structure Installation Inspector Certification

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Scope of Activities and Authority.

(a) A manufactured structure installation inspector conducts onsite field inspections of manufactured dwelling or park trailer installations including site preparation, setbacks, drainage, stand, foundation support, earthquake bracing systems, tie-downs, under-floor enclosures, access, egress, plumbing utility connections (within 30 lineal feet of the manufactured dwelling), mechanical connections and electrical feeder assembly connections (as defined by **Article 550** of the **National Electrical Code**), electrical fixture connections, and plumbing, mechanical, and electrical crossover connections for manufactured structures under ORS 446.230 and 446.240;

(b) This certification does not include inspections or plan reviews of manufactured dwelling alterations or manufactured structure accessory structures and accessory buildings. See OAR 918-098-1325 and 918-098-1330 for certification requirements.

(c) This certification can be used only in a jurisdiction that:

(A) Meets all of the requirements of this rule and OAR 918-500-0055;

(B) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(C) Issues permits according to ORS 446.253; and

(D) Enforces the current edition of the **Oregon Manufactured Dwelling Installation Specialty Code**, the provisions of OAR chapter 918, division 500, and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule, make application, pay the required fees, attend a division-approved training program, and pass a division-approved examination.

(3) Experience, Education, and Training Requirements. An applicant must have at least one of the following:

(a) 2 years of supervisory experience in the building construction industry; or

(b) 2 years of experience in design work related to building construction; or

(c) Hold a valid division certification as a building inspector or plans examiner; or

(d) 2 years of experience as a quality assurance inspector in a manufactured structure manufacturing plant; or

(e) 2 years of experience as an Oregon licensed manufactured dwelling installer; or

(f) An associate degree or equal from a division-approved education program in a construction-related field; or

(g) Any combination of the experience and education listed in subsections (a) through (f) of this section equaling at least 2 years; or

(h) A one year certificate of completion in building inspection technology from a division-approved education program and completion of 180 hours working under the supervision of a person with a minimum of three years experience as a certified manufactured structure installation inspector or a person approved by the board.

(4) Inspector Training and Examination. An applicant must successfully complete a division-approved manufactured structure installation inspector training program and pass a division-approved examination covering:

ADMINISTRATIVE RULES

(a) The **Oregon Manufactured Dwelling Installation Specialty Code**, the provisions of OAR chapter 918, division 500, and those standards referenced therein;

(b) ORS 446.003, 446.155 to 446.253, and 446.395 to 446.420; and

(c) OAR chapter 918, divisions 500, 515, and 530.

(5) A Manufactured Structure Installation Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

(6) Revocation. The division is authorized to revoke this certification under ORS 446.255. Persons certified under this rule who fail to meet the minimum continuing education requirements are subject to revocation. If the minimum continuing education is met within 60 days from the date it was originally due, the division may discontinue any pending revocation action based on a failure to meet minimum continuing education requirements.

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

Stat. Auth.: ORS 446.250, 446.255 & 455.720

Stats. Implemented: ORS 446.250, 446.255 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0135; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0310; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0310; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1310

Recreational Vehicle Inspector Certification

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Scope of Activities and Authority. A recreational vehicle inspector conducts field, dealer lot, repair operation, alteration, visual and manufacturing plant inspections, reviews plans, and provides other technical services for recreational vehicle manufacturers, dealers, and owners in accordance with ORS 446.185 and 446.160(1).

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule, make application, pay the required fees, and pass a division-approved examination.

(3) Experience, Education, and Training Requirements. An applicant for certification as a recreational vehicle inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building construction industry;

(b) 2 years of experience in design work related to building construction;

(c) 2 years of experience as a certified building inspector or plans examiner;

(d) 2 years of experience as a quality assurance inspector in a manufactured structure plant;

(e) 2 years of experience as a division-certified recreational vehicle quality assurance technician;

(f) 2 years of code-related experience as a recreational vehicle technician;

(g) An associate degree or equal from a division-approved education program in a construction-related field;

(h) Any combination of the experience and education listed in subsections (a) through (g) of this section equaling at least 2 years; or

(i) A one year certificate of completion in building inspection technology from a division-approved education program and completion of 800 hours working under the supervision of a person with a minimum of three years experience as a certified recreational vehicle inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification as a recreational vehicle inspector must pass a division-approved examination covering the following:

(a) **American National Standards Institute (ANSI) A119.2 (1999 Edition);**

(b) **American National Standards Institute (ANSI) A119.5 (1998 Edition);**

(c) **National Electrical Code (NEC) NFPA 70 (2008 Edition);**

(d) ORS 446.003 and 446.155 to 446.253; and

(e) OAR chapter 918, divisions 525 and 530.

(5) A Recreational Vehicle Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0140; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05,

Renumbered from 918-098-0320; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0320; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1315

Manufactured Structure Construction Inspector Certification

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Scope of Activities and Authority. A manufactured structure construction inspector conducts field, dealer lot, consumer assistance, alteration, visual and manufacturing plant inspections, reviews plans, and provides technical services for manufactured dwelling manufacturers, dealers, and owners.

(2) Procedure for Qualification. An applicant for this certification must meet the general qualifications in section (3) of this rule, make application, pay the required fees, and pass a division-approved examination.

(3) Experience, Education, and Training Requirements. An applicant for certification as a manufactured structure construction inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building construction industry;

(b) 2 years of experience in design work related to building construction;

(c) 2 years of experience as a certified building inspector or plans examiner;

(d) 2 years of experience as a quality control inspector in a manufactured structures plant;

(e) An associate degree or equal from a division-approved education program in a construction-related field; or

(f) Any combination of the experience and education listed in subsections (a) through (e) of this section equaling at least two years; or

(g) A one year certificate of completion in building inspection technology from a division-approved education program and completion of 800 hours working under the supervision of a person with a minimum of three years experience as a certified manufactured structure construction inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification as a manufactured structure construction inspector must pass a division-approved examination covering:

(a) **Oregon Manufactured Dwelling Installation Specialty Code;**

(b) **National Electrical Code (NEC) NFPA 70 (2008 Edition);**

(c) **Manufactured Home Construction and Safety Standards Act;**

(d) **Public Law 93-383, Title VI;**

(e) ORS 446.003 and 446.155 to 446.253; and

(f) OAR chapter 918, division 500.

(5) A Manufactured Structure Construction Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0145; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0330; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0330; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1320

Park and Camp Inspector Certification

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Scope of Activities and Authority.

(a) A park and camp inspector conducts field inspections, reviews plans, and provides other technical services for manufactured dwelling parks, recreational parks, organizational camps, and picnic parks under ORS 446.066 and 446.335.

(b) This certification can only be used in a jurisdiction that:

(A) Meets all of the requirements of this rule;

(B) Complies with ORS 446.430, 455.170, and 455.680 relating to the delegation of full responsibility for permit issuance and inspections; and

(C) Issues permits, enforces the current edition of ORS chapter 446, OAR chapter 918, divisions 600 and 650, and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule, make application, pay the required fees, and pass a division-approved examination.

ADMINISTRATIVE RULES

(3) Experience, Education, and Training Requirements. An applicant for certification as a park and camp inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building or road construction industry;

(b) 2 years of experience in design work related to building or road construction;

(c) 2 years of experience as a road construction inspector;

(d) 2 years of experience as a surveyor or landscape architect;

(e) 2 years of experience as a registered sanitarian;

(f) 2 years of experience as an Oregon licensed manufactured dwelling installer;

(g) A division certification as a building inspector or plans examiner;

(h) An associate degree or equal from a division-approved education program in a construction-related field; or

(i) Any combination of the experience and education listed in subsection (a) through (h) of this section equaling 2 years;

(j) A one year certificate of completion in building inspection technology from a division-approved education program and completion of 180 hours working under the supervision of a person with a minimum of three years experience as a certified park and camp inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification under this rule must pass a division-approved park and camp inspector certification examination covering:

(a) ORS 446.003 to 446.140, 446.310 to 446.350, 446.430, 455.170, and 455.680;

(b) OAR chapter 918, divisions 600 and 650; and

(c) **2002 Oregon Manufactured Dwelling and Park Specialty Code**, Chapters 1, 2, 9, and 10.

(5) A Park and Camp Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0150; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0340; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0340; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1325

Requirements for Alteration Inspection and Plan Review of Manufactured Dwellings

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Scope of Work. Manufactured dwelling alteration inspections and plan reviews include on-site field inspections of alterations including structural, fire and life safety, electrical, plumbing, and mechanical alterations made to manufactured dwellings after the initial sale of the home to the first consumer after all the terms of the sales contract have been met. Most alteration inspections made prior to this time are the responsibility of the division and must be performed by a certified manufactured structure construction inspector. All alteration inspections made to recreational vehicles and park trailers are the responsibility of the division and must be performed by a certified recreational vehicle inspector.

(2) Certifications. Inspectors of manufactured dwelling alterations are required to be certified by ORS 446.250. The division requires that persons performing inspections or plan reviews on manufactured dwelling alterations have:

(a) An Oregon Inspector Certification and the appropriate Oregon Code Certification under OAR 918-098-1015 for the **Oregon Residential Specialty Code** for the specific discipline being used; or

(b) An Oregon Inspector Certification and the appropriate ICC Residential Certification as described in OAR 918-098-1010.

(3) The requirement in section (2) is not applicable to alteration inspections performed on manufactured homes still under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD), recreational vehicles, or park trailers.

(4) Authority. Inspectors and plans examiners of manufactured dwelling alterations may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling alteration program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Issues permits and enforces the current edition of ORS chapter 446 and OAR chapter 918, divisions 500 and 520;

(c) Meets the requirements of OAR 918-500-0055 for delegation; and
(d) Enforces the current edition of the **Oregon Manufactured Dwelling Installation Specialty Code** and all referenced standards contained therein.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0350; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0350; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1330

Manufactured Structure Accessory Structure or Accessory Building Inspection

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Scope of Work. Manufactured structure accessory structure or accessory building inspections and plan reviews include on-site field inspections of installations of manufactured structure accessory structures and accessory buildings (i.e., carports, ramadas, cabanas, garages, storage sheds, awnings, decks, steps, and ramps).

(2) Certifications. Inspectors of manufactured structure accessory structures and accessory buildings are required to be certified by ORS 446.250. To satisfy this mandate, the division requires that persons performing inspections or plan reviews on manufactured structure accessory structures or accessory buildings have a valid Oregon Inspector Certification and the appropriate Oregon Code Certification under OAR 918-098-1015 or a valid Oregon Inspector Certification and the appropriate ICC Residential Certification as described in OAR 918-098-1010 for the **Oregon Residential Specialty Code** for the specific discipline being used.

(3) Authority. Inspectors of manufactured structure accessory structures and accessory buildings may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling accessory structure and accessory building program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Complies with the **Oregon Manufactured Dwelling Installation Specialty Code** and all referenced standards contained therein;

(c) Issues permits and enforces the current edition of ORS Chapter 446 and OAR chapter 918, division 500;

(d) Meets the requirements of OAR 918-500-0055 for delegation; and
(e) Enforces the current edition of the **Oregon Manufactured Dwelling Installation Specialty Code** and all referenced standards contained therein.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0360; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0360; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

918-098-1450

Continuing Education Requirements

Unless stated otherwise within this rule, this rule is retroactive to July 1, 2010.

(1) Persons performing inspections and plan review in Oregon are required to obtain at least 16 hours of continuing education every three years, beginning January 1, 2006.

(a) At least one course during each three-year cycle must be a division-approved code-change course related to the scope of work allowed under each certification, if the code related to that specific certification changed during the cycle.

(b) At least one course must be a division approved course covering new legislation relating to the administration and enforcement of building inspection programs. This course is required to be taken every other year within one year after adjournment of the regular legislative session.

(2) In addition to the minimum hours in section (1), if a person has more than one Oregon Code Certification or ICC certification, the person must take at least one division-approved code change course for each certification.

(3) Building officials are required to obtain six hours continuing education credits every other year in classes related to the duties of a building official. The classes must also include at least one division approved class covering new legislation relating to the administration and enforcement of

ADMINISTRATIVE RULES

building inspection programs within one year after adjournment of the regular legislative session.

(4) The division may periodically verify that a person is maintaining and recording their continuing education.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11

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

Rule Caption: Set fees for credit union program and change date payment is due.

Adm. Order No.: FCS 3-2011

Filed with Sec. of State: 3-7-2011

Certified to be Effective: 3-8-11

Notice Publication Date: 1-1-2011

Rules Amended: 441-710-0500

Subject: The Department of Consumer and Business Services (DCBS) revised its credit union assessment rule to ensure that Oregon-chartered credit union fees are equitable, and that the assessment fees accurately reflect the costs of supervision. The amended rule increases the excess rate 26 percent to produce a positive fund balance through the end of December 31, 2011. The increase covers decreased revenue resulting from a recent merger of a state-chartered credit union with a federal credit union and costs associated with additional joint examinations of credit unions with assets over \$250 million. The amended rule also changes the date fees are due from March 1 to April 1. Changing the due date will provide DCBS sufficient time to calculate the assessments and provide the credit unions with 30 days notice of the assessment amount.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-710-0500

Fees and Charges Credit Unions Pay the Director

(1) Effective March 8, 2011, the annual regulatory fee under ORS 723.114(1), which is due and payable on April 1 of each calendar year, by each credit union, with assets of:

(a) Less than \$10 million, is \$250 plus .000163 of all assets;

(b) \$10 million or more but less than \$20 million, is \$1110 plus .000197 of all assets;

(c) \$20 million or more but less than \$50 million, is \$1170 plus .000188 of all assets;

(d) \$50 million or more but less than \$100 million, is \$1350 plus .000178 of all assets;

(e) \$100 million or more but less than \$200 million, is \$7100 plus .000125 of all assets;

(f) \$200 million or more but less than \$500 million, is \$7900 plus .000120 of all assets;

(g) \$500 million or more but less than \$1 billion, is \$9400 plus .000116 of all assets;

(h) \$1 billion or more but less than \$2 billion, is \$10,400 plus .000115 of all assets;

(i) \$2 billion or more is \$12,400 plus .000113 of all assets.

(j) If the credit union is a corporate credit union, the fee schedule is \$16,800 plus .0000345 of all assets.

(2) The rate of charge payable by a credit union is \$75 an hour for each examiner used in an examination for extra services provided a credit union under ORS 723.114(2).

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the Supervisor is required to travel out of state for an examination or to provide extra service, the rate of charge payable by the credit union is \$75 an hour per person, plus actual expenses for travel and subsistence;

(b) If the examination or the extra service is performed by a consultant hired by contract for the particular work, the charge payable by the credit union is the actual cost to the division of the contract consultant.

(4) In addition to the charges fixed by sections (2) and (3) of this rule, the Director will collect from a credit union any additional costs directly attributable to extra services given the credit union under ORS 723.114(2).

(5) As used in this rule:

(a) "Assets" means the average value of total assets reported by the credit union for the four calendar quarters for the year immediately preceding the due date of the fee. However, if a credit union was not in existence or doing business in this state during all of the prior calendar year "assets" means the average assets reported on the quarterly reports for the quarters for which reports were required to be filed during the calendar year immediately preceding the due date of the fee.

(b) "Extra service" means any special examination or examination in connection with a conversion.

(6) The annual regulatory fee of a credit union that is party to a merger or conversion, or is liquidated or dissolved:

(a) Is not subject to refund in whole or in part if the merger, conversion, liquidation or dissolution occurs prior to the end of the calendar years for which a fee has been paid;

(b) Is not subject to pro ration if the credit union operated during any part of the calendar year during which the merger, conversion, liquidation or dissolution occurred.

(7) An application for a credit union charter under ORS 723.012 must be accompanied by a fee of \$350.

(8) An application to establish an additional place of business under ORS 723.032 must be accompanied by a fee of \$300.

(9) The Director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 705.620, 723.012, 723.032, 723.102 & 723.532

Stats. Implemented: ORS 723.114 & 723.532, Ch. 343, 2007 OL

Hist.: FID 9-1985, f. & cert. ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-072-0010; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1991, f. 1-28-91, cert. ef. 2-15-91; FCS 3-1994, f. 2-1-94, cert. ef. 2-15-94; Administrative correction 9-29-97; FCS 3-2000, f. & cert. ef. 3-9-00; FCS 3-2001, f. & cert. ef. 2-13-01; FCS 1-2005(Temp), f. & cert. ef. 3-4-05 thru 8-30-05; Renumbered from 441-710-0010, FCS 2-2005, f. & cert. ef. 8-25-05; FCS 1-2008, f. & cert. ef. 1-28-08; FCS 3-2011, f. 3-7-11, cert. ef. 3-8-11

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Life and Health Actuarial Opinion including Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary.

Adm. Order No.: ID 5-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 2-23-11

Notice Publication Date: 12-1-2010

Rules Amended: 836-031-0600, 836-031-0620, 836-031-0630, 836-031-0640, 836-031-0670, 836-031-0680, 836-031-0690

Rules Repealed: 836-031-0650, 836-031-0660

Subject: This rule requires life insurers to submit an actuarial opinion that includes a regulatory asset adequacy issues summary. The summary would require a more rigorous actuarial demonstration of the adequacy of an insurer's assets backing all of its reserves and other liabilities. The proposed rule also incorporates changes to the National Association of Insurance Commissioners' (NAIC) Model Law #822 that were adopted in 2001 but never adopted in Oregon. Adoption of these changes provides uniformity for insurers submitting the requisite actuarial opinions by bringing Oregon into conformity with most other states. Although the division had adopted most of the pertinent changes to the model law, the changes proposed in this rulemaking have been added to the model since the division originally adopted the model.

Adoption of the model law with the changes proposed in this rulemaking became an accreditation standard effective January 1, 2010.

Rules Coordinator: Sue Munson—(503) 947-7272

836-031-0600

Purpose

The purpose of OAR 836-031-0600 to 836-031-0690 is to prescribe:

(1) Requirements for statements of actuarial opinion to be submitted in accordance with ORS 733.304 and for memoranda in support thereof;

(2) Rules applicable to the appointment of an appointed actuary.

(3) Guidance as to the meaning of "adequacy of reserves."

Stat. Auth.: ORS 731.244 & 733.304

Stats. Implemented: ORS 733.304

Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 5-2011, f. & cert. ef. 2-23-11

ADMINISTRATIVE RULES

830-031-0620

Scope

(1) OAR 836-031-0600 to 836-031-0690 apply to all life insurers transacting insurance in this state and to all life insurers that are authorized to reinsure life insurance, annuities or health insurance business in this state. OAR 836-031-0600 to 836-031-0690 shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards and practices. However, the director may specify specific methods of actuarial analysis and actuarial assumptions when, in the director's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

(2) OAR 836-031-0600 to 836-031-0690 shall be applicable to all annual statements filed with the office of the director after the effective date of this change to OAR 836-031-0600 to 836-031-0690. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with 836-031-0670 and a memorandum in support thereof in accordance with 836-031-0680 are required each year.

Stat. Auth.: ORS 731.244 & 733.304

Stats. Implemented: ORS 733.304

Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 5-2011, f. & cert. ef. 2-23-11

836-031-0630

Definitions

As used in OAR 836-031-0600 to 836-031-0690:

(1) "Actuarial Opinion" means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with 836-031-0670 and with currently accepted actuarial standards;

(2) "Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(3) "Annual Statement" means that statement required by ORS 731.574 of the Insurance Code to be filed by the company with the Director annually.

(4) "Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in OAR 836-031-0640(3) to provide the actuarial opinion and supporting memorandum as required by ORS 733.304.

(5) "Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in OAR 836-031-0640(4).

(6) "Company" means a life insurance company or reinsurer subject to the provisions of OAR 836-031-0600 to 836-031-0690.

(7) "Qualified Actuary" means any individual who meets the requirements set forth in OAR 836-031-0640(2).

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 733.304

Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 1-1993(Temp), f. & cert. ef. 2-4-93; ID 4-1993, f. 7-27-93, cert. ef. 7-30-93; ID 5-2011, f. & cert. ef. 2-23-11

836-031-0640

General Requirements

(1) The following provisions apply to submission of the statement of actuarial opinions:

(a) There is to be included on or attached to page 1 of the annual statement for each year beginning with 1992 the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with OAR 836-031-0670.

(b) Upon written request by the company, the Director may grant an extension of the date for submission of the statement of actuarial opinion.

(2) For purposes of OAR 836-031-0600 to 836-031-0690, a "qualified actuary" is an individual who:

(a) Is a member in good standing of the American Academy of Actuaries;

(b) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(c) Is familiar with the valuation requirements applicable to life and health insurance companies;

(d) Has not been found by the Director, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(A) Violated any provision of, or any obligation imposed by, the Insurance Code or other law in the course of the qualified actuary's dealings as a qualified actuary;

(B) Been found guilty of fraudulent or dishonest practices;

(C) Demonstrated incompetency, lack of cooperation or untrustworthiness to act as a qualified actuary;

(D) Submitted to the Director during the past five years, pursuant to OAR 836-031-0600 to 836-031-0690, an actuarial opinion or memorandum that the Director rejected because it did not meet the provisions of 836-031-0600 to 836-031-0690, including standards set by the Actuarial Standards Board; or

(E) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(e) Has not failed to notify the Director of any action taken by any insurance regulator of any other state similar to that under subsection (d) of this section.

(3) For purposes of OAR 836-031-0600 to 836-031-0690, an "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by 836-031-0600 to 836-031-0690, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the Director timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in the notice that the person meets the requirements set forth in section (2) of this rule. Once notice is furnished, no further notice is required with respect to this person if the company gives the Director timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in section (2) of this rule. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(4) This section establishes standards for asset adequacy analysis. The asset adequacy analysis required by OAR 836-031-0600 to 836-031-0690:

(a) Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and acceptable to the Director, and on any additional standards under OAR 836-031-0600 to 836-031-0690, which standards are to form the basis of the statement of actuarial opinion in accordance with OAR 836-031-0600 to 836-031-0690; and

(b) Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board and acceptable to the Director.

(5) The following apply to liabilities to be covered:

(a) Under authority of ORS 733.304, the statement of actuarial opinion shall apply to all in force business on the statement date whether directly issued or assumed regardless of when or where issued, e.g., reserves of Exhibits 8, 9, and 10, and claim liabilities in Exhibit 11, Part I and equivalent items in the separate account statement or statements;

(b) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in ORS 733.312, 733.314, 733.320, and 733.322, the company shall establish such additional reserve;

(c) Additional reserves established under subsection (b) of this section and deemed not necessary in subsequent years may be released. Any amount released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves is not to be deemed an adoption of a lower standard of valuation.

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

Stat. Auth.: ORS 731.244 & 733.304

Stats. Implemented: ORS 733.304

Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 5-2011, f. & cert. ef. 2-23-11

836-031-0670

Statement of Actuarial Opinion Based On an Asset Adequacy Analysis

(1) General Description. The statement of actuarial opinion submitted in accordance with this rule must consist of:

(a) A paragraph identifying the appointed actuary and the qualifications of the qualified actuary, as provided in subsection (2)(a) of this rule;

(b) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, as

ADMINISTRATIVE RULES

provided in subsection (2)(b) of this rule, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

(c) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as provided in subsection (2)(c) of this rule, supported by a statement of each such expert in the form prescribed by section (5) of this rule;

(d) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, as provided in subsection (2)(f) of this rule; and

(e) One or more additional paragraphs, to be included in individual company cases as follows:

(A) If the appointed actuary considers it necessary to state a qualification of the appointed actuary's opinion;

(B) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for the appointed actuary's opinion;

(C) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release; and

(D) If the appointed actuary chooses to add a paragraph briefly describing the assumptions forming the basis for the actuarial opinion.

(2) Recommended Language. The following paragraphs must be included in the statement of actuarial opinion in accordance with this section. The following provisions of this section are those that in typical circumstances would be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary must use language that clearly expresses the professional judgment of the appointed actuary. However, in any event, the opinion must retain all pertinent aspects of the language provided in this section. The following provisions apply:

(a) The opening paragraph must indicate generally the appointed actuary's relationship to the company and qualifications of the appointed actuary to sign the opinion, as follows:

(A) For a company actuary, the opening paragraph of the actuarial opinion must include a statement such as:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of the insurer to render this opinion as stated in the letter to the director dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(B) For a consulting actuary, the opening paragraph must include a statement such as:

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the Commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(b) The scope paragraph must include a statement such as:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20(). Tabulated below are those reserves and related actuarial items that have been subjected to asset adequacy analysis." See Table 1 (Reserves and Liabilities).

(c) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph must include a statement such as the following:

"I have relied on (name), (title) for (e.g., "anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios" or "certain critical aspects of the analysis performed in conjunction with forming my opinion"), as certified in the attached statement. I have reviewed the information relied upon for reasonableness."

Such a statement of reliance on other experts must be accompanied by a statement by each of such experts on the form prescribed in section (5) of this rule.

(d) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph must include a statement such as:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual statement."

(e) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company, the reliance paragraph must include a statement such as:

"In forming my opinion on (specify types of reserves) I relied upon data prepared by (name and title of company officer certifying in force records or other data) as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary."

Such a section shall be accompanied by a statement by each person relied upon, in the form prescribed by section (5) of this rule.

(f) The opinion paragraph must include a statement such as:

"In my opinion, the reserves and related actuarial values concerning the statement items identified above:

(i) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(ii) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(iii) Meet the requirements of the Insurance Law and regulation of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(v) Include provision for all actuarial reserves and related statement items that ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on the assets, and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision, according to currently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. At the discretion of the director, this language may be omitted for an opinion filed on behalf of a company doing business only in Oregon and in no other state.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion that should be considered in reviewing this opinion; or

The following material change or changes that occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

The appointed actuary must choose one of the above two paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary

Date"

(3) Assumptions for New Issues. The adoption, for new issues or new claims or other new liabilities, of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this rule.

(4) Adverse Opinions. If the appointed actuary is unable to form an opinion, the appointed actuary must refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, the appointed actuary must issue an adverse or qualified actuarial opinion explicitly stating the reason or reasons for the opinion. Such a statement must follow the scope paragraph and precede the opinion paragraph.

(5) Reliance on Information Furnished by Other Persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

(6) Alternate Option

ADMINISTRATIVE RULES

(a) The Standard Valuation Law gives the director broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subsection B(6)(c), the director may make one or more of the following additional approaches available to the opining actuary:

(A) A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of (state of domicile) and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.” If the director chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(B) A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the director for approval of that request have been met.” If the director chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the director. Such rescission or modifications shall be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the director has not denied the request by that date.

(C) A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have submitted the required comparison as specified by this state.”

(i) If the director chooses to allow this alternative, a formal written list of products (to be added to the table in Item (ii) below) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least:

Product Type
Death Benefit or Account Value
Reserves Held
Codification Reserves
Codification Standard

(iii) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(v) The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) Notwithstanding the above, the director may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the director after consultation with the company, the director may contract an independent actuary at the company’s expense to prepare and file the opinion.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 733.304
Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 1-1993(Temp), f. & cert. ef. 2-4-93; ID 4-1993, f. 7-27-93, cert. ef. 7-30-93; ID 5-2011, f. & cert. ef. 2-23-11

836-031-0680

Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Summary

(1) General provisions. The following general provisions apply to actuarial memoranda that include an asset adequacy analysis:

(a) In accordance with ORS 733.304 (Standard Valuation Law), the appointed actuary shall prepare a memorandum to the Company describing the analysis done in support of the appointed actuary’s opinion regarding the reserves under an opinion pursuant to OAR 836-0310-670. The memorandum must be made available for examination by the Director upon request of the Director but shall be returned to the company after such examination and not be filed with the Department;

(b) In preparing the memorandum, the appointed actuary may rely on, and include as a part of the appointed actuary’s own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of OAR 836-031-0640(2), with respect to the areas covered in such memoranda, and so state in their memoranda;

(c) If the Director requests a memorandum and no such memorandum exists or if the Director finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of OAR 836-031-0600 to 836-031-0690, the Director may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Director;

(d) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Director. However, any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Director and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Director pursuant to the Standard Valuation Law. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to OAR 836-031-0600 to 836-031-0690 for any one of the current year or the preceding three years.

(e) In accordance with ORS 733.304, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in section (3) of this rule. All companies domiciled in Oregon shall submit the regulatory asset adequacy issues summary no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. For all other companies, the memorandum must be made available for examination by the Director upon request of the Director. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Provisions relating to the Memorandum Section Documenting Asset Adequacy Analysis. When an actuarial opinion under OAR 836-031-0670 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with standards for asset adequacy referred to in 836-031-0640(4) and any additional standards under OAR 836-031-0600 to 836-031-0690. It must specify:

(a) For reserves:

(A) Product descriptions, including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(B) Source of liability in force;

(C) Reserve method and basis;

(D) Investment reserves;

(E) Reinsurance arrangements;

(F) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

(G) Documentation of the following assumptions, sufficient for an actuary reviewing the actuarial memorandum to form the following conclusion as to the reasonableness of the assumptions in the context of asset adequacy testing:

(i) Base and excess lapse rates;

(ii) Interest crediting rate strategy;

(iii) Mortality;

(iv) Policyholder dividend strategy;

(v) Competitor or market interest rate;

ADMINISTRATIVE RULES

- (vi) Annuitization rates;
- (vii) Commission and expenses; and
- (viii) Morbidity.

(b) For assets:

(A) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(B) Investment and disinvestment assumptions;

(C) Source of asset data;

(D) Asset valuation bases;

(E) Documentation of assumptions sufficient for an actuary reviewing the actuarial memorandum to form a conclusion as to the reasonableness of the assumption, made for:

(i) Default costs;

(ii) Bond call function;

(iii) Mortgage prepayment function;

(iv) Determining market value for assets sold due to disinvestment strategy; and

(v) Determining yield on assets acquired through the investment strategy.

(c) For the analysis basis:

(A) Methodology;

(B) Rationale for inclusion and exclusion of different blocks of business and how pertinent risks were analyzed;

(C) Rational for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(D) Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(E) Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis;

(d) A summary of material changes in methods, procedures or assumptions from prior year's asset adequacy analysis.

(e) Summary of results; and

(f) Conclusion or conclusions.

(3) Details of the Regulatory Asset Adequacy Issues Summary. The regulatory asset adequacy issues summary shall:

(a) Include all of the following:

(A) Descriptions of the scenarios tested, including whether those scenarios are stochastic or deterministic, and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date, which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(B) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis.

(C) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion.

(D) Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods.

(E) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested.

(F) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability, including but not limited to those affecting cash flows embedded in fixed income securities, and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(b) Contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(4) Conformity to Standards of Practice. The memorandum must include the following statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

Stat. Auth.: ORS 731.244 & 733.304

Stats. Implemented: ORS 733.304

Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 5-2011, f. & cert. ef. 2-23-11

836-031-0690

Additional Considerations for Analysis

(1) Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve. An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(2) Documentation. The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 733.304

Hist.: ID 10-1992, f. & cert. ef. 5-27-92; ID 1-1993(Temp), f. & cert. ef. 2-4-93; ID 4-1993, f. 7-27-93, cert. ef. 7-30-93; ID 5-2011, f. & cert. ef. 2-23-11

Rule Caption: Disclosures Required for Small Face Amount Life Insurance Policies.

Adm. Order No.: ID 6-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 2-23-11

Notice Publication Date: 12-1-2010

Rules Adopted: 836-051-0030, 836-051-0032, 836-051-0034, 836-051-0036, 836-051-0038, 836-051-0040

Subject: Often small face amount policies are purchased later in life, and many times premiums paid for these policies exceed the face amount of the policy itself. Policyholders often continue to pay the premiums without understanding their options under the policy. To ensure that consumers better understand the implications of purchasing a policy with a face amount of less than \$15,000, these rules adopt the National Association of Insurance Commissioners' (NAIC) Model #605 relating to Disclosure for Small Face Amount Life Insurance Policies. The rules require disclosure to the purchaser about when the premiums paid would exceed the face value of the policy. The rules also require a 10-day period for the insured to examine the policy during which the insured could cancel the policy for a complete refund of premium paid if the insured decided not to keep the policy. The rules apply to policies issued on or after July 1, 2011.
Rules Coordinator: Sue Munson—(503) 947-7272

836-051-0030

Purpose and Applicability

(1) The purpose of OAR 836-051-0030 to 836-051-0040 is to establish rules that ensure meaningful information is provided to the purchasers of small face amount policies.

(2) OAR 836-051-0030 to 836-051-0040 apply to insurance policies and certificates issued on or after July 1, 2011.

Stat. Auth.: ORS 731.244 & ORS 746.240

Stats. Implemented: ORS 746.075, 743.218, 746.100, 746.110 & 746.240

Hist.: ID 6-2011, f. & cert. ef. 2-23-11

836-051-0032

Definition

"Small face amount policy" means a life insurance policy or certificate with an initial face amount of \$15,000 or less.

Stat. Auth.: ORS 731.244 & 746.240

Stats. Implemented: ORS 746.075, 743.218, 746.100, 746.110 & 746.240

Hist.: ID 6-2011, f. & cert. ef. 2-23-11

836-051-0034

Exemptions

OAR 836-051-0030 to 836-051-0040 apply to all group and individual life insurance policies and certificates except:

(1) Variable life insurance;

ADMINISTRATIVE RULES

- (2) Individual and group annuity contracts;
- (3) Credit life insurance;
- (4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:
 - (a) Every plan of coverage was selected by the employer or other group representative;
 - (b) Some portion of the premium is paid by the group or through payroll deduction; and
 - (c) Group underwriting or simplified underwriting is used; or
 - (5) Policies and certificates where an illustration has been provided pursuant to the requirements of OAR 836-051-0500 to 836-051-0600.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.075, 743.218, 746.100, 746.110 & 746.240
Hist.: ID 6-2011, f. & cert. ef. 2-23-11

836-051-0036

Disclosure Requirements

(1) An insurer issuing a small face amount policy, where over the term of the policy the cumulative policy premiums paid may exceed the face amount of the policy, shall clearly and prominently disclose, on or before policy delivery, the length of time until the cumulative policy premiums paid may exceed the face amount of the policy.

(2) If an insurer is required to provide a disclosure under section (1) of this rule, the insurer shall clearly and prominently disclose, on or before policy delivery, available premium payment plans.

(3) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

(4) Each policy subject to the disclosure requirements of this section shall contain a provision that allows the policyholder to cancel the policy within 10 days following the delivery of the policy with full premium refund to the consumer and with no charge or penalty. The free-look period shall be clearly and prominently disclosed to the consumer.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.075, 743.218, 746.100, 746.110 & 746.240
Hist.: ID 6-2011, f. & cert. ef. 2-23-11

836-051-0038

Insurer Duties

The insurer and its producers shall provide additional information to any policyholder or certificate holder who asks questions about the disclosure statement.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.075, 743.218, 746.100, 746.110 & 746.240
Hist.: ID 6-2011, f. & cert. ef. 2-23-11

836-051-0040

Trade Practice Regulation

Violation of any provision of OAR 836-051-0030 to 836-051-0040 is an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731.244 & 746.240
Stats. Implemented: ORS 746.075, 743.218, 746.100, 746.110 & 746.240
Hist.: ID 6-2011, f. & cert. ef. 2-23-11

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Rule Caption: Limit Medicare Supplement Insurance Premium Increases to Once Yearly and Correct Exhibits.

Adm. Order No.: ID 7-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 2-23-11

Notice Publication Date: 12-1-2010

Rules Amended: 836-052-0114, 836-052-0145, 836-052-0151, 836-052-0160

Subject: Amend rules to limit premium increases for Medicare supplement insurance policies to once in 12-month period and to correct errors in exhibits to the Medicare Supplement rules.

Rules Coordinator: Sue Munson—(503) 947-7272

836-052-0114

Applicability and Scope

(1) Except as otherwise specifically provided in OAR 836-052-0134, 836-052-0140, 836-052-0145, 836-052-0160 and 836-052-0185, 836-052-0103 to 836-052-0194 apply to the following Medicare supplement policies and certificates issued under group Medicare supplement policies, as follows:

(a) All Medicare supplement policies delivered or issued for delivery in this state on or after July 1, 1992; and

(b) All certificates issued under group Medicare supplement policies and delivered or issued for delivery in this state on or after July 1, 1992.

(2) Except as otherwise specifically provided in OAR 836-052-0134, 836-052-0140, 836-052-0154, 836-052-0160, and 836-052-0185, on or after September 1, 1993, 836-052-0103 to 836-052-0194 apply to Medicare supplement policies and certificates issued under group Medicare supplement policies that are made subject to 836-052-0103 to 836-052-0194 because of amendments to the definition of "Medicare supplement policy" in ORS 743.680 and OAR 836-052-0119.

(3) A prepayment plan offered by a health maintenance organization under which the health maintenance organization and competitive medical plans provides Medicare services under the authority of Title XVIII Part C of the Social Security Act or Section 1876 of the federal Social Security Act (42 U.S.C. section 1395 et seq.) is not subject to OAR 836-052-0103 through 836-052-0194. The health maintenance organization and competitive medical plans must file with the Director, for information purposes, a copy of the Medicare contract forms and rates that the plan or health maintenance organization uses in this state, and the marketing and sales materials used therewith.

(4) OAR 836-052-0103 to 836-052-0194 do not apply to an issued policy under a demonstration project specified in 42 U.S.C. sec. 1395ss (g)(1).

(5) OAR 836-052-0103 to 836-052-0194 do not apply to a policy or contract of one or more employers or labor organizations; or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof; for employees or former employees, or a combination thereof; or for members or former members, or a combination thereof, of the labor organizations.

(6) OAR 836-052-0103 to 836-052-0194 are effective on August 1, 2005. Insurers may continue using current forms, or may make changes to current forms if offering Plan K or L, as appropriate, through 2005. Insurers may offer any authorized plan upon approval by the Director of the Department of Consumer and Business Services.

(7) The changes to OAR 836-052-0145 and 836-052-0151 and Exhibits to OAR 836-052-0160 effective on February 17, 2011 apply to all Medicare Supplement policies or certificates issued on or after July 1, 2011.

Stat. Auth.: ORS 731.244 & 743.682
Stats. Implemented: ORS 743.010 & 743.683
Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 10-2005, f. & cert. ef. 7-26-05; ID 7-2011, f. & cert. ef. 2-23-11

836-052-0145

Loss Ratio Standards and Refund or Credit of Premium

(1) The following provisions of this section establish loss ratio standards:

(a) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return the applicable percentage specified in this section to the policyholder and certificate holder in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(A) At least 75 percent of the aggregate amount of premiums earned, in the case of group policies; or

(B) At least 65 percent of the aggregate amount of premiums earned, in the case of individual policies.

(b) A percentage under subsection (a) of this subsection shall be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

- (A) Home office and overhead costs;
- (B) Advertising costs;
- (C) Commissions and other acquisition costs;
- (D) Taxes;
- (E) Capital costs;
- (F) Administrative costs; and
- (G) Claims processing costs.

(c) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this rule when combined with actual experience to date. Filings of rate revi-

ADMINISTRATIVE RULES

sions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards;

(d) For purposes of applying section (1)(a) of this rule and section (3)(c) of OAR 836-052-0151 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies;

(e) For policies issued prior to September 1, 1993, expected claims in relation to premiums shall meet:

(A) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(B) The appropriate loss ratio requirement from section (1)(a)(A) and (B) of this rule when combined with actual experience beginning with April 28, 1996, to date; and

(C) The appropriate loss ratio requirement from section (1)(a)(A) and (B) of this rule over the entire future period for which the rates are computed to provide coverage.

(2) The following provisions of this section apply to refund and credit calculations:

(a) An issuer shall collect and file with the Director by May 31 of each year the data contained in the applicable reporting form contained in Exhibit 1 to this rule for each type in a standard Medicare supplement benefit plan;

(b) If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded;

(c) For the purpose of this rule, policies or certificates issued prior to September 1, 1993, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after April 28, 1996. The first such report shall be due by May 31, 1998.

(d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a negligible level. The refund must include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) An issuer of Medicare supplement policies and certificates issued before, on or after July 1, 1992, in this state shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration for approval by the Director in accordance with the filing requirements and procedures prescribed by the Director. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Director for approval, in accordance with the applicable filing procedures of this state the following:

(a)(A) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Supporting documents necessary to justify the adjustment shall accompany the filing.

(B) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and to be expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment that would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date. Except as pro-

vided in OAR 836-052-0138, an insurer may not increase the rates for a Medicare supplement policy or certificate issued in this state more than once in a 12-month period. If an issuer intends to exercise the right to adjust a premium for age attainment under OAR 836-052-0138, and such adjustment results in more than one increase in a 12-month period, the issuer must provide written disclosure to the consumer prior to the issuance of the policy or certificate.

(C) If an issuer fails to make premium adjustments acceptable to the Director, the Director may order premium adjustments, refunds or premium credits that the Director considers necessary to achieve the loss ratio required by this rule.

(b) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(4) For purposes of this rule, experience of insureds who qualify for Medicare by reason of disability shall be combined with experience of insureds who qualify for Medicare by reason of age.

(5) The Director may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before, on or after July 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance may be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished as the Director determines to be appropriate.

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

Stat. Auth.: ORS 743.684

Stats. Implemented: ORS 743.010 & 743.684

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 8-2001(Temp), 6-15-01, cert. ef. 6-18-01 thru 12-10-01; ID 11-2001, f. & cert. ef. 9-24-01; ID 10-2005, f. & cert. ef. 7-26-05; ID 7-2011, f. & cert. ef. 2-23-11

836-052-0151

Filing and Approval of Policies and Certificates and Premium Rates

(1) An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the Director in accordance with filing requirements and procedures prescribed by the Director.

(2) An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the Insurance Commissioner in the state in which the policy or certificate was issued.

(3)(a) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Director in accordance with filing requirements and procedures prescribed by the Director.

(b) Except for an adjustment of premium on the basis of attained age under OAR 836-052-0138, an issuer may not increase the rates for a Medicare supplement policy or certificate issued in this state more than once in a 12-month period. Annual rate increases shall be effective on the policy or certificate anniversary date or renewal date. If an issuer intends to exercise the right to adjust a premium for age attainment under OAR 836-052-0138, and such adjustment results in more than one increase in a 12-month period, the issuer must provide written disclosure to the consumer prior to the issuance of the policy or certificate.

(4) Except as provided in this section, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan. For the purposes of this section, a "type" means an individual policy or a group policy. An issuer may offer, with the approval of the Director, not more than four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage.

(5) The following applies to continuance and discontinuance of Medicare supplement policies and certificates:

(a) Except as provided in this subsection, an issuer shall continue to make available for purchase any policy form or certificate form issued after July 1, 1992, that has been approved by the Director. A policy form or certificate form shall not be considered to be available for purchase unless the

ADMINISTRATIVE RULES

issuer has actively offered it for sale in the previous twelve months. The following applies to discontinuance of a policy form or certificate form to which this subsection applies:

(A) An issuer may discontinue the availability of a policy form or certificate form for new issues if the issuer provides to the Director in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Director, the issuer shall no longer offer for sale the policy form or certificate form in this state. The issuer must continue to renew outstanding policies and certificates;

(B) An issuer that discontinues the availability of a policy form or certificate form pursuant to paragraph (A) of this subsection shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the Director of the discontinuance. The period of discontinuance may be reduced if the Director determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection;

(c) A change in the rating structure or methodology shall be considered a discontinuance under subsection (a) of this section unless the issuer complies with the following requirements:

(A) The issuer provides an actuarial memorandum satisfactory to the Director, in a form and manner prescribed by the Director, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates;

(B) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The Director may approve a change to the differential that is in the public interest.

(6) Except as provided in this section, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in OAR 836-052-0145. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010, 743.684(1) - (2) & 743.683(2)

Hist.: ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 2-1995, f. & cert. ef. 4-26-95; ID 10-2005, f. & cert. ef. 7-26-05; ID 7-2011, f. & cert. ef. 2-23-11

836-052-0160

Required Disclosure Provisions

(1) The following provisions apply to all Medicare supplement policies and certificates:

(a) Each Medicare supplement policy and certificate shall include a renewal or continuation provision. The language or specifications of the provision must be consistent with the type of contract issued. The provision shall be appropriately captioned, shall appear on the first page of the policy and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's or certificate holder's age;

(b) Each rider or endorsement added to a Medicare supplement policy after the date that the policy is issued or at reinstatement or renewal, that reduces or eliminates benefits or coverage in the policy, shall require a signed acceptance by the insured, except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits. After the date of issuance of the policy or certificate, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. When a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy;

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import;

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations";

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificate holder may return the policy or certificate within 30 days of its delivery and may have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason;

(f)(A) An issuer of health policies or certificates that provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and CMS and in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in OAR 836-052-0119. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application, and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(B) For the purposes of this rule, "form" means the language, format, type size, type proportional spacing, bold character and line spacing.

(2) The following notice requirements apply to all insurers providing Medicare supplement insurance:

(a) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit change, an issuer shall notify its policyholders and certificate holders of modification it has made to Medicare supplement insurance policies or certificates. The notice must be made in a format acceptable to the Director. The notice shall:

(A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(B) Inform each policyholder or certificate holder as to when any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension;

(c) Notices under this rule shall not contain or be accompanied by any solicitation.

(3) MMA Notice Requirements. Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(4) Each issuer shall provide an outline of coverage for Medicare supplement policies as follows:

(a) An issuer shall provide an outline of coverage to each applicant at the time the sales presentation is made to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline of coverage from the applicant;

(b) If an outline of coverage provided at the time of the sales presentation and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline of coverage, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered. The revised outline of coverage shall contain the following statement, or similar language approved by the Director, in not less than twelve point type, immediately above the insurer's name: "Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued";

(c) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in Exhibit 1;

(d) The outline of coverage may be designated by the insurer either as an outline of coverage or as a fact sheet.

(5) An issuer shall give notice regarding policies or certificates that are not Medicare supplement policies, as follows:

(a) Any health insurance policy, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.); any disability income policy or other policy identified in OAR 836-052-0114(4), issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate;

(b) The notice under subsection (a) of this section shall be printed on or attached to the first page of the outline of coverage delivered to insureds

ADMINISTRATIVE RULES

under the policy, or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language: "THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company";

(c) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in section (4)(a) of this rule shall disclose, using the applicable standard statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as part of, or together with, the application for the policy or certificate.

[ED. NOTE: Exhibits and Appendices referenced are available from the agency.]

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

Stat. Auth.: ORS 731.244, 743.683 & 743.685

Stats. Implemented: ORS 743.683, 743.685 & 743.686

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 8-2001(Temp), f. 6-15-01, cert. ef. 6-18-01 thru 12-10-01; ID 11-2001, f. & cert. ef. 9-24-01; ID 10-2005, f. & cert. ef. 7-26-05; ID 7-2011, f. & cert. ef. 2-23-11

Rule Caption: Annual Update of Rule Relating to Health Insurance Coverage of Prosthetic and Orthotic Devices.

Adm. Order No.: ID 8-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 2-23-11

Notice Publication Date: 1-1-2011

Rules Amended: 836-052-1000

Subject: This rulemaking adopts the annual update to the Insurance Division rule listing the prosthetic and orthotic devices that must be covered by group and individual health insurance policies. The rulemaking implements ORS 743A.144, which requires all such policies that provide coverage for hospital, medical or surgical expenses to include coverage for prosthetic and orthotic devices.

Rules Coordinator: Sue Munson—(503) 947-7272

836-052-1000

Prosthetic and Orthotic Devices

(1) This rule is adopted under the authority of ORS 731.244 and 743A.144, for the purpose of implementing ORS 743A.144.

(2) The list of prosthetic and orthotic devices and supplies in the Medicare fee schedule for Durable Medical Equipment, Prosthetics, Orthotics and Supplies is adopted for the purpose of listing the prosthetic and orthotic devices and supplies for which coverage is required by ORS 743A.144, insofar as the list is consistent with ORS 743A.144. The list is limited to those rigid or semi rigid devices used for supporting a weak or deformed leg, foot, arm, hand, back or neck, or restricting or eliminating motion in a diseased or injured leg, foot, arm, hand, back or neck or an artificial limb device or appliance designed to replace in whole or in part an arm or a leg that the Centers for Medicare and Medicaid Services (CMS) has designated in the 4-digit L Codes of Healthcare Common Procedure Coding System (HCPC) Level II, which is accessible by selecting the link for the most current Alpha-Numeric HCPCS File at: <https://www.cms.hhs.gov/HCPCSReleaseCodeSets/ANHCPCS/list.asp> (Rev. 12-9-10).

(3) Under ORS 743A.144(4), benefits payable under a policy may not be subject to internal or separate limits or caps other than the policy lifetime maximum benefits as they apply to the coverage for prosthetic and orthotic devices required by ORS 743A.144.

(4) A managed care plan to which ORS 743A.144(6) applies is a health insurance policy that requires an enrollee to use a closed network of providers managed, owned, under contract with or employed by the insurer in order to receive benefits under the plan.

Stat. Auth.: ORS 731.244 & 743A.144

Stats. Implemented: ORS 743A.144

Hist.: ID 12-2007, f. 12-18-07, cert. ef. 1-1-08; ID 12-2009, f. & cert. ef. 12-18-09; ID 8-2011, f. & cert. ef. 2-23-11

Rule Caption: Changes to Oregon Standard Health Statement.

Adm. Order No.: ID 9-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 2-23-11

Notice Publication Date: 1-1-2011

Rules Amended: 836-053-0510

Subject: This rule is necessary to reflect the changes to the Oregon Standard Health Statement recommended by the Health Insurance Reform Advisory Committee (HIRAC) pursuant to ORS 743.766. The changes update the form to reflect the federal Affordable Care Act's rescission standard and its prohibition against insurers limiting or denying coverage for persons under the age of 19 because of health status or preexisting condition. The changes also include corrections of clerical errors, moving a notice to a more prominent location, and the inclusion of a HIRAC recommendation that insurers be allowed to review their own claims history for those applicants 19 years of age or older. The rule as amended refers to the Oregon Standard Health Statement as set forth on the State of Oregon Insurance Division's website rather than as an exhibit to the rule.

Rules Coordinator: Sue Munson—(503) 947-7272

836-053-0510

Oregon Standard Health Statement

(1) A carrier may not use any health statement except the Oregon Standard Health Statement set forth on the website for the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov to evaluate the health status of an applicant for coverage in an individual health benefit plan or a late enrollee in a group health benefit plan. In all instances in which a carrier uses the Oregon Standard Health Statement, the cost of processing the statement shall be borne by the carrier.

(2) In evaluating the Oregon Standard Health Statement submitted by an applicant, a carrier may request medical records or an attending physician's statement for the applicant, but such a request shall be made only for questions that have been marked "Yes" by the applicant in the numbered questionnaire portion of the statement. The cost of obtaining such information shall be borne by the carrier. Although a carrier's request for additional medical information is limited to the specific questions marked "Yes," a carrier may use all of the information received in response to such a request in evaluating the applicant's health statement.

(3) In accordance with ORS 746.135, a carrier may not use genetic information to reject, deny, limit or alter the terms of a health benefit plan.

(4) Violation of any provision of this rule is an unfair trade practice under ORS 746.240.

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

Stat. Auth.: ORS 731.244 & 743.766

Stats. Implemented: ORS 743.766

Hist.: ID 12-1996, f. & cert. ef. 9-23-96; Renumbered from 836-053-0470, ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 9-2004, f. & cert. ef. 11-19-04; ID 9-2011, f. & cert. ef. 2-23-11

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

Rule Caption: Amendments to rules affecting workers' compensation medical fee schedules and medical services.

Adm. Order No.: WCD 1-2011

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 1-1-2011

Rules Adopted: 436-009-0114

Rules Amended: 436-009-0003, 436-009-0004, 436-009-0005, 436-009-0010, 436-009-0020, 436-009-0030, 436-009-0040, 436-009-0050, 436-009-0070, 436-009-0080, 436-009-0090, 436-009-0120, 436-009-0125, 436-009-0155, 436-009-0160, 436-009-0180, 436-010-0230, 436-010-0265, 436-010-0290, 436-060-0095

Rules Ren. & Amend: 436-009-0199 to 436-009-0998

Subject: Unless stated otherwise, references to "insurers" mean workers' compensation insurers and self-insured employers.

Revised OAR 436-009, "Oregon Medical Fee and Payment Rules":

• Adopt updated medical fee schedules and resources for the payment of health care providers – the American Society of Anesthesiologists ASA, Relative Value Guide 2011, the American Medical Association's (AMA) Current Procedural Terminology (CPT® 2011), Fourth Edition Revised, 2010, and the AMA's CPT® Assistant, Volume 0, Issue 04 1990 through Volume 20, Issue 12, 2010.

ADMINISTRATIVE RULES

- Specify data that must be included on hospital inpatient and outpatient bills. Appendix A lists Oregon hospitals required to include Medicare Severity Diagnosis Related Group codes on hospital inpatient bills.

- Set minimum requirements for explanations that accompany medical bill payments or denials of payment (EOBs), and require that the insurer or insurer's representative named on the EOB as the point of contact may not refer a health care provider to another business entity to address questions about payment.

- Include certain Healthcare Common Procedure Coding System (HCPCS) level II codes in the maximum allowable payment table (Appendix B).

- Require that, unless otherwise provided by contract or fee discount agreement, if the rules do not state a maximum payment amount for a medical service or for medical supplies, the insurer must pay 80 percent of the provider's usual fee. Exceptions include requiring insurers to pay health care providers as billed, unless otherwise provided by contract, for deposition time, attorney consultation time, and insurer consultation time; insurers must also pay for independent medical examinations (IMEs), or reviews and responses to IMEs, as billed, unless otherwise provided by contract.

- Specify the formula for determining maximum payment for anesthesia services, because anesthesia codes are not included in the maximum allowable payment table in Appendix B. The formula maintains current payment maximums.

- Provide flexibility in documenting time spent with a patient when constant attendance is required, affecting physical medicine codes. Chart notes may provide the start and end time or the total time spent providing the treatment.

- Limit payment for a prosthetic or orthosis to the lesser of the provider's usual rate or 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.

- Require health care providers to send clinical justifications to the insurers, on a State of Oregon form, when prescribing greater than a five-day supply of the following drugs: Celebrex®, Cymbalta®, Fentora®, Kadian®, Lidoderm®, Lyrica®, and OxyContin®. If a prescribing provider fails to submit the form to the insurer, the insurer may file a complaint with the director.

- Clarify that the worker has the right to choose an interpreter to aid in communication with a medical provider.

- Require payment, and provide a formula for payment, of an interpreter who arrives at the provider's office for an appointment that was required by the insurer or the director, e.g., an independent medical exam or an arbiter exam, even if the patient fails to attend the appointment or the provider has to cancel or reschedule the appointment.

Revised OAR 436-010, "Medical Services" rules:

- Require, unless otherwise provided by standards under a managed care organization contract, that physical therapists send progress reports that include specified data, to the worker's attending physician and the insurer each 30 days or after every visit if the worker is seen less frequently. Progress reports may be included in the provider's chart notes.

- Eliminate the requirement that independent medical examination (IME) providers give workers a survey form. The worker may complete an online survey or make a complaint about the IME on the agency's website, or the worker may call the agency for assistance if the worker does not have access to the Internet.

- Require IME providers to make the State of Oregon Form 440-3923, "Important Information about Independent Medical Exams," available to workers before the examinations.

- Eliminate the three-hour initial training course requirement for IME providers and include an option to review training materials provided by the director.

Revised OAR 436-060, "Claims Administration" rules:

- Eliminate the requirement that the insurer include a survey form with each independent medical examination appointment notice it

sends to workers – see second paragraph under OAR 436-010 summary above.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-009-0003

Applicability of Rules

(1) These rules apply to all services rendered on or after the effective date of these rules.

(2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

(3) OAR 436-009-0200 through 436-009-0290 apply to all services rendered and billed through an ambulatory surgery center on or after April 1, 2012.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09, Administrative correction 1-23-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0004

Adoption of Standards

(1) The director adopts, by reference, the *American Society of Anesthesiologists ASA, Relative Value Guide 2011* as a supplementary fee schedule for those anesthesia codes not found in Appendix B.

(2) The director adopts, by reference, the *American Medical Association's (AMA) Current Procedural Terminology (CPT® 2011)*, Fourth Edition Revised, 2010, for billing by medical providers. The guidelines are adopted as the basis for determining level of service.

(3) The director adopts, by reference, the *AMA's CPT® Assistant, Volume 0, Issue 04 1990 through Volume 20, Issue 12, 2010*. If there is a conflict between the *CPT® manual* and *CPT® Assistant*, the *CPT® manual* shall be the controlling resource.

(4)(a) The director adopts, by reference, only the alphanumeric codes from the CMS Healthcare Common Procedure Coding System (HCPCS) to be used when billing for services only to identify products, supplies, and services that are not described by CPT® codes or that provide more detail than a CPT® code.

(b) The director does not adopt the HCPCS edits, processes, exclusions, color-coding and associated instructions, age and sex edits, notes, status indicators, or other policies of CMS.

(5) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in *ASA Relative Value Guide 2011*, *CPT® 2011*, *CPT® Assistant*, or *HCPCS 2011*.

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

Stat. Auth.: ORS 656.248 & 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 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 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0005

Definitions

(1) Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS chapter 656 and OAR 436-010-0005 are hereby incorporated by reference and made part of these rules.

(2) "Clinic" means a group practice in which several medical service providers work cooperatively.

(3) "Fee Discount Agreement" means a direct contract entered into between a medical service provider or clinic and an insurer to discount fees to the medical service provider or clinic under OAR 436-009-0018.

(4) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; an assigned claims agent selected by the director under ORS 656.054; or, an employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(5) "Provider network" means a health service intermediary other than an MCO that facilitates transactions between medical providers and insurers through a series of contractual arrangements.

(6) Abbreviations used in these rules are either defined in the rules in which they are used or defined as follows:

(a) ANSI means the American National Standards Institute.

(b) CMS means Centers for Medicare & Medicaid Services.

ADMINISTRATIVE RULES

(c) CPT® means Current Procedural Terminology published by the American Medical Association.

(d) DME means durable medical equipment.

(e) EDI means electronic data interchange.

(f) HCPCS means Healthcare Common Procedure Coding System published by CMS.

(g) IAIABC means International Association of Industrial Accident Boards and Commissions.

(h) ICD-9-CM means International Classification of Diseases, Ninth Revision, Clinical Modification, Vol. 1, 2 & 3 by US Department of Health and Human Services.

(i) MCO means managed care organization certified by the director.

(j) NPI means National Provider Identifier.

(k) OSC means Oregon specific code.

(l) PCE means physical capacity evaluation.

(m) WCE means work capacity evaluation.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.726(4)

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 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; 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 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 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

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® 2011 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® 2011 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 12 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 12 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; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0020

Hospital Fees

(1) For the purposes of this rule:

(a) Hospital inpatient services include, but are not limited to, those bills coded "0111" through "0118" in form locator #4 on the UB-04 billing form.

(b) Hospital outpatient services include, but are not limited to, those bills coded "0131" through "0138" in form locator #4 on the UB-04 billing form.

(2) Hospital inpatient bills must include:

(a) ICD-9-CM codes;

(b) When applicable, procedural codes;

(c) The hospital's NPI; and

(d) The Medicare Severity Diagnosis Related Group (MS-DRG) code for bills from those hospitals listed in Appendix A.

(3) Hospital outpatient bills must, when applicable, include the following:

(a) Revenue codes;

(b) ICD-9-CM diagnostic and procedural codes;

(c) CPT® codes and HCPCS codes; and

(d) The hospital's NPI.

(4) Unless otherwise provided by contract, the insurer must pay the audited bill for hospital inpatient services by multiplying the amount charged by the hospital's adjusted cost/charge ratio (See Bulletin 290).

(5) The insurer must pay for hospital outpatient services as follows:

ADMINISTRATIVE RULES

(a) For services by physicians and other medical service providers assigned a code under the CPT® and identified by the revenue codes indicating professional services (0960 through 0989), pay the lesser of:

(A) The amount assigned to the CPT® in the Facility Maximum column of Appendix B; or

(B) The amount charged.

(b) For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology) pay the lesser of:

(A) The amount assigned to the CPT® code or the Oregon Specific Code in the Non-Facility Maximum column of Appendix B; or

(B) The amount charged.

(c) For hospital outpatient services not paid under subsection (5)(a) or (b) of this rule, unless otherwise provided by contract, pay the amount charged multiplied by the hospital's adjusted cost/charge ratio (See Bulletin 290).

(6) If a hospital qualifies for a rural exemption under (7)(k), the insurer may only apply an MCO contract to discount the fees calculated under this rule.

(7) Each hospital's CMS 2552 form and financial statement shall be the basis for determining its adjusted cost/charge ratio. If a current form 2552 is not available, then financial statements may be used to develop estimated data. If the adjusted cost/charge ratio is determined from estimated data, the hospital will receive the lower ratio of either the hospital's last published cost/charge ratio or the hospital's cost/charge ratio based on estimated data.

(a) The basic cost/charge ratio shall be developed by dividing the total net expenses for allocation shown on Worksheet A, and as modified in subsection (b), by the total patient revenues from Worksheet G-2.

(b) The net expenses for allocation derived from Worksheet A shall be modified by adding, from Worksheet A-8, the expenses for:

(A) Provider-based physician adjustment;

(B) Patient expenses such as telephone, television, radio service, and other expenses determined by the department to be patient-related expenses; and

(C) Expenses identified as for physician recruitment.

(c) The basic cost/charge ratio shall be further modified to allow a factor for bad debt and the charity care provided by each hospital. The adjustment for bad debt and charity care is calculated in two steps. Step one: Add the dollar amount for net bad debt to the dollar amount for charity care. Divide this sum by the dollar amount of the total patient revenues, from Worksheet G-2, to compute the bad debt and charity ratio. Step two: Multiply the bad debt and charity ratio by the basic cost/charge ratio calculated in subsection (7)(a) to obtain the factor for bad debt and charity care.

(d) The basic cost/charge ratio shall be further modified to allow an adequate return on assets. The director will determine a historic real growth rate in the gross fixed assets of Oregon hospitals from the audited financial statements. This real growth rate and the projected growth in a national fixed weight price deflator will be added together to form a growth factor. This growth factor will be multiplied by the total fund balance, from Worksheet G of each hospital's CMS 2552 to produce a fund balance amount. The fund balance amount is then divided by the total patient revenues from Worksheet G-2, to compute the fund balance factor.

(e) The factors resulting from subsections (7)(c) and (7)(d) of this rule will be added to the ratio calculated in subsection (7)(a) of this rule to obtain the adjusted cost/charge ratio. In no event will the adjusted cost/charge ratio exceed 1.00.

(f) The adjusted cost/charge ratio for each hospital will be revised annually, at a time based on their fiscal year, as described by bulletin. Each hospital must submit a copy of their CMS 2552 and financial statements each year within 150 days of the end of their fiscal year to the Information Management Division, Department of Consumer and Business Services. The adjusted cost/charge ratio schedule will be published by bulletin twice yearly, effective for the six-month period beginning April 1 and the six-month period beginning October 1.

(g) For newly formed or established hospitals for which no CMS 2552 has been filed or for which there is insufficient data, or for those hospitals that do not file Worksheet G-2 with the submission of their CMS 2552, the division shall determine an adjusted cost/charge ratio for the hospital based upon the adjusted cost/charge ratios of a group of hospitals of similar size or geographic location.

(h) If the financial circumstances of a hospital unexpectedly or dramatically change, the division may revise the hospital's adjusted cost/charge ratio to allow equitable payment.

(i) If audit of a hospital's CMS 2552 by the CMS produces significantly different data from that obtained from the initial filing, the division

may revise the hospital's adjusted cost/charge ratio to reflect the data developed subsequent to the initial calculation.

(j) Notwithstanding subsections (c) through (i) of this section the payment to out-of-state hospitals, may be negotiated between the insurer and the hospital.

(A) Any agreement for payment less than the billed amount must be in writing and signed by a hospital and insurer representative.

(B) The agreement must include language that the hospital will not bill the worker any remaining balance and that the negotiated amount is considered payment in full.

(C) If the insurer and the hospital are unable to reach agreement within 60 days of the insurer's receipt of the bill, either party may bring the issue to the director for resolution. The director may order payment up to the amount billed considering factors such as, but not limited to, reasonableness, usual fees for similar services by facilities in similar geographic areas, case specific services, and any extenuating circumstances.

(k) Notwithstanding sections (3), (4), and (5) of this rule, the director may exclude rural hospitals from imposition of the adjusted cost/charge ratio based upon a determination of economic necessity. The rural hospital exclusion will be based on the financial health of the hospital reflected by its financial flexibility index. All rural hospitals having a financial flexibility index at or below the median for critical access hospitals nationwide will qualify for the rural exemption. Rural hospitals that are designated as critical access hospitals under the Oregon Medicare Rural Hospital Flexibility Program are automatically exempt from imposition of the adjusted cost/charge ratio.

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

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

Stat. Auth.: ORS 656.726(4), also see 656.012, 656.236(5), 656.327(2), 656.313(4)(d)

Stats. Implemented: ORS 656.248; 656.252; 656.256

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0701, 5-1-85; WCD 3-1985(Admin)(Temp), f. & ef. 9-4-85; WCD 4-1985(Admin)(Temp), f. & ef. 9-11-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1986(Admin)(Temp), f. 2-5-86, ef. 2-6-86; WCD 2-1986(Admin), f. 3-10-86, ef. 3-17-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; 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 15-1990, f. 6-13-08, cert. ef. 7-1-08; 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 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0090; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; Administrative correction 6-18-97; WCD 8-1997(Temp), f. & cert. ef. 7-9-97; WCD 16-1997, f. & cert. ef. 12-15-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; 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 15-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0030

Insurer's Duties and Responsibilities

(1) The insurer must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(2) The insurer, or its designated agent, may request from the medical provider, any and all necessary records needed to review accuracy of billings. The medical provider may charge an appropriate fee for copying documents in accordance with OAR 436-009-0070(1). If the evaluation of the records must be conducted on-site, the provider must furnish a reasonable work-site for the records to be reviewed at no cost. These records must be provided or made available for review within 14 days of a request.

(3) Insurers must date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the billing is submitted in proper form in accordance with OAR 436-009-0010(2) through (4) and clearly shows that the treatment is related to the accepted compensable injury or disease. Billings not submitted in the proper form must be returned to the medical provider within 20 days of receipt of the bill with a written explanation describing why the bill was not paid or what needs to be corrected. A request for chart notes on EDI billings must be made to the medical provider within 20 days of receipt of the bill. The number of days between the date the insurer returns the billing or requests for chart notes from the provider and the date the insurer receives the corrected billing or chart notes, shall not apply toward the 45 days within which the insurer is required to make payment.

(a) The insurer must retain a copy of each medical provider's bill received by the insurer or must be able to reproduce upon request data relevant to the bill, including but not limited to, provider name, date of service, date the insurer received the bill, type of service, billed amount, coding submitted by the medical provider as described in OAR 436-009-0010(2),

ADMINISTRATIVE RULES

and insurer action, for any non-payment or fee reduction. This includes all bills submitted to the insurer even when the insurer determines no payment is due.

(b) Any service billed with a code number commanding a higher fee than the services provided shall be returned to the medical provider for correction or paid at the value of the service provided.

(c) When a medical provider submits a bill electronically, it shall be considered "mailed" in accordance with OAR 436-010-0005.

(4) The insurer or its representative must provide a written explanation of benefits being paid or denied. The insurer or its representative must send the explanation to the medical provider that billed for the services. All information on the explanation must be in 10 point size font or larger.

(5) The explanation of benefits must include:

(a) The amount of payment for each service billed. When the payment covers multiple patients, the explanation must clearly separate and identify payments for each patient;

(b) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;

(c) An Oregon or toll-free phone number for the insurer or its representative, and a statement that the insurer or its representative must respond to a medical provider's payment question within 48 hours, excluding weekends and legal holidays;

(d) The following notice, web link, and phone number:

"To access information about Oregon's Medical Fee and Payment Rules, visit www.oregonwdoc.info or call 503-947-7606.";

(e) Space for a signature and date; and

(f) A notice of right to administrative review as follows: "If you disagree with this decision about this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

(6) The insurer or its representative must respond to a medical provider's inquiry about a medical payment within 48 hours, not including weekends or legal holidays, of the medical provider's inquiry. The insurer or its representative may not refer the medical provider to another entity to obtain an answer.

(7) An insurer or its representative and a medical service provider may agree to send and receive payment information by e-mail. Electronic records sent by e-mail are subject to the Oregon Consumer Identity Theft Protection Act ORS 646A.600 to 646A.628 and federal law.

(8) Payment of medical bills is required within 14 days of any action causing the service to be payable, or within 45 days of the insurer's receipt of the bill, whichever is later.

(9) Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public.

(10) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code. Resolution of billing disputes, including possible overpayment disputes, must be made in accordance with OAR 436-009-0008, 436-010-0008 and 436-015.

(11) Bills for medical services rendered at the request of the insurer and bills for information submitted at the request of the insurer, which are in addition to those required in OAR 436-010-0240 must be paid for within 45 days of receipt by the insurer even if the claim is denied.

(12) The insurer must establish an audit program for bills for all medical services to determine that the bill reflects the services provided, that appropriate prescriptions and treatment plans are completed in a timely manner, that payments do not exceed the maximum fees adopted by the director, and that bills are submitted in a timely manner. The audit shall be continuous and shall include no fewer than 10 percent of medical bills. The insurer must provide upon request documentation establishing that the insurer is conducting a continuous audit of medical bills. This documentation must include, but not be limited to, medical bills, internal audit forms,

and any medical charge summaries prepared by private medical audit companies.

(13) The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a disputed claim settlement (DCS) were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

(14) Once the director has determined that an insurer's average accepted disabling claim count is 100 or higher per calendar year the insurer must report medical bill payment data to the department in subsequent years. If the insurer's claim count drops below an average of 50 accepted disabling claims, the insurer may apply to the director for exemption from the reporting requirement. See OAR 436-160 Electronic Data Interchange Medical Bill Data rules for reporting requirements.

[ED. NOTE: Appendix 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 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; 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 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 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 6-2010, f. 10-1-10, cert. ef. 1-1-11; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0040

Calculating Medical Provider Fees

(1) Unless otherwise provided by contract or fee discount agreement permitted by these rules, insurers must pay for medical services the lesser of:

(a) The maximum allowable payment amount for CPT® codes, HCPCS codes, and Oregon Specific Codes listed in Appendix B of these rules; or

(b) The provider's usual fee.

(2) Unless otherwise provided by contract or fee discount agreement, the insurer must pay 80 percent of the provider's usual fee when:

(a) Appendix B does not establish a maximum payment amount and the code is designated "80% of billed";

(b) The fee schedule does not establish a fixed, maximum payment amount (e.g., medical supplies); or

(c) The service is not covered by the fee schedule (e.g., dental or ambulance services).

(3) For services payable under subsection (2) of this rule or for hospital outpatient charges, an insurer may challenge the reasonableness of a provider's billing on a case by case basis by asking the director to review the billing under OAR 436-009-0008. If the director determines the amount billed is unreasonable, the director may establish a different fee to be paid to the provider based on at least one of, but not limited to, the following: reasonableness, the usual fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.

(4)(a) When using Appendix B for calculating payment for CPT® codes, the maximum allowable payment column is determined by the location where the procedure is performed: If the procedure is performed inside the medical service provider's office, use the Non-Facility Maximum column; if the procedure is performed outside the medical service provider's office, use the Facility Maximum column. Use the Global Days column to identify the follow up days when applicable. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Non-Facility Maximum column.

(b) When an Oregon Specific Code is assigned, the maximum allowable payment for multidisciplinary program and other services is found at the end of Appendix B, and in OAR 436-009-0060(5) and 436-009-0070(12).

(5) When using the American Society of Anesthesiologists Relative Value Guide, a basic unit value is determined by reference to the appropriate anesthesia code. The anesthesia value includes the basic unit value, time units, and modifying units. The maximum allowable payment amount for anesthesia codes is determined by multiplying the anesthesia value by a conversion factor of \$58.00.

ADMINISTRATIVE RULES

(a) Unless otherwise provided by contract or fee discount agreement permitted by these rules, the insurer must pay the lesser of:

(A) The maximum allowable payment amount for anesthesia codes; or

(B) The provider's usual fee.

(b) When the anesthesia code is designated by IC (individual consideration), unless otherwise provided by a contract or fee discount agreement, the insurer must pay 80 percent of the provider's usual fee.

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 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 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0050

CPT® Sections

Each CPT® section has its own schedule of relative values, completely independent of and unrelated to any of the other sections. The definitions, descriptions, and guidelines found in CPT® must be used as guides governing the descriptions of services, except as otherwise provided in these rules. The following provisions are in addition to those provided in each section of CPT®.

(1) Evaluation and Management services.

(2) Anesthesia services.

(a) In calculating the units of time, use 15 minutes per unit. If a medical provider bills for a portion of 15 minutes, round the time up to the next 15 minutes and pay one unit for the portion of time.

(b) Anesthesia basic unit values are to be used only when the anesthesia is personally administered by either a licensed physician or certified nurse anesthetist who remains in constant attendance during the procedure for the sole purpose of rendering such anesthesia service.

(c) When a regional anesthesia is administered by the attending surgeon, the value must be the "basic" anesthesia value only without added value for time.

(d) When the surgeon or attending physician administers a local or regional block for anesthesia during a procedure, the modifier "NT" (no time) must be noted on the bill.

(e) Local infiltration, digital block, or topical anesthesia administered by the operating surgeon is included in the relative value unit for the surgical procedure.

(3) Surgery services.

(a) When a worker is scheduled for elective surgery, the pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program is included in the listed global value of the surgical procedure. If the procedure is not elective, the physician is entitled to payment for the initial evaluation of the worker in addition to the global fee for the surgical procedure(s) performed.

(b) When an additional surgical procedure(s) is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods will continue concurrently to their normal terminations.

(c) Multiple surgical procedures performed at the same session must be paid as follows:

(A) When multiple surgical procedures are performed by one surgeon, the principal procedure is paid at 100 percent of the maximum allowable fee, the secondary and all subsequent procedures are paid at 50 percent of the maximum allowable fee. A diagnostic arthroscopic procedure performed preliminary to an open operation, is considered a secondary procedure and paid accordingly.

(B) When multiple arthroscopic procedures are performed, the major procedure must be paid at no more than 100 percent of the value listed in these rules and the subsequent procedures paid at 50 percent of the value listed.

(C) When more than one surgeon performs surgery, each procedure must be billed separately. The maximum allowable fee for each procedure, as listed in these rules, must be reduced by 25 percent. When the surgeons assist each other throughout the operation, each is entitled to an additional fee of 20 percent of the other surgeon's allowable fee as an assistant's fee. When the surgeons do not assist each other, and a third physician assists the surgeons, the third physician is entitled to the assistant's fee of 20 percent of the surgeons' allowable fees.

(D) When a surgeon performs surgery following severe trauma that requires considerable time, and the surgeon does not think the fees should be reduced under the multiple surgery rule, the surgeon may request special

consideration by the insurer. Such a request must be accompanied by written documentation and justification. Based on the documentation, the insurer may pay for each procedure at 100 percent.

(E) When a surgical procedure is performed bilaterally, the modifier "-50" must be noted on the bill for the second side, and paid at 50 percent of the fee allowed for the first side.

(d) When physician assistants or nurse practitioners assist a surgeon performing surgery, they must be paid at the rate of 15 percent of the surgeon's allowable fee for the surgical procedure(s). When physician assistants or nurse practitioners are the primary providers of a surgical procedure, they must be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. Physician assistants and nurse practitioners must mark their bills with a modifier "-81." Chart notes must document when medical services have been provided by a physician assistant or nurse practitioner.

(e) Other surgical assistants who are self-employed and work under the direct control and supervision of a physician must be paid at the rate of 10 percent of the surgeon's allowable fee for the surgical procedure(s). The operation report must document who assisted.

(4) Radiology services.

(a) In order to be paid, x-ray films must be of diagnostic quality and include a report of the findings. Billings for 14" x 36" lateral views shall not be paid.

(b) When multiple contiguous areas are examined by computerized axial tomography (CAT) scan, computerized tomography angiography (CTA), magnetic resonance angiography (MRA), or magnetic resonance imaging (MRI), the technical component for the first area examined must be paid at 100 percent, the second area at 50 percent, and the third and all subsequent areas at 25 percent under these rules. The discount applies to multiple studies done within 2 days, unless the ordering provider provides a reasonable explanation of why the studies needed to be done on separate days. No reduction is applied to multiple areas for the professional component.

(5) Pathology and Laboratory services.

(a) The maximum allowable payment amount established in Appendix B applies only when there is direct physician involvement.

(b) Laboratory fees must be billed in accordance with ORS 676.310. If any physician submits a bill for laboratory services that were performed in an independent laboratory, the bill must show the amount charged by the laboratory and any service fee that the physician charges.

(6) Medicine services.

(7) Physical Medicine and Rehabilitation services.

(a) Increments of time for a time-based CPT® code must not be pro-rated.

(b) Payment for modalities and therapeutic procedures shall be limited to a total of three separate CPT®-coded services per day. CPT® codes 97001, 97002, 97003, or 97004 are not subject to this limit. An additional unit of time (15 minute increment) for the same CPT® code is not counted as a separate code.

(c) All modality codes requiring constant attendance (97032, 97033, 97034, 97035, 97036, and 97039) are time-based. Chart notes must clearly indicate the time treatment begins and the time treatment ends for the day or the amount of time spent providing the treatment.

(d) CPT® codes 97010 through 97028 shall not be paid unless they are performed in conjunction with other procedures or modalities which require constant attendance or knowledge and skill of the licensed medical provider.

(e) When multiple treatments are provided simultaneously by a machine, device or table there must be a notation on the bill that treatments were provided simultaneously by a machine, device or table and there must be one charge.

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 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 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

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

ADMINISTRATIVE RULES

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 and performed. 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 generally requires 30 to 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 generally 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 generally 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 must bill under OSC-D0001. Unless otherwise provided by contract, insurers must pay for attorney consultation time as billed.

(6) When an insurer requires a consultation with a medical provider, the medical provider must bill under OSC-D0030. Unless otherwise provided by contract, insurers must pay for insurer consultation time as billed.

(7) The fee for a deposition must be billed under OSC-D0002. This code should include time for preparation, travel, and deposition. Unless otherwise provided by contract, insurers must pay for deposition time as billed. 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 must bill under OSC-D0003. This code must be used for a report, addendum to a report, file review, or examination.

(b) 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.

(c) Unless otherwise provided by contract, insurers must pay for IMEs as billed.

(d) If the insurer asks the medical service provider to review the IME report and respond, the medical service provider must bill for the time spent reviewing and responding using OSC-D0019. Billing should include documentation of time spent. Unless otherwise provided by contract, insurers must pay for medical service providers' review and response to IME reports as billed.

(9) 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 medical 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.

(10) 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

ADMINISTRATIVE RULES

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.

(11) The fee for a Worker Requested Medical Examination must be billed under OSC-W0001. This code must be used for a report, file review, or examination. Unless otherwise provided by contract, the insurer must pay the provider at the billed amount.

(12) 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)

Stat. 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; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0080

Durable Medical Equipment and Medical Supplies

(1) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: Transcutaneous Electrical Nerve Stimulation (TENS), MicroCurrent Electrical Nerve Stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc. Unless otherwise provided by contract, fees for durable medical equipment shall be paid as follows:

(a) The insurer shall pay for the purchase of all compensable DME that are ordered and approved by the physician, at 85 percent of the manufacturer's suggested retail price (MSRP). If no MSRP is available or the provider can demonstrate that 85 percent of the MSRP is less than 140 percent of the actual cost to the provider, the insurer must pay the provider 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.

(b) The DME provider is entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase, or repairs. A subsequent modification is one done other than as a part of the initial set-up at the time of purchase. The insurer shall pay for labor at the provider's usual rate.

(c) The provider may offer a service agreement at an additional cost.

(d) Rental of all compensable DME shall be billed at the provider's usual rate. Within 90 days of the beginning of the rental, the insurer may purchase the DME or device at the fee provided in this rule, with a credit for rental paid up to 2 months.

(2) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc. Unless otherwise provided by contract, the insurer must pay for a prosthetic the lesser of:

(a) The provider's usual rate; or

(b) 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.

(3)(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.

(b) Based on current technology, the preferred types of hearing aids for most workers are programmable BTE, ITE, and CIC multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.

(c) Without approval from the insurer or director, the payment for hearing aids may not exceed \$5000 for a pair of hearing aids, or \$2500 for a single hearing aid.

(4) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification,

etc. Unless otherwise provided by contract, the insurer must pay for an orthosis the lesser of:

(a) The provider's usual rate; or

(b) 140 percent of the actual cost to the provider for the item as documented on a receipt of sale.

(5) Medical supplies are materials that may be reused multiple times by the same person, but a single supply is not intended to be used by more than one person, including, but not limited to incontinent pads, catheters, bandages, elastic stockings, irrigating kits, sheets, and bags. Unless otherwise provided by contract, the insurer must pay 80 percent of the provider's usual rate for medical supplies.

(6) The worker may select the service provider, except for claims enrolled in a managed care organization (MCO) when service providers are specified by the MCO contract.

(7) Except as provided in subsection (2)(c) of this rule, this rule does not apply to a worker's direct purchase of DME and medical supplies, and does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(8) DME, medical supplies and other devices dispensed by a hospital (inpatient or outpatient) shall be billed and paid according to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4)

Stat. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02, cert. ef. 4-1-02; 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 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0090

Pharmacy Fees

(1) Except for hospital charges or unless otherwise provided by contract, insurers must pay medical providers for prescription medication at the medical provider's usual fee, or the amount set by the fee schedule, whichever is less.

(a) "AWP" means the Average Wholesale Price effective on the day the drug was dispensed.

(b) The maximum allowable fee is calculated according to the following table: [Table not included. See ED. NOTE.]

(2) All prescription medications are required medical services and do not require prior approval under the palliative care provisions of OAR 436-010-0290.

(3) Under ORS 689.515(2) licensed providers may dispense generic drugs to injured workers.

(4) (a) Unless the prescription is for five days or less, the prescribing provider must submit a clinical justification for the following drugs:

(A) Celebrex®

(B) Cymbalta®

(C) Fentora®

(D) Kadian®

(E) Lidoderm®

(F) Lyrica®

(G) OxyContin®

(b) The prescribing provider must fill out the clinical justification on Form 4909, Pharmaceutical Clinical Justification for Workers' Compensation, and submit it to the insurer.

(c) Insurers cannot challenge the adequacy of the clinical justification. However, they can challenge whether or not the medication is excessive, inappropriate, or ineffectual in accordance with ORS 656.327.

(d) The prescribing provider is not required to fill out an additional Form 4909 for refills of that medication.

(5) Insurers shall use the prescription pricing guide First DataBank published by Hearst Corporation, RED BOOK published by Thomson Reuters, or Medi-Span published by Wolters Kluwer for calculating payments to the licensed provider. Insurers must update their source at least monthly.

(6) The worker may select the pharmacy, except for claims enrolled in a managed care organization (MCO) where pharmacy service providers are specified by the MCO contract.

(7) Except for sections 2, 3, 4 and 6 of this rule, this rule does not apply to a worker's direct purchase of prescription medications, and does not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(8) The insurer must pay the retail-based fee for over-the-counter medications.

(9) Drugs dispensed by a hospital (inpatient or outpatient) must be billed and paid according to OAR 436-009-0020.

ADMINISTRATIVE RULES

[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 2-2001, f. 3-8-01, cert. ef. 4-1-01; 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 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0114

Who May Choose a Person to Provide Interpreter Services?

A worker may choose a person to communicate with a medical provider when the worker and the medical provider speak different languages, including sign language. The worker may choose a family member, a friend, an employee of the medical provider, or someone who provides interpreter services as a profession. The medical provider may disapprove of the worker's choice at any time the medical provider feels the interpreter services are not improving communication with the worker, or feels the interpretation is not complete or accurate.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245

Hist.: WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0120

What May I Bill For?

(1) You may bill for:

(a) Interpreter services; and

(b) Mileage when your round-trip mileage is more than 60 miles.

(2) You may bill for interpreter services and mileage under section (1) of this rule when you arrive at the provider's office for an appointment that was required by the insurer or the director, e.g., an independent medical exam, a physician review exam, or an arbiter exam, even if:

(a) The patient fails to attend the appointment; or

(b) The provider has to cancel or reschedule the appointment.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248

Hist. WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0125

What May I Not Bill For?

When an appointment was not required by the insurer or director, you may not bill any amount for interpreter services or mileage when:

(1) The patient fails to attend the appointment; or

(2) The provider cancels or reschedules the appointment.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248

Hist. WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0155

How do I Calculate the Maximum Allowable Payment Amount?

(1) You use the following table to calculate the maximum allowable payment: [Table not included. See ED. NOTE.]

(2) You must use the following method to calculate the maximum allowable payment:

(a) For interpreter services, multiply the number of minutes billed by the conversion factor of \$1.00 with a minimum payment of \$60.00.

(b) When a patient fails to attend an appointment required by the insurer or director, or the provider cancels or reschedules such an exam, multiply the number of minutes billed by the conversion factor of \$0.50 with a minimum payment of \$60.00.

(c) For mileage, multiply the number of miles by the conversion factor of \$0.50 when the round trip mileage is more than 60 miles.

(3) When an interpreter in Oregon is the only person able to interpret a specific language the maximum allowable payment is the amount billed for interpreter services and mileage.

(4) Calculation examples:

(a) If the interpreter provides 1 hour and 35 minutes of interpreter services, the maximum allowable payment is: 95 minutes x \$1.00 (interpreter services conversion factor) = \$95.00

(b) If the interpreter provides 1 hour and 20 minutes of interpreter services, and the round trip is 100 miles, the maximum allowable payment is: 80 minutes x \$1.00 (interpreter services conversion factor) = \$80.00, 100 miles x \$0.50 (mileage conversion factor) = \$50.00, Total maximum payment = \$130.00

(c) If the interpreter provides 40 minutes of interpreter services, and the round trip is 50 miles, the maximum allowable payment is: Use the minimum payment of \$60.00, There is no mileage allowance because the round trip is less than 60 miles. Total maximum payment = \$60.00

(d) If the interpreter spends 75 minutes waiting at the provider's location for an independent medical exam that the patient fails to attend, and the round trip is 65 miles, the maximum allowable payment is: Use the minimum payment of \$60.00, 65 miles x \$0.50 (mileage conversion factor) = \$32.50, Total maximum payment = \$92.50

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248

Hist. WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0160

What Must I Pay for?

When the medical exam or treatment is directed to an accepted claim or condition, an independent medical exam, or a worker requested medical exam, you must pay for:

(1) Interpreter services provided by an interpreter;

(2) Mileage when the round-trip mileage is more than 60 miles; and

(3) The interpreter's time spent waiting at the provider's location and mileage when:

(a) The patient fails to attend an exam required by the insurer or the director; or

(b) The provider cancels or reschedules such an exam.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248

Hist. WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0180

What Must I Include on an Explanation of Benefits?

(1) You must provide a written explanation of benefits being paid or denied. The explanation must be sent to the interpreter.

(2) The explanation of benefits must include:

(a) The amount of payment for each service provided;

(b) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;

(c) Your Oregon or toll-free phone number at which the interpreter may contact you for questions about a payment(s);

(d) Space for a signature and date.

(e) A notice of the right to administrative review as follows: **"If you disagree with this decision about this payment, please contact (the insurer or its representative) first. If you are not satisfied with the response you receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."**

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248

Hist. WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-009-0998

Sanctions and Civil Penalties

(1) The director may impose sanctions upon a medical provider or insurer for violation of these rules in accordance with OAR 436-010-0340.

(2) If an insurer applies a contract or fee discount agreement to a provider's bill that is incorrect, the insurer must pay the provider's bill at the provider's usual fee or according to the fee schedule, whichever is less, and the insurer may be subject to a civil penalty.

(3) Although insurers may contract with provider networks for certain services, the insurer is responsible for their own actions as well as the actions of others acting on the insurer's behalf. If an insurer or someone acting on the insurer's behalf violates any provisions of these rules, the director may impose a civil penalty against the insurer.

(4) If the director finds a pattern and practice, or an egregious violation of applying incorrect discounts to providers' fees under these rules, by an insurer or someone acting on the insurer's behalf, the director may issue a civil penalty up to the amount allowed under ORS chapter 656.

(5) If a prescribing provider fails to submit Form 4909, Pharmaceutical Clinical Justification for Workers' Compensation, to the insurer, in accordance with OAR 436-009-0090(4)(b) and (c), the insurer may file a complaint with the director.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.254, 656.745

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 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 9-

ADMINISTRATIVE RULES

1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; Renumbered from 436-009-0100 by WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; Renumbered from 436-009-0199, WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-010-0230

Medical Services and Treatment Guidelines

(1) Medical services provided to the injured worker must not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(2) An employer or insurer representative may not attend a worker's medical appointment without written consent of the worker. The worker has the right to refuse such attendance.

(a) The consent form must state that the worker's benefits cannot be suspended if the worker refuses to have a representative present.

(b) The consent form must be written in a way that allows the worker to understand it and to overcome language or cultural differences.

(c) The insurer must retain a copy of a signed consent form in the claim file.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment and services.

(4)(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A).

(b) The attending physician, authorized nurse practitioner, or specialist physician must sign a copy of the treatment plan within 30 days of the commencement of treatment and send it to the insurer. Failure of the physician or nurse practitioner to sign or mail the treatment plan may subject the attending physician or authorized nurse practitioner to sanctions under OAR 436-010-0340, but shall not affect payment to the ancillary medical service provider.

(c) Medical services prescribed by an attending physician, specialist physician, or authorized nurse practitioner and provided by a chiropractor, naturopath, acupuncturist, or podiatrist will be subject to the treatment plan requirements set forth in subsection (4)(a) and (b) of this rule.

(d) Unless otherwise provided for within utilization and treatment standards under an MCO contract, the usual range for therapy visits does not exceed 20 visits in the first 60 days, and 4 visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment or services. The attending physician or authorized nurse practitioner must document the need for medical services in excess of these guidelines when submitting a written treatment plan. The process outlined in OAR 436-010-0008 should be followed when an insurer believes the treatment plan is inappropriate.

(e) Unless otherwise provided for within utilization and treatment standards under an MCO contract, a physical therapist must simultaneously submit a progress report to the attending physician and the insurer each 30 days or after every visit if the worker is seen less frequently. The progress report may be included in the provider's chart notes. The progress report must include:

- (A) Subjective status of the worker;
- (B) Objective data from tests and measurements conducted;
- (C) Functional status of the worker;
- (D) Interpretation of above data; and
- (E) Any change in the treatment plan.

(5) The attending physician or authorized nurse practitioner, when requested by the insurer or the director through the insurer to complete a physical capacity or work capacity evaluation, must complete the evaluation within 20 days, or refer the worker for such evaluation within seven days. The attending physician or authorized nurse practitioner must notify the insurer and the worker in writing if the worker is incapable of participating in such evaluation.

(6) Prescription medications are required medical services under the provisions of ORS 656.245(1)(a), (1)(b), and (1)(c) and do not require prior approval under the palliative care provisions of OAR 436-010-0290. A

pharmacist, dispensing physician, or authorized nurse practitioner must dispense generic drugs to injured workers in accordance with and under ORS 689.515. For the purposes of this rule, the worker will be deemed the "purchaser" and may object to the substitution of a generic drug. However, payment for brand name drugs are subject to the limitations provided in OAR 436-009-0090. Workers may have prescriptions filled by a provider of their choice, unless otherwise provided for in accordance with an MCO contract. Except in an emergency, drugs and medicine for oral consumption supplied by a physician's or authorized nurse practitioner's office are compensable only for the initial supply to treat the worker with the medication up to a maximum of 10 days, subject to the requirements of the provider's licensing board, this rule and OAR 436-009-0090. Compensation for certain drugs is limited as provided in OAR 436-009-0090.

(7) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured worker or they are provided in accordance with a utilization and treatment standard adopted by the director. Vitamin B-12 injections are not reimbursable unless necessary because of a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(8) X-ray films must be of diagnostic quality and accompanied by a report. 14" x 36" lateral views are not reimbursable.

(9) Upon request of either the director or the insurer, original diagnostic studies, including but not limited to actual films, must be forwarded to the director, the insurer, or the insurer's designee, within 14 days of receipt of a written request.

(a) Diagnostic studies, including films must be returned to the medical provider within a reasonable time.

(b) The insurer must pay for a reasonable charge made by the provider for the costs of delivery of diagnostic studies, including films.

(c) If a medical provider does not forward the films to the director or the insurer within 14 days of receipt of a written request, civil penalties may be imposed.

(10) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the worker requires an item not usually considered necessary in the great majority of workers with similar impairments. Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist.

(11) Physical restorative services may include but are not limited to a regular exercise program or swim therapy. Such services are not compensable unless the nature of the worker's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The attending physician or authorized nurse practitioner must justify by report why the worker requires services not usually considered necessary for the majority of injured workers.

(12) The cost of repair or replacement of prosthetic appliances damaged when in use at the time of and in the course of a compensable injury is a compensable medical expense, including when the worker received no physical injury. For purposes of this rule, a prosthetic appliance is an artificial substitute for a missing body part or any device by which performance of a natural function is aided, including but not limited to hearing aids and eyeglasses.

(13) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) is always inappropriate for injured workers with the following conditions (absolute contraindications):

- (a) Metabolic bone disease — for example, osteoporosis;
- (b) Known spondyloarthropathy (seropositive and seronegative);
- (c) Posttraumatic vertebral body deformity at the level of the proposed surgery;
- (d) Malignancy of the spine;
- (e) Implant allergy to the materials involved in the artificial disc;
- (f) Pregnancy — currently;
- (g) Active infection, local or systemic;
- (h) Lumbar spondylolisthesis or lumbar spondylosis;
- (i) Prior fusion, laminectomy that involves any part of the facet joint, or facetectomy at the same level as proposed surgery; or
- (j) Spinal stenosis — lumbar — moderate to severe lateral recess and central stenosis.

(14) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) may be inappropriate for

ADMINISTRATIVE RULES

injured workers with the following conditions, depending on severity, location, etc. (relative contraindications):

(a) A comorbid medical condition compromising general health, for example, hepatitis, poorly controlled diabetes, cardiovascular disease, renal disease, autoimmune disorders, AIDS, lupus, etc.;

(b) Arachnoiditis;

(c) Corticosteroid use (chronic ongoing treatment with adrenal immunosuppression);

(d) Facet arthropathy — lumbar — moderate to severe, as shown radiographically;

(e) Morbid obesity — BMI greater than 40;

(f) Multilevel degenerative disc disease — lumbar — moderate to severe, as shown radiographically;

(g) Osteopenia — based on bone density test;

(h) Prior lumbar fusion at a different level than the proposed artificial disc replacement; or

(i) Psychosocial disorders — diagnosed as significant to severe.

(15) Cervical artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(h) is always inappropriate for injured workers with any of the following conditions (absolute contraindications):

(a) Instability in the cervical spine which is greater than 3.5 mm of anterior motion or greater than 20 degrees of angulation;

(b) Significantly abnormal facets;

(c) Osteoporosis defined as a T-score of negative (-)2.5 or more negative (e.g. -2.7);

(d) Allergy to metal implant;

(e) Bone disorders (any disease that affects the density of the bone);

(f) Uncontrolled diabetes mellitus;

(g) Active infection, local or systemic;

(h) Active malignancy, primary or metastatic;

(i) Bridging osteophytes (severe degenerative disease);

(j) A loss of disc height greater than 75 percent relative to the normal disc above;

(k) Chronic indefinite corticosteroid use;

(l) Prior cervical fusion at two or more levels; or

(m) Pseudo-arthritis at the level of the proposed artificial disc replacement.

(16) Cervical artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(h) may be inappropriate for injured workers with any of the following conditions, depending on severity, location, etc. (relative contraindications):

(a) A comorbid medical condition compromising general health, for example hepatitis, poorly controlled diabetes, cardiovascular disease, renal disease, autoimmune disorders, AIDS, lupus, etc.;

(b) Multilevel degenerative disc disease — cervical — moderate to severe, as shown radiographically;

(c) Osteopenia — based on bone density test with a T-score range of negative (-)1.5 to negative (-)2.5;

(d) Prior cervical fusion at one level;

(e) A loss of disc height of 50 percent to 75 percent relative to the normal disc above; or

(f) Psychosocial disorders — diagnosed as significant to severe.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, cert. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0201, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; 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 436-010-0040; 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 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 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

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.

ADMINISTRATIVE RULES

(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) The Form 440-3923, "Important Information about Independent Medical Exams," available to the injured worker before the exam.

(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 hold a current license and be in good standing with the professional regulatory board that issued the license, for example the Oregon Medical Board, and must:

(A) Complete a director-approved training course regarding IMEs. The training curriculum must include all topics listed in Appendix B;

(B) Review IME training materials provided by the director at www.oregonwcdoc.info; or

(C) IME training materials approved by the director.

(b) To be included on the list of authorized IME providers, the provider must complete the online certification form. Providers may access the certification form at www.oregonwcdoc.info. The provider must supply his or her license number, the name of the training vendor, and certify to the director that the provider completed at least one of the training requirements under OAR 436-010-0265(13)(a). Any provider that completes the certification agrees to abide by the following:

(A) 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; and

(B) All relevant workers' compensation laws and rules.

(c) Providers on the director's list of authorized IME providers as of March 31, 2011, remain authorized to perform IMEs and do not need to reapply.

(d) 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;

(B) Failed to comply with the requirements of this rule;

(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 complete training required by the director.

(e) 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 worker and any observer have been notified of the requirement in sub-section (b).

(17) The IME provider must make Form 440-3923, "Important Information about Independent Medical Exams," available to the worker upon request by the worker or when needed to complete the observer form (440-3923A).

(18) Upon completion of the examination, the examining medical service provider must:

(a) 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.

(b) 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.

(19) 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.

(20) The worker may complete an online survey or make a complaint about the IME on the Workers' Compensation Division's website. If the worker does not have access to the Internet, the worker may call the Workers' Compensation Division at 503-947-7606.

(21) 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.

(22) 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.

(23) 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-

ADMINISTRATIVE RULES

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; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

436-010-0290

Medical Care After Medically Stationary

(1) Palliative care means medical services rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal, or permanently alleviate or eliminate a medical condition. Palliative care is compensable when it is prescribed by the attending physician and is necessary to enable the worker to continue current employment or a vocational training program. When the worker's attending physician believes that palliative care is appropriate to enable the worker to continue current employment or a current vocational training program, the attending physician must first submit a written request for approval to the insurer.

(a) The request must:

(A) Describe any objective findings;

(B) Identify by ICD-9-CM diagnosis, the medical condition for which palliative care is requested;

(C) Detail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and frequency and duration of the care, not to exceed 180 days;

(D) Explain how the requested care is related to the compensable condition; and

(E) Describe how the requested care will enable the worker to continue current employment, or a current vocational training program, and the possible adverse effect if the care is not approved.

(b) Insurers must date stamp all palliative care requests upon receipt. Within 30 days of receipt, the insurer must send written notification to the attending physician, worker, and worker's attorney approving or disapproving the request as prescribed.

(A) Palliative care may begin following submission of the request to the insurer. If approved, services are payable from the date the approved medical service begins. If the requested care is ultimately disapproved, the insurer is not liable for payment of the medical service.

(B) If the insurer disapproves the requested care, the insurer must explain, in writing:

(i) Any disagreement with the medical condition for which the care is requested;

(ii) Why the requested care is not acceptable; or

(iii) Why the requested care will not enable the worker to continue current employment or a current vocational training program.

(c) If the insurer fails to respond in writing within 30 days, the attending physician or injured worker may request approval from the director within 120 days from the date the request was first submitted to the insurer. If the request is from a physician, it must include a copy of the original request and may include any other supporting information.

(d) When the attending physician or the injured worker disagrees with the insurer's disapproval, the attending physician or the injured worker may request administrative review by the director in accordance with OAR 436-010-0008, within 90 days from the date of insurer's notice of disapproval. In addition to information required by OAR 436-010-0008(6), if the request is from a physician, it must include:

(A) A copy of the original request to the insurer; and

(B) A copy of the insurer's response.

(e) When the worker, insurer, or director believes palliative care, compensable under ORS 656.245(1)(c)(J), is excessive, inappropriate, ineffectual, or in violation of the director's rules regarding the performance of medical services, the dispute will be resolved in accordance with ORS 656.327 and OAR 436-010-0008.

(f) Subsequent requests for palliative care are subject to the same process as the initial request; however, the insurer may waive the requirement that the attending physician submit a supplemental palliative care request.

(2) Curative medical care is compensable when the care is to stabilize a temporary and acute waxing and waning of symptoms of the worker's condition.

(a) The director must approve curative care arising from a generally recognized, non-experimental advance in medical science since the worker's claim was closed that is highly likely to improve the worker's condition and that is otherwise justified by the circumstances of the claim. When the attending physician believes that curative care is appropriate, the physician must submit a written request for approval to the director. The request must:

(A) Describe any objective findings.

(B) Identify by ICD-9-CM diagnosis, the medical condition for which the care is requested.

(C) Describe in detail the advance in medical science that has occurred since the worker's claim was closed that is highly likely to improve the worker's condition.

(D) Provide an explanation, based on sound medical principles, as to how and why the care will improve the worker's condition.

(E) Describe why the care is otherwise justified by the circumstances of the claim.

(3) In addition to sections (1) and (2) of this rule, medical services after a worker's condition is medically stationary are compensable when they are:

(a) Provided to a worker who has been determined permanently and totally disabled.

(b) Prescription medications.

(c) Services necessary to administer or monitor administration of prescription medications.

(d) Prosthetic devices, braces, and supports.

(e) Services to monitor the status, replacement or repair of prosthetic devices, braces, and supports.

(f) Services provided under an accepted claim for aggravation.

(g) Services provided under Board's Own Motion.

(h) Services necessary to diagnose the worker's condition.

(i) Life-preserving modalities similar to insulin therapy, dialysis, and transfusions.

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

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.245

Hist.: WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; 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 436-010-0041; 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 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

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;

ADMINISTRATIVE RULES

(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; and

(b) The director’s brochure, Form 440-3923, “Important Information about Independent Medical Exams.”

(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; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11

Rule Caption: Adoption of rules on ambulatory surgery center billing and payment procedures.

Adm. Order No.: WCD 2-2011

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 4-1-12

Notice Publication Date: 1-1-2011

Rules Adopted: 436-009-0200, 436-009-0205, 436-009-0206, 436-009-0207, 436-009-0210, 436-009-0215, 436-009-0220, 436-009-0225, 436-009-0230, 436-009-0235, 436-009-0240, 436-009-0245, 436-009-0250, 436-009-0255, 436-009-0260, 436-009-0265, 436-009-0270, 436-009-0275, 436-009-0280, 436-009-0285, 436-009-0290

Subject: Revised OAR 436-009, “Oregon Medical Fee and Payment Rules,” effective April 1, 2012:

• Establish new billing and payment requirements for ambulatory surgery center (ASC) services. These changes are generally consistent with the Centers for Medicare and Medicaid Services’ prospective payment system, which uses groups called Ambulatory Payment Classification (which are also used for the hospital Outpatient Prospective Payment System). Because this is a substantial change from current ASC payment procedures and will require some stakeholders to update their computer programs, these rules will not go into effect until April 1, 2012.

• Provide a default for payment of implants, that these are packaged into the charges for the surgical service during which they are implanted. However, an ASC may bill separately for an implant costing at least \$100, and the insurer or self-insured employer must pay

ADMINISTRATIVE RULES

for the implant at 110 percent of cost, as documented on a receipt of sale.

• Include a number of general rules about billing and payment that are located elsewhere in OAR 436-009, but duplicated so ASCs may more easily find relevant information within a group of rules dedicated to ASC billing and payment procedures.

Rules Coordinator: Fred Bruyns — (503) 947-7717

436-009-0200

Definitions for OAR 436-009-0205 through 436-009-0240

(1) “You” and “I” mean an ambulatory surgery center.

(2) An “ambulatory surgery center” (ASC) means:

(a) Any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization; or

(b) Any entity outside of Oregon similarly licensed, or certified by Medicare or a nationally recognized agency as an ASC.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0205

Who Do I Bill for Providing Medical Services?

You must submit bills to the insurer or, if provided by your contract for medical services, to the managed care organization.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0206

What Billing Form Must I Use?

Unless you submit medical bills electronically, you must bill on a CMS 1500 form. Computer-generated reproductions of the CMS 1500 form may also be used.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0207

How Do I Fill Out the CMS 1500 Form?

Unless different instructions are provided in the table below, use the instructions provided in the **National Uniform Claim Committee 1500 Claim Form Reference Instruction Manual**.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0210

How Much Should I Charge?

(1) You must bill your usual fee that you charge to the general public.

(2) For purposes of this rule, “general public” means any person who receives medical services, unless the law requires you to bill a specific amount.

(3) When a patient with two or more separate compensable claims receives treatment for more than one injury or illness, you must divide the charges accordingly.

(4) If you provide packaged services (see Appendices C and D) with a surgical procedure, you should include the charges for the packaged services in the surgical charges.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0215

What Must Accompany My Bill?

You must submit legible chart notes with your bill. The chart notes must:

(1) Document services that have been billed; and

(2) Identify the person performing the service.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0220

What Am I Not Allowed to Bill for?

You are not allowed to bill for:

(1) Providing chart notes that you are required to submit with your bills.

(2) Completing forms that are required by the director, e.g., Form 827.

(3) Services that were not performed.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0225

What Services Are Included In the ASC Facility Fee?

(1) The following services are included in the ASC facility fee and you may not get paid separately for them:

(a) Nursing, technical, and related services;

(b) Use of the facility where the surgical procedure is performed;

(c) Drugs and biologicals designated as packaged in Appendix D, surgical dressings, supplies, splints, casts, appliances, and equipment directly related to the provision of the surgical procedure;

(d) Radiology services designated as packaged in Appendix D;

(e) Administrative, record-keeping, and housekeeping items and services;

(f) Materials for anesthesia;

(g) Supervision of the services of an anesthetist by the operating surgeon; and

(h) Implants, unless you choose to receive separate payment for implants when your cost for the implant is over \$100.

(2) Packaged services identified in **Appendix C or D**.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0230

Are There Services That I May Not Get Paid for?

You may not get paid when:

(1) You bill more than 12 months after the date of service;

(2) X-ray films:

(a) Are not of diagnostic quality;

(b) Do not include a report of findings; or

(c) Are 14” x 36” lateral views;

(3) You provide services to a worker who is enrolled in a managed care organization (MCO) and:

(a) You are not a contracted facility for the MCO;

(b) The MCO has not pre-certified the service provided; or

(c) The surgeon is not a panel provider; or

(4) The surgery provided is not for an accepted condition.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0235

When Must I Submit My Bill?

(1) Unless you establish good cause, you must submit your bill within:

(a) 60 days of the date of service; or

(b) 60 days of the date you learn which insurer is responsible for the worker’s compensable claim.

(2) A bill is considered submitted on the date the envelope is post-marked, the date the document is faxed, or the date the document is transmitted electronically.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248, 656.252

Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0240

Are There Specific Billing Requirements for Certain Services That I Need to Know?

(1) If you provide packaged services (see Appendices C and D) with a surgical procedure, you should include the charges for the packaged services in the surgical charges.

(2) Do not bill for packaged codes as separate line-item charges when the payment amount says “packaged” in Appendices C or D.

(3)(a) By default, charges for implants are packaged into the charges for the surgical service during which they are implanted, and you should not bill separately for implants.

(b) When your cost for an implant is more than \$100, you may bill for the implant as a separate line item. You must provide the insurer a receipt of sale showing your cost of the implant.

(c) For the purpose of these rules, an implant is an object or material inserted or grafted into the body.

(4) When a surgical procedure is performed bilaterally, you must add the modifier “-50” on the bill for the second side.

ADMINISTRATIVE RULES

(5) When a service is provided by a physician assistant or nurse practitioner, you must add the modifier “-81” to the appropriate code. The chart notes must document when medical services have been provided by a physician assistant or nurse practitioner.

(6) When you receive a request for medical records, you should use the Oregon specific code R0001 to bill for the copies.

[ED. NOTE: Appendix referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0245

Definitions for OAR 436-009-0250 through 436-009-0290

(1) “You” and “I” mean the insurer.

(2) An “ambulatory surgery center” (ASC) means:

(a) Any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization; or

(b) Any entity outside of Oregon similarly licensed, or certified by Medicare or a nationally recognized agency as an ASC.

(3) Durable medical equipment (DME) is equipment that is primarily and customarily used to serve a medical purpose, can withstand repeated use, could normally be rented and used by successive patients, is appropriate for use in the home, and not generally useful to a person in the absence of an illness or injury. For example: transcutaneous electrical nerve stimulation (TENS), microcurrent electrical nerve stimulation (MENS), home traction devices, heating pads, reusable hot/cold packs, etc.

(4) A prosthetic is an artificial substitute for a missing body part or any device aiding performance of a natural function. For example: hearing aids, eye glasses, crutches, wheelchairs, scooters, artificial limbs, etc.

(5) An orthosis is an orthopedic appliance or apparatus used to support, align, prevent or correct deformities, or to improve the function of a moveable body part. For example: brace, splint, shoe insert or modification, etc.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.245, 656.248; 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0250

What Do I Have to Pay for?

(1) You may only pay for treatment that falls within the scope and field of the ASC’s license to operate.

(2) You must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(3) Even if the claim is denied, you must pay for medical services rendered at your request and for information submitted at your request, which is in addition to that required in OAR 436-010-0240.

(4) You must pay for:

(a) Surgical procedures (i.e., ASC facility fee) listed in Appendix C;

(b) Ancillary services listed in Appendix D that are integral to the surgical procedure; and

(c) Implants, either when included in the ASC facility fee or when billed separately.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.245, 656.248; 656.252, 656.262(5)
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0255

What Don’t I Have to Pay for?

(1) You don’t have to pay for services that have been excluded from compensability under OAR 436-009-0015, or for treatment of any of the side effects caused by the excluded services. The following are excluded services:

(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface EMG (electromyography) tests;

(d) Rolfling;

(e) Prolotherapy;

(f) Thermography;

(g) Lumbar artificial disc replacement, unless it is a single level replacement with an unconstrained or semi-constrained metal on polymer device and:

(A) The single level artificial disc replacement is between L3 and S1;

(B) The injured worker is 16 to 60 years old;

(C) The injured worker underwent a minimum of six months unsuccessful exercise based rehabilitation; and

(D) The procedure is not found inappropriate under OAR 436-010-0230(13) or (14); and

(h) Cervical artificial disc replacement, unless it is a single level replacement with a semi-constrained metal on polymer or a semi-constrained metal on metal device and:

(A) The single level artificial disc replacement is between C3 and C7;

(B) The injured worker is 16 to 60 years old;

(C) The injured worker underwent unsuccessful conservative treatment;

(D) There is intraoperative visualization of the surgical implant level; and

(E) The procedure is not found inappropriate under OAR 436-010-0230(15) or (16).

(2) You don’t have to pay an ASC when:

(a) The patient misses an appointment;

(b) The ASC bills more than 12 months after the date of service;

(c) X-ray films are not of diagnostic quality, do not include a report of findings, or the films are 14” x 36” lateral views; or

(d) The ASC provides services to a worker who is enrolled in a managed care organization (MCO) and:

(A) The ASC is not a contracted facility for the MCO;

(B) The MCO has not pre-certified the service provided; or

(C) The surgeon is not a panel provider.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.245, 656.248; 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0260

How Much Must I Pay ASCs?

(1) Unless otherwise provided by contract, you must:

(a) Pay for surgical procedures (i.e., ASC facility fee) and ancillary services at the lesser amount of:

(A) The maximum allowable payment amount for the HCPCS code found in Appendix C, Column labeled “Maximum Payment with Device Included, If Any” for surgical procedures, and in Appendix D, Column labeled “Maximum Payment” for ancillary services integral to a surgical procedure; or

(B) The ASC’s usual fee for surgical procedures and ancillary services;

(b) When more than one procedure is performed in a single operative session:

(A) For the lower paying procedure(s), pay the surgical procedures with a “Y” in the column labeled “Subject To Multiple Procedure Discounting” in Appendix C at 50 percent of the amount listed for the HCPCS code or 50 percent of the ASC’s usual fee, whichever is less; and

(B) For the surgical procedures with an “N” in the column labeled “Subject To Multiple Procedure Discounting” in Appendix C, pay the amount listed for the HCPCS code or the ASC’s usual fee, whichever is less, for the procedure(s);

(c) When the ASC bills separately for an implant:

(A) Pay for the implant at 110 percent of the ASC’s actual cost documented on a receipt of sale when the implant’s cost to the ASC is more than \$100; and

(B) Pay the surgical procedure (i.e., ASC facility fee) at the maximum allowable amount for the HCPCS code found in Appendix C, Column labeled “Maximum Payment with Separate Device Payment” or the ASC’s usual fee, whichever is less;

(d) For durable medical equipment not listed in Appendix D:

(A) Pay at 85 percent of the manufacturer’s suggested retail price (MSRP); or

(B) If no MSRP is available or the ASC can demonstrate that 85 percent of the MSRP is less than 140 percent of the actual cost to the ASC, then you must pay at 140 percent of the ASC’s actual cost documented on a receipt of sale;

(e) Pay a prosthetic or orthotic device not listed in Appendix D, at 80 percent of the ASC’s usual fee; and

(f) Pay copies of medical records you requested at \$10.00 for the first page and \$0.50 for each page thereafter.

(2) The surgical procedure (i.e., ASC facility fee) does not include physicians’ services, laboratory, x-ray, or diagnostic procedures not directly related to the surgical procedure, prosthetic devices, orthotic devices, durable medical equipment (DME), or anesthesiologists’ services.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.245, 656.248; 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

ADMINISTRATIVE RULES

436-009-0265

What If I Don't Receive All the Information I Need to Process the Bill?

(1) When you receive a bill that you cannot process because it is not submitted in the proper form or the form is not complete, you may return the bill to the ASC within 20 days of the date you received the bill with a written explanation describing why you returned the bill. You must provide specific information about what you need in order to process the bill.

(2) If the ASC submits its bills electronically and you want chart notes, you must, within 20 days of the date you received the bill, ask the ASC to provide them.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0270

What If I Disagree With the Billing?

If you disagree with the amount of a bill or the appropriateness of services rendered, you must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0275

What Discounts May I Apply Under This Fee Schedule?

(1) You may apply a discount to the ASC's fee if you have a contract with the ASC.

(2) If you have multiple contracts with the ASC, you may only apply one discount to the ASC's fee.

(3) If you have multiple contracts and one of the contracts is through a certified managed care organization for services provided to an enrolled worker, you may only apply the discount under the managed care organization's contract.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0280

Who Is Responsible for the Payment?

You are responsible for paying for medical services related to a compensable injury or illness.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0285

When Must I Pay the ASC?

You must pay an ASC within the later of:

- (1) 14 days of any action causing the service to be payable; or
- (2) 45 days of the date you received the bill.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

436-009-0290

What Must I Tell the Provider About the Payment?

(1) You must provide a written explanation for services being paid or denied. You must send the explanation to the medical provider that billed for the services. All information on the explanation must be in 10 point size font or larger.

(2) The explanation of benefits must include:

(a) The amount of payment for each service billed. When the payment covers multiple patients, the explanation must clearly separate and identify payments for each patient;

(b) The specific reason for non-payment, reduced payment, or discounted payment for each service billed;

(c) An Oregon or toll-free phone number for you or your representative, and a statement that you or your representative must respond to a medical provider's payment questions within 48 hours, excluding weekends and legal holidays;

(d) The following notice, web link, and phone number:

"To access information about Oregon's Medical Fee and Payment Rules, visit www.oregonwcdoc.info or call 503-947-7606";

(e) Space for a signature and date; and

(f) A notice of right to administrative review as follows: "If you disagree with this decision about this payment, please contact {the insurer or its representative} first. If you are not satisfied with the response you

receive, you may request administrative review by the Director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of the mailing date of this explanation. To request review, sign and date in the space provided, indicate what you believe is incorrect about the payment, and mail this document with the required supporting documentation to the Workers' Compensation Division, Medical Section, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-947-7629. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

(3) You or your representative must respond to a medical provider's inquiry about a medical payment within 48 hours, not including weekends or legal holidays, of the medical provider's inquiry. You may not refer the medical provider to another entity to obtain an answer.

(4) You or your representative and an ASC may agree to send and receive payment information by e-mail. Electronic records sent by e-mail are subject to the Oregon Consumer Identity Theft Protection Act ORS 646A.600 to 646A.628 and federal law.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248, 656.252
Hist.: WCD 2-2011, f. 3-1-11, cert. ef. 4-1-12

Department of Corrections Chapter 291

Rule Caption: Inmate Discrimination Complaints.

Adm. Order No.: DOC 2-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 11-1-2010

Rules Adopted: 291-006-0011, 291-006-0012, 291-006-0031, 291-006-0035, 291-006-0040, 291-006-0045

Rules Amended: 291-006-0005, 291-006-0015

Rules Repealed: 291-006-0020, 291-006-0025

Subject: Amendment of these rules is necessary to establish and update policy and procedures for the department's internal inmate discrimination complaint process. These rules have not been revised since 1997; and the department has a structured process to investigate any inmate complaint alleging perceived discrimination. These amendments further clarify the process for an inmate to file a discrimination complaint, set time frames within the process for inmate submission of a complaint and staff response to the complaint, and establish a review by the Inspector General of the department's response to a discrimination complaint.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-006-0005

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policy and procedures for inmates to obtain internal review, investigation, and resolution of perceived instances of unfair discriminatory practices and action by the department based on race, gender, color, national origin, religion, age, marital status or disability.

(3) Policy: Within the inherent limitations of resources and the need to maintain internal security, good order, and discipline in Department of Corrections facilities, the health and safety of inmates, staff and volunteers, and to promote inmate rehabilitation, it is the policy of the Department of Corrections:

(a) That all inmates are treated fairly, equitably, and that staff actions and decisions be consistent with the rules, policies, and procedures of the department.

(b) To permit and encourage inmates to seek resolution of issues or disputes related to perceived instances of discriminatory practices or actions using the department's internal discrimination complaint system established in these rules.

(c) To promptly and thoroughly investigate any complaint alleging perceived discrimination and, if appropriate, take measures to resolve the issue.

(d) No person shall be discriminated against, intimidated, threatened, coerced, or suffer any form of retaliation or reprisals, because the person has opposed unlawful discrimination, filed a complaint, testified, assisted,

ADMINISTRATIVE RULES

or participated in any manner, in any proceeding regarding unlawful discrimination or has attempted to do so.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 22-1986(Temp), f. 7-25-86, ef. 9-1-86; CD 40-1986, f. & ef. 10-17-86; CD 12-1995, f. & cert. ef. 7-7-95; CD 19-1997, f. 10-27-97, cert. ef. 11-1-97; DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

291-006-0011

Definitions

(1) Contractor: Any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department sanctioned assignment to provide services or support to department programs.

(2) Department of Corrections (DOC) Employee: Any person employed full-time, part-time, or under temporary appointment by the Department of Corrections.

(3) Disability: With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment.

(4) Discrimination Complaint Coordinator: An employee who is assigned by the functional unit manager to review and investigate incidents of perceived discrimination. In a DOC facility, the discrimination complaint coordinator may also be the grievance coordinator.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports either to the Director, an Assistant Director, or an administrator and has responsibility for the delivery of program services or the coordination of program operations.

(6) Inmate Communication Form: An official Department of Corrections form (CD 214) commonly referred to as a "kyte or kite." The form is designed for inmate use in communicating with employees, volunteers, or contractors and allows employees, volunteers, or contractors to respond in writing, when appropriate, to the inmate.

(7) Inmate Discrimination Complaint Review Committee: A workgroup chaired by a manager designated by the Inspector General and made up of inmate grievance coordinators, discrimination complaint coordinators, the Chief of Inmate Services, and department subject matter experts. The committee meets monthly to review inmate discrimination complaints, investigations, and responses when a review has been requested by an inmate.

(8) Oregon Corrections Enterprises: A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(9) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises.

(10) Volunteer: An approved person who donates time, knowledge, skill or effort to enhance the mission, activities and programs of the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075
Hist.: DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

291-006-0012

Inmate-Staff Communications (General Principles)

(1) Proper and effective communication between inmates and staff is essential to the safe, secure, and orderly operation of Department of Corrections facilities and to the successful completion of the inmate's corrections plans.

(a) Inmates and staff communicate with each other not only with their choice of words (oral or written), but also non-verbally through their manner, tone, and approach (commonly referred to as "body language").

(b) Inmates and staff are jointly responsible for ensuring their choice of words, manner, tone and approach are appropriate to properly and effectively convey their intended information and ideas to one another.

(2) Inmates shall communicate with staff in a civil and respectful tone and manner.

(3) Staff shall communicate with inmates in a professional manner that fosters respect and confidence. Staff orders directed to inmates should be clear and concise.

(4) Staff shall make every effort to respond to an inmate communication form (CD 214) within seven days of receipt.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075
Hist.: DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

291-006-0015

Internal Complaint Process

(1) General Information:

(a) An inmate that believes he/she has been subjected to discrimination by the department or by an employee, contractor, or volunteer of the department or the Oregon Corrections Enterprises on the basis of race, color, national origin, gender, religion, age, marital status, or disability may seek resolution of his/her complaint or issue through the department's internal discrimination complaint process by completing the department's approved discrimination form (CD 1086D) and submitting it to the designated functional unit discrimination complaint coordinator.

(b) If an inmate cannot complete the complaint form due to a language, physical, or competency or capacity barrier, another person may complete the complaint form.

(A) However, the inmate submitting the form must sign the discrimination complaint form.

(B) Translation services or other assistance for submission of an inmate discrimination form for non-English speaking inmates or inmates who have difficulty with reading and writing will be made available upon request.

(c) Inmates who have submitted a discrimination complaint shall be treated in a professional and respectful manner.

(d) Functional unit managers or designees shall ensure the approved inmate discrimination forms are available to inmates in DOC correctional facilities.

(2) An inmate cannot file a discrimination complaint regarding the following:

(a) Complaints relating to actions or decisions not within the authority of the department (as an example, actions by the Board of Parole, county jails or court action);

(b) Incidents or actions for which there exists a separate internal department appeal or review process; for example, rejection or confiscation of mail, visiting, classification issues, etc.

(c) Incidents or actions in which the inmate was not directly involved or affected;

(d) Claims or issues that the inmate is pursuing in pending litigation in state or federal courts; or

(e) Claims or issues for which the inmate has filed a Notice of Tort Claim with the Oregon Department of Administrative Services, Risk Management Division;

(3) An inmate may not file more than one discrimination form on a single incident or issue.

(4) An inmate may not file a discrimination complaint and a grievance regarding the same incident.

(5) An inmate may submit only his/her signature on a single discrimination complaint form.

(6) An inmate may file a discrimination complaint regarding the same issue as previously filed provided there is another incident and new information is available about the issue.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 22-1986(Temp), f. 7-25-86, ef. 9-1-86; CD 40-1986, f. & ef. 10-17-86; CD 12-1995, f. & cert. ef. 7-7-95; CD 19-1997, f. 10-27-97, cert. ef. 11-1-97; DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

291-006-0031

How and When a Discrimination Complaint is filed

(1) When submitting an inmate discrimination complaint, inmates must include on the approved discrimination complaint form (CD 1086D), a complete description of the incident, action or application of rule that directly impacted the submitting inmate and how the inmate believes it has subjected him/her to discrimination.

(2) The discrimination complaint coordinator must receive the discrimination complaint within 30 calendar days of the last date of the incident giving rise to the discrimination complaint.

(a) The discrimination complaint coordinator will date stamp and log the discrimination form upon receipt.

(b) A discrimination complaint received more than 30 days after the last date of the incident giving rise to the complaint will be rejected as untimely.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075
Hist.: DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

ADMINISTRATIVE RULES

291-006-0035

Processing of Inmate Discrimination Complaints

(1) Upon receiving an inmate discrimination complaint, the discrimination complaint coordinator will assign the complaint a number and record it in a discrimination log.

(2) After the complaint has been logged, the discrimination complaint coordinator will send a receipt to the inmate.

(a) If the discrimination complaint is rejected for failure to comply with the requirements and procedures for submitting discrimination complaints provided in these rules, the discrimination complaint coordinator will provide the inmate with a written statement of the reason(s) for the rejection on the receipt form.

(c) A copy of the denied complaint will be sent to the Director or designee.

(3) If the discrimination complaint is accepted for processing, the discrimination complaint coordinator will investigate the matter or, if more suitable, will coordinate with an appropriate manager to initiate an investigation into the alleged incident or issue. Staff may be required to submit written information for consideration by the discrimination complaint coordinator during the investigation of the incident.

(4) The discrimination complaint coordinator will complete the investigation and brief the functional unit manager.

(a) The functional unit manager or designee will prepare a response.

(b) The discrimination complaint coordinator will send the inmate the response within 60 calendar days from the date of receipt of the discrimination complaint, unless further investigation or review is necessary.

(c) If the discrimination complaint is not processed within this timeframe, the discrimination complaint coordinator will make an effort to notify the inmate of the status of the discrimination complaint.

(d) If the inmate does not receive a response within the allotted timeframe, he/she may contact the discrimination complaint coordinator for information regarding when he/she may expect a response.

(5) A copy of the discrimination complaint, investigative documents and the functional unit manager's response will be sent to the Inspector General or designee.

(6) A copy of the discrimination complaint and functional unit manager's response will be sent to the Director or designee.

(7) Discrimination complaint responses may be consolidated.

(8) If at any time the discrimination complaint coordinator determines that the inmate is pursuing his/her complaint or issue in pending litigation in state or federal courts, including submitting to state officials a Notice of Tort Claim, the discrimination complaint process will cease and the complaint will be returned to the inmate. The discrimination complaint coordinator will retain a copy of the inmate's discrimination complaint and document the date and reason for return of the complaint.

(9) A discrimination complaint that has been returned to the inmate by the discrimination complaint coordinator for procedural reasons cannot be reviewed. An inmate may elect to resubmit the discrimination complaint if the procedural errors can be corrected.

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

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

Hist.: DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

291-006-0040

Discrimination Complaint Reviews

(1) An inmate may obtain a review of the department's response to his/her discrimination complaint by sending an inmate communication form to the discrimination complaint coordinator requesting a review. The inmate must attach the original discrimination complaint, original attachments and the department's response.

(a) The scope of the original complaint cannot be expanded. No additional information may be submitted unless it was unavailable to the inmate at the time the original discrimination complaint was filed, and the information is directly related to the alleged initial complaint.

(b) The discrimination complaint coordinator will date stamp and log the review request.

(c) The inmate will be sent a response to the inmate communication form stating the review was forwarded to the Inspector General and the Inmate Discrimination Complaint Review Committee.

(2) Review Timelines:

(a) The discrimination complaint coordinator must receive the inmate's review request within 14 calendar days from the date that the department's discrimination response was sent to the inmate from the discrimination complaint coordinator.

(b) Review requests received more than 14 days from the date that the department's discrimination response was sent to the inmate will be rejected as untimely.

(c) An inmate's review request will be responded to by the Inspector General or designee within 60 calendar days from the date the review was received, unless further investigation is necessary.

(d) If the discrimination complaint review is not processed within this timeframe, the discrimination complaint coordinator will make an effort to notify the inmate of the status of the discrimination complaint. If the inmate does not receive a response within the allotted timeframe, he/she may contact the discrimination complaint coordinator.

(3) The review decisions made by the Inspector General or designee are final and not subject to further review.

(4) A copy of the review decision will be sent to the Director or designee.

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

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

Hist.: DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

291-006-0045

Retention and Filing of Inmate Discrimination Complaints

(1) The discrimination complaint coordinator will retain a file copy of discrimination complaints with pertinent documents, including a review, according to the department's approved retention schedule for these records.

(2) Inmate discrimination complaints will not be filed in the inmate's working file.

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

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

Hist.: DOC 2-2011, f. 2-23-11, cert. ef. 3-1-11

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Rule Caption: Inmate Grievance Review and Appeal System.

Adm. Order No.: DOC 3-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 3-1-11

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Rules Adopted: 291-109-0125

Rules Amended: 291-109-0100, 291-109-0110, 291-109-0120, 291-109-0140, 291-109-0150, 291-109-0160, 291-109-0170, 291-109-0180, 291-109-0190

Subject: Amendment of these rules is necessary to revise and update the department's inmate grievance review system. These rules have not been modified since 2006; and since that time there have been significant changes in state laws and department policies that affect the inmate population that may result in issues between the inmates and staff. These amendments provide clarification of the process for an inmate to submit a grievance; further define what an inmate can and cannot grieve; and encourage inmates to report information or concerns regarding the behavior or conduct of staff that may directly threaten the life, health, and safety of staff or inmates.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-109-0100

Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish department policy and procedures for inmate communication with staff and the administration of the department's internal grievance review and appeal system for inmates confined in Department of Corrections facilities.

(3) Policy:

(a) It is the policy of the Department of Corrections to encourage inmates to address their concerns informally with appropriate staff and managers through either dialog or by utilizing inmate communication forms. Inmates having information or concerns regarding the conduct or behavior of staff that may directly threaten the life, health, and safety of staff or inmates are also encouraged to communicate their information and concerns to the department using such other systems as the department may develop, for example, the Inspector General's hotline.

(b) Recognizing that due to the complex nature of the correctional setting some issues or disputes between staff and inmates may not be readily resolved at an informal level, it is the policy of the Department of Corrections to permit and encourage inmates to seek resolution of issues or

ADMINISTRATIVE RULES

disputes using the department's internal inmate grievance review and appeal system established in these rules.

(c) Within the inherent limitations of resources and the need for facility security, safety, health and good order, it is the policy of the Department of Corrections that all inmates be treated fairly and equitably, and that staff actions and decisions be consistent with the rules, policies and procedures of the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0110

Definitions

(1) Administrative Directive: A term used to describe in general a Department of Corrections rule or policy signed by the Director or Deputy Director.

(2) Communication: A process by which information is exchanged between individuals, usually through verbal or written message.

(3) Contractor: Any person under contractual arrangement to provide services to the department; any person employed by private or public sector agencies who is serving under department sanctioned assignment to provide services or support to department programs.

(4) Department of Corrections (DOC) Employee: Any person employed full-time, part-time, or under temporary appointment by the Department of Corrections.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports either to the Director, an Assistant Director, or an administrator and has responsibility for the delivery of program services or the coordination of program operations.

(6) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, probation, or post prison supervision status.

(7) Inmate Communication Form: An official Department of Corrections form (CD 214) commonly referred to as a "kyte or kite." The form is designed for inmate use in communicating with employees, volunteers, or contractors and allows employees, volunteers, or contractors to respond in writing, when appropriate, to the inmate.

(8) Inspector General's Hotline: A phone number, maintained and paid for by the department, where inmates may report misconduct by other inmates and abuse of lawful authority or criminal activity of department staff in order to protect the life, health, and safety of both staff and inmates.

(9) Oregon Corrections Enterprises: A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(10) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises.

(11) Volunteer: An approved person who donates time, knowledge, skills and effort to enhance the mission, activities and programs of the department.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1979, f. 1-18-79, ef. 1-25-79; CD 34-1981(Temp), f. & ef. 8-7-81; CD 5-1982, f. & ef. 1-29-82; CD 39-1983(Temp), f. & ef. 10-14-83; CD 6-1984, f. & ef. 4-9-84; CD 53-1985, f. & ef. 8-16-85; CD 56-1986, f. & ef. 12-5-86; CD 13-1992, f. 6-15-92, cert. ef. 6-26-92; DOC 29-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 17-2000, f. & cert. ef. 6-19-00; Renumbered from 291-109-0010, DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0120

Inmate-Staff Communications (General Principles)

(1) Proper and effective communication between inmates and staff is essential to the safe, secure, and orderly operation of Department of Corrections facilities and to the successful completion of the inmate's corrections plans.

(a) Inmates and staff communicate with each other not only with their choice of words (oral or written), but also non-verbally through their manner, tone, and approach (commonly referred to as "body language").

(b) Inmates and staff are jointly responsible for ensuring their choice of words, manner, tone and approach are appropriate to properly and effectively convey their intended information and ideas to one another.

(2) Inmates shall communicate with staff in a civil and respectful tone and manner.

(3) Staff shall communicate with inmates in a professional manner that fosters respect and confidence. Staff orders directed to inmates should be clear and concise.

(4) Staff shall make every effort to respond to an inmate communication form within seven days of receipt.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0125

Methods of Reporting Sexual Contact

(1) Inmates should immediately report incidents of information regarding sexual contact between staff and an inmate to a trusted staff or use the Inspector General's hotline number or both.

(2) Inmates with information or concerns regarding sexual contact between staff and an inmate may also use the inmate grievance review system.

(3) The Inspector General's hotline number is posted throughout Department of Corrections facilities.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0140

Grievance Review System

(1) General Requirements:

(a) If an inmate is unable to resolve an issue through informal communications, the department encourages the inmate to seek resolution of the issue by submitting a written grievance using the department's approved inmate grievance form (CD 117) in accordance with these rules. As with informal communications, inmates should use a civil and respectful tone and manner in their written grievances to attempt to resolve the issue or concern.

(b) An inmate grievance must include a complete description of the incident, action, or application of the rule being grieved, including date and approximate time.

(A) Only supporting documentation that directly relates to the issue being grieved, such as program failures, inmate communications, etc., should be attached and submitted with the grievance.

(B) Inmate grievances and supporting attachments that directly relate to the issue being grieved meet the standard for photocopying detailed in the rule on Legal Affairs, OAR 291-139-0040 (Supplies, Photocopying, Mailing, and Notary Services). However, library coordinators may limit photocopying of irrelevant or excessive amounts of supporting attachments.

(c) An inmate who attempts to grieve an issue by use of an inmate communication form or any written communication other than the department's approved inmate grievance form shall have his/her communication returned to him/her with instruction that the inmate resubmit the grievance on the department's approved inmate grievance form.

(d) An inmate grievance may request review of just one matter, action or incident per inmate grievance form.

(2) An inmate may file a single grievance concerning any of the following matters:

(a) The misapplication of any administrative directive or operational procedure;

(b) The lack of an administrative directive or operational procedure;

(c) Any unprofessional behavior or action which may be directed toward an inmate by an employee, contractor, or volunteer of the Department of Corrections or the Oregon Corrections Enterprises;

(d) Any oversight or error affecting an inmate;

(e) A program failure as defined in the DOC rule on Performance Recognition and Award System (Inmate), OAR 291-077-0020, unless the program failure is a direct result of a misconduct report where the inmate was found in violation;

(f) The loss or destruction of property as designated in the DOC rule on Personal Property (Inmate), OAR 291-117-0130 (3); or

(g) Sexual contact, solicitation or coercion between an employee or contractor and an inmate.

(3) An inmate cannot grieve the following:

(a) Grievances relating to actions or decisions not within the jurisdiction of the department (for example, actions by the Board of Parole and Post Prison Supervision);

(b) Incident(s) or action(s) for which there exists a separate internal department appeal or review process; for example, rejection or confiscation of mail, visiting, discrimination complaints, classification issues, etc.;

ADMINISTRATIVE RULES

(c) Daily fails as defined in the DOC rule on Performance Recognition and Award System (Inmate), OAR 291-077-0020;

(d) Conduct orders, investigations leading to a conduct order, or conduct order sanction(s);

(e) Misconduct reports, investigations leading to or arising from misconduct reports, or disciplinary hearings, findings and sanctions;

(f) Incident(s) or problem(s) to which an inmate was not a party;

(g) The action or decision of more than one DOC or OCE employee, volunteer or contractor on a single grievance form;

(h) Claims or issues for which the inmate has filed a Notice of Tort with the Oregon Department of Administrative Services, Risk Management Division;

(i) Claims or issues that the inmate is pursuing in pending litigation in state or federal courts; or

(j) Group grievances representing other inmates, or acts where an inmate is a spokesperson for other inmates.

(4) An inmate may submit only his/her signature on a single grievance form.

(5) An inmate may not file more than one grievance regarding a single incident or issue.

(6) An inmate may file a grievance regarding the same issue as a previously filed grievance provided there is another incident and new information is available about the issue.

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

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0150

How and When a Grievance is Filed

(1) Inmate grievances must be submitted to the functional unit grievance coordinator on the department's approved inmate grievance form (CD117). Instructions for filing a grievance are found on form CD117a (Inmate Grievance Instructions).

(2) To obtain a grievance review, the functional unit grievance coordinator must receive an inmate's grievance within 30 calendar days of the date of the incident giving rise to the grievance. The grievance coordinator shall date stamp and log the grievance form upon receipt.

(3) If an inmate cannot complete the grievance form due to language, physical, or competency and capacity barriers, another person may complete the form. However, the inmate submitting the grievance must sign the grievance form. Translation services or other assistance for submission of a grievance form for non-English speaking inmates or inmates that have difficulty with reading and writing will be made available upon request.

(4) Functional unit managers or designees shall ensure the approved inmate grievance forms are readily available to inmates in DOC correctional facilities.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(3), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0160

Processing of Inmate Grievances

(1) Upon receiving an inmate grievance, the grievance coordinator will assign the grievance a number and record its receipt in an inmate grievance log.

(a) After the inmate grievance has been logged, the grievance coordinator will send a grievance receipt to the inmate.

(b) The grievance coordinator will coordinate with the appropriate staff or, if deemed more suitable, the appropriate manager by sending the grievance and a grievance response form (CD 117b) to the staff or manager respondent for reply.

(c) The respondent will complete the form and submit it to his/her manager for review and signature. The response shall be returned to the grievance coordinator for processing within 21 calendar days.

(2) After recording, the grievance coordinator will send the inmate grievance and employee's, contractor's, or volunteer's response to the inmate and retain copies for the file.

(a) The grievance coordinator will complete processing of the grievance within 45 days from the date the grievance was received from the inmate, unless further investigation is necessary.

(b) If the grievance is not processed within this timeframe, the grievance coordinator will make an effort to notify the inmate of the status of the grievance. If the inmate does not receive a response within the allotted time frame, he/she may contact the grievance coordinator.

(3) Grievance responses may be consolidated.

(4) If at anytime the grievance coordinator determines the inmate has pursued his/her issue through state or federal courts, or has filed a notice of tort claim, the grievance process will cease and the grievance will be returned to the inmate. The grievance coordinator will retain a copy of the inmate's grievance and document the date and reason for return of the grievance.

(5) A grievance that has been returned to the inmate by the grievance coordinator for procedural reasons cannot be appealed. The inmate may elect to resubmit the grievance to the grievance coordinator within 14 calendar days from the date the grievance was sent back to the inmate if the procedural errors can be corrected.

(6) Once an inmate is released from the custody of the Department of Corrections, any pending grievances or pending appeal responses will be completed and held on file unless other arrangements have been made with the grievance coordinator. No further appeals will be accepted for processing once the inmate is released from the custody of the Department of Corrections.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(4), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0170

Grievance Appeals

(1) Appeals of the Initial Grievance (First Appeal Process):

(a) An inmate may appeal the initial grievance response using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments and staff response(s).

(A) The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance was filed and the information is directly related to the alleged issue being grieved.

(B) After the appeal has been date stamped and logged, the inmate will be issued a return receipt, and the grievance appeal will be forwarded to the functional unit manager having authority to review and resolve the issue.

(b) Appeal Timelines: The grievance coordinator must receive an appeal within 14 calendar days from the date that the grievance response was sent to the inmate from the grievance coordinator.

(c) The functional unit manager shall respond to the inmate's grievance appeal within 30 calendar days from the date the appeal was received by the functional unit manager. The functional unit manager will return the grievance appeal and the response back to the grievance coordinator.

(2) Appeal of the Functional Unit Manager Decision (FINAL Appeal Process):

(a) An inmate may appeal the functional unit manager's decision using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments, staff responses and documentation related to the first grievance appeal.

(A) The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance or first-level appeal was filed and the information is directly related to the alleged issue being grieved.

(B) After the appeal has been date stamped and logged, the inmate will be issued a return receipt. The grievance appeal will be forwarded to the Assistant Director having authority to review and resolve the issue.

(b) The Assistant Director or designee shall review the final grievance appeal. If the Assistant Director determines additional facts should have been gathered or additional witnesses interviewed, the grievance appeal will be referred back to the functional unit grievance coordinator. Upon completion of the investigation, the Assistant Director shall complete the review.

(c) Final Appeal Timelines: The grievance coordinator must receive the final appeal within 14 calendar days from the date that the first grievance appeal response was sent to the inmate from the grievance coordinator. The Assistant Director or designee shall respond to the inmate's grievance appeal within 30 calendar days from the date the appeal was received by the Assistant Director.

(d) The Assistant Director's or designee's decision on an inmate's grievance appeal is final, and is not subject to further review.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(5), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

ADMINISTRATIVE RULES

291-109-0180

Abuse of Grievance Review System

(1) An inmate shall submit no more than two inmate grievances in any one week or six in any calendar month. A week is defined as Sunday through Saturday. Grievances submitted in excess of two grievances in any one-week or six in any calendar month will be denied and returned to the inmate, noting that he/she has abused the grievance review system.

(2) If a life, health or safety situation arises whereby there is valid reason to submit more than two grievances in one week or six in a calendar month, the inmate must clearly state in writing the reason for submission of the grievance above the number allowed. If the grievance coordinator determines that these reasons are not clear, concise or valid for submission of an additional grievance, the grievance will be returned to the inmate denied.

(3) Actions taken against an inmate who has abused the grievance review system under these rules are not grievable.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(6), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

291-109-0190

Retention and Filing of Inmate Grievances

(1) The grievance coordinator will retain a file copy of grievances with pertinent documents, including appeals, in accordance with the department's approved retention schedule for these records.

(2) Inmate grievances will not be filed in the inmate's working file.

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

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

Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(7), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11

Rule Caption: Mail for inmates that contains clippings or copies in which the subject is nude or partially nude

Adm. Order No.: DOC 4-2011(Temp)

Filed with Sec. of State: 3-4-2011

Certified to be Effective: 4-1-11 thru 9-28-11

Notice Publication Date:

Rules Amended: 291-131-0020, 291-131-0025, 291-131-0035, 291-131-0037

Subject: These temporary rule amendments are necessary to clearly establish department policy that incoming and outgoing mail to inmates that contains clippings or copies in which a subject is nude or partially nude is prohibited.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-131-0020

Outgoing Mail

(1) Outgoing mail must be written with lead or color pencil, pen, non-toxic markers or be typewritten or photocopied.

(2) Outgoing mail, except business mail to department officials in Central Administration sent through the intra departmental mail system, shall be enclosed in an approved DOC envelope with U.S. postage. The outside of the envelope shall contain only the inmate's committed name, SID number, and return address, and the addressee's name and address, except official or legal mail labeled as such in accordance with OAR 291-131-0030. If the sender cannot be identified, the mail will be destroyed.

(3) Business mail to Department of Corrections officials in Central Administration shall require the inmate's complete name, SID number, housing assignment, and return address and the official's complete name and address.

(4) Outgoing electronic messages shall include the full name and address of the intended recipient and the name and SID number of the inmate sender.

(5) Inmates shall not send any item "prohibited from receipt by mail" as described under OAR 291 131 0035, except as authorized by the functional unit manager.

(6) Inmate-to-Inmate Correspondence:

(a) Inmates are authorized to correspond with other inmates if the correspondence is otherwise in compliance with department rules. Inmates shall not send newspaper or magazine clippings and tear-outs, photocopies, printed web pages, drawings, photographs or any other material, other than correspondence, to themselves or to another inmate through the mail.

(b) All inmate to inmate correspondence shall be routed through the U.S. Postal Service.

(c) Inmates shall not enclose correspondence other than from the inmate sender whose name and return address appears on the front of the

envelope. Inmates shall not request another inmate to forward correspondence beyond the immediate addressee.

(d) Inmates shall not send a package to another inmate.

(7) Inmates shall not use electronic messaging to correspond with other inmates.

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

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

Hist.: CD 18(Temp), f. & ef. 12-18-73 thru 4-17-74; CD 22, f. 6-27-74, ef. 7-25-74; CD 1-1979, f. & ef. 1-4-79; Renumbered from 291-010-0305, CD 11-1980(Temp), f. & ef. 4-10-80; CD 16-1980(Temp), f. & ef. 4-18-80; CD 28-1980, f. & ef. 8-22-80; CD 22-1983(Temp), f. & ef. 6-3-83; CD 27-1983, f. & ef. 7-11-83; CD 57-1985, f. & ef. 8-16-85; CD 14-1988, f. & cert. ef. 10-7-88 (and corrected 10-25-88); CD 1-1992, f. & cert. ef. 1-29-92; CD 10-1993, f. 5-5-93, cert. ef. 7-1-93; DOC 20-1998, f. 9-22-98, cert. ef. 12-1-98; DOC 20-2001, f. & cert. ef. 12-17-01; DOC 13-2002, f. 9-11-02 cert. ef. 9-20-02; DOC 5-2007(Temp), f. & cert. ef. 8-1-07 thru 1-27-08; DOC 1-2008, f. & cert. ef. 1-25-08; DOC 4-2011(Temp), f. 3-4-11, cert. ef. 4-1-11 thru 9-28-11

291-131-0025

Incoming Mail

(1) Incoming mail shall require the sender's name and return address on the front of the envelope and shall be addressed to the inmate using only his/her committed name and SID number. Incoming electronic messages shall include the name and address of the sender as part of the message and the full name and SID number of the inmate recipient.

(a) Mail whose recipient cannot be identified because of incomplete name or number will be returned to the sender. A reasonable attempt will be made to identify the inmate recipient. If the inmate recipient cannot be positively identified, the mail will be returned to the sender.

(b) Mail with no return address or an incomplete name and return address shall be refused and returned to the U.S. Postal Service or other authorized mail service provider.

(c) The placement of the return address for international mail shall be in accordance with the sending country's postal regulations.

(2) Incoming mail must be in pen, lead or color pencil, non-toxic markers or be typewritten or photocopied.

(3) Transfers:

(a) Incoming mail to inmates not residing in the receiving facility will be forwarded to the inmate if he/she resides at another Department of Corrections facility.

(b) Incoming mail for inmates temporarily transferred to another criminal justice agency will be held at the facility for seven consecutive days. If the inmate does not return to the facility within seven days, the facility will forward to the agency all accumulated and subsequent mail received at the facility. If the criminal justice agency refuses the forwarded mail, it will be held at the department facility until the inmate has been returned.

(4) Mail received for an inmate who has been released, discharged, or has escaped shall be refused and returned to the U.S. Postal Service or other authorized mail service provider.

(5) New and used books, magazines, and newspapers shall only be received directly from the publisher or distributor.

(a) Multiple copies of the same publication to an inmate shall be prohibited.

(b) Publications that have been previously rejected by the department and altered (i.e., offending pages removed) shall be prohibited.

(6) Inmates may receive catalogs, advertisements, brochures, promotional materials, pamphlets, sweepstakes, and contest materials solicited by the inmate provided the materials are properly addressed with the inmate's full name and SID number and are received directly at the correct address of where the inmate is currently housed. These materials must conform to any content restrictions contained within this rule.

(7) No notice or administrative review will be provided to the sender or intended inmate recipient for mail refused under subsections (5)(a) and (b) or (6) of this rule.

(8) Packages, except books, magazines, and newspapers received directly from the publisher or distributor, require prior authorization from the functional unit manager or designee.

(9) Central Administration Review of Publications:

(a) Facility mailroom staff shall stamp approval of all accepted books, magazines and other publications (except newspapers) on the front or inside front cover of the publication, together with the inmate's name, SID number, date accepted, and the authorizing staff's signature. Books and magazines without the completed stamp on the front or inside the front cover shall be unauthorized and considered contraband.

(b) Unauthorized attachments, enclosures, merchandise, or materials in publications may be removed and destroyed to allow the publication to be delivered to the intended inmate recipient, if the publication is otherwise

ADMINISTRATIVE RULES

in compliance with these rules, and doing so would not drastically alter/destroy the publication.

(c) If mailroom staff determine a publication contains material that is prohibited under these or other department administrative rules, the violation notice and prohibited material shall be reviewed by a designated Central Administration official, who will either affirm, reverse or otherwise modify the original rejection decision in writing. The reviewing official shall not take part in any subsequent administrative review of the rejected publication under OAR 291-131-0050.

(10) General correspondence shall be authorized up to 1/4 inch thickness. Legal and official mail received directly from the original source shall be authorized up to three inches thick. Legal and official mail in excess of three inches shall require prior approval from the functional unit manager or designee.

(11) Unauthorized Attachments and Enclosures:

(a) Only the canceled postage stamp, address label, and return address stamp (if used) attached to the front of an envelope or package shall be glued, taped or otherwise affixed to an envelope or package, or its contents.

(b) Only written correspondence, newspaper and magazine clippings and tear-outs, small pamphlets, photocopies, carbon copies, business cards, hand made drawings, printed web pages, and photographs that meet the content restrictions in these rules may be enclosed in the envelope.

(A) Unauthorized items with minimal monetary value (e.g., paper clips, rubber bands, uncanceled stamps, book marks, envelopes, blank paper, etc.) may be removed and destroyed and the remaining mail sent to the inmate if the remaining contents are otherwise in compliance with department rules.

(B) Small pamphlets, photocopies, carbon copies and hand-made drawings shall be allowed provided the contents do not exceed the one fourth inch thickness limitation as specified in section (10) above.

(C) Newspaper and magazine clippings and photographs shall not exceed ten items for each category.

(D) Freestanding Nude or Partially Nude Images: Newspaper and magazine clippings and tear-outs, photocopies, printed web pages, drawings, photographs, and other media with nude or partially nude subjects, whether human or anime (i.e., cartoon), that depict or display male or female genitalia, pubic area or anus, or expose the areola, may not be attached to or enclosed in correspondence to inmates.

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

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

Hist.: CD 18(Temp), f. & ef. 12-18-73 thru 4-17-74; CD 22, f. 6-27-74, ef. 7-25-74; CD 1-1979, f. & ef. 1-4-79; Renumbered from 291-010-0310, CD 11-1980(Temp), f. & ef. 4-10-80; CD 16-1980(Temp), f. & ef. 4-18-80; CD 28-1980, f. & ef. 8-22-80; CD 22-1983(Temp), f. & ef. 6-3-83; CD 27-1983, f. & ef. 7-11-83; CD 41-1983(Temp), f. & ef. 10-14-83; CD 13-1984, f. & ef. 4-11-84; CD 57-1985, f. & ef. 8-16-85; CD 14-1988, f. & cert. ef. 10-7-88 (and corrected 10-25-88); CD 1-1992, f. & cert. ef. 1-29-92; CD 10-1993, f. 5-5-93, cert. ef. 7-1-93; DOC 20-1998, f. 9-22-98, cert. ef. 12-1-98; DOC 12-2001(Temp) f. & cert. ef. 6-20-01 thru 12-17-01; DOC 20-2001, f. & cert. ef. 12-17-01; DOC 4-2002(Temp), f. & cert. ef. 3-25-02 thru 9-21-02; DOC 13-2002, f. 9-11-02 cert. ef. 9-20-02; DOC 5-2007(Temp), f. & cert. ef. 8-1-07 thru 1-27-08; DOC 1-2008, f. & cert. ef. 1-25-08; DOC 17-2008, f. 7-18-08, cert. ef. 7-21-08; DOC 4-2011(Temp), f. 3-4-11, cert. ef. 4-1-11 thru 9-28-11

291-131-0035

Prohibited Mail

The following materials constitute prohibited mail which shall be confiscated or returned to the sender:

(1) Sexually Explicit Material:

(a) Sexually explicit material which by its nature or content poses a threat or is detrimental to the security, good order or discipline of the facility, inmate rehabilitation, or facilitates criminal activity including, but not limited to, the following:

(A) Sexual Acts or Behaviors:

(i) Portrayal of actual or simulated sexual acts or behaviors between human beings including, but not limited to, intercourse, sodomy, fellatio, cunnilingus or masturbation.

(ii) Portrayal of actual or simulated penetration of the vagina or anus, or contact between the mouth and the breast, genitals, or anus.

(iii) Portrayal of actual or simulated stimulation of the breast, genitals, or anus.

(iv) Portrayal of actual or simulated acts or threatened acts of force or violence in a sexual context, including, but not limited to, forcible intercourse (rape) or acts of sadomasochism emphasizing the infliction of pain.

(v) Portrayal of actual or simulated sexual acts or behaviors in which one of the participants is a minor, or appears to be under the age of 18.

(vi) Bestiality: Portrayal of actual or simulated sexual acts or behaviors between a human being and an animal.

(B) Excretory Functions: Portrayal of actual or simulated human excretory functions, including, but not limited to, urination, defecation, or ejaculation.

(C) Personal photographs in which the subject is nude; displays male or female genitalia, pubic area, or anus; or exposes the areola.

(D) Freestanding Nude or Partially Nude Images: Newspaper and magazine clippings and tear-outs, photocopies, printed web pages, drawings contained in incoming mail, and photographs, with nude or partially nude subjects, whether human or anime (i.e., cartoon), that depict or display male or female genitalia, pubic area or anus, or expose the areola.

(b) No distinction shall be made between depictions of heterosexual and homosexual activity in applying these standards.

(c) Sexually explicit material does not include material of a news or information type, for example, publications covering the activities of gay rights or gay religious groups.

(d) Literary publications shall not be excluded solely because of homosexual themes or references, except for violations of these rules.

(e) Sexually explicit material may be admitted if it has scholarly value, or general social or literary value.

(2) Material That Threatens or is Detrimental to the Security, Safety, Health, Good Order or Discipline of the Facility, Inmate Rehabilitation, or Facilitates Criminal Activity: Material which by its nature or content poses a threat or is detrimental to the security, safety, health, good order or discipline of the facility, inmate rehabilitation, or facilitates criminal activity, including, but not limited to, material that meets one or more of the following criteria:

(a) It incites, advocates, aids or abets criminal activity such as illegal drug use, or instructs in the manufacture, use or conversion of weapons.

(b) It incites, advocates, aids or abets escape, such as picking locks or digging tunnels.

(c) It consists of threats of physical harm to any person or threats of criminal activity.

(d) It contains or concerns sending contraband within, into or out of the facility.

(e) It concerns plans for activities in violation of other Department of Corrections administrative directives.

(f) It contains code that directly threatens or is detrimental to the security, safety, health, good order, or discipline of the facility, inmate rehabilitation, or facilitates criminal activity.

(g) It contains information which, if communicated, would create a clear and present danger of violence and physical harm to a human being.

(h) It contains contraband material.

(i) It contains STG-related paraphernalia.

(j) It contains inflammatory material.

(k) It contains role-playing or similar fantasy games or materials.

(3) Credit or Deferred Billing Transactions: Mail involving credit or deferred billing (e.g., "bill me later" or "payment after delivery") transactions for the purchase of or subscription to publications (e.g., books, newspapers, magazines) or other items or merchandise is prohibited. Mail prohibited under this subsection includes:

(a) Outgoing inmate requests or purported agreements to enter into a credit or deferred billing transaction.

(b) Incoming publications or other items or merchandise, including promotions (e.g., free gift or premium) items given in exchange for purchase or subscription, received in a Department of Corrections facility which are accompanied by a billing or other statement requiring payment upon delivery or at a later date.

(4) Unauthorized Business Transactions: Mail involving a business transaction not previously approved by the functional unit manager or designee.

(5) Items Prohibited From Receipt by Mail:

(a) Any item or material which an inmate shall not possess within the Department of Corrections facility to which the inmate is assigned.

(b) Material which an inmate shall not possess within the facility or which meets one of the following criteria:

(A) Weapons or explosives;

(B) Narcotics or narcotics paraphernalia;

(C) Intoxicants or medications;

(D) Escape devices;

(E) Money, negotiable instruments, deposit and withdrawal slips, uncanceled stamps, and stamp collections;

(F) Any item larger than 18" x 18" except subscription newspapers;

(G) Any electronic items, including batteries;

(H) Any substance that is unauthorized, including lipstick, crayon, water colors, paint, correction fluid, etc.; or

ADMINISTRATIVE RULES

(I) Polaroid type photographs with a chemical substance on the back of the photograph.

(6) Mail Subject to Outgoing Mail Restriction: Outgoing mail to a person or address to which the inmate has been ordered by the functional unit manager or designee not to send mail.

(7) Any other material that the department deems to pose a threat or to be detrimental to legitimate penological objectives.

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

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

Hist.: CD 18(Temp), f. & ef. 12-18-73 through 4-17-74; CD 22, f. 6-27-74, ef. 7-25-74; CD 1-1979, f. & ef. 1-4-79; Renumbered from 291-010-0315, CD 11-1980(Temp), f. & ef. 4-10-80; CD 16-1980(Temp), f. & ef. 4-18-80; CD 28-1980, f. & ef. 8-22-80; CD 22-1983(Temp), f. & ef. 6-3-83; CD 27-1983, f. & ef. 7-11-83; CD 13-1984, f. & ef. 4-11-84; CD 57-1985, f. & ef. 8-16-85; CD 14-1988, f. & cert. ef. 10-7-88 (and corrected 10-25-88); CD 1-1992, f. & cert. ef. 1-29-92; CD 10-1993, f. 5-5-93, cert. ef. 7-1-93; DOC 20-1998, f. 9-22-98, cert. ef. 12-1-98; DOC 16-2001(Temp), f. 7-9-01, cert. ef. 7-11-01 thru 1-7-02; DOC 20-2001, f. & cert. ef. 12-17-01; DOC 13-2002, f. 9-11-02 cert. ef. 9-20-02; DOC 1-2008, f. & cert. ef. 1-25-08; DOC 4-2011(Temp), f. 3-4-11, cert. ef. 4-1-11 thru 9-28-11

291-131-0037

Disposition of Prohibited Mail

(1) Mail, if not confiscated, will be returned to the U.S. Postal Service, or to the applicable mail service provider for not meeting requirements provided in these rules.

(2) Contraband:

(a) Illegal contraband or evidence of crime shall be confiscated and turned over to the Oregon State Police. No notice of confiscation shall be given.

(b) Non-Inmate Sender:

(A) Contraband (including unauthorized attachments or enclosures) not illegal or evidence of crime shall be returned to the non inmate sender with the contents of the envelope or package intact, together with a Mail Violation Notice (CD 618a).

(B) Unauthorized items with minimal monetary value (e.g., paper clips, rubber bands, uncanceled stamps, book marks, envelopes, blank paper, etc.) may be removed and destroyed and the remaining mail sent to the inmate if the remaining contents are otherwise in compliance with department rules. No notice shall be provided to the sender or inmate recipient for the removal and destruction of minimally valued items.

(c) Inmate Sender: Any enclosures (i.e., photographs, hand-made drawings in excess of that allowed) that are not illegal or evidence of crime, or that are otherwise not prohibited in outgoing mail under these rules shall be returned to the inmate sender with the contents of the envelope or package intact, together with a Mail Violation Notice (CD 618a). Any item that poses a threat or is a detriment to the security, good order, or discipline of the facility, or that would encourage or instruct in criminal activity, may be confiscated and retained pending an investigation. If appropriate, the inmate may be issued a misconduct report, in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) Money:

(a) Cash contained in mail shall be confiscated and deposited to the Inmate Welfare Fund. Notice of the confiscation shall be provided to the sender on a Mail Confiscation Notice (CD 618b). A copy of the notice shall also be provided to the intended inmate recipient.

(A) If the cash was concealed in the mail, a written entry shall be made on the Mail Confiscation Notice (CD 618b) to document the method of concealment. If, after an administrative review of the confiscation, it is determined that the sender did not conceal the cash, the money shall be returned to the sender.

(B) Correspondence received in an envelope from which cash has been confiscated shall be delivered to the intended inmate recipient if the correspondence is otherwise in compliance with department rules.

(b) Monies other than cash (e.g., money orders, warrants, personal checks, withdrawal and deposit slips, and certified checks) contained in mail shall be returned to the sender with the contents of the envelope or package intact, together with a Mail Violation Notice (CD 618a). A copy of the Mail Violation Notice shall be provided to the intended inmate recipient.

(A) Prior to returning the mail to the sender, the offending money item shall be photocopied together with the addressee side of the envelope or package.

(B) The photocopy shall be retained by the facility according to archive standards.

(4) Mail with unauthorized or insufficient postage shall be refused and returned to the U.S. Postal Service. Notice of the reason(s) for the mail rejection shall be provided on a form label or stamp affixed to the outside of the envelope or package.

(5) Unauthorized Attachments or Enclosures:

(a) Mail received with unauthorized attachment(s) affixed to the outside of an envelope or package shall remain unopened, be refused and returned to the U.S. Postal Service or applicable mail service provider. Notice of the reason(s) for the mail rejection shall be provided on a form label or stamp affixed to the outside of the envelope or package.

(b) Mail received with unauthorized attachments affixed to the inside of an envelope or package or affixed to the contents of an envelope or package, or mail received with unauthorized enclosure(s), except for that with minimal monetary value as described in section (2)(b) above, shall be refused and returned to the sender with the contents of the envelope or package intact, together with a Mail Violation Notice.

(6) Correspondence and Publications: When, after opening, mail is rejected for violation of these or other department rules the following procedures shall be followed:

(a) Rejected Mail:

(A) Non-inmate sender: The sender and intended inmate recipient shall be notified of the rejection of mail, including the reasons, on a Mail Violation Notice (CD 618a) for correspondence, or a Publication Violation Notice for a publication. If the rejection is based upon written or pictorial content, the notice shall advise that an independent review of the rejection may be obtained by writing to the functional unit manager within 30 days of the date of the notice. Mail rejected based on written or pictorial content shall be returned intact to the sender. The rejected portion(s) of the mail shall be photocopied and retained pending any administrative review. If no administrative review is requested, the photocopy shall be maintained according to archive standards.

(B) Inmate Sender: The inmate sender shall receive the same standards as the non-inmate sender, however, the intended recipient shall not be notified of the rejection for any mail sent by an inmate in a Department of Corrections facility and shall not be eligible for an administrative review.

(b) No administrative review shall be available if the rejection is based on the presence of an unauthorized attachment, substance or enclosure on or with the mail, or if the rejection is based on any violation not related to the written or pictorial content.

(c) Confiscated Mail:

(A) Non-inmate Sender: If the mail is confiscated, notice shall be made to the sender and intended inmate recipient on a Mail Confiscation Notice (CD 618b), unless it includes plans for a discussion or commission of a crime or evidence of a crime. In such cases, no notice shall be given and the mail shall be turned over to the Special Investigations Unit of the department or the Oregon State Police. Confiscated mail not involving evidence of a crime shall be retained intact pending any administrative review. If no administrative review is requested, the mail shall be maintained according to archive standards.

(B) Inmate Sender: If the mail is confiscated, no notice shall be given to the sender or the intended inmate recipient. Mail which includes plans for a discussion or commission of a crime or evidence of a crime shall be turned over to the Special Investigations Unit of the department or the Oregon State Police. Confiscated mail which poses a threat or detriment to the security, good order, or discipline of the facility, or would encourage or instruct in criminal activity shall be retained intact pending an investigation. The inmate may be issued a misconduct report in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Otherwise, after the investigation is completed, the inmate will be notified of the confiscation. If no administrative review is requested, the mail shall be maintained according to archive standards.

(7) Packages: When a package is rejected, the following procedures shall be followed:

(a) Packages received without prior authorization of the functional unit manager or designee, or which have unauthorized attachments affixed to the outside of the package shall be refused and returned to the U.S. Postal Service or to the applicable mail service provider.

(b) Prior authorized packages which after opening are found to contain contraband not illegal (including unauthorized attachments or enclosures) or evidence of crime or otherwise to be in violation of these or other department rules, shall be returned to the sender with the contents of the package intact, together with a Mail Violation Notice.

(c) Intended Inmate Recipient: If a prior authorized package is returned to the sender after opening, the intended inmate recipient shall be promptly notified in writing of the rejection, along with the reason(s) for the rejection, on a Mail Violation Notice. No administrative review shall be available to the intended inmate recipient.

(d) Sender: The sender shall be notified in writing of the rejection of any package received in a Department of Corrections facility and addressed

ADMINISTRATIVE RULES

to an inmate, along with the reason(s) for rejection, on a form label or stamp affixed to the outside of the package if the package is refused without opening or; if the package is returned to the sender after opening, on a Mail Violation Notice inserted into the package. No administrative review shall be available to the sender.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 14-1988, f. & cert. ef. 10-7-88 (and corrected 10-25-88); CD 1-1992, f. & cert. ef. 1-29-92; CD 10-1993, f. 5-5-93, cert. ef. 7-1-93; CD 25-1994, f. 12-21-94, cert. ef. 1-3-95; DOC 20-1998, f. 9-22-98, cert. ef. 12-1-98; DOC 20-2001, f. & cert. ef. 12-17-01; DOC 4-2002(Temp), f. & cert. ef. 3-25-02 thru 9-21-02; DOC 13-2002, f. 9-11-02 cert. ef. 9-20-02; DOC 1-2008, f. & cert. ef. 1-25-08; DOC 4-2011(Temp), f. 3-4-11, cert. ef. 4-1-11 thru 9-28-11

Rule Caption: Interstate Compact for Adult Offenders.

Adm. Order No.: DOC 5-2011(Temp)

Filed with Sec. of State: 3-4-2011

Certified to be Effective: 3-4-11 thru 8-31-11

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Subject: The Department of Corrections fully participates in the Interstate Compact for Adult Offender Supervision (ICAOS). These temporary rule modifications are necessary so that the department may adopt by reference the most current rules published by the Interstate Compact for Adult Offender Supervision (ICAOS).

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-180-0115

Definitions (1.101 ICAOS)

(1) Abscond: To be absent from the offender's approved place of residence or employment with the intent of avoiding supervision.

(2) Adult: Both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(3) Application Fee: A reasonable sum of money charged an interstate compact offender by the sending state for each application for transfer prepared by the sending state.

(4) Arrival: To report to the location and officials designated in reporting instructions given to an offender at the time of the offender's departure from a sending state under an interstate compact transfer of supervision.

(5) By-laws: Those by-laws established by the Interstate Commission for Adult Offender Supervision for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

(6) Compact Administrator: The individual in each compacting state appointed under the terms of this compact and responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission for Adult Offender Supervision, and policies adopted by the State Council under this compact.

(7) Compact Commissioner or Commissioner: The voting representative of each compacting state appointed under the terms of the Interstate Compact for Adult Offender Supervision as adopted in the member state.

(8) Compliance: An interstate compact offender is abiding by all terms and condition of supervision, including payment of restitution, family support, fines, court costs or other financial obligations imposed by the sending state.

(9) Deferred Sentence: A sentence the imposition of which is postponed pending the successful completion by the offender of the terms and conditions of supervision ordered by the court.

(10) Detainer: An order to hold an offender in custody.

(11) Discharge: The final completion of the sentence that was imposed on an offender by the sending state.

(12) Extradition: The return of a fugitive to a state in which the offender is accused, or has been convicted of, committing a criminal offense, by order of the governor of the state to which the fugitive has fled to evade justice or escape prosecution.

(13) ICAOS: Interstate Compact for Adult Offender Supervision. The numeric reference in parenthesis next to this acronym refers to the section number of the national ICAOS rules that apply to these rules.

(14) Offender: For purposes of this rule, an adult placed under, or made subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.

(15) Plan of supervision: The terms, under which an offender will be supervised, including proposed residence, proposed employment or viable means of support and the terms and conditions of supervision.

(16) Probable Cause Hearing: A hearing in compliance with the decisions of the U.S. Supreme Court, conducted on behalf of an offender accused of violating the terms or conditions of the offender's parole or probation.

(17) Receiving State: A state to which an offender requests transfer of supervision or is transferred.

(18) Reporting Instructions: The orders given to an offender by a sending or receiving state directing the offender to report to a designated person or place, at a specified date and time, in another state. Reporting instructions shall include place, date, and time on which the offender is directed to report in the receiving state.

(19) Resident: person who has continuously inhabited a state for at least one year prior to the commission of the offense for which the offender is under supervision, and intends that such state shall be the person's principal place of residence, and has not, unless incarcerated, relocated to another state or states for a continuous period of six months or more with the intent to establish a new principal place of residence.

(20) Resident Family: A parent, grandparent, aunt, uncle, adult child, adult sibling, spouse, legal guardian, or step-parent who has resided in the receiving state for 180 days or longer as of the date of the transfer request; and indicates willingness and ability to assist the offender as specified in the plan of supervision.

(21) Retaking: The act of a sending state in physically removing an offender, or causing to have an offender removed, from a receiving state.

(22) Rules: Acts of the Interstate Commission, which have the force and effect of law in the compacting states, and are promulgated under the Interstate Compact for Adult Offender Supervision, and substantially affect interested parties in addition to the Interstate Commission.

(23) Sending State: A state requesting the transfer of an offender, or which transfers supervision of an offender, under the terms of the Compact and its rules.

(24) Shall: That a state or other actor is required to perform an act, the non-performance of which may result in the imposition of sanctions as permitted by the Interstate Compact for Adult Offender Supervision, its by-laws and rules.

(25) Significant Violation: An offender's failure to comply with the terms or conditions of supervision that, if occurring in the receiving state, would result in a request for revocation of supervision.

(26) Special Condition: A condition or term that is added to the standard conditions of parole or probation by either the sending or receiving state.

(27) Subsequent Receiving State: A state to which an offender is transferred that is not the sending state or the original receiving state.

(28) Substantial Compliance: An offender is sufficiently in compliance with the terms and conditions of his or her supervision so as not to result in initiation of revocation of supervision proceedings by the sending state.

(29) Supervision: The authority or oversight exercised by supervising authorities of a sending or receiving state over an offender for a period of time determined by a court or releasing authority, during which the offender is required to report to or be monitored by supervising authorities, and includes any condition, qualification, special condition or requirement imposed on the offender at the time of the offender's release to the community or during the period of supervision in the community.

(30) Supervision Fee: A fee collected by the receiving state for the supervision of an offender.

(31) Temporary Travel Permit: The written permission granted to an offender to travel outside the receiving state. Temporary travel permits shall not exceed 31 days and are not repeatedly renewable except as provided for

ADMINISTRATIVE RULES

in these rules. All temporary travel permits shall include the offender's crime of conviction and a beginning and ending date.

(32) Temporary Travel Permit (Victim Sensitive Cases): In "victim-sensitive" cases, the receiving state shall give notice of offender movement to the sending state regarding the issuance of a temporary travel permit. Travel permits may not exceed 31 days and must have a beginning and ending date.

(33) Travel permit: The written permission granted to an offender authorizing the offender to relocate from one state to another. All travel permits shall include the offender's crime of conviction.

(34) Victim: A natural person or the family of a natural person who has suffered physical injury or serious emotional harm as a result of an act or omission of an offender.

(35) Victim-Sensitive: A designation made by the sending state in accordance with its definition of "crime victim" under the statutes governing the rights of crime victims in the sending state.

(36) Waiver: The voluntary relinquishment, in writing, of a known constitutional right or other right, claim or privilege by an offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0125

Authority of Oregon Interstate Compact (2.101 ICAOS)

(1) The acceptance, rejection or termination of supervision of an offender under the compact requires the involvement and concurrence of the Oregon Compact Administrator or their designated deputy.

(2) All formal written, electronic or oral communication regarding an offender under this compact shall be made only through the Oregon Compact Administrator or their designated deputy.

(3) Transfer, modification or termination of supervision authority for an offender under this compact may be authorized only with the involvement and concurrence of the Oregon Compact Administrator or their designated deputy.

(4) Violation reports or other notices regarding offenders under this compact shall be transmitted only through direct communication between the compact offices of the sending and receiving states.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0135

Data Collection and Reporting (2.102 ICAOS)

The Oregon Compact Office shall gather, maintain and report as requested to the national compact office all required data regarding the transfer and supervision of offenders supervised under this compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0145

Interstate Compact for Adult Offender Supervision Dues (2.103 ICAOS)

Oregon shall pay membership dues to the Interstate Compact for Adult Offender Supervision as established by the dues formula lawfully promulgated by the National Compact Commission.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0155

Forms (2.104 ICAOS)

Oregon shall use the forms and electronic information system authorized by the National Compact for all communications regarding offenders between or among states.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0165

Communication Preferences

While these rules permit communication and notice by "telephone, electronic mail or telefax," whenever possible electronic transmission by email is the preferred mode of communication and transfer of documents.

For greatest clarity and usability, all documents must be electronically generated.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0175

Transfer of Offenders Under This Compact (2.110 ICAOS)

No state shall permit a person who is eligible for transfer under this compact to relocate to another state except as provided by the Interstate Compact for Adult Offender Supervision and these rules.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0185

Compact Eligible Destinations

(1) Services allowed under this compact are available only between sending and receiving states, United States possessions and territories who are signatory to the Interstate Compact for Adult Offender Supervision. This compact may not be used with non-members of the ICAOS or any foreign country.

(2) A current list of states, U.S. possessions and territories signatory to this compact may be obtained by contacting Oregon Interstate Compact or may be viewed at the ICAOS website at "<http://www.adultcompact.org>".

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0195

Adoption and Amendment to the ICAOS Rules

Additions or amendments to the ICAOS rules shall be adopted by a majority vote of the members of the Interstate Commission.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0205

Eligibility for Transfer of Supervision (3.101 ICAOS)

(1) At the discretion of the sending state, an offender who has three months or more or an indefinite period of supervision remaining shall be eligible for transfer of supervision to a receiving state under the compact, and the receiving state shall accept transfer, if the offender, pursuant to a valid plan of supervision is in substantial compliance with the terms of supervision in the sending state and:

- Is a resident of the receiving state; or
- Has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and
- Can obtain employment in the receiving state or has a visible means of support.

(2) Military Members: An offender who is a member of the military and has been transferred by the military to another state, and who meets the other criteria specified in (1)(c) shall be immediately eligible for transfer of supervision.

(3) Offenders That Live with Family Who Are Military Members: An offender who meets the other criteria specified in (1)(c) and who live with a family member who has been deployed to another state, shall be immediately eligible for transfer, provided that the offender will live with the military member in the receiving state.

(4) Employment of Family Member In Another State: An offender who meets the other criteria specified in (1)(c) and whose family member, with whom he or she resides, is transferred to another state and obtains full-time employment, shall be immediately eligible for transfer unless the receiving state can show good cause for rejecting the transfer request, provided that the offender will live with the family member in the receiving state.

(5) A receiving state, for good cause shown, may consent to the transfer of supervision of an offender who does not otherwise qualify for transfer of supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

ADMINISTRATIVE RULES

291-180-0215

Misdemeanants (2.105 ICAOS)

(1) Misdemeanants as defined below are eligible for transfer under the compact.

(2) For purposes of this rule, a misdemeanor is an offender whose sentence includes one year or more of supervision provided that all other criteria for transfer, as specified in the previous section, have been satisfied, and the instant offense includes one or more of the following:

(a) An offense in which a person has incurred direct or threatened physical or psychological harm;

(b) An offense that involves the use or possession of a firearm;

(c) A second or subsequent misdemeanor offense of driving while impaired by drugs or alcohol;

(d) A sexual offense that requires the offender to register as a sex offender in the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0225

Ineligible Offenders (2.106 ICAOS)

Persons subject to supervision pursuant to a pre-trial intervention program, bail, or similar program, are not eligible for transfer under the terms and conditions of this compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0235

Offenders Subject to Deferred Sentences (2.106 ICAOS)

Offenders subject to deferred sentences (i.e.: conditional discharges) are eligible for transfer of supervision under the same eligibility requirements, terms, and conditions applicable to all other offenders under this compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0245

Offenders on Furlough, Work Release (2.107 ICAOS)

A person who is released from incarceration under furlough, work-release, or other pre-parole program is not eligible for transfer under the compact.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0251

Standards for Interstate Transfer of Adult Offenders

The Department of Corrections adopts by this reference standards for the interstate transfer of adult offender supervision set out in the official ICAOS rules, published by the Interstate Commission for Adult Offender Supervision, as updated to reflect amendments to the rules effective March 1, 2011. The rules may be viewed at the ICAOS website at www.interstatecompact.org

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0255

Offenders With Disabilities (2.108 ICAOS)

A receiving state shall continue to supervise offenders who become mentally ill or exhibit signs of mental illness or who develop a physical disability while supervised in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0261

Travel Permits

No offenders shall relocate to another state except as provided by the ICAOS rules. Travel Permits may be issued for up to 30 days, with a subsequent extension of 15 days in emergency situations. Offenders shall be transferred pursuant to ICAOS rules if their need exceeds 45 consecutive days in another state. The offender shall return and remain in Oregon pending the Interstate Compact transfer process. No person shall be allowed to

travel out of state for treatment or programming purposes that exceeds 45 consecutive days unless they have been accepted through the Interstate Compact transfer process.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0285

Submission of Transfer Request to a Receiving State (3.102 ICAOS)

(1) Subject to the exception in the next section, a sending state seeking to transfer supervision of an offender to another state shall submit a completed transfer request with all required information to the receiving state prior to allowing the offender to leave the sending state.

(2) Subject to the exception in the next section, the receiving state shall be given the opportunity to investigate the proposed plan of supervision prior to allowing the offender to leave the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0295

Acceptance of the Offender by Receiving State; Exception (3.103 ICAOS)

(1) A sending state shall not allow an offender under supervision in the sending state to relocate to a receiving state without the receiving state's acceptance of the transfer of supervision. Exception:

(2) A sending state may grant a travel permit to an offender who was living in the receiving state at the time of sentencing. This exception is not applicable to offenders released to supervision from prison.

(a) Prior to granting a travel permit to an offender under this exception, the sending state shall verify that the offender is living in the receiving state and shall immediately contact the receiving state's interstate compact office by telephone, telefax or electronic mail to request provisional reporting instructions.

(b) A travel permit, not to exceed seven days, may be issued to the offender to allow for the request and issuance of reporting instructions. A copy of the travel permit will be immediately forwarded to the receiving state by telefax or electronic mail and will expire either upon the offender's arrival in the receiving state or on the travel permit's expiration date. The sending state retains supervisory responsibility during this period. If the receiving state rejects the transfer request or the travel permit's expiration date is reached, (6)(a) and (6)(b) shall apply.

(c) The sending state shall ensure that the offender sign all forms requiring the offender's signature prior to granting a travel permit to the offender. The sending state shall immediately transmit the signed forms electronically or by telefax to the receiving state. (3.107 ICAOS)

(d) The receiving state shall issue reporting instructions no later than two business days following receipt of such notification and request from the sending state.

(3) A receiving state shall assume responsibility for supervision of an offender who is granted reporting instructions during the investigation of the offender's plan of supervision upon the offender's arrival in the receiving state.

(4) A sending state shall transmit a completed transfer request for an offender granted reporting instructions no later than 15 calendar days following the granting to the offender of the reporting instructions.

(5) If the receiving state rejects the transfer request for an offender granted a travel permit, or if the sending state fails to send a completed transfer request by the 15th day following the granting of a travel permit, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request from the receiving state, direct the offender to return to the sending state by a date specified by the sending state.

(6) If the offender does not return to the sending state, the sending state shall initiate the retaking of the offender by issuing a warrant or an order to return no later than 10 calendar days following the offender's failure to appear in the sending state.

(7) The receiving state shall continue to supervise the offender until a warrant is issued or sending state notifies receiving state that offender has returned to sending state. (4.105 ICAOS)

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

ADMINISTRATIVE RULES

291-180-0305

Time Allowed for Investigation by Receiving State (3.104 ICAOS)

(1) A receiving state shall complete an investigation and respond to a sending state's request for offender's transfer of supervision no later than the 45th calendar day following receipt of a completed transfer request in the receiving state's compact office. Receipt of completed transfer request shall be presumed to occur by the fifth business day following transmission.

(2) If a receiving state determines that an offender transfer request is incomplete, the receiving state shall notify the sending state of that determination and the nature of the incompleteness no later than five business days following receipt of the transfer request by the receiving state.

(3) A sending state that has been notified of an incomplete transfer request shall, within five business days following receipt of notice of incompleteness, remedy the incompleteness by providing the missing material or demonstrating good cause why the incompleteness cannot be remedied within five business days, which the receiving state shall consider. Receipt by the sending state of notice of incomplete transfer request shall be presumed to occur by the fifth business day following transmission by the receiving state.

(4) The 45-calendar-day period for investigation of and response to a sending state's request for transfer of an offender's supervision shall be suspended until the sending state supplies the missing material in the transfer request.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0315

Acceptance of Offender; Issuance of Reporting Instructions (3.1041 ICAOS)

(1) If a receiving state accepts transfer of the offender, the receiving state's acceptance shall include reporting instructions.

(2) Upon notice of acceptance of transfer by the receiving state, the sending state shall issue a travel permit to the offender and notify the receiving state of the offender's departure as required. (ICAOS 4.105)

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0325

Request for Transfer of a Paroling Offender (3.105 ICAOS)

(1) A sending state shall submit a completed request for transfer of a parolee or post prison supervision offender to a receiving state no earlier than 120 days prior to the offender's planned prison release date.

(2) A sending state shall notify a receiving state of the offender's date of release from prison or if the recommendation for release of the offender has been withdrawn or denied.

(3) A receiving state may withdraw its acceptance of the transfer request if the offender does not report to the receiving state by the fifth calendar day following the offender's intended date of departure from the sending state.

(a) A receiving state that withdraws its acceptance because an offender fails to report, shall immediately notify the sending state.

(b) Following withdrawal of the receiving state's acceptance, if the sending state desires to reapply for transfer of a paroling offender, they must resubmit a new request for transfer of supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0335

Request for Expedited Transfer (3.106 ICAOS)

(1) A sending state may request that a receiving state agree to an expedited transfer of an offender if the sending state believes that emergency circumstances exist and the receiving state agrees with that determination.

(a) A receiving state that agrees to expedited transfer of an offender shall immediately issue reporting instructions for the offender, and a sending state shall immediately issue a travel permit.

(b) The sending state shall ensure that the offender signs all compact transfer application forms requiring the offender's signature (see "Application for transfer of supervision"), prior to granting a travel permit to the offender. The sending state shall immediately transmit the signed forms electronically or by telefax to the receiving state.

(c) At the time of transmission of the signed forms, the sending state shall provide the receiving state with a copy of the offender's orders and

conditions, documentation of the offender's residency, copy of any available pre-sentence report, copy of any order of protection, where applicable, and whether the offender is subject to sex offender registration in the sending state.

(2) The receiving state granting an expedited transfer shall assume responsibility for supervision of an offender granted reporting instructions during the investigation of the offender's plan of supervision upon the offender's arrival in the receiving state.

(3) The sending state shall transmit a completed transfer request for an offender granted a travel permit no later than seven calendar days following the granting to the offender of the travel permit.

(4) If the receiving state rejects the transfer request for an offender granted a travel permit, or if the sending state fails to send a completed transfer request by the seventh calendar day following the granting of a travel permit, the sending state shall, upon receiving notice of rejection or upon failure to timely send a required transfer request, direct the offender to return to the sending state by a date specified by the sending state.

(5) If the offender does not return to the sending state, the sending state shall initiate the retaking of the offender no later than ten calendar days following the offender's failure to appear in the sending state.

(6) The receiving state shall continue to supervise the offender until a warrant is issued or sending state notifies receiving state that offender has returned to sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0345

Applications for Transfer of Supervision (Investigation Packets) (3.107 ICAOS)

An application for transfer of supervision of an offender shall contain the following information:

(1) Offender's full name and any aliases by which the offender is known;

(2) Indication of whether the offender seeks transfer to the receiving state based on residency in the receiving state, family residing in the receiving state, or consent of the receiving state;

(3) Name, address, and telephone number of family in the receiving state if the offender bases the transfer request on family's residency in the receiving state;

(4) Offender's proposed residence in the receiving state;

(5) Offender's current or prospective employer in the receiving state;

(6) Offender's criminal justice identification number in the sending state;

(7) Offender's date of birth;

(8) Offender's social security number, if known;

(9) County of conviction or imposition of supervision;

(10) Indication of the type of criminal justice supervision to which the offender has been sentenced;

(11) Instant offense in sufficient detail to describe the type and severity of offense and whether the charge has been reduced at the time of imposition of sentence;

(12) Offender's criminal history;

(13) Notice, if applicable, indicating that the supervision of the offender is a victim-sensitive matter;

(14) Date supervision is to begin, if known;

(15) Date supervision is to terminate, if known;

(16) Name and title of supervising officer;

(17) Signed "Offender Application for Interstate Compact Transfer" form, which shall include "Agreement to Return on Demand of the Sending State" and "Waiver of Extradition";

(18) Signed "Consent to Random Drug or Alcohol Testing and to Searches Based on Reasonable Suspicion" form;

(19) Signed "Authorization for Release of Medical and Psychological Information" form;

(20) Photograph of offender;

(21) Conditions of supervision;

(22) Any orders restricting the offender's contact with victims or any other person;

(23) Any known orders protecting the offender from contact with any other person;

(24) Information as to whether the offender is subject to sex offender registry requirements in the sending state along with supportive documentation;

(25) Judgment and commitment documents;

ADMINISTRATIVE RULES

- (26) Pre-sentence investigation report, if available;
 - (27) Supervision history, if available;
 - (28) Information relating to any court-ordered financial obligations, including but not limited to, fines, court costs, restitution, and family support; the balance that is owed by the offender on each; and the address of the office to which payment must be made.
 - (29) Medical information, if available; and
 - (30) Psychological evaluation, if available.
- Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0355

Waiver of Extradition (3.109 ICAOS)

(1) An offender applying for interstate supervision shall execute, at the time of application for transfer, a waiver of extradition from any state to which the offender may abscond while under supervision in the receiving state.

(2) States that are party to this compact waive all legal requirements to extradition of offenders who are fugitives from justice.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0365

Offenders Illegally Present in Oregon

Requests for compact services shall be returned to the sending state when sending state's offender is present in Oregon in violation of rules of the Interstate Compact for Adult Offender Supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0375

Notification to Victims Upon Transfer of Offenders (3.108 ICAOS)

Within one business day of the issuance of reporting instructions or acceptance of transfer by the receiving state, the sending state shall initiate notification procedures of the transfer of supervision of the offender in accordance with its own laws to known victims in the sending state, and the receiving state shall initiate notification procedures of the transfer of supervision of the offender in accordance with its own laws to victims in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0385

Notification to Victims Upon Violation by Offender or Other Change in Status (3.108 ICAOS)

(1) The receiving state is responsible for reporting information to the sending state when an offender:

- (a) Commits a significant violation;
- (b) Changes address;
- (c) Returns to the sending state where an offender's victim resides;
- (d) Departs the receiving state under an approved plan of supervision in a subsequent receiving state; or
- (e) Is issued a temporary travel permit where supervision of the offender has been designated a victim-sensitive matter.

(2) Both the sending state and the receiving state shall notify known victims in their respective states of this information in accordance with their own laws or procedures.

(3) The receiving state shall respond to requests for offender information from the sending state no later than the fifth business day following the receipt of the request.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0395

Victims' Right to be Heard and Comment (3.1081 ICAOS)

(1) When an offender submits a request to transfer to a receiving state or a subsequent receiving state or to return to a sending state, the victim notification authority in the sending state shall, at the time of notification to the victim, shall inform victims of the offender of their right to be heard and comment. Victims of the offender have the right to be heard regarding their

concerns relating to the transfer request for their safety and family members' safety. Victims have the right to contact the sending state's interstate compact office at any time by telephone, telefax, or conventional or electronic mail regarding their concerns relating to the transfer request for their safety and family members' safety. The victim notification authority in the sending state shall provide victims of the offender with information regarding how to respond and be heard if the victim chooses.

(a) Victims shall have ten business days from receipt of notice required in this provision to respond to the sending state. Receipt of notice shall be presumed to have occurred by the fifth business day following its sending.

(b) The receiving state shall continue to investigate the transfer request while awaiting response from the victim.

(2) Upon receipt of the comments from victims of the offender, the sending state shall consider comments regarding their concerns relating to the transfer request for their safety and family members' safety. Victims' comments shall be confidential and shall not be disclosed to the public. The sending state or receiving state may impose special conditions of supervision on the offender, if the safety of the offender's victims or family members of victims is deemed to be at risk by the approval of the offender's request for transfer.

(3) The sending state shall respond to the victim no later than five business days following receipt of victims' comments, indicating how victims' concerns will be addressed when transferring supervision of the offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0405

Manner and Degree of Supervision in Receiving State (4.101 ICAOS)

A receiving state shall supervise an offender transferred under the interstate compact in a manner determined by the receiving state and consistent with the supervision of other similar offenders sentenced in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0415

Duration of Supervision in the Receiving State (4.102 ICAOS)

A receiving state shall supervise an offender transferred under the interstate compact for a length of time determined by the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0425

Special Conditions (4.103 ICAOS)

(1) At the time of investigation or during the term of supervision, the compact administrator or supervising authority in the receiving state may impose a special condition on an offender transferred under the interstate compact if that special condition would have been imposed on the offender if sentence had been imposed in the receiving state.

(2) A receiving state shall notify a sending state that it intends to impose or has imposed a special condition on the offender, the nature of the special condition, and the purpose.

(3) A sending state shall inform the receiving state of any special conditions to which the offender is subject at the time of request for transfer is made, or when it becomes available.

(4) A receiving state that is unable to enforce a special condition imposed in the sending state shall notify the sending state of its inability at the time of request for transfer of supervision is made.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0435

Offender Registration in Receiving State (4.104 ICAOS)

The receiving state shall require that an offender transferred under the interstate compact comply with any offender registration and DNA testing requirements in accordance with the laws or policies of the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

ADMINISTRATIVE RULES

291-180-0445

Arrival and Departure Notifications, Withdrawal of Reporting Instructions (4.105 ICAOS)

(1) Departure Notifications: At the time of an offender's departure from any state pursuant to a transfer of supervision or the granting of a travel permit, the state from which the offender departs shall notify the intended receiving state, and, if applicable, the sending state, by telephone, electronic mail or telefax of the date and time of the offender's intended departure and the date by which the offender has been instructed to arrive.

(2) Arrival Notifications: At the time of an offender's arrival in any state pursuant to a transfer of supervision or the granting of a travel permit, or upon the failure of an offender to arrive as instructed, the intended receiving state shall immediately notify the state from which the offender departed, and, if applicable, the sending state, by telephone, electronic mail or telefax of the offender's arrival or failure to arrive.

(3) Withdrawal of Reporting Instructions:

(a) The receiving state may withdraw its reporting instructions if the offender does not report to the receiving state as directed in the reporting instructions.

(b) The receiving state that withdraws its reporting instructions or subsequently determines that an offender granted a travel permit has absconded, shall immediately notify the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0455

Progress Reports (4.106 ICAOS)

(1) A receiving state shall provide to the sending state a progress report annually, or more frequently, upon the request of the sending state, for good cause shown.

(2) A progress report shall include:

(a) Offender's name;

(b) Offender's residence address;

(c) Offender's telephone number and electronic mail address;

(d) Name and address of offender's employer;

(e) Supervising officer's summary of offender's conduct, progress and attitude, and compliance with conditions of supervision;

(f) Programs of treatment attempted and completed by the offender;

(g) Information about any sanctions that have been imposed on the offender since the previous progress report;

(h) Supervising officer's recommendation; and

(i) Any other information requested by the sending state that is available in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0465

Fees (4.107 ICAOS)

(1) Application Fee: A sending state may impose a fee for each transfer application prepared for an offender.

(2) Supervision Fee:

(a) A receiving state may impose a reasonable supervision fee on an offender whom the state accepts for supervision, which shall not be greater than the fee charged to the state's own offenders.

(b) A sending state shall not impose a supervision fee on an offender whose supervision has been transferred to a receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0475

Collection of Restitution, Fines and Other Costs (4.108 ICAOS)

(1) A sending state is responsible for collecting all fines, family support, restitution, court costs, or other financial obligations imposed by the sending state on the offender.

(2) Upon notice by the sending state that the offender is not complying with family support and restitution obligations and financial obligations as set forth above, the receiving state shall notify the offender that the offender is in violation of the conditions of supervision and must comply. The receiving state shall inform the offender of the address to which payments are to be sent.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0485

Temporary Travel Permits

(1) This rule regulates the travel of offenders relocating to other states including compacted offenders or those applying for compact services. It does not apply to other offenders under supervision.

(2) An offender may be issued an out of state temporary travel permit for up to 31 days for reasons consistent with the purposes of supervision and public safety. Temporary travel permits to return to the sending state require notice be given the sending state.

(3) Offenders shall not be granted a temporary travel permit to a receiving state during an active transfer investigation without the consent of the receiving state. Temporary travel permits shall not be granted to seek employment and residence in another state for the purpose of compacting to that state.

(4) Exceptions:

(a) "Victim-Sensitive" Cases: The receiving state shall notify the sending state when a temporary travel permit is issued. Travel permits for these offenders may not exceed 31 days. No temporary travel permit shall be granted to a "victim-sensitive" case that is inconsistent with these requirements.

(b) Employment/Treatment in Adjoining State: A temporary travel permit may be issued for up to 120 days and renewed as needed to permit daily travel to and from an adjoining state for purpose of employment or treatment. A copy of this permit shall be forwarded through the interstate compact office to the adjoining state to be visited. This permit is intended to expire upon termination of employment or treatment.

(c) Fire Fighters: A temporary travel permit for the purpose of fire fighting may be issued for 60 days and renewed as needed to continue seasonal employment fighting fires. A copy of this permit shall be forwarded, in a timely manner, through the interstate compact office to any state visited.

(d) Offshore Fisherman: A temporary travel permit may be granted for up to 60 days and renewed as needed for employment purposes. A copy of this permit shall be forwarded through the interstate compact office to any state visited.

(e) Residential Treatment: Offenders may be issued a temporary travel permit to reside in a residential treatment program in another state for up to 60 days. A copy of this permit shall be forwarded through the interstate compact office to the state visited. The offender shall immediately return to Oregon upon completion of the program unless accepted for transfer pursuant this compact.

(f) Long Term Treatment Programs: Offenders participating in programs longer than 60 days must request transfer to the receiving state. An expedited transfer may be requested if the offender needs to proceed to the program immediately.

(5) All temporary travel permits shall include the offender's crime of conviction, a beginning and ending date and require that the offender report to local law enforcement within 24 hours of arrival and comply with any registration requirement of that state.

(6) Caution should be exercised in granting permission to travel for sex or violent offenders. Recipients of temporary travel permits should be in substantial compliance with their conditions of supervision and not be considered a high risk to re-offend.

(7) An offender shall not be granted travel to any state where a known victim resides without prior notice to that state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0495

Violation Reports (4.109 ICAOS)

(1) A receiving state shall notify a sending state of significant violations of conditions of supervision by an offender within 30 calendar days of discovery of the violation.

(2) A violation report shall contain:

(a) Offender's name and location;

(b) Offender's state-issued identifying numbers;

(c) Date of the offense or infraction that forms the basis of the violation;

(d) Description of the offense or infraction;

(e) Status and disposition, if any, of offense or infraction;

(f) Dates and descriptions of any previous violations;

ADMINISTRATIVE RULES

(g) Receiving state's recommendation of actions sending state may take;

(h) Name and title of the officer making the report; and

(i) If the offender has absconded, the offender's last known address and telephone number, name and address of the offender's employer, and the date of the offender's last personal contact with the supervising officer.

(3) The sending state shall respond to a report of a violation made by the receiving state no later than ten business days following receipt by the sending state. Receipt of a violation report shall be presumed to have occurred by the fifth business day following its transmission by the receiving state;

(4) The response by the sending state shall include action to be taken by the sending state and the date by which that action will begin and its estimated completion date.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0505

Transfer to a Subsequent Receiving State (4.110 ICAOS)

(1) At the request of an offender for transfer to a subsequent receiving state, and with the approval of the sending state, the sending state shall prepare and transmit a request for transfer to the subsequent state in the same manner as an initial request for transfer is made.

(2) The receiving state shall assist the sending state in acquiring the offender's signature on the "Offender Application for Interstate Compact Transfer," the "Agreement to Return on Demand of the Sending State" and the "Consent to Random Drug and Alcohol Testing and to Searches Based on Reasonable Suspicion" forms, and any other forms that may be required for submission of an "Application for transfer of supervision" and shall transmit these forms to the sending state.

(3) The receiving state shall submit a statement to the sending state summarizing the offender's progress under supervision.

(4) The receiving state shall issue a travel permit to the offender when the sending state informs the receiving state that the offender's transfer to the subsequent receiving state has been approved.

(5) Notification, of offender's departure, shall be sent by the state the offender is departing to the state offender has been issued a travel permit to proceed to. An arrival notice shall be sent by the new receiving state to the original sending state upon the offender's arrival.

(6) Acceptance of the offender's transfer of supervision by a subsequent state and issuance of reporting instructions to the offender terminate the receiving state's supervisory obligations for the offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0515

Return to the Sending State (4.111 ICAOS)

(1) Upon an offender's request to return to the sending state, the receiving state shall request reporting instructions, unless the offender is under active criminal investigation or is charged with a subsequent criminal offense in the receiving state.

(2) The sending state shall grant the request and provide reporting instructions no later than two business days following receipt of the request for reporting instructions from the receiving state.

(3) The receiving state shall send a departure notice to the sending state upon offender's departure.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0525

Closing of Supervision by the Receiving State (4.112 ICAOS)

(1) The receiving state may close its supervision of an offender and cease supervision upon:

(a) The date of discharge indicated for the offender at the time of application for supervision unless informed of an earlier or later date by the sending state;

(b) Notification to the sending state of the absconding of the offender from supervision in the receiving state;

(c) Notification to the sending state of the sentencing of the offender to incarceration for 180 days or longer and receipt from the sending state of a warrant and detainer or other acknowledgement by the sending state of responsibility for the offender within 90 days of the notification.

(A) If the sending state fails to provide the warrant and detainer or other acknowledgement within 90 days of notification, the receiving state may close its supervision of the offender.

(B) After 90 days the sending state shall be responsible for the offender.

(d) Notification of death; or

(e) Return to sending state.

(2) A receiving state shall not terminate its supervision of an offender while the sending state is in the process of retaking the offender.

(3) At the time a receiving state closes supervision, a case closure notice shall be provided to the sending state which shall include last known address and employment.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0535

New Felony Offense (5.102 ICAOS)

Upon a request from the receiving state, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state upon the offender's conviction of a new felony offense and completion of a term of incarceration for that conviction or the placement of the offender on probation for that felony offense.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0545

Violations of Conditions of Supervision (5.103 ICAOS)

Upon request by the receiving state and a showing that the offender has committed three or more significant violations arising from separate incidents that establish a pattern of non-compliance of the conditions of supervision, a sending state shall retake or order the return of an offender from the receiving state or a subsequent receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0555

Effect of Special Conditions or Requirements Imposed by the Receiving State (5.112 ICAOS)

(1) For purposes of revocation or other punitive action against an offender, the probation or paroling authority of a sending state shall give the same effect to a violation of special conditions or requirement imposed by a receiving state as if those conditions or requirement had been imposed by the sending state.

(2) Failure of an offender to comply with special conditions or additional requirements imposed by a receiving state shall form the basis of punitive action in the sending state notwithstanding the absence of such conditions or requirements in the original plan of supervision issued by the sending state.

(3) For purposes of these rules, the original plan of supervision shall include, but not be limited to, any court orders setting forth the terms and conditions of probation, any orders incorporating a plan of supervision by reference, or any orders or directives of the paroling or probation authority.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0565

Retaking by the Sending State (5.101 ICAOS)

(1) Except when offenders have a new felony conviction or have established a pattern of non-compliance by the commission of three or more significant violations as provided for in previous sections, the sending state, at its sole discretion, may retake an offender, unless the offender has been charged with a subsequent criminal offense in the receiving state.

(2) If the offender has been charged with a subsequent criminal offense in the receiving state, the offender shall not be retaken without the consent of the receiving state, or until criminal charges have been dismissed, or the offender has been released to supervision for the subsequent offense.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

ADMINISTRATIVE RULES

291-180-0575

Cost of Retaking an Offender (5.104 ICAOS)

A sending state shall be responsible for the cost of retaking the offender.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0585

Time Allowed for Retaking an Offender (5.105 ICAOS)

A sending state shall retake an offender within 30 calendar days after the decision to retake has been made or upon release of the offender from incarceration in the receiving state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0595

Cost of Incarceration in Receiving State (5.106 ICAOS)

The receiving state shall be responsible for the cost of detaining the offender in the receiving state pending the offender's retaking by the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0605

Officers Retaking an Offender (5.107 ICAOS)

(1) Officers authorized under the law of a sending state may enter a state where the offender is found and apprehend and retake the offender, subject to this compact, its rules, and due process requirements.

(2) The sending state shall be required to establish the authority of the officer and the identity of the offender to be retaken.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0615

Opportunity for Hearing in Receiving State (5.108 ICAOS)

The offender shall be afforded the opportunity for a probable cause hearing in the receiving state consistent with due process requirements. No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to one or more significant violations of the terms or conditions of supervision. Any evidence or record generated during a probable cause hearing shall be forwarded to the sending state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0625

Transport of Offenders (5.109 ICAOS)

States that are party to this compact shall allow officers authorized by the law of the sending or receiving state to transport offenders through the state without interference.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0635

Retaking Offenders From Local, State or Federal Correctional Facilities (5.110 ICAOS)

Officers authorized by the law of a sending state may take custody of an offender from a local, state or federal correctional facility at the expiration of the sentence or the offender's release from that facility provided that:

(1) No detainer has been placed against the offender by the state in which the correctional facility lies; and

(2) No extradition proceedings have been initiated against the offender by a third-party state.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0645

Denial of Bail to Certain Offenders (5.111 ICAOS)

An offender against whom retaking procedures have been instituted by a sending or receiving state shall not be admitted to bail in any state where the offender is found.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0655

Dispute Resolution (6.101–6.102 ICAOS)

It is the policy of the Oregon Department of Corrections as administrator of the Oregon Interstate Compact to resolve disputes with other member states regarding interstate compact activities in a manner consistent with the adopted rules of the National Commission of the Interstate Compact for Adult Offender Supervision. The following are the general steps to be taken:

(1) The first effort will be made to resolve any dispute informally with the other state.

(2) If unresolved, Oregon will seek the assistance of the executive director of the National Compact in resolving the dispute. The Executive Director will, using any resource available, within 10 business days issue a written response to the disputing parties.

(3) Any dispute not informally resolved by this process shall be formally resolved by mediation and arbitration set forth in the rules adopted by the Interstate Commission of the Interstate Compact for Adult Offender Supervision.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

291-180-0665

Interpretation of Rules (6.101 ICAOS)

Oregon Interstate Compact may submit an informal written request to the Executive Director of the Interstate Compact for Adult Offender Supervision for assistance in interpreting the rules of that compact. The Executive Director or the Executive Committee will, using any resource available, submit a written response to be circulated to all of the states.

Stat. Auth.: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 144.600, 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 2-2005, f. & cert. ef. 2-24-05; Suspended by DOC 5-2011(Temp), f. & cert. ef. 3-4-11 thru 8-31-11

Department of Energy Chapter 330

Rule Caption: Recognizes a national certification organization to certify low-impact hydroelectric facilities.

Adm. Order No.: DOE 1-2011

Filed with Sec. of State: 2-22-2011

Certified to be Effective: 2-22-11

Notice Publication Date: 1-1-2011

Rules Adopted: 330-160-0040

Rules Amended: 330-160-0015

Rules Repealed: 330-160-0015(T), 330-160-0040(T)

Subject: These rules recognize the Low Impact hydropower Institute as the national agency to certify hydroelectric facilities as low impact for purposes of the Oregon Renewable Portfolio Standard.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-160-0015

Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 160, the following definitions apply unless the context requires otherwise:

(1) "Banked Renewable Energy Certificate" has the meaning in ORS 469A.005.

(2) "Bundled Renewable Energy Certificate" has the meaning in ORS 469A.005.

(3) "Compliance Year" has the meaning in ORS 469A.005.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Electricity Service Supplier" has the meaning in ORS 469A.005.

ADMINISTRATIVE RULES

(7) "Electric Utility" has the meaning in ORS 469A.005. (8) "Qualifying Electricity" has the meaning in ORS 469A.005.

(9) "Renewable Energy Certificate" (REC or Certificate) means a unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources that produce Qualifying Electricity. One Certificate is created in association with the generation of one megaWatt-hour (MWh) of Qualifying Electricity. While a Certificate is always directly associated with the generation of one MWh of electricity, transactions for Certificates may be conducted independently of transactions for the associated electricity.

(10) "Renewable Energy Source" has the meaning in ORS 469A.005.

(11) "RPS" means the Oregon renewable portfolio standard as established in ORS 469A.

(12) "Unbundled Renewable Energy Certificate" has the meaning in ORS 469A.005.

(13) "Vintage" means the month and year that qualifying electricity was created in accordance with WREGIS protocol.

(14) "WREGIS" means the Western Renewable Energy Generation Information System which is the renewable energy certificate tracking and reporting system established by the California Energy Commission and the Western Governors Association and governed by the Western Electricity Coordinating Council for use by states and provinces throughout the western power interconnection.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 11-2010(Temp), f. & cert. ef. 8-31-10 thru 2-26-11; DOE 1-2011, f. & cert. ef. 2-22-11

330-160-0040

Low-impact Hydro Electric Facilities

Pursuant to ORS 469A.020(4), the Department recognizes the Low Impact Hydropower Institute (LIHI) as the national agency to certify hydroelectric facilities as low impact for purposes of the Oregon RPS. A hydroelectric generation facility with current certification from the Low Impact Hydropower Institute and that complies with other requirements of ORS 469A is eligible for the Oregon RPS.

Stat. Auth.: ORS 469A.025, OL 2010, Ch. 71(SS)

Stats. Implemented: ORS 469A.025

Hist.: DOE 11-2010(Temp), f. & cert. ef. 8-31-10 thru 2-26-11; DOE 1-2011, f. & cert. ef. 2-22-11

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Rule Caption: Expands the Renewable Portfolio Standard and addresses programmatic implementation issues.

Adm. Order No.: DOE 2-2011

Filed with Sec. of State: 3-4-2011

Certified to be Effective: 3-4-11

Notice Publication Date: 1-1-2011

Rules Adopted: 330-160-0050

Rules Amended: 330-160-0015, 330-160-0020, 330-160-0025, 330-160-0030

Subject: Pursuant to ORS 496A.130, the Oregon Department of Energy (Department) is responsible for determining whether electricity generating unit's (GU's) are entitled to receive Oregon-eligible Renewable Energy Certificates (REC's). Oregon utilities are REC's to comply with the obligations under Oregon's Renewable Portfolio Standard (RPS). Previously, in OAR 330-160-0020, the Department selected the Western Renewable Energy Generation Information System (WREGIS) as the electronic tracking system for Oregon REC's. These rules carry out the amendments to ORS 469A in Or Laws 2001, ch. 71 (HB 3649) (Special Session) Or Laws 2010, ch. 17 (HB 3674) (Special Session) that increased the number of GU's that may acquire Oregon REC's. The rules also address other issues related to administering Oregon's RPS, including the potential failure of WREGIS's to create and track RECs associated with certain electricity.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-160-0015

Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 160, the following definitions apply unless the context requires otherwise:

(1) "Banked Renewable Energy Certificate" has the meaning in ORS 469A.005.

(2) "Bundled Renewable Energy Certificate" has the meaning in ORS 469A.005.

(3) "Compliance Year" has the meaning in ORS 469A.005.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Electricity Service Supplier" has the meaning in ORS 469A.005.

(7) "Electric Utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(8) "Qualifying Electricity" has the meaning in ORS 469A.005.

(9) "Renewable Energy Certificate" (REC or Certificate) means a unique representation of the environmental, economic, and social benefits associated with the generation of electricity from renewable energy sources that produce Qualifying Electricity. One Certificate is created in association with the generation of one MegaWatt-hour (MWh) of Qualifying Electricity. While a Certificate is always directly associated with the generation of one MWh of electricity, transactions for Certificates may be conducted independently of transactions for the associated electricity.

(10) "Renewable Energy Source" has the meaning in ORS 469A.005.

(11) "RPS" means the Oregon renewable portfolio standard as established in ORS 469A.

(12) "Stranded electricity" means qualifying electricity that:

(a) Was generated between January 1, 2007 and the effective date of these rules by a generating unit that was registered in WREGIS on or before the effective date of these rules and;

(b) Is not associated with a WREGIS-issued renewable energy certificate and;

(c) Was reported to the Department on or before March 11, 2011.

(13) "Unbundled Renewable Energy Certificate" has the meaning in ORS 469A.005.

(14) "Vintage" means the month and year that qualifying electricity was created in accordance with WREGIS protocol or an interim tracking system approved by the Department pursuant to OAR 330-160-0020(4).

(15) "WREGIS" means the Western Renewable Energy Generation Information System, which is the renewable energy certificate tracking and reporting system established by the California Energy Commission and the Western Governors Association and governed by the Western Electricity Coordinating Council for use by states and provinces throughout the western power interconnection.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.130 - 469A.145

Hist.: DOE 6-2008, f. & cert. ef. 9-3-08; DOE 11-2010(Temp), f. & cert. ef. 8-31-10 thru 2-26-11; DOE 1-2011, f. & cert. ef. 2-22-11; DOE 2-2011, f. & cert. ef. 3-4-11

330-160-0020

Establishment of Renewable Energy Certificate System

(1) Except as otherwise provided in OAR 330-160-0030(4), renewable energy certificates that are issued, monitored, accounted for and transferred by or through the regional renewable energy certificate system and trading mechanism known as the Western Renewable Energy Generation Information System (WREGIS) shall be the only renewable energy certificates that can be used by an electric utility or electricity service supplier to establish compliance with the Oregon Renewable Portfolio Standard (RPS).

(2) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must establish and maintain accounts in good standing with the WREGIS renewable energy certificate system. These entities must comply with all information, data reporting and verification requirements of WREGIS and the WREGIS Operating Rules, including costs required for compliance. These accounts must be established before January 1, 2009 or before the earliest vintage of Certificate to be used to comply with the Oregon RPS, whichever is later.

(3) All entities that wish to demonstrate compliance or participate in the renewable energy certificate system associated with the Oregon RPS must participate in the system in accordance with the WREGIS Operating Rules, except as otherwise provided in 330-160-0030(4). The Operating Rules for WREGIS are publicly available from the WREGIS web site at www.wregis.org under the "Operating Rules" section. If there are substantial changes to the WREGIS Operating Rules which, at the Director's discretion, may significantly impact the ability of the WREGIS renewable energy certificate system to facilitate the Oregon RPS the Director may, after public consultation with interested parties, implement rulemaking to address those concerns.

(4) If, by July 1, 2011, the Department determines that the WREGIS system cannot be used to retroactively create renewable energy certificates

ADMINISTRATIVE RULES

for each megawatt hour of stranded electricity, the Department will establish an interim tracking system for the singular purpose of ensuring that stranded electricity can be used to comply with the Oregon RPS. The interim tracking system will issue, monitor, account for and permit transfer of renewable energy certificates associated with stranded electricity for the purposes of compliance with the Oregon RPS. Renewable energy certificates created by the interim tracking system may be used to establish compliance with the Oregon RPS to the same extent as renewable energy certificates issued by WREGIS.

(a) To be eligible for the interim tracking system, an electric utility, electricity service supplier, or generator must electronically provide the Department the following information:

(A) Generation data, including metering data, identical to that required by WREGIS; and

(B) Attestation from an officer of the electric utility, electricity service supplier, or generator stating that the information being provided pursuant to 330-160-0020(4) is true and accurate to the best of their knowledge; and

(C) Additional information requested by the Department necessary to process a generating unit's stranded electricity in the interim tracking system.

(b) The Department may conduct verification audits for all stranded electricity issued RECs through the interim tracking system or may designate an independent third party for verification services. Any electric utility, electricity service provider or generator that has participated in the interim tracking system is subject to these verifications.

Stat. Auth.: ORS 469A.130
Stats. Implemented: ORS 469A.130
Hist.: DOE 6-2008, f. & cert. ef 9-3-08; DOE 2-2011, f. & cert. ef. 3-4-11

330-160-0025

Types of Renewable Energy Certificates

(1) A bundled or unbundled renewable energy certificate may be used to comply with the RPS when it is issued through the WREGIS renewable energy certificate system or a Department approved interim tracking system pursuant to OAR 330-160-0020(4), and is otherwise consistent with the rules and requirements of the Oregon RPS. The Department will identify those generating facilities eligible for creation of Certificates that can be used to satisfy the Oregon RPS.

(2) Each bundled renewable energy certificate used to comply with the RPS must be supported by documentation demonstrating that one megawatt-hour of electricity that was associated with the bundled renewable energy certificate was delivered to the Bonneville Power Administration, to the transmission system of an electric utility or to another delivery point designated by an electric utility for the purpose of subsequent delivery to the electric utility.

(3) To demonstrate that a renewable energy certificate is bundled under Subsection (2) of this rule, an electric utility must either:

(a) Electronically affix to the certificate a valid North American Electric Reliability Corporation (NERC) electronic tagging number ("e-Tag") or another unique identifier adopted by WREGIS or the Department, which demonstrates that one megawatt hour of electricity was delivered to a point described in Subsection (2) of this rule; or

(b) In a manner prescribed by the Department, submit documentation to the Department demonstrating that:

(A) The renewable energy certificate for the qualifying electricity was acquired by an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the certificate that was issued for the electricity; or by an electric utility by generation of the electricity for which the certificate was issued; and

(B) The qualifying electricity associated with the bundled renewable energy certificate was initially delivered to a point described in Subsection (2) of this rule.

(4) An electric utility required to demonstrate compliance with the RPS through the use of bundled renewable energy certificates, and which demonstrates that a renewable energy certificate is bundled pursuant to 330-160-0025(3)(b), may be required to electronically affix to that certificate a unique identifier adopted by WREGIS or the Department.

(5) The Department may conduct verification audits or may designate a third party for verification services to review any documentation submitted under Subsection (3) of this rule for purposes of verifying compliance with the RPS.

(6) A bundled renewable energy certificate does not need to demonstrate that the electricity identified by the NERC e-Tag is qualifying electricity or that the originating source identified by the NERC e-Tag is a renewable energy source.

Stat. Auth.: ORS 469A.130

Stats. Implemented: ORS 469A.135 - 469A.145
Hist.: DOE 6-2008, f. & cert. ef 9-3-08; DOE 2-2011, f. & cert. ef. 3-4-11

330-160-0030

Allowed Vintage of Renewable Energy Certificates

(1) The system of renewable energy certificates established through this rule may be used to comply with or participate in the Oregon RPS through the use of Certificates with a vintage of January 2007 or later.

(2) No renewable energy certificate that derives from the WREGIS renewable energy certificate system or from a Department approved interim tracking system pursuant to OAR 330-160-0020(4) with a vintage before January 2007 will be eligible for compliance with the Oregon RPS.

(3) Banked renewable energy certificates with a vintage of January 2007 or later, both bundled and unbundled, may be held for future use within the WREGIS renewable energy certificate system or a Department approved interim tracking system pursuant to OAR 330-160-0020(4) to comply with the Oregon RPS.

(4) Generating facilities that produce qualifying electricity shall be eligible to receive certificates associated with generation beginning on January 1, 2007.

Stat. Auth.: ORS 469A.130
Stats. Implemented: ORS 469A.130
Hist.: DOE 6-2008, f. & cert. ef 9-3-08; DOE 2-2011, f. & cert. ef. 3-4-11

330-160-0050

Hydroelectric Facility Upgrades

(1) Efficiency upgrades from an Oregon RPS qualifying hydroelectric facility, refers to additional incremental qualifying electricity production at an existing hydroelectric facility due to upgrades to existing generators, turbines and other Department-approved equipment changes. Efficiency upgrades do not include increased generation achieved through increased impoundments or increased appropriation or diversions of water.

(2) The Department will determine the eligibility of incremental hydroelectric power production at an existing hydroelectric facility for purposes of Oregon RPS compliance.

(a) Eligibility may not be based on any operational changes at the facility that are not directly associated with efficiency upgrades as defined in Subsection (1) of this rule.

(b) The determination of the percentage increase in the efficiency of hydroelectric power production as described in Subsection (1) of this rule shall be based on the best available evidence, including but not limited to, representations by the Federal Energy Regulatory Commission or, for federal projects, by the authorized power marketing agency or agencies with jurisdiction over the federal projects.

(c) The annual electricity production eligible for RPS-eligible renewable energy certificates is the annual hydroelectric power production at the facility multiplied by the percentage increase in efficiency from subsection (b) of this subsection.

(3) Capacity upgrades to a hydroelectric project are not eligible under ORS 469A.025(4)(b) for the Oregon RPS. Capacity upgrades to a hydroelectric project include any increase in generating capacity other than an increase from an efficiency upgrade.

Stat. Auth.: ORS 469A.005 - 469A.210 & 469.040
Stats. Implemented: ORS 469A.005 - 469A.210
Hist.: DOE 2-2011, f. & cert. ef. 3-4-11

Department of Environmental Quality Chapter 340

Rule Caption: Adoption of Federal Air Quality Regulations and Related Permit Rules.

Adm. Order No.: DEQ 1-2011

Filed with Sec. of State: 2-24-2011

Certified to be Effective: 2-24-11

Notice Publication Date: 10-1-2010

Rules Amended: 340-200-0040, 340-216-0020, 340-216-0060, 340-216-0064, 340-230-0030, 340-230-0300, 340-238-0040, 340-238-0060, 340-242-0500, 340-244-0030, 340-244-0220, 340-244-0234, 340-244-0236, 340-244-0238, 340-244-0242, 340-244-0244, 340-244-0248

Rules Repealed: 340-230-0400, 340-230-0410

ADMINISTRATIVE RULES

Subject: The proposed rules would adopt standards to implement new and amended federal air quality regulations. The objectives of this rulemaking are to:

- Protect public health;
- Implement federally-delegated programs that regulate hazardous air pollutants and other air pollutants; and
- Improve Oregon's implementation of these programs.

If adopted, this proposal would:

- Adopt by reference federal area source standards regulating asphalt processing and asphalt roofing manufacturing, chemical manufacturing, chemical preparation, paint and allied product manufacturing, and prepared feeds manufacturing;
- Repeal the adoption of existing federal standards regulating stationary internal combustion engines;
- Add paint and allied product manufacturing to the list of business categories eligible to obtain a simple or general permit, and assign this source category to a general ACDP annual fee class;
- Allow DEQ to defer the requirement to submit an application for, or to obtain an ACDP for up to twelve months;
- Allow DEQ to use a portion of the ACDP non-technical permit modification fee to cover the change of ownership fee required in the underground storage tank rules;
- Split the metal fabrication and finishing source category into multiple fee classes;
- Exempt small metal fabrication and finishing facilities and small commercial ethylene oxide sterilization operations from permitting;
- Extend the permit exemption for gasoline dispensing facilities with aboveground storage tanks that dispense less than 10,000 gallons of gasoline per month to also include those with underground tanks;
- Clarify that the gasoline dispensing rule that prohibits "topping off" applies to the equipment used for the refueling of motor vehicles;
- Correct an error that occurred in merging separate rules affecting gasoline dispensing facilities that inadvertently exempted aviation gasoline from emission standards required by the state implementation plan;
- Clarify the requirements for gasoline cargo tanks, the calculation of monthly throughput, and when compliance demonstration testing is required;
- Update the adoption by reference of existing federal rules to keep them consistent with federal amendments; and
- Repeal the rules that implement the federal emission guidelines for hospital, medical and infectious waste incinerators.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A. 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on February 17, 2011.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11

340-216-0020

Applicability

This division applies to all sources referred to in Table 1. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or 340-224-0010. Sources referred to in **Table 1** are subject to fees as set forth in **Table 2**.

(1) No person may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority, unless otherwise deferred from the requirement to obtain an ACDP in subsection (1)(c) or (d) of this rule. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in OAR 340-216-0082.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both the Department and Regional Authorities.

(b) The Department or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, the Department will be responsible for issuing the permit.

(c) An air contaminant source required to obtain an ACDP or ACDP Attachment pursuant to a NESHAP or NSPS adopted by the Commission by rule is not required to submit an application for an ACDP or ACDP Attachment until four months after the effective date of the Commission's adoption of the NESHAP or NSPS, and is not required to obtain an ACDP or ACDP Attachment until six months after the Commission's adoption of the NESHAP or NSPS. In addition, the Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional twelve months.

(d) Gasoline dispensing facilities are not required to submit an application for an ACDP or ACDP Attachment until May 1, 2010 or obtain an ACDP or ACDP attachment until June 1, 2010. The Department may defer the requirement to submit an application for, or to obtain an ACDP or ACDP Attachment, or both, for up to an additional six months.

ADMINISTRATIVE RULES

(e) Deferrals of Oregon permitting requirements do not relieve an air contaminant source from the responsibility of complying with federal NESHAP or NSPS requirements.

(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from the Department or Regional Authority.

(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0205 through 340-210-0250.

(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 7-2007, f. & cert. ef. 10-18-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; DEQ 10-2010(Temp), f. 8-31-10, cert. ef. 9-1-10 thru 2-28-11; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 1-2011, f. & cert. ef. 2-24-11

340-216-0060

General Air Contaminant Discharge Permits

(1) Applicability.

(a) The Department may issue a General ACDP under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the covered operations can be contained in a General ACDP;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all operations covered by the General ACDP; and

(D) The pollutants emitted are of the same type for all covered operations.

(b) Permit content. Each General ACDP must include the following:

(A) All relevant requirements for the operations covered by the General ACDP;

(B) Generic PSELs for all pollutants emitted at more than the de minimis level in accordance with OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards; and

(D) A permit expiration date not to exceed 10 years from the date of issuance.

(c) Permit issuance procedures: A new General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category III permit actions. A reissued General ACDP or a modification to a General ACDP requires public notice and opportunity for comment in accordance with OAR 340 division 209 for Category II permit actions. All General ACDPs are on file and available for review at the Department's headquarters.

(2) Source assignment:

(a) Application requirements. Any person requesting that a source be assigned to a General ACDP must submit a written application in accordance with OAR 340-216-0040 that includes the information in OAR 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.

(b) Fees. Applicants must pay the fees set forth in Table 2 of OAR 340-216-0020. The fee class for each General ACDP is as follows:

(A) Hard chrome platers — Fee Class Three;

(B) Decorative chrome platers — Fee Class Two;

(C) Halogenated solvent degreasers — batch cold — Fee Class Two;

(D) Halogenated solvent degreasers — batch vapor and in-line — Fee Class Two;

(E) Halogenated solvent degreasers — batch cold, batch vapor, and in-line — Fee Class Two;

(F) Perchloroethylene dry cleaners — Fee Class Six;

(G) Asphalt plants — Fee Class Three;

(H) Rock crushers — Fee Class Two;

(I) Ready-mix concrete — Fee Class One;

(J) Sawmills, planing mills, millwork, plywood manufacturing and veneer drying — Fee Class Three;

(K) Boilers — Fee Class Two;

(L) Crematories — Fee Class Two;

(M) Grain elevators — Fee Class One;

(N) Prepared feeds, flour, and cereal — Fee Class One;

(O) Seed cleaning — Fee Class One;

(P) Coffee roasters — Fee Class One;

(Q) Bulk gasoline plants — Fee Class One;

(R) Electric power generators — Fee Class Two;

(S) Clay ceramics — Fee Class One;

(T) Hospital sterilizers — Fee Class Four;

(U) Secondary nonferrous metals — Fee Class One;

(V) Gasoline dispensing facilities — stage I — Fee Class Five;

(W) Gasoline dispensing facilities — stage II — Fee Class Four;

(X) Wood preserving — Fee Class Four;

(Y) Metal fabrication and finishing — with two or more of the following operations — Fee Class Two;

(i) Dry abrasive blasting performed in a vented enclosure or of objects greater than 8 feet (2.4 meters) in any one dimension that uses materials that contain MFHAP or has the potential to emit MFHAP;

(ii) Spray-applied painting operation using MFHAP containing paints;

(iii) Welding operation that uses materials that contain MFHAP or has the potential to emit MFHAP and uses 2,000 pounds or more per year of MFHAP containing welding wire and rod (calculated on a rolling 12-month basis);

(Z) Metal fabrication and finishing — with only one of the operations listed in subparagraphs (2)(b)(Y)(i) through (iii) of this rule — Fee Class One;

(AA) Metal fabrication and finishing -- with none of the operations listed in subparagraphs (2)(b)(Y)(i) through (iii) of this rule — Fee Class Four;

(BB) Plating and polishing — Fee Class One;

(CC) Surface coating operations — Fee Class One;

(DD) Paint stripping — Fee Class One;

(EE) Aluminum, copper, and nonferrous foundries — Fee Class Two;

(FF) Paints and allied products manufacturing — Fee Class Two;

(GG) Any General ACDP not listed above — Fee Class One.

(c) Source assignment procedures:

(A) Assignment of a source to a General ACDP is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP until the Department assigns the General ACDP to the person.

(C) Assignments to General ACDPs and attachment(s) terminate when the General ACDP or attachment expires or is modified, terminated or revoked.

(D) Once a source has been assigned to a General ACDP, if the assigned General ACDP does not cover all requirements applicable to the source, the other applicable requirements must be covered by assignment to one or more General ACDP Attachments in accordance with OAR 340-216-0062, otherwise the source must obtain a Simple or Standard ACDP.

(E) A source requesting to be assigned to a General ACDP Attachment, in accordance with OAR 340-216-0062, for a source category in a higher annual fee class than the General ACDP the source is currently assigned to, must be reassigned to the General ACDP for the source category in the higher annual fee class.

(3) Department Initiated Modification. If the Department determines that the conditions have changed such that a General ACDP for a category needs to be modified, the Department may issue a new General ACDP for that category and assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to OAR 340-216-0082 (Termination or Revocation of an ACDP), the Department may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to a source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP the

ADMINISTRATIVE RULES

Department will place the source on a Simple or Standard ACDP. The Department may also revoke a General ACDP or attachment or both if conditions, standards or rules have changed so the permit or attachment no longer meets the requirements of this rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 10-2001, f. & cert. ef. 8-30-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11

340-216-0064

Simple ACDP

(1) Applicability.

(a) Sources and activities listed in Table 1, Part B of OAR 340-216-0020 that do not qualify for a General ACDP and are not required to obtain a Standard ACDP must, at a minimum, obtain a Simple ACDP.

(b) Any source required to obtain a Simple ACDP may obtain a Standard ACDP.

(c) The Department may determine that a source is ineligible for a Simple ACDP and must obtain a Standard ACDP based upon, but not limited to, the following considerations:

(A) The nature, extent, and toxicity of the source's emissions;

(B) The complexity of the source and the rules applicable to that source;

(C) The complexity of the emission controls and potential threat to human health and the environment if the emission controls fail;

(D) The location of the source; and

(E) The compliance history of the source.

(2) Application Requirements. Any person requesting a new, modified, or renewed Simple ACDP must submit an application in accordance with OAR 340-216-0040.

(3) Fees. Applicants for a new or modified Simple ACDP must pay the fees set forth in Table 2 of 340-216-0020. Annual fees for Simple ACDPs will be assessed based on the following:

(a) Low Fee — A Source may qualify for the Low Fee if:

(A) the source is, or will be, permitted under only one of the following categories from OAR 340-216-0020 Table 1, Part B (category 25. Electric Power Generation, may be included with any category listed below):

(i) Category 7. Asphalt felt and coatings;

(ii) Category 13. Boilers and other fuel burning equipment;

(iii) Category 33. Galvanizing & Pipe coating;

(iv) Category 39. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/yr. metal charged (not elsewhere identified);

(v) Category 40. Gypsum products;

(vi) Category 45. Liquid Storage Tanks subject to OAR Division 232;

(vii) Category 56. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged;

(viii) Category 57. Organic or Inorganic Industrial Chemical Manufacturing;

(ix) Category 62. Perchloroethylene Dry Cleaning;

(x) Category 73. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals; or

(xi) Category 85. All Other Sources not listed in Table 1 which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of PM₁₀ if located in a PM₁₀ non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state; and

(B) The actual emissions from the 12 months immediately preceding the invoice date, and future projected emissions are less than 5 tons/yr. PM₁₀ in a PM₁₀ nonattainment or maintenance area, and less than 10 tons/yr. for each criteria pollutant; and

(C) The source is not considered an air quality problem or nuisance source by the Department.

(b) High Fee — Any source required to have a Simple ACDP (OAR 340-216-0020 Table 1 Part B) that does not qualify for the Low Fee will be assessed the High Fee.

(c) If the Department determines that a source was invoiced for the Low Annual Fee but does not meet the Low Fee criteria outlined above, the source will be required to pay the difference between the Low and High Fees, plus applicable late fees in accordance with OAR 340-216-0020 Table

2. Late fees start upon issuance of the initial invoice. In this case, the Department will issue a new invoice specifying applicable fees.

(4) Permit Content.

(a) All relevant applicable requirements for source operation, including general ACDP conditions for incorporating generally applicable requirements;

(b) Generic PSELs for all pollutants emitted at more than the de minimis level in accordance with OAR 340 division 222;

(c) Testing, monitoring, recordkeeping, and reporting requirements sufficient to determine compliance with the PSEL and other emission limits and standards, as necessary; and

(d) A permit duration not to exceed 5 years

(5) Permit issuance procedures:

(a) Issuance of a new or renewed Simple ACDP requires public notice in accordance with OAR 340 division 209 for Category II permit actions.

(b) Issuance of a modification to a Simple ACDP requires one of the following procedures, as applicable:

(A) Non-technical and non-NSR/PSD Basic and Simple technical modifications require public notice in accordance with OAR 340, division 209 for Category I permit actions; or

(B) Issuance of non-NSR/PSD Moderate and Complex technical modifications require public notice in accordance with OAR 340 division 209 for Category II permit actions.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11

340-230-0030

Definitions

The definitions in OAR 340-200-0020, 340-238-0040 and this rule apply to this division. If the same term is defined in this rule and 340-200-0020 or 340-238-0040, the definition in this rule applies to this division. Applicable definitions have the same meaning as those provided in 40 CFR 60.51c including, but not limited to:

(1) "Acid Gases" means any exhaust gas that includes hydrogen chloride and sulfur dioxide.

(2) "Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

(3) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2010 edition.

(4) "Commercial and industrial solid waste incineration unit (CISWI)" means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(a) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(b) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(5) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(6) "Continuous Emission Monitoring (CEM)" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous monitoring equipment and operation must be certified in accordance with EPA performance specifications and quality assurance procedures outlined in 40 CFR 60, Appendices B and F, and the Department's CEM Manual.

(7) "Crematory Incinerator" means an incinerator used solely for the cremation of human and animal bodies.

(8) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" implies adjustment of gas

ADMINISTRATIVE RULES

volume to that which would result at a concentration of seven percent oxygen or 50 percent excess air.

(9) "Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

(10) "Incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted material.

(11) "Infectious Waste" means waste as defined in ORS Chapter 763, Oregon Laws 1989, that contains or may contain any disease producing microorganism or material, and includes, but is not limited to the following:

(a) "Biological waste", which includes blood and blood products, and body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include soiled diapers;

(b) "Cultures and stocks", which includes etiologic agents and associated biologicals; including specimen cultures and dishes, devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures;

(c) "Pathological waste", which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological wastes" does not include teeth or formaldehyde or other preservative agents;

(d) "Sharps", which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(12) "Infectious Waste Facility" or "Infectious Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.

(13) "Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

(14) "Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

(15) "Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

(16) "Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(17) "Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(18) "Municipal waste combustor plant" means one or more municipal waste combustor units at the same location.

(19) "Municipal waste combustor plant capacity" means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.

(20) "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.

(21) "Pyrolysis" means the endothermic gasification of waste material using external energy.

(22) "Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(a) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(b) Pelletized refuse-derived fuel.

(23) "Secondary" or "Final Combustion Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are com-

busted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.

(24) "Solid Waste" means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.

(25) "Solid Waste Facility" or "Solid Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of solid waste including combustion for the recovery of heat, and that utilizes high temperature thermal destruction technologies.

(26) "Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

(27) "Transmissometer" means a device that measures opacity and conforms to EPA Specification Number 1 in **40 CFR 60, Appendix B**.

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

Stat. Auth.: ORS 183, 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0750, 340-025-0855, 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 1-2011, f. & cert. ef. 2-24-11

340-230-0300

Applicability

(1) Applicability: OAR 340-230-0310 through 340-230-0359 apply to each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994. MWC subject to OAR 340-230-0300 through 340-230-0350 are not subject to the incinerator rules in 340-230-0100 through 340-230-0150.

(2) Exemptions:

(a) Any municipal waste combustion unit that is capable of combusting more than 250 tons per day of municipal solid waste and is subject to a federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than or equal to 11 tons per day is not subject to this rule if the owner or operator:

(A) Notifies the Department of an exemption claim;

(B) Provides a copy of the federally enforceable permit that limits the firing of municipal solid waste to less than 11 tons per day; and

(C) Keeps records of the amount of municipal solid waste fired on a daily basis.

(b) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with emission limits under these rules are not considered in determining whether the unit is a modified or reconstructed facility under 40 CFR 60, Subparts Ea or Eb.

(c) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to these rules if the owner or operator of the facility notifies the Department of this exemption and provides data documenting that the facility qualifies for this exemption.

(d) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to these rules if the owner or operator of the facility notifies the Department of this exemption and provides data documenting that the facility qualifies for this exemption.

(e) Any unit combusting a single-item waste stream of tires is not subject to this rule if the owner or operator of the unit:

(A) Notifies the Department of an exemption claim; and

(B) Provides data documenting that the unit qualifies for this exemption.

(f) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to these rules.

(g) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to these rules.

(h) Any cofired combustor, as defined in 40 CFR 60.51b, that meets the capacity specifications in section (1) of this rule is not subject to these rules if the owner or operator of the cofired combustor:

ADMINISTRATIVE RULES

- (A) Notifies the Department of an exemption claim;
- (B) Provides a copy of the federally enforceable permit (specified in the definition of cofired combustor); and
- (C) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(i) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in 40 CFR 60.51b) are not subject to this rule if the owner or operator of the plastics/rubber recycling unit keeps records of:

(A) The weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis;

(B) The weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and

(C) The name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units are not subject to these rules.

(j) Air curtain incinerators that meet the capacity specifications in subsection (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under OAR 340-230-0310, the testing procedures under 340-230-0340, and the reporting and recordkeeping provisions under 340-230-0350.

(k) Air curtain incinerators that meet the capacity specifications in subsection (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(l) Cement kilns firing municipal solid waste are not subject to this subpart.

(m) Any affected facility meeting the applicability requirements under this rule is not subject to **40 CFR part 60 subpart E**.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11

340-238-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in **Internal Revenue Service (IRS) Publication 534** and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2010 edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(8) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR

Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(9) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(10) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(11) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(12) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(13) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(14) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(15) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(16) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(17) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(18) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11

340-238-0060

Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts A, D through XX, BBB through AAAA, CCCC, EEEE, and KKKK** are by this reference adopted and incorporated herein, and 40 CFR Part 60 Subpart OOO is by this reference adopted and incorporated herein for major sources only.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" is substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority must not be delegated to the state.

(3) 40 CFR Part 60 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart D — Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;

(c) Subpart Da — Electric utility steam generating units for which construction is commenced after September 18, 1978;

(d) Subpart Db — Industrial-commercial-institutional steam generating units;

ADMINISTRATIVE RULES

(e) Subpart Dc — Small industrial-commercial-institutional steam generating units;

(f) Subpart E — Incinerators;

(g) Subpart Ea — Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;

(h) Subpart Eb — Municipal waste combustors for which construction is commenced after September 20, 1994;

(i) Subpart Ec — Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;

(j) Subpart F — Portland cement plants;

(k) Subpart G — Nitric acid plants;

(l) Subpart H — Sulfuric acid plants;

(m) Subpart I — Hot mix asphalt facilities;

(n) Subpart J — Petroleum refineries;

(o) Subpart K — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and before May 19, 1978;

(p) Subpart Ka — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and before July 23, 1984;

(q) Subpart Kb — Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

(r) Subpart L — Secondary lead smelters;

(s) Subpart M — Secondary brass and bronze production plants;

(t) Subpart N — Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(u) Subpart Na — Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;

(v) Subpart O — Sewage treatment plants;

(w) Subpart P — Primary copper smelters;

(x) Subpart Q — Primary Zinc smelters;

(y) Subpart R — Primary lead smelters;

(z) Subpart S — Primary aluminum reduction plants;

(aa) Subpart T — Phosphate fertilizer industry: wet-process phosphoric acid plants;

(bb) Subpart U — Phosphate fertilizer industry: superphosphoric acid plants;

(cc) Subpart V — Phosphate fertilizer industry: diammonium phosphate plants;

(dd) Subpart W — Phosphate fertilizer industry: triple superphosphate plants;

(ee) Subpart X — Phosphate fertilizer industry: granular triple superphosphate storage facilities;

(ff) Subpart Y — Coal preparation plants;

(gg) Subpart Z — Ferroalloy production facilities;

(hh) Subpart AA — Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;

(ii) Subpart AAa — Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;

(jj) Subpart BB — Kraft pulp mills;

(kk) Subpart CC — Glass manufacturing plants;

(ll) Subpart DD — Grain elevators.

(mm) Subpart EE — Surface coating of metal furniture;

(nn) Subpart GG — Stationary gas turbines;

(oo) Subpart HH — Lime manufacturing plants;

(pp) Subpart KK — Lead-acid battery manufacturing plants;

(qq) Subpart LL — Metallic mineral processing plants;

(rr) Subpart MM — Automobile and light-duty truck surface coating operations;

(ss) Subpart NN — Phosphate rock plants;

(tt) Subpart PP — Ammonium sulfate manufacture;

(uu) Subpart QQ — Graphic arts industry: publication rotogravure printing;

(vv) Subpart RR — pressure sensitive tape and label surface coating operations;

(ww) Subpart SS — Industrial surface coating: large appliances;

(xx) Subpart TT — Metal coil surface coating;

(yy) Subpart UU —

Asphalt processing and asphalt roofing manufacture;

(zz) Subpart VV — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(aaa) Subpart VVa — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(bbb) Subpart WW — Beverage can surface coating industry;

(ccc) Subpart XX — Bulk gasoline terminals;

(ddd) Subpart BBB — Rubber tire manufacturing industry;

(eee) Subpart DDD — Volatile organic compound (VOC) emissions for the polymer manufacture industry;

(fff) Subpart FFF — Flexible vinyl and urethane coating and printing;

(ggg) Subpart GGG — Equipment leaks of VOC in petroleum refineries;

(hhh) Subpart GGGa — Equipment leaks of VOC in petroleum refineries;

(iii) Subpart HHH — Synthetic fiber production facilities;

(jjj) Subpart III — Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;

(kkk) Subpart JJJ — Petroleum dry cleaners;

(lll) Subpart KKK — Equipment leaks of VOC from onshore natural gas processing plants;

(mmm) Subpart LLL — Onshore natural gas processing; SO₂ emissions;

(nnn) Subpart NNN — Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;

(ooo) Subpart OOO — Nonmetallic mineral processing plants (adopted by reference for major sources only);

(ppp) Subpart PPP — Wool fiberglass insulation manufacturing plants;

(qqq) Subpart QQQ — VOC emissions from petroleum refinery wastewater systems;

(rrr) Subpart RRR — Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;

(sss) Subpart SSS — Magnetic tape coating facilities;

(ttt) Subpart TTT — Industrial surface coating: surface coating of plastic parts for business machines;

(uuu) Subpart UUU — Calciners and dryers in mineral industries;

(vvv) Subpart VVV — Polymeric coating of supporting substrates facilities;

(www) Subpart WWW — Municipal solid waste landfills, as clarified by OAR 340-238-0100;

(xxx) Subpart AAAA — Small municipal waste combustion units;

(yyy) Subpart CCCC — Commercial and industrial solid waste incineration units;

(zzz) Subpart EEEE — Other solid waste incineration units;

(aaaa) Subpart KKKK — Stationary combustion turbines.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11

340-242-0500

Purpose and Applicability

(1) Gasoline vapors contribute to the formation of ozone. OAR 340-242-0500 through 340-242-0520 require the control of gasoline vapors from gasoline dispensing operations.

(2) OAR 340-242-0500 through 340-242-0520 apply to gasoline dispensing facilities located within Clackamas, Multnomah and Washington Counties.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stats. Implemented: ORS 468A.040

Hist.: DEQ 7-1991, f. & cert. ef. 5-7-91 (and corrected 6-7-91); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 16-1996, f. & cert. ef. 8-14-96; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0400; DEQ 1-2011, f. & cert. ef. 2-24-11

ADMINISTRATIVE RULES

340-244-0030

Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(2) "Annual throughput" means the amount of gasoline transferred into a gasoline dispensing facility during 12 consecutive months.

(3) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2010 edition.

(5) "Construct a major source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria in paragraphs (a) through (f) of this definition:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of 40 CFR Part 63, Subpart B will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b) The Department has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT), or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or the Department determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) The Department determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) The Department has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, the Department has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the Department are predicated will be construed by the Department as applicable requirements under section 504(a) and either have been incorporated into any existing Title V permit for the affected facility or will be incorporated into such permit upon issuance.

(6) "Dual-point vapor balance system" means a type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for a vapor connection.

(7) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or Regional Agency, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(8) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(9) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

(10) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(11) "Gasoline" means any petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals (4.0 psi) or greater which is used as a fuel for internal combustion engines.

(12) "Gasoline cargo tank" means a delivery tank truck or railcar which is loading or unloading gasoline or which has loaded or unloaded gasoline on the immediately previous load.

(13) "Gasoline dispensing facility (GDF)" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle. In Clackamas, Multnomah and Washington Counties, the Medford-Ashland Air Quality Maintenance Area, and the Salem-Keizer Area Transportation Study area, "gasoline dispensing facility" means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, boat, or airplane.

(14) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.

(15) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(16) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(17) "Monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

(18) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(19) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(20) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(21) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-200-0400 or 340-244-0230; or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(22) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

ADMINISTRATIVE RULES

(23) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(24) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(25) "Stationary Source":

(a) As used in OAR 340 division 244 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(b) As used in OAR 340-244-0230 means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(A) That belong to the same industrial group;

(B) That are located on one or more contiguous properties;

(C) That are under the control of the same person (or persons under common control); and

(D) From which an accidental release may occur.

(26) "Submerged filling" means, for the purposes of this subpart, the filling of a gasoline storage tank through a submerged fill pipe whose discharge is no more than the applicable distance specified in OAR 340-244-0240(3) from the bottom of the tank. Bottom filling of gasoline storage tanks is included in this definition.

(27) "Topping off" means, in the absence of equipment malfunction, continuing to fill a gasoline tank after the nozzle has clicked off.

(28) "Vapor balance system" means a combination of pipes and hoses that create a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank such that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

(29) "Vapor-tight" means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the Lower Explosive Limit when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch from the source.

(30) "Vapor-tight gasoline cargo tank" means a gasoline cargo tank which has demonstrated within the 12 preceding months that it meets the annual certification test requirements in 40 CFR 63.11092(f).

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

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

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11

340-244-0220

Federal Regulations Adopted by Reference

(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A, C through F, J, L, N through P, V, and Y through FF and 40 CFR Part 63, Subparts A, F through YYYY, AAAAA through TTTTTT, and VVVVVV through DDDDDDD** are adopted by reference and incorporated herein.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 61 or 63, "Department" is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subpart M — Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.

(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart C — Beryllium;

(c) Subpart D — Beryllium Rocket Motor Firing;

(d) Subpart E — Mercury;

(e) Subpart F — Vinyl Chloride;

(f) Subpart J — Equipment Leaks (Fugitive Emission Sources) of Benzene;

(g) Subpart L — Benzene Emissions from Coke By-Product Recovery Plants;

(h) Subpart N — Inorganic Arsenic Emissions from Glass Manufacturing Plants;

(i) Subpart O — Inorganic Arsenic Emissions from Primary Copper Smelters;

(j) Subpart P — Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;

(k) Subpart V — Equipment Leaks (Fugitive Emission Sources);

(l) Subpart Y — Benzene Emissions from Benzene Storage Vessels;

(m) Subpart BB — Benzene Emissions from Benzene Transfer Operations; and

(n) Subpart FF — Benzene Waste Operations.

(5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart F — SOCFMI;

(c) Subpart G — SOCFMI — Process Vents, Storage Vessels, Transfer Operations, and Wastewater;

(d) Subpart H — SOCFMI — Equipment Leaks;

(e) Subpart I — Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;

(f) Subpart J — Polyvinyl Chloride and Copolymers Production;

(g) Subpart L — Coke Oven Batteries;

(h) Subpart M — Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

(i) Subpart N — Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;

(j) Subpart O — Ethylene Oxide Emissions Standards for Sterilization Facilities;

(k) Subpart Q — Industrial Process Cooling Towers;

(l) Subpart R — Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);

(m) Subpart S — Pulp and Paper Industry;

(n) Subpart T — Halogenated Solvent Cleaning;

(o) Subpart U — Group I Polymers and Resins;

(p) Subpart W — Epoxy Resins and Non-Nylon Polyamides Production;

(q) Subpart X — Secondary Lead Smelting;

(r) Subpart Y — Marine Tank Vessel Loading Operations;

(s) Subpart AA — Phosphoric Acid Manufacturing Plants;

(t) Subpart BB — Phosphate Fertilizer Production Plants;

(u) Subpart CC — Petroleum Refineries;

(v) Subpart DD — Off-Site Waste and Recovery Operations;

(w) Subpart EE — Magnetic Tape Manufacturing Operations;

(x) Subpart GG — Aerospace Manufacturing and Rework Facilities;

(y) Subpart HH — Oil and Natural Gas Production Facilities;

(z) Subpart II — Shipbuilding and Ship Repair (Surface Coating);

(aa) Subpart JJ — Wood Furniture Manufacturing Operations;

(bb) Subpart KK — Printing and Publishing Industry;

(cc) Subpart LL — Primary Aluminum Reduction Plants;

(dd) Subpart MM — Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills;

(ee) Subpart OO — Tanks — Level 1;

(ff) Subpart PP — Containers;

(gg) Subpart QQ — Surface Impoundments;

(hh) Subpart RR — Individual Drain Systems;

(ii) Subpart SS — Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;

(jj) Subpart TT — Equipment Leaks — Control Level 1;

(kk) Subpart UU — Equipment Leaks — Control Level 2;

(ll) Subpart VV — Oil-Water Separators and Organic-Water Separators;

(mm) Subpart WW — Storage Vessels (Tanks) -- Control Level 2;

(nn) Subpart XX — Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;

(oo) Subpart YY — Generic Maximum Achievable Control Technology Standards;

(pp) Subpart CCC — Steel Pickling — HCl Process Facilities and Hydrochloric Acid Regeneration Plants;

(qq) Subpart DDD — Mineral Wool Production;

(rr) Subpart EEE — Hazardous Waste Combustors;

(ss) Subpart GGG — Pharmaceuticals Production;

(tt) Subpart HHH — Natural Gas Transmission and Storage Facilities;

(uu) Subpart III — Flexible Polyurethane Foam Production;

(vv) Subpart JJJ — Group IV Polymers and Resins;

(ww) Subpart LLL — Portland Cement Manufacturing Industry;

(xx) Subpart MMM — Pesticide Active Ingredient Production;

(yy) Subpart NNN — Wool Fiberglass Manufacturing;

(zz) Subpart OOO — Manufacture of Amino/Phenolic Resins;

(aaa) Subpart PPP — Polyether Polyols Production;

(bbb) Subpart QQQ — Primary Copper Smelting;

(ccc) Subpart RRR — Secondary Aluminum Production;

(ddd) Subpart TTT — Primary Lead Smelting;

(eee) Subpart UUU — Petroleum Refineries -- Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;

ADMINISTRATIVE RULES

(fff) Subpart VVV — Publicly Owned Treatment Works;
(ggg) Subpart XXX — Ferroalloys Production: Ferromanganese and Silicomanganese;
(hhh) Subpart AAAA — Municipal Solid Waste Landfills;
(iii) Subpart CCCC — Manufacturing of Nutritional Yeast;
(jjj) Subpart DDDD — Plywood and Composite Wood Products;
(kkk) Subpart EEEE — Organic Liquids Distribution (non-gasoline);
(lll) Subpart FFFF — Miscellaneous Organic Chemical Manufacturing;
(mmm) Subpart GGGG — Solvent Extraction for Vegetable Oil Production;
(nnn) Subpart HHHH — Wet Formed Fiberglass Mat Production;
(ooo) Subpart IIII — Surface Coating of Automobiles and Light-Duty Trucks;
(ppp) Subpart JJJJ — Paper and Other Web Coating;
(qqq) Subpart KKKK — Surface Coating of Metal Cans;
(rrr) Subpart MMMM — Surface Coating of Miscellaneous Metal Parts and Products;
(sss) Subpart NNNN — Surface Coating of Large Appliances;
(ttt) Subpart OOOO — Printing, Coating, and Dyeing of Fabrics and Other Textiles;
(uuu) Subpart PPPP — Surface Coating of Plastic Parts and Products;
(vvv) Subpart QQQQ — Surface Coating of Wood Building Products;
(www) Subpart RRRR — Surface Coating of Metal Furniture;
(xxx) Subpart SSSS — Surface Coating of Metal Coil;
(yyy) Subpart TTTT — Leather Finishing Operations;
(zzz) Subpart UUUU — Cellulose Production Manufacturing;
(aaa) Subpart VVVV — Boat Manufacturing;
(bbb) Subpart WWWW — Reinforced Plastics Composites Production;
(ccc) Subpart XXXX — Rubber Tire Manufacturing;
(ddd) Subpart YYYY — Stationary Combustion Turbines;
(eee) Subpart AAAAA — Lime Manufacturing;
(fff) Subpart BBBB — Semiconductor Manufacturing;
(ggg) Subpart CCCCC — Coke Ovens: Pushing, Quenching & Battery Stacks;
(hhh) Subpart EEEEE — Iron and Steel Foundries;
(iii) Subpart FFFFF — Integrated Iron and Steel Manufacturing Facilities;
(jjj) Subpart GGGGG — Site Remediation;
(kkk) Subpart HHHHH — Misc. Coating Manufacturing;
(lll) Subpart IIII — Mercury Cell Chlor-Alkali Plants;
(mmm) Subpart JJJJ — Brick and Structural Clay Products Manufacturing;
(nnn) Subpart KKKKK — Clay Ceramics Manufacturing;
(ooo) Subpart LLLLL — Asphalt Processing & Asphalt Roofing Manufacturing;
(ppp) Subpart MMMM — Flexible Polyurethane Foam Fabrication Operations;
(qqq) Subpart NNNNN — Hydrochloric Acid Production;
(rrr) Subpart PPPP — Engine Tests Cells/Stands;
(sss) Subpart QQQQQ — Friction Materials Manufacturing Facilities;
(ttt) Subpart RRRRR — Taconite Iron Ore Processing;
(uuu) Subpart SSSS — Refractory Products Manufacturing;
(vvv) Subpart TTTTT — Primary Magnesium Refining;
(www) Subpart WWWW — Area Sources: Hospital Ethylene Oxide Sterilization;
(xxx) Subpart YYYYY — Area Sources: Electric Arc Furnace Steelmaking Facilities;
(yyy) Subpart ZZZZ — Area Sources: Iron and Steel Foundries;
(zzz) Subpart BBBB — Area Sources: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;
(aaa) Subpart DDDDD — Area Sources: Polyvinyl Chloride and Copolymers Production;
(bbb) Subpart EEEEE — Area Sources: Primary Copper Smelting;
(ccc) Subpart FFFFF — Area Sources: Secondary Copper Smelting;
(ddd) Subpart GGGGG — Area Sources: Primary Nonferrous Metals -- Zinc, Cadmium, and Beryllium;
(eee) Subpart HHHHH — Area Sources: Paint Stripping and Miscellaneous Surface Coating Operations
(fff) Subpart LLLLL — Area Sources: Acrylic and Modacrylic Fibers Production;

(gggg) Subpart MMMMM — Area Sources: Carbon Black Production;
(hhhh) Subpart NNNNN — Area Sources: Chemical Manufacturing: Chromium Compounds;
(iiii) Subpart OOOOO — Area Sources: Flexible Polyurethane Foam Production;
(jjjj) Subpart PPPPP — Area Sources: Lead Acid Battery Manufacturing;
(kkkk) Subpart QQQQQ — Area Sources: Wood Preserving;
(llll) Subpart RRRRR — Area Sources: Clay Ceramics Manufacturing;
(mmmm) Subpart SSSSS — Area Sources: Glass Manufacturing;
(nnnn) Subpart TTTTT — Area Sources: Secondary Nonferrous Metals Processing;
(oooo) Subpart VVVVV — Area Sources: Chemical Manufacturing;
(pppp) Subpart WWWW — Area Source: Plating and Polishing Operations;
(qqqq) Subpart XXXXX — Area Source: Nine Metal Fabrication and Finishing Source Categories;
(rrrr) Subpart YYYYY — Area Sources: Ferroalloys Production Facilities;
(ssss) Subpart ZZZZZ — Area Sources: Aluminum, Copper, and Other Nonferrous Foundries;
(tttt) Subpart AAAAAA — Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing;
(uuuu) Subpart BBBB — Area Sources: Chemical Preparations Industry;
(vvvv) Subpart CCCCC — Area Sources: Paints and Allied Products Manufacturing;
(wwww) Subpart DDDDD — Area Sources: Prepared Feeds Manufacturing.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; [DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11]

340-244-0234

Affected Sources

- (1) The affected source to which the emission standards apply is each GDF. The affected source includes each gasoline cargo tank during the delivery of product to a GDF and also includes each storage tank.
- (2) The emissions standards in OAR 340-244-0236 through 0252 do not apply to agricultural operations as defined in ORS 468A.020. Agricultural operations are however required to comply with the Gasoline Dispensing NESHAP, if applicable (40 CFR part 63 subpart CCCCC).
- (3) All GDFs must comply with the requirements of OAR 340-244-0240.
- (4) The owner or operator of a GDF must comply with the requirements of OAR 340-244-0242 for the following gasoline storage tanks:
 - (a) All tanks with a capacity of 250 gallons or more located at GDFs:
 - (A) Whose annual throughput exceeds 480,000 gallons of gasoline or more;
 - (B) Whose average monthly throughput exceeds 100,000 gallons of gasoline or more; or
 - (C) In Clackamas, Multnomah, or Washington County whose annual throughput exceeds 120,000 gallons of gasoline or more.
 - (b) All tanks with a capacity of 1,500 gallons or more located at GDFs in the Portland AQMA, Medford AQMA, or Salem SKATS.
- (5) The owner or operator of a GDF must comply with the requirements of OAR 340-244-0242(4) for any gasoline storage tank equipped with a vapor balance system.
- (6) An affected source must, upon request by the Department, demonstrate their annual or average monthly throughput.
- (7) The owner or operator of an affected source, as defined in section (1) of this rule, is not required to obtain a Title V Operating Permit. However, the owner or operator must still apply for and obtain a Title V Operating Permit if meeting one or more of the applicability criteria found in OAR 340-218-0020.
- (8) The loading of aviation gasoline storage tanks at airports, and the subsequent transfer of aviation gasoline within the airport, is not subject to OAR 340-244-0236 through 0252, except in the Portland AQMA, Medford AQMA, Salem SKATS, and Clackamas, Multnomah, and Washington

ADMINISTRATIVE RULES

Counties. In these geographic areas, aviation gasoline is subject to OAR 340-244-0236 through 0252.

(9) Monthly throughput is the total volume of gasoline loaded into, or dispensed from, all the gasoline storage tanks located at a single affected GDF. If an area source has two or more GDFs at separate locations within the area source, each GDF is treated as a separate affected source.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11

340-244-0236

Affected Equipment or Processes

(1) The emission sources to which this rule applies are gasoline storage tanks and associated equipment components in vapor or liquid gasoline service at new, reconstructed, or existing GDF that meet the criteria specified in OAR 340-244-0234. Pressure/Vacuum vents on gasoline storage tanks and the equipment necessary to unload product from cargo tanks into the storage tanks at GDF are covered emission sources.

(2) An affected source is a new affected source if construction commenced on the affected source after November 9, 2006, and the applicability criteria in OAR 340-244-0234 are met at the time operation commenced.

(3) An affected source is reconstructed if meeting the criteria for reconstruction as defined in 40 CFR 63.2.

(4) An affected source is an existing affected source if it is not new or reconstructed.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11

340-244-0238

Compliance Dates

(1) For a new or reconstructed affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, no later than January 10, 2008 or upon startup, whichever is later, except as follows:

(a) The owner or operator of a new or reconstructed GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(b) For tanks located at a GDF with average monthly throughput less than 100,000 gallons of gasoline and not listed in OAR 340-244-0234(4)(a)(C) or (4)(b) must comply with OAR 340-244-0242, as applicable, no later than December 13, 2009 or upon startup, whichever is later.

(c) The owner or operator of a GDF subject to Table 4 of this division must comply no later than September 23, 2008 or upon startup, whichever is later.

(2) For an existing affected source, the owner or operator must comply with the standards in OAR 340-244-0240 and 0242, as applicable, by no later than January 10, 2011, except as follows:

(a) For tanks with a capacity between 1,500 and 40,000 gallons and located in the Portland AQMA, Medford AQMA, or Salem SATS, the owner or operator must comply with the standards in OAR 340-244-0240(3) and 0242 no later than December 13, 2008.

(b) For tanks located at an affected source located in Clackamas, Multnomah, or Washington County, whose annual throughput exceeds 120,000 gallons, the owner or operator must comply with the standards in OAR 340-244-0240(3) and 0242 no later than December 13, 2008.

(c) The owner or operator of an existing GDF must comply with OAR 340-244-0240(1)(b) and (c) no later than July 1, 2009 or upon startup, whichever is later.

(3) For an existing affected source that becomes subject to the control requirements in OAR 340-244-0242 because of an increase in the monthly throughput, as specified in OAR 340-244-0234(4), the owner or operator must comply with the standards OAR 340-244-0242 no later than January 10, 2011 or within 2 years after the affected source becomes subject to the control requirements in OAR 340-244-0242, whichever is later.

(4) The initial compliance demonstration test required under OAR 340-244-0244(1)(a) and (b) must be conducted as specified in subsections (4)(a) and (b) of this rule.

(a) For a new or reconstructed affected source, the owner or operator must conduct the initial compliance test upon installation of the complete vapor balance system.

(b) For an existing affected source, the owner or operator must conduct the initial compliance test as specified in paragraph (4)(b)(A) or (B) of this rule.

(A) For vapor balance systems installed on or before December 15, 2009 at a GDF whose average monthly throughput exceeds 100,000 gallons of gasoline or more, the owner or operator must test no later than 180 days after the applicable compliance date specified in section (2) or (3) of this rule.

(B) For vapor balance systems installed after December 15, 2009, the owner or operator must test upon installation of a complete vapor balance system or a new gasoline storage tank.

(C) For a GDF whose average monthly throughput is less than or equal to 100,000 gallons of gasoline, the owner or operator is only required to test upon installation of a complete vapor balance system or a new gasoline storage tank.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11

340-244-0242

Vapor Balance Requirements

(1) Except as provided in section (2) of this rule, the owner or operator of gasoline storage tank listed in OAR 340-244-0234(4), must meet the requirements in either subsection (1)(a) or (1)(b) of this rule.

(a) Each management practice in Table 4 of this division that applies to the GDF.

(b) If, prior to January 10, 2008, the owner or operator operates a vapor balance system at the GDF that meets the requirements of either paragraph (1)(b)(A) or (1)(b)(B) of this rule, the owner or operator will be deemed in compliance with this section.

(A) Achieves emissions reduction of at least 90 percent.

(B) Operates using management practices at least as stringent as those in Table 4 of this division.

(2) Gasoline storage tanks equipped with floating roofs or the equivalent are not required to comply with the control requirements in section (1) of this rule.

(3) Cargo tanks unloading at a GDF must comply with the requirements of OAR 340-244-0240(1) and management practices in Table 5 of this division.

(4) The owner or operator of a GDF subject to section (1) of this rule or having a gasoline storage tank equipped with a vapor balance system, must comply with the following requirements on and after the applicable compliance date in OAR 340-244-0238:

(a) When loading a gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded.

(b) Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order.

(c) In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, have the vapor balance equipment inspected on an annual basis to discover potential or actual equipment failures.

(d) Replace, repair or modify any worn or ineffective component or design element within 24 hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts must be ordered, either a written or verbal order for those parts must be initiated within 2 working days of detecting such a leak. Such repair parts must be installed within 5 working days after receipt.

(5) The owner or operator of a GDF subject to section (1) of this rule must also comply with the following requirements:

(a) The applicable testing requirements contained in OAR 340-244-0244.

(b) The applicable notification requirements under OAR 340-244-0246.

(c) The applicable recordkeeping and reporting requirements as specified in OAR 340-244-0248 and 0250.

(d) The owner or operator must have records available within 24 hours of a request by the Department to document gasoline throughput.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

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

Stats. Implemented: ORS 468A.025

ADMINISTRATIVE RULES

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 1-2011, f. & cert. ef. 2-24-11

340-244-0244

Testing and Monitoring Requirements

(1) Each owner or operator, at time of installation, as specified in OAR 340-244-0238(4), of a vapor balance system required under 340-244-0242(1)(a), and every 3 years thereafter at a GDF with monthly throughput of 100,000 gallons of gasoline or more, must comply with the requirements in subsections (1)(a) and (b) of this rule.

(a) The owner or operator must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 4 of this division, for pressure-vacuum vent valves installed on gasoline storage tanks using the test methods identified in paragraph (1)(a)(A) or (B) of this rule.

(A) California Air Resources Board Vapor Recovery Test Procedure TP-201.1E, — Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (incorporated by reference, see 40 CFR 63.14).

(B) Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f).

(b) The owner or operator must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 4 of this division, for the vapor balance system by conducting a static pressure test on the gasoline storage tanks using the test methods identified in paragraph (1)(b)(A) or (B) of this rule.

(A) California Air Resources Board Vapor Recovery Test Procedure TP-201.3, — Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (incorporated by reference, see 40 CFR 63.14).

(B) Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f).

(2) Each owner or operator of a GDF, choosing, under the provisions of 40 CFR 63.6(g), to use a vapor balance system other than that described in Table 4 of this division, must demonstrate to the Department the equivalency of their vapor balance system to that described in Table 4 of this division using the procedures specified in subsections (2)(a) through (c) of this rule.

(a) The owner or operator must demonstrate initial compliance by conducting an initial performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1, — Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (incorporated by reference, see 40 CFR 63.14).

(b) The owner or operator must, during the initial performance test required under subsection (2)(a) of this rule, determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 4 of this division and for the static pressure performance requirement in item 1(h) of Table 4 of this division.

(c) The owner or operator must comply with the testing requirements specified in section (1) of this rule.

(3) Conduct of performance tests. Performance tests must be conducted under such conditions as the Department specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Upon request, the owner or operator must make available to the Department such records as may be necessary to determine the conditions of performance tests.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11

340-244-0248

Recordkeeping Requirements

(1) Each owner or operator must keep the following records:

(a) Records of all tests performed under OAR 340-244-0244(1) and (2);

(b) Records related to the operation and maintenance of vapor balance equipment required under OAR 340-244-0242. Any vapor balance component defect must be logged and tracked by station personnel using forms provided by the Department or a reasonable facsimile.

(c) Records of total throughput volume of gasoline, in gallons, for each calendar month.

(d) Records of permanent changes made at the GDF and vapor balance equipment which may affect emissions.

(2) Records required under section (1) of this rule must be kept for a period of 5 years and must be made available for inspection by the Department during the course of a site visit.

(3) Each owner or operator of a gasoline cargo tank subject to the management practices in Table 5 of this division must keep records documenting vapor tightness testing for a period of 5 years. Documentation must include each of the items specified in **40 CFR 63.11094(b)(i) through (viii)**. Records of vapor tightness testing must be retained as specified in either subsection (3)(a) or (b) of this rule.

(a) The owner or operator must keep all vapor tightness testing records with the cargo tank.

(b) As an alternative to keeping all records with the cargo tank, the owner or operator may comply with the requirements of paragraphs (3)(a)(A) and (B) of this rule.

(A) The owner or operator may keep records of only the most recent vapor tightness test with the cargo tank and keep records for the previous 4 years at their office or another central location.

(B) Vapor tightness testing records that are kept at a location other than with the cargo tank must be instantly available (e.g., via e-mail or facsimile) to the Department during the course of a site visit or within a mutually agreeable time frame. Such records must be an exact duplicate image of the original paper copy record with certifying signatures.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stats. Implemented: ORS 468A.025

Hist.: DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 1-2011, f. & cert. ef. 2-24-11

Rule Caption: Rule amendments for residential woodstoves and other solid fuel burning devices.

Adm. Order No.: DEQ 2-2011

Filed with Sec. of State: 3-10-2011

Certified to be Effective: 3-15-11

Notice Publication Date: 10-1-2010

Rules Adopted: 340-262-0400, 340-262-0450, 340-262-0500, 340-262-0600, 340-262-0700, 340-262-0800, 340-262-0900

Rules Amended: 340-012-0054, 340-012-0140, 340-200-0040

Rules Repealed: 340-262-0010, 340-262-0020, 340-262-0030, 340-262-0040, 340-262-0050, 340-262-0100, 340-262-0110, 340-262-0120, 340-262-0130, 340-262-0200, 340-262-0210, 340-262-0220, 340-262-0230, 340-262-0240, 340-262-0250, 340-262-0300, 340-262-0310, 340-262-0320, 340-262-0330

Subject: This rulemaking implements the requirements of Senate Bill 102, a measure passed by the 2009 Oregon Legislature to protect Oregonians from uncontrolled wood smoke. The rules implement the statutory requirement for homeowners to remove and destroy any uncertified woodstove at the time of home sale and to notify DEQ. The rules subject a broader range of home and commercial heating devices (including outdoor wood-fired boilers and other uncontrolled wood burning devices) to certification requirements. Unless these heating devices meet the certification requirements, they will not be allowed to be sold in Oregon. The rules also update DEQ rules for implementing a wood burning curtailment program in a nonattainment area if needed.

These rules will also be submitted to the U.S. Environmental Protection Agency as a revision to the Oregon State Implementation Plan under OAR 340-200-0040.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-012-0054

Air Quality Classification of Violations

(1) **Class I:**

(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;

(c) Exceeding a Plant Site Emission Limit (PSEL);

(d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340

ADMINISTRATIVE RULES

division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

- (e) Exceeding a hazardous air pollutant emission limitation;
- (f) Failing to comply with an Emergency Action Plan;

(g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), or the Western Backstop SO₂ Trading Program;

(h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;

(i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

(j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonable Achievable Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rates (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

- (k) Causing emissions that are a hazard to public safety;

(l) Violating a work practice requirement for asbestos abatement projects;

(m) Storing or accumulating friable asbestos material or asbestos-containing waste material;

(n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;

(o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;

(p) Failing to hire a licensed contractor to conduct an asbestos abatement project;

(q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1).

- (r) Failing to install certified vapor recovery equipment.

(s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257.

(u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257.

(v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257.

(w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(2) Class II:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) without first obtaining such permit, unless otherwise classified;

(b) Violating the terms or conditions of a permit or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit modification from the department without first obtaining such approval from the department, unless otherwise classified;

- (d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

- (f) Failing to timely submit an ACDP annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;

(h) Failing to timely submit a permit application or permit renewal application;

(i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;

(j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).

(k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;

- (l) Failing to provide notification of an asbestos abatement project;

(m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project; or

(n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620.

(o) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257.

(3) Class III:

(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

(c) Modifying a source in such a way as to require construction approval from the department without first obtaining such approval from the department, unless otherwise classified;

(d) Failing to provide proper notification of an asbestos abatement project or failing to revise a notification when necessary, unless otherwise classified;

(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or

(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

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

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of an open burning statute, rule, permit or related order committed by a permitted industrial facility.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of 468B.025(1)(a) or (1)(b), or of ORS 468B.050(1)(a) by a person without an National Pollutant Discharge Elimination System (NPDES) permit.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a major industrial source NPDES permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF

ADMINISTRATIVE RULES

Municipal Stormwater Underground Injection Control (UIC) System Permit, or has a NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that has or should have a WPCF permit for a major vegetable or fruit processing facility, for a major mining operation involving over 500,000 cubic yards per year, or for any mining operation using chemical leaching or froth flotation.

(v) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(F) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by the department to perform tank services.

(G) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by the department to perform heating oil tank services.

(H) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(I) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(J) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order.

(L) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(M) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(N) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8000;

(ii) Moderate — \$4000;

(iii) Minor — \$2000.

(B) Class II:

(i) Major — \$4000;

(ii) Moderate — \$2000;

(iii) Minor — \$1000.

(C) Class III: \$750.

(3) \$6,000 Penalty Matrix:

(a) The \$6,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has a NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a minor industrial source NPDES Permit, or has or should have a WPCF Permit, for an industrial source.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of one acre or more, but less than five acres in size and except for an NPDES 700-PM General Permit for suction dredges.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that has or should have a WPCF permit for a mining operation involving from 100,000 up to 500,000 cubic yards other than those operations using chemical leachate or froth flotation.

(vi) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage.

(F) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(G) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(H) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(b) The base penalty values for the \$6,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$6,000.

(ii) Moderate — \$3,000.

(iii) Minor — \$1,500.

(B) Class II:

(i) Major — \$3,000.

(ii) Moderate — \$1,500.

(iii) Minor — \$750.

(C) Class III: \$500.

(4) \$2,500 Penalty Matrix:

(a) The \$2,500 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(D) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(E) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater or sewage.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(F) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by the residential owner-occupant.

(G) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(H) Any violation, except a violation related to a spill or release, of a used oil statute, rule, permit or related order committed by a person that is a used oil generator.

(I) Unless listed under another penalty matrix, any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator if the violation does not impact the person's generator status.

ADMINISTRATIVE RULES

(J) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(K) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(L) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(A) Class I:

(i) Major — \$2500;

(ii) Moderate — \$1250;

(iii) Minor — \$625.

(B) Class II:

(i) Major — \$1250;

(ii) Moderate — \$625;

(iii) Minor — \$300.

(C) Class III: \$200.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of a dry cleaning facility statute, rule, permit or related order.

(H) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(I) Any violation of a statute, rule or order relating to the opportunity to recycle.

(J) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(K) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater or sewage.

(L) Any violation by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for Suction Dredges.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality

and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on February 18, 2011.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & cert. ef. 6-25-79; DEQ 21-1979, f. & cert. ef. 7-2-79; DEQ 22-1980, f. & cert. ef. 9-26-80; DEQ 11-1981, f. & cert. ef. 3-26-81; DEQ 14-1982, f. & cert. ef. 7-21-82; DEQ 21-1982, f. & cert. ef. 10-27-82; DEQ 1-1983, f. & cert. ef. 1-21-83; DEQ 6-1983, f. & cert. ef. 4-18-83; DEQ 18-1984, f. & cert. ef. 10-16-84; DEQ 25-1984, f. & cert. ef. 11-27-84; DEQ 3-1985, f. & cert. ef. 2-1-85; DEQ 12-1985, f. & cert. ef. 9-30-85; DEQ 5-1986, f. & cert. ef. 2-21-86; DEQ 10-1986, f. & cert. ef. 5-9-86; DEQ 20-1986, f. & cert. ef. 11-7-86; DEQ 21-1986, f. & cert. ef. 11-7-86; DEQ 4-1987, f. & cert. ef. 3-2-87; DEQ 5-1987, f. & cert. ef. 3-2-87; DEQ 8-1987, f. & cert. ef. 4-23-87; DEQ 21-1987, f. & cert. ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0400

Purpose and Applicability of Rules

(1) The State of Oregon promotes the use of cleaner solid fuel burning devices to reduce smoke created from wood heating and other solid fuels. Smoke from wood burning can be a significant source of air pollution and can have serious health consequences for people with asthma, respiratory or heart conditions or other illnesses. Children and the elderly are especially at risk.

(2) This Division regulates the sale and use of residential and commercial solid fuel burning devices to implement Oregon's air quality regulations for public health and safety.

(3) Subject to the requirements in this Division and ORS 468A.100 through 468A.180, the Lane Regional Air Protection Agency is designated by the Environmental Quality Commission as the agency responsible for implementing this Division within its area of jurisdiction. The Regional

ADMINISTRATIVE RULES

Agency must implement the requirements and procedures contained in this Division unless the Regional Agency adopts superseding rules at least as restrictive as this Division.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.
Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468A.460 - 468A.515, 468A.100 - 468A.180
Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0450

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this Division. If OAR 340-0200-0020 and this rule define the same term, the definition in this rule applies to this Division.

(1) "Antique woodstove" means a woodstove built before 1940 that has an ornate construction and a current market value substantially higher than a common woodstove manufactured during the same period.

(2) "Central wood-fired furnace" means an indoor, wood-fired furnace that is thermostatically controlled, has a dedicated cold air inlet and dedicated hot air outlet, and is connected to heating ductwork for the entire residential structure.

(3) "CFR" means Code of Federal Regulations.

(4) "Consumer" means a person who buys a solid fuel burning device for personal use.

(5) "Cookstove" means an indoor wood-burning appliance designed for the primary purpose of cooking food.

(6) "Dealer" means a person that sells solid fuel burning devices to retailers or other dealers for resale. For the purpose of this Division, a dealer that is also an Oregon retailer shall be considered to be only a retailer.

(7) "DEQ" means Oregon Department of Environmental Quality.

(8) "Destroy" means to demolish or decommission to the extent that restoration or reuse as a heating device is impossible.

(9) "EPA" means United States Environmental Protection Agency.

(10) "EQC" means Environmental Quality Commission

(11) "Federal Regulations" means 40 CFR, Part 60, Subpart AAA as in effect on July 1, 2010.

(12) "Fireplace" means a site-built or factory-built masonry fireplace that is designed to be used with an open combustion chamber and that is without features to control air-to-fuel ratios.

(13) "Hydronic heater" means a fuel-burning device which may be equipped with a heat storage unit, and which is designed to:

(a) Burn wood or other automatically fed fuels such as wood pellets, shelled corn, and wood chips;

(b) Be installed according to the manufacturer's specifications either indoors or outdoors; and

(c) Heat building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

(14) "Manufacturer" means a person who designs a solid fuel burning device, constructs a solid fuel burning device or constructs parts for solid fuel burning devices.

(15) "Masonry heater" means a site-built or site-assembled, solid fueled heating device constructed of structural masonry mass used to store heat from intermittent fires burned rapidly in the structure's firebox and slow release the heat to the site. Such solid-fueled heating device must meet the design and construction specifications set forth in ASTM E 1602-03, "Guide for Construction of Solid Fuel Burning Masonry Heaters."

(16) "New solid fuel burning device" or "new device" means a solid fuel burning device defined under ORS 468A.485(4)(a) that has not been sold, bargained, exchanged, given away, acquired secondhand, or otherwise had its ownership transferred from the person who first acquired it from a retailer.

(17) "PM10" means particulate matter less than 10 microns.

(18) "PM2.5" means particulate matter less than 2.5 microns.

(19) "Pellet stove" means a heating device that uses wood pellets, or other biomass fuels designed for use in pellet stoves, as its primary source of fuel.

(20) "Phase 1 emission level qualified model" is a model of a hydronic heater that achieves an average emission level of 0.60 lbs/million Btu heat input or less for all fuel types listed in the owner's manual and/or mentioned in marketing/sales materials, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model.

(21) "Phase 2 emission level qualified model" is a model of a hydronic heater that achieves an average emissions level of 0.32 lbs/million Btu heat output or less for all fuel types listed in the owner's manual and/or

mentioned in marketing/sales materials, and that did not exceed 18.0 grams/hr of fine particles in any individual test run that was used in the calculation of the average, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model pursuant to the EPA Hydronic Heater Program Phase 2 Partnership Agreement.

(22) "Residential structure" has the meaning given that term in ORS 701.005.

(23) "Retailer" means a person engaged in the sale of solid fuel burning devices directly to consumers.

(24) "Solid fuel burning device" or "device" means a woodstove or any other device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water-heating purposes in or for a private residential structure or a commercial establishment and that has a heat output of less than one million British thermal units per hour. Solid fuel burning device does not include:

(a) Fireplace;

(b) Antique stove;

(c) Pellet stoves;

(d) Masonry heaters;

(e) Central, wood-fired furnaces; and

(f) Saunas.

(25) "Trash burner" means any equipment that is used to dispose of waste by burning and has not been issued an air quality permit under ORS 468A.040.

(26) "Treated Wood" means wood of any species that has been chemically impregnated, painted or similarly modified to prevent weathering and deterioration.

(27) "Used solid fuel burning device" or "used device" means a solid fuel burning device that has been sold, bargained, exchanged, given away, or otherwise has had its ownership transferred.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0500

Certification of Solid Fuel Burning Devices for Sale as New

(1) By order, the department may certify solid fuel burning devices that have been certified by the United States Environmental Protection Agency as meeting EPA emission performance standards and certification labeling standards pursuant to:

(a) 40 CFR part 60, subpart AAA, as in effect on July 1, 2010; or

(b) Any equivalent or more stringent standard adopted by the United States Environmental Protection Agency subsequent to July 1, 2010.

(2) By order, the department may certify solid fuel burning devices that have not been certified by the United States Environmental Protection Agency, but that were previously certified by the department as meeting emission performance standards and certification labeling standards on or after July 1, 1986 pursuant to ORS 468A.480.

(3) By order, the department may certify any hydronic heater that has been accepted by EPA as a Phase 1 or Phase 2 emission level qualified model pursuant to the EPA Hydronic Heater Program, and that meets the requirements of subsections (a) and (b) below:

(a) The hydronic heater must have a permanent "qualifying label" attached that meets the requirements of the EPA Hydronic Heater Program Phase 2 Partnership Agreement or similar agreement for the EPA Phase 1 program; and

(b) The hydronic heater must have been installed by March 1, 2011, and the owner of the hydronic heater must confirm notice of installation to the department, on a department provided form, by July 1, 2011.

(4) By order, the department may certify solid fuel burning devices that have been tested using a test method that is equivalent to the test methods in 40 CFR part 60, subpart AAA as in effect on July 1, 2010, if:

(a) Testing is done by a method that has been determined to be equivalent by DEQ; and

(b) The test results show the solid fuel burning device emits no more than 7.5 g/hr.

(5) The department shall maintain a list of all devices certified pursuant to this rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

ADMINISTRATIVE RULES

340-262-0600

New and Used Solid Fuel Burning Devices Sold in Oregon

(1) No person may advertise to sell, offer to sell or sell a new or used solid fuel burning device in Oregon unless:

(a) The device has been certified for sale as new by DEQ pursuant to OAR 340-262-0500, or by EPA pursuant to 40 CFR part 60, subpart AAA; and the device is permanently labeled as certified, or in the case of a hydronic heater is

(b) Permanently labeled as a Phase 1 or Phase 2 emission level qualified model, with a label authorized by DEQ or EPA.

(2) Exempt devices. The following are exempt from this rule:

- (a) Pellet stoves;
- (b) Antique woodstoves;
- (c) Cookstoves
- (d) Fireplaces;
- (e) Masonry heaters;
- (f) Central, wood-fired furnaces; and
- (g) Saunas.

(3) Exempt consumer transactions. Consumer transactions are exempt from this rule, if the consumer:

(a) Sells a used solid fuel burning device to a person in the business of reusing, reclaiming or recycling scrap metal and the person destroys the device; or

(b) Remits a used device to a retailer for a price reduction on a new residential heating system.

(4) Prohibited label alteration. No person may alter DEQ or EPA authorized labels.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0700

Removal and Destruction of Used Solid Fuel Burning Devices

(1) Unless exempt under section (4), when a residential structure is sold in Oregon, all used solid fuel burning devices must be removed and destroyed if the devices were not certified for sale as new by DEQ or EPA and are not permanently labeled as certified, or in the case of a hydronic heater is permanently labeled as a Phase 1 or Phase 2 emission level qualified model, with a label authorized by DEQ or EPA.

(2) The removal and destruction of a used solid fuel burning device is the responsibility of the seller of the residential structure, unless the seller and buyer agree in writing that it is the buyer's responsibility. If the seller retains responsibility, the seller shall remove and destroy the device prior to the closing date of the sale of the residential structure. If the buyer accepts responsibility, the buyer shall remove and destroy the device within 30 days after the closing date of the sale of the residential structure.

(3) The seller or buyer, as determined pursuant to sections (1) and (2), must:

(a) Remove all used solid fuel burning devices on the real property sold with the residential structure, including but not limited to devices in a residence, garage, workshop, outbuilding, or any other structure.

(b) Destroy all used solid fuel burning devices, pursuant to the definition of "destroy" in OAR 340-262-0450, by taking them to a facility or entity that will render the devices incapable of being used as heating devices.

(c) Obtain a receipt from the place of destruction that verifies the delivery of all used solid fuel burning devices. The receipt must include:

- (A) Date of delivery to place of destruction;
- (B) Name and address for the place of destruction; and
- (C) Description of all used solid fuel burning devices delivered for destruction.

(d) Notify DEQ of the removal and destruction of all used solid fuel burning devices on DEQ issued paper or electronic forms. The forms will require the following information:

(A) Name, current mailing address, and phone number of the person removing the stove;

(B) Address and tax lot number of the residential structure being sold;

(C) Closing date of sale of the residential structure if the buyer is the responsible party, or the estimated closing date of sale if the seller is the responsible party;

(D) The receipt or receipt information obtained under subsection (3)(c); and

(E) A signed statement certifying that the information is accurate to the best of the certifying individual's knowledge.

(4) Exemptions. The following are exempt from removal and destruction pursuant to this rule:

- (a) Fireplaces;
- (b) Cookstoves;
- (c) Antique woodstoves;
- (d) Pellet stoves;
- (e) Masonry heaters;
- (f) Central wood-fired furnaces; and
- (g) Saunas.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0800

Wood Burning and Other Heating Devices Curtailment Program

(1) **Applicability.**

(a) The wood burning and other heating devices curtailment program applies to any portion of the state where required as an emission reduction strategy or contingency plan for PM10 or PM 2.5 nonattainment or maintenance areas as an element of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040.

(b) If a local government or regional authority has not adopted or is not adequately implementing a curtailment program in any area of the state where such a program is required, the Department will operate and enforce a program to curtail solid fuel heating during periods of air stagnation.

(c) To determine whether a local government or regional authority has failed to adopt or adequately implement a curtailment program, the Department shall consider whether a local government or regional authority:

(A) Has adopted an ordinance that requires the curtailment of solid fuel heating at forecasted air pollution levels which are consistent with the curtailment conditions and requirements specified in sections (3) and (4);

(B) Is issuing on a daily basis, curtailment advisories to the public consistent with section (5); and

(C) Is conducting surveillance for compliance and is taking adequate enforcement actions consistent with sections (6) to (8).

(2) **Exempt from this rule.** Curtailed heating under this rule does not apply to:

(a) Solid fuel burning devices or other solid fuel heating operated within a household classified to be less than or equal to 125 percent of the current federal poverty income guidelines accessible through the Oregon Center for Public Policy;

(b) Solid fuel burning devices operated in a residence where the solid fuel burning device is the sole heating source; and

(c) Pellet stoves, unless the pellet stove is located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

(3) **Air stagnation levels.** DEQ or DEQ's representative must use appropriate data and technology to establish the air stagnation levels used to curtail burning in PM10 or PM 2.5 nonattainment areas. The program must designate a:

(a) *Stage I advisory* when the PM10 or PM 2.5 standard is being approached; and

(b) *Stage II advisory* when an exceedance of the PM10 or PM 2.5 standard is forecast as imminent.

(4) **Curtailed burning.** Unless exempt under section (2), the wood burning curtailment program prohibits operation of:

(a) All heating by means of solid fuel, including but not limited to solid fuel burning devices, fireplaces, masonry heaters, pellet stoves, trash burners and all devices described in ORS 468A.485(4)(b), that were not certified for sale as new by DEQ or EPA, during a designated Stage I advisory when the PM10 or PM2.5 standard is being approached.

(b) All heating by means of solid fuel, including but not limited to solid fuel burning devices, fireplaces, masonry heaters, pellet stoves, trash burners and all devices described in ORS 468A.485(4)(b), whether or not those devices were certified for sale as new by DEQ or EPA, during a designated Stage II advisory when an exceedance of the PM10 or PM2.5 standard is forecasted to be imminent.

(5) **Daily air pollution advisories.** DEQ or the DEQ representative (local or regional government) must disseminate daily air pollution advisories to the local community that must include any air stagnation levels under section (3) and curtailed burning under section (4) during the winter wood heating season.

(6) **Monitoring and enforcement.** DEQ or the DEQ representative:

(a) Must monitor compliance with the wood burning curtailment program during curtailed burning under section (4); and

ADMINISTRATIVE RULES

(b) May initiate enforcement action for smoke emitted through a flue or chimney during curtailed burning under section (4). Smoke emitted during curtailed burning raises a rebuttable presumption of a violation subject to OAR chapter 340, division 12.

(7) **Exempt from enforcement action.** A person may respond to an enforcement action initiated under subsection (6)(b) by submitting a signed affidavit and documentation sufficient for DEQ to establish:

(a) For a low income exemption under subsection (2)(a), a copy of the previous year tax returns with redacted Social Security Numbers. The tax return must reflect the total combined household income for the past year; or

(b) For a sole-source heating exemption under subsection (2)(b), a signed affidavit attesting to the device's status as the sole heating source of the residence. The exemption is valid for the current woodheating season in which the person is claiming the exemption.

(8) **Exempt status review.** DEQ or the DEQ representative must review documentation submitted under section (7) to determine the exempt status of the household or solid fuel burning device. DEQ shall notify the person claiming exempt status of the:

(a) Approval of exempt status and the dismissal of the enforcement action under section (6); or

(b) Denial of exempt status including the reason.

(9) **Suspension of Department program.** DEQ shall suspend the operation and enforcement of (2) through (8) of this rule if the Department determines the local government or regional authority has adopted and is adequately implementing a wood burning and other heating devices curtailment program that is at least as stringent as the program outlined in this rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0900

Materials Prohibited from Burning

No person may cause or allow any of the following materials to be burned in a solid fuel burning device, fireplace, a trash burner or any other device described in ORS 468A.485(4)(b):

- (1)(a) Garbage;
 - (b) Treated wood;
 - (c) Plastic or plastic products;
 - (d) Rubber or rubber products;
 - (e) Animal carcasses;
 - (f) Products that contain asphalt;
 - (g) Waste petroleum products;
 - (h) Paint;
 - (i) Chemicals;
 - (j) Products containing lead, mercury or other heavy or toxic metals;
 - (k) Materials containing asbestos; and
 - (l) Particleboard.
- (2) Paper or paper products, except for paper used to kindle a fire.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

Rule Caption: Suspend municipalities' requirement to develop Persistent Pollutant Reduction Plans for cholesterol and coprostanol.

Adm. Order No.: DEQ 3-2011(Temp)

Filed with Sec. of State: 3-15-2011

Certified to be Effective: 3-15-11 thru 9-11-11

Notice Publication Date:

Rules Amended: 340-045-0100

Subject: OAR 340-045-0100 requires Oregon's 52 largest municipal wastewater treatment plants to develop Persistent Pollutant Reduction Plans for pollutants present above Plan Initiation Levels (PILs). The temporary amendment suspends municipalities' requirement to develop Persistent Pollutant Reduction Plans for cholesterol and coprostanol, two naturally-occurring byproducts of human digestion.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-045-0100

Initiation Level Rule

(1) **Definitions.** The definitions in ORS 468B.138 are adopted by reference. In addition, for purposes of this rule, the following definitions apply:

(a) "Persistent Pollutants" are substances that are toxic and that either persist in the environment or accumulate in the tissues of humans, fish, wildlife or plants, and are listed in Column 2 of Table A.

(b) "Permittee" means a municipality in possession of a National Pollutant Discharge Elimination System or water pollution control facility permit issued by the DEQ pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more.

(c) "Initiation level" is the concentration of a persistent pollutant in a permittee's effluent that, if exceeded, necessitates the preparation of a persistent pollutant reduction plan under ORS 468B.140.

(2) Initiation levels.

(a) Initiation levels for persistent pollutants are those values contained in Table A, or the analytical quantitation limit (concentration at which quantitative results can be reported with a high degree of confidence), whichever is higher.

(b) Initiation levels are not standards of quality and purity for the waters of this state for the purposes of ORS 468B.048 or the federal Clean Water Act.

(c) Except as specified in subsection (f), each permittee must measure the concentration of the persistent pollutants listed in Table A in its effluent, compare the results of these measurements to the initiation levels, determine whether any persistent pollutant exceeds its initiation level, and document this proposed determination in a report to the Department. For existing permittees, the report must be filed no later than 60 calendar days after receipt of laboratory results. For permittees that first become subject to this rule after its effective date, the report must be filed within 18 months after the permittee becomes subject to the rule.

(d) The Department will review this report to verify that the proposed determination is based on reliable information. If the Department finds that the proposed determination is not based on reliable information, the Department will make an independent determination of whether a initiation level has been exceeded.

(e) Except as specified in subsection (g), each permittee must prepare and submit to the Department a written persistent pollutant reduction plan in accordance with ORS 468B.140(1)(a) addressing persistent pollutants that exceed the initiation level. For existing permittees, the plan must be submitted no later than July 1, 2011. For permittees that first become subject to this rule after the effective date of this rule, the plan must be submitted to the Department within six months after the report is submitted, or, if the Department makes an independent determination, six months from the date of the Department's independent determination or within a time-frame established by the Department.

(f) The Department may suspend, by written order, the requirement to measure or develop a persistent pollutant reduction plan for a listed persistent pollutant if the Department determines it is not technically practicable to measure the pollutant in effluent or if the Department removes a pollutant from the Priority Persistent Pollutant List. If, based on additional monitoring done pursuant to a persistent pollutant reduction plan, the Department determines that it is unlikely that a pollutant exists in a permittee's effluent, the Department may allow the permittee to withdraw the pollutant from inclusion in the persistent pollutant reduction plan.

(g) Permittees are not required to develop a persistent pollutant reduction plan to address cholesterol or coprostanol based on the absence of municipal pollution prevention activities, as well as the absence of conclusive evidence in the scientific literature that these pollutants have documented harmful effects on the health and well-being of humans, fish or wildlife, in accordance with ORS 468B.139, and the absence of cost-effective treatment options. **Table A.** [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 468.020 & 468B.141

Stats. Implemented: ORS 468B.138 - 468B.144

Hist.: DEQ 6-2010, f. & cert. ef. 7-6-10; DEQ 3-2011(Temp), f. & cert. ef. 3-15-11 thru 9-11-11

Department of Fish and Wildlife Chapter 635

Rule Caption: 2011 Spring Chinook Season on the Deschutes River.

Adm. Order No.: DFW 16-2011(Temp)

Filed with Sec. of State: 2-16-2011

ADMINISTRATIVE RULES

Certified to be Effective: 4-15-11 thru 7-31-11

Notice Publication Date:

Rules Amended: 635-018-0090

Rules Suspended: 635-018-0090(T)

Subject: Amended rule allows the sport harvest of spring Chinook salmon in the Lower Deschutes River from April 15 through July 31, 2011. The open area would extend from Sherars Falls downstream to the mouth of the river. During the open period, the proposed bag limit would be 1 adipose fin-clipped Chinook salmon per day, and 5 adipose fin-clipped jack salmon per day. All unmarked Chinook salmon must be released unharmed and it will be unlawful to angle from Sherars Falls downstream to the upper railroad trestle after taking a daily bag limit of 1 adult Chinook salmon.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2011 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 **2011 Oregon Sport Fishing Regulations**.

(2) The Hood River is open to retention of adipose fin-clipped coho salmon and adipose fin-clipped steelhead from January 1 through June 29, 2011 from the mouth to mainstem confluence with the East Fork and the West Fork from the confluence with the mainstem upstream to the angling deadline 200 feet downstream of Punchbowl Falls.

(a) All other catch limits and restrictions remain unchanged from those listed for Hood River in the **2011 Oregon Sport Fishing Regulations**.

(3) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead, and adipose fin-clipped Chinook salmon from April 15 through July 31, 2011.

(a) The catch limit is one adult adipose fin-clipped salmon and five adipose fin-clipped jack salmon per day. All non-adipose fin-clipped Chinook salmon must be released unharmed.

(b) It is unlawful to continue angling from Sherars Falls downstream to the upper railroad trestle after taking a daily bag limit of one adult Chinook salmon.

[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 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; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-

2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11

Rule Caption: Hood River Spring Chinook Sport Fishery.

Adm. Order No.: DFW 17-2011(Temp)

Filed with Sec. of State: 2-17-2011

Certified to be Effective: 4-15-11 thru 7-31-11

Notice Publication Date:

Rules Amended: 635-018-0090

Rules Suspended: 635-018-0090(T)

Subject: Amended rule allows the sport harvest of adipose fin-clipped spring Chinook salmon in the Hood River beginning April 15, 2011. The catch limit is two adult adipose fin-clipped Chinook salmon per day, and five adipose fin-clipped jack Chinook salmon per day. All salmon and steelhead that have not been adipose fin-clipped must be released unharmed.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2011 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 **2011 Oregon Sport Fishing Regulations**.

(2) The Hood River is open from the mouth to mainstem confluence with the East Fork and the West Fork from the confluence with the mainstem upstream to the angling deadline 200 feet downstream of Punchbowl Falls to retention of:

(a) Adipose fin-clipped coho salmon and adipose fin-clipped steelhead from January 1 through June 29, 2011. The catch limit is two adult adipose fin-clipped salmon or steelhead per day and five adipose fin-clipped jack salmon per day, with the exception that one additional adipose fin-clipped steelhead may be retained per day for a total aggregate of 3 adult fish harvested daily; and

(b) Adipose fin-clipped Chinook salmon from April 15 through June 29, 2011. The catch limit is two adult adipose fin-clipped Chinook salmon per day and five adipose fin-clipped jack salmon per day.

(c) All salmon and steelhead that have not been adipose fin-clipped must be released unharmed. All other catch limits and restrictions remain unchanged from those listed for Hood River in the **2011 Oregon Sport Fishing Regulations**.

(3) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead, and adipose fin-clipped Chinook salmon from April 15 through July 31, 2011.

(a) The catch limit is one adult adipose fin-clipped salmon and five adipose fin-clipped jack salmon per day. All non-adipose fin-clipped Chinook salmon must be released unharmed.

(b) It is unlawful to continue angling from Sherars Falls downstream to the upper railroad trestle after taking a daily bag limit of one adult Chinook salmon.

[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 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;

ADMINISTRATIVE RULES

ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11

Rule Caption: Renumbering of rule to the proper division.

Adm. Order No.: DFW 18-2011

Filed with Sec. of State: 3-2-2011

Certified to be Effective: 3-2-11

Notice Publication Date:

Rules Renumbered: 635-200-0030 to 635-043-0003

Subject: Move OAR 635-200-0030 to the correct division; 043 Miscellaneous Permits and Records.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-043-0003

Fur Dealer and Taxidermy

(1) Fur Dealer License shall cost \$50.00 (plus a \$2.00 license agent fee) and shall expire on December 31 of the year issued.

(2) Whenever a fur dealer purchases, possesses, sells, or disposes of the pelt of any furbearing mammal, the dealer must record:

(a) The date, numbers and types of pelts;

(b) For furbearing mammals requiring tags, the tag number, the state issuing the tag, the species, and the year the tag was issued; and

(c) The name and address of those from whom the pelts were obtained, and to whom they were sold or otherwise transferred;

(d) This record must be maintained at the business address of the fur dealer for a period of three years.

(3) No fur dealer may purchase, sell, or possess any raw pelt requiring a tag or seal without having a proper tag or seal affixed to the pelt.

(4) Fur buyers who are agents for companies shall have a fur dealer's license and record the company whom they represent on the fur dealer's license application.

(5) Fur dealer records and pelts are subject to inspection at any time by any Oregon State Police officer or Department representative.

(6) Failure to comply with the record keeping criteria in OAR 635-200-0030 (1) or to permit inspection of such records may result in a two year license suspension.

(7) Taxidermy License shall cost \$50.00 (plus a \$2.00 license agent fee) and shall expire on December 31 of the year issued.

(8) Licensed taxidermists may sell a client's unclaimed, legally taken, mounted wildlife, except migratory birds protected by Federal Law 16 USC 703, provided that:

(a) Upon completion, at least two written notices of intent to sell are sent to the client;

(b) Two months have passed since completion of mount;

(c) The amount realized by the sale of a mount is not to exceed the original quoted price stated contemporaneously in writing, less any deposit received;

(d) Taxidermists may mount and sell legally taken furbearing animals with a fur dealer's license.

(9) At the time of receiving wildlife for mounting, every licensed taxidermist shall:

(a) Record the date, number and kinds of wildlife received;

(b) Record the tag number and year of issuance of those furbearing mammals requiring tags;

(c) Record the date taken and county or hunting unit and state where taken and the name and address of the person who killed the wildlife;

(d) Record the name and address of the person from whom received and the quoted price for the taxidermy work;

(e) Maintain this record at the business address of the taxidermist for a three-year period;

(f) Maintain copies of the written notices, as described in 635-200-0030 (6), date of sale, amount of sale and name and address of the person purchasing the mount at the business address of the taxidermist for a three-year period.

(10) Taxidermy records and all wildlife possessed by licensed taxidermists for the purpose of taxidermy are subject to inspection at any time by any Oregon State Police officer or Department representative.

Stat. Auth.: 496.012, 496.138, 496.146, 498.019, 498.022, 498.042

Stats. Implemented: 496.012, 496.138, 496.146, 498.019, 498.022, 498.042

Hist.: DFW 96-1998, f. & cert. ef. 11-25-98; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 82-2010, f. & cert. ef. 6-15-10; Renumbered from 635-200-0030, DFW 18-2011, f. & cert. ef. 3-2-11

Rule Caption: Directed Commercial Sardine Fishery First Allocation Period Closes March 5, 2011.

Adm. Order No.: DFW 19-2011(Temp)

Filed with Sec. of State: 3-2-2011

Certified to be Effective: 3-4-11 thru 6-30-11

Notice Publication Date:

Rules Amended: 635-004-0017

Subject: This amended rule closes the first allocation period of the directed commercial sardine fishery effective 12:01 a.m. March 5 through June 30, 2011. This modification conforms to federal rule changes announced March 1, 2011 to be published in the Federal Register on March 4, 2011.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0017

Inclusions and Modifications

(1) OAR Chapter 635, Division 004, modifies or is in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, provides requirements for commercial sardine fishing in the Pacific Ocean. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations as defined in OAR 635-004-0016, the National Oceanic and Atmospheric Administration (NOAA), by means of Docket No. 1101110-18-1095-02 filed 03/01/11 for public inspection at <http://www.ofr.gov/inspection.aspx#special> with intent to publish in the Federal Register on day, March 4, 2011, announced management measures effective March 5 2011, including but not limited to, closure of the directed sardine fishery through June 30, 2011.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 38-2009, f. & cert. ef. 4-22-09; DFW 78-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 12-28-09; DFW 85-2009(Temp), f. 7-17-09, cert. ef. 7-18-09 thru 12-31-09; DFW 116-2009(Temp), f. & cert. ef. 9-23-09 thru 12-31-09; Administrative correction 1-25-10; DFW 79-2010(Temp), f. 6-11-10, cert. ef. 6-12-10 thru 6-30-10; Administrative correction 7-27-10; DFW 104-2010(Temp), f. 7-21-10, cert. ef. 7-22-10 thru 9-14-10; Administrative correction 9-22-10; DFW 133-2010(Temp), f. 9-22-10, cert. ef. 9-24-10 thru 12-31-10; Administrative correction 1-25-11; DFW 19-2011(Temp), f. 3-2-11, cert. ef. 3-4-11 thru 6-30-11

Rule Caption: Federal Inseason Actions: Adjustments to Fishery Management Measures for Commercial Groundfish Fisheries.

Adm. Order No.: DFW 20-2011(Temp)

Filed with Sec. of State: 3-3-2011

Certified to be Effective: 3-3-11 thru 8-29-11

Notice Publication Date:

Rules Amended: 635-004-0019

Rules Suspended: 635-004-0019(T)

Subject: This amended rule adopts in-season management measures adopted by the federal government for Pacific ocean commercial groundfish fisheries, including but not limited to: (a) changes in cumulative trip limits and RCA boundaries for commercial fixed gear fisheries; and (b) the annual tier limits for the limited entry fixed gear sablefish primary fishery north of 36° N. Latitude.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0019

Inclusions and Modifications

(1) OAR chapter 635, division 4, modifies or is in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.

ADMINISTRATIVE RULES

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G**, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations**.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 162/Monday, August 23, 2010, announced inseason management measures effective August 18, 2010, including, but not limited to, changes to cumulative trip limits for the limited entry fixed-gear sablefish fishery and lincod retention allowances for vessels fishing in the salmon troll fishery and operating outside of the non-trawl RCA.

(4) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 191/Monday, October 4, 2010, announced inseason management measures effective October 1, 2010, including, but not limited to, changes to cumulative trip limits for the limited entry non-whiting trawl fishery.

(5) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 232/Friday, December 3, 2010, announced inseason management measures effective December 1, 2010, including, but not limited to, changes in cumulative trip limits and RCA boundaries for limited entry non-whiting trawl fisheries and cumulative trip limits for commercial fixed gear fisheries.

(6) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service (NMFS) Public Notice/NMFS-SEA-10-22/December 27, 2010, announced inseason adjustments and new management measures effective January 1, 2010, including but not limited to:

- (a) Temporary closure of the limited entry trawl fishery;
- (b) Replacement of previously used trip limit tables for limited entry trawl gear with incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species;
- (c) Adjustment of the trawl RCA; and
- (d) Adjustments to RCAs and cumulative trip limits for the limited entry and open access fixed-gear fisheries.

(7) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service (NMFS) Public Notice/NMFS-SEA-11-01/January 7, 2011, announced inseason adjustments effective January 11, 2011, including but not limited to: the start of the Trawl Rationalization Program; fishing will begin under the Shorebased Individual Fishing Quota (IFQ) Program on January 11, 2011.

(8) Notwithstanding, the regulations as defined in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of Federal Register/Vol. 76, No. 41/Wednesday, March 2, 2011, announced inseason management measures effective March 1, 2011, including, but not limited to:

- (a) Changes in cumulative trip limits and RCA boundaries for commercial fixed gear fisheries; and
- (b) The annual tier limits for the limited entry fixed gear sablefish primate fishery north of 360 N. Latitude.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), f. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 29-2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09; DFW 136-2009, f. 10-28-09 thru 12-31-09; DFW 138-2009(Temp), f. & cert. ef. 11-2-09 thru 12-31-09; Administrative correction 1-25-10; DFW 25-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; DFW 59-2010(Temp), f. & cert. ef. 5-12-10 thru 11-7-10; DFW 109-2010(Temp), f. & cert. ef. 7-30-10 thru 11-30-10; DFW 122-2010(Temp), f. & cert. ef. 8-25-10 thru 11-30-10; DFW 138-2010(Temp), f. & cert. ef. 10-4-10 thru 12-31-10;

DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 160-2010(Temp), f. & cert. ef. 12-7-10 thru 12-31-10; DFW 167-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 1-31-11; DFW 2-2011(Temp), f. & cert. ef. 1-11-11 thru 7-9-11; DFW 20-2011(Temp), f. & cert. ef. 3-3-11 thru 8-29-11

Rule Caption: Emergency Commercial Crab Pot Retrieval Regulations for Natural Disasters.

Adm. Order No.: DFW 21-2011(Temp)

Filed with Sec. of State: 3-14-2011

Certified to be Effective: 3-15-11 thru 4-15-11

Notice Publication Date:

Rules Amended: 635-005-0055

Subject: This amended rule allows the retrieval of derelict commercial crab pot gear that was lost or unable to be retrieved, due to the recent natural disaster (tsunami) on the Oregon coast, by fishermen other than the owners as required by permanent rule, for up to one month from the effective date of the rule.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0055

Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) A single loop of untreated cotton not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(b) Any modification of the wire mesh on the top or upper half of the side of the pot, secured with a single strand of untreated cotton not heavier than 120 thread size, which, when removed, will create a minimum opening of at least 5 inches in diameter and will meet the following:

(A) The minimum opening may have not more than a single wire mesh (described as a "V") that protrudes into the opening provided that mesh extends into the opening a distance of not more than 2.5 inches, as measured from the perimeter of the opening along either edge of the protruding wire mesh, to serve as an anchor for the securing cotton. The panel containing the opening and the wire mesh acting as an anchor for the securing cotton must be constructed of a single wire no greater than 0.050 inches in diameter.

(B) Cotton must not be wrapped multiple times around wire mesh and may use no more than one knot securing the wire mesh at each end.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(7) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and the Department buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

ADMINISTRATIVE RULES

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of the first business day after 30 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C) If the Director finds that the loss of the crab pot buoy tags was:

(i) Due to an extraordinary event; and

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (7)(g)(E) of this rule, and a request for replacement tags under subsection (7)(g)(C) of this rule, the Director or the Director's designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (7)(g)(C). The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-006-1065(1)(g).

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(8) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(9) Possess on a vessel, use, control, or operate any crab pot which does not have a pot tag identifying the pot as that vessel's, a surface buoy bearing the Department buoy brand registered to that vessel and a Department buoy tag issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) To retrieve from the ocean, including the Columbia River, and transport to shore commercial crab pot(s) of another vessel which were lost, forgotten, damaged, abandoned or otherwise derelict; provided that:

(A) No more than twenty-five (25) such pots may be retrieved per trip during December 1 until the second Monday in June of the following year and no more than fifty (50) such pots may be retrieved per trip during the second Monday in June through August 28; and

(B) Upon retrieval from the ocean or Columbia River, the pot(s) must be un-baited; and

(C) Crab from the retrieved pot(s) shall not be retained; and

(D) Immediately upon retrieval of pot(s), the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot retrieval, number of retrieved crab pots, location of retrieval, and retrieved pot owner identification information; and

(E) Any retrieved crab pot(s) must be transported to shore during the same fishing trip that retrieval took place; or that:

(F) During August 29 through October 31, an unlimited number of such pots may be retrieved per trip and transported to shore during the same fishing trip; or

(c) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure, natural disaster or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(d) Under a waiver granted by the Department to allow one time change of buoy tags associated with a Dungeness crab permit transfer under OAR 635-006-1095(7) provided that:

(A) A request must be in writing and a waiver approved and issued prior to change of buoy tags.

(B) A copy of the waiver must be on board the vessel making the change of buoy tags. (Contact Department of Fish and Wildlife License Services, Salem for guidelines.)

(e) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing crab pots not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized to participate in the Dungeness crab fishery of an adjacent state.

(10) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(11) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(12) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(13) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(14) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 and 506.129

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08; DFW 29-2008(Temp), f. & cert. ef. 3-25-08 thru 8-31-08; DFW 59-2008(Temp), f. & cert. ef. 6-11-08 thru 8-28-08; DFW 98-2008(Temp), f. 8-19-08, cert. ef. 8-29-08 thru 10-31-08; Administrative correction 11-18-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 145-2008(Temp), f. 11-24-08, cert. ef. 12-1-08 thru 5-29-09; DFW 54-2009(Temp), f. 5-19-09, cert. ef. 5-29-09 thru 8-28-09; DFW 101-2009(Temp), f. 8-27-09, cert. ef. 8-29-09 thru 10-31-09; DFW 126-2009, f. & cert. ef. 10-7-09; DFW 114-2010, f. & cert. ef. 8-10-10; DFW 21-2011(Temp), f. 3-14-11, cert. ef. 3-15-11 thru 4-15-11

Department of Forestry Chapter 629

Rule Caption: Appeal and Hearings Under ORS 477.260.

Adm. Order No.: DOF 2-2011

Filed with Sec. of State: 3-14-2011

Certified to be Effective: 3-15-11

Notice Publication Date: 12-1-2010

Rules Amended: 629-001-0015, 629-001-0020, 629-041-0035

Rules Repealed: 629-001-0015(T), 629-001-0020(T), 629-041-0035(T)

Subject: Rules requiring that hearings and appeals under ORS 477.260 be conducted as contested case hearings in all cases are being deleted. A less rigid and more direct process for resolving disputes is substituted that allows the forestland owner access to the Board of Forestry's final decision-making in the majority of cases anticipated to occur under Chapter 477. Cases that require contested case proceedings under the Administrative Procedures Act will continue to follow that process.

Rules Coordinator: Sabrina Perez—(503) 945-7210

ADMINISTRATIVE RULES

629-001-0015

Rules of Procedure for Contested Cases; Applicability

The rules of procedure in this Division, OAR 629-001-0010 to 629-001-0055, apply to all contested cases before the board and State Forester, unless otherwise provided by law, and are in addition to the procedural requirements of the Attorney General's Model Rules adopted in 629-001-0005. Contested cases covered by these rules include, but are not limited to the following:

- (1) Appeal of civil penalties assessed under ORS 527.687;
- (2) Appeal of "any finding or order" under ORS 527.610 through 527.770 and 527.992;
- (3) Hearings requested by persons adversely affected or aggrieved by an operation requiring a written plan under ORS 527.700(3) through (9);
- (4) Appeal of temporary orders to cease further activity under ORS 527.680(3) and 527.680(4);
- (5) Appeal of repair orders issued under ORS 527.680(2)(b) and 527.690(1);
- (6) Appeal of orders prohibiting new operations under ORS 527.680(5);
- (7) Appeal by any person adversely affected by operations to be conducted under an approved or amended stewardship agreement under ORS 527.662;
- (8) Review of State Forester's proposal to conduct repair work at state expense under ORS 527.690(2); and
- (9) Appeals of decisions on land exchanges under OAR 629-033-0055.

Stat. Auth.: ORS 526.016(4), 527.687(3) & 527.715
Stats. Implemented: ORS 183.310 - 183.550
Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 2-2004, f. & cert. ef. 2-10-04; DOF 1-2011(Temp), f. & cert. ef. 1-7-11 thru 7-5-11; DOF 2-2011, f. 3-14-11, cert. ef. 3-15-11

629-001-0020

Requesting Hearings

- (1) All requests for hearing shall be made in writing, within the time period provided by statute or rule.
- (2) All requests shall specifically state the issues to be addressed and the relief sought.
- (3) Requests for hearing involving civil penalties shall comply with OAR 629-670-0310.
- (4) Requests for hearing involving a finding or order of the State Forester issued under ORS 527.610 to 527.770 shall comply with OAR 629-672-0200.
- (5) Requests for hearing by persons adversely affected or aggrieved by an operation approved under ORS 527.670(3) shall comply with OAR 629-672-0210.
- (6) Requests for hearing by persons adversely affected or aggrieved by a proposed or amended stewardship agreement shall comply with ORS 527.662(12).
- (7) Requests for hearing involving land exchanges shall comply with OAR 629-033-0055.

Stat. Auth.: ORS 526.016(4), 527.687(3) & 527.715
Stats. Implemented: ORS 183.310 - 183.550
Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 1-2011(Temp), f. & cert. ef. 1-7-11 thru 7-5-11; DOF 2-2011, f. 3-14-11, cert. ef. 3-15-11

629-041-0035

Appeals and Hearings Before the State Board of Forestry

- (1) Any request of an owner of grazing land or timberland to appeal a forest protection district budget to the State Board of Forestry under ORS 477.260(1) must be made in writing, to the State Forester, and must be received within 30 days after the date of the public budget meeting for the forest protection district.
- (2) In the written appeal in section (1) of this rule, the owner must specifically state the issues with the proposed forest protection district budget and the remedy sought.
- (3) Upon receipt of a written appeal of a proposed forest protection district budget, the forester shall:
 - (a) Inform the owner/appellant of the time and place the board will discuss and decide final approval of the district protection budget, pursuant to ORS 477.265;
 - (b) Ensure all written materials provided by the owner/appellant are distributed to board members for their consideration;
 - (c) Inform the owner/appellant whether there will be an opportunity for further oral or written comment to the board before its decision; and
 - (d) Inform the president of the appropriate forest protective association and the chair of the appropriate advisory budget committee appointed under ORS 477.240 about the budget appeal, the time and place the board

will discuss and decide final approval of the district protection budget, and whether there will be an opportunity for further oral or written comment to the board before its decision.

(4) A written request by an owner of grazing land or timberland subject to ORS 477.205 to 477.281 for a hearing before the State Board of Forestry under 477.260(2) must be received by the State Forester within 30 days of the date of a written notice, including but not limited to notice of proposed assessment for forest protection under 477.250(2), to which the person wants to comment or within 30 days of the date of an activity of the forester or board affecting the land.

(5) Upon receipt of a written request for hearing under section (4) of this rule, the forester shall:

(A) Contact the owner to schedule a time and place that the forester and owner may further review the matter, if the owner so desires;

(b) In the event the matter is not satisfactorily resolved, in the judgment of the owner, through the informal review in subsection (a) of this section, the forester shall:

(A) Prepare a report for the board describing the issue and proposing final resolution of the matter; and

(B) Inform the owner of the time and place the board will meet to discuss the matter, and the opportunity for the owner to provide input.

(6) Any final resolution by the board of the matter raised under section (4) of this rule shall be prepared as a final order, and any further appeal of the board's final action shall be as prescribed by ORS 183.484.

(7) Notwithstanding sections (5) and (6) of this rule, the forester may determine that a request for hearing under section (4) of this rule constitutes a contested case under ORS Chapter 183. In that event, a contested case hearing process will be followed and OAR 629-001-0005 to 629-001-0055 shall apply.

(8) Any other matters of forestland fire protection of a more general nature may be addressed to the board at any time the board schedules public comment at any of its meetings, in the manner and time prescribed by the chairperson of the board.

Stat. Auth.: ORS 183 & 526
Stats. Implemented: ORS 477.260 & 477.291
Hist.: DOF 8-1998, f. & cert. ef. 6-3-98; DOF 1-2011(Temp), f. & cert. ef. 1-7-11 thru 7-5-11; DOF 2-2011, f. 3-14-11, cert. ef. 3-15-11

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

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

Adm. Order No.: SSP 7-2011(Temp)

Filed with Sec. of State: 2-16-2011

Certified to be Effective: 2-16-11 thru 8-15-11

Notice Publication Date:

Rules Amended: 461-135-0400

Subject: OAR 461-135-0400 is being amended to extend the break in ERDC eligibility from 30 days to two calendar months under which to resume ERDC applicants are not required to have received REF, SPSS, or TANF benefits in the prior three months. The rule is also being amended to allow the Department to use a previously submitted application to determine eligibility if the application is still within the 45 day time limit and the applicant was selected from the reservation list to apply for child care benefits.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0400

Specific Requirements; ERDC

(1) The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules.

(2) To be eligible for ERDC, a filing group (see OAR 461-110-0350) must meet the requirements of all of the following subsections:

(a) At least one caretaker (see OAR 461-001-0000) must receive income from employment (other than self-employment, see OAR 461-145-0910), including employment through a work study program.

(b) The filing group must include a child who needs child care.

(c) The filing group must have an allowable child care need as described in OAR 461-160-0040. If there are two adults required to be in the filing group, and one of the adults is unemployed or self-employed, the

ADMINISTRATIVE RULES

unemployed or self-employed adult is considered available to provide child care, making the filing group ineligible, except in the following situations:

(A) The unemployed adult is physically or mentally unable to provide adequate child care.

(B) The unemployed adult is unavailable to provide child care while participating in the requirements of a case plan (see OAR 461-001-0025) other than requirements associated with post-secondary education.

(d) The filing group must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(e) The child needing child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(3) A filing group is not eligible for a child care payment for more than six calendar months if the filing group is unwilling to obtain a Certificate of Immunization Status for the child.

(4) The child care must be necessary to enable the caretaker to remain employed (other than self-employed).

(5) A filing group is not eligible for child care when the caretaker or parent in the filing group receives a grant for child care from the Oregon Student Assistance Commission for any month the grant is intended to cover, regardless of when the grant is received.

(6) To be eligible for ERDC program benefits, a new applicant with an effective date of October 1, 2010 or later under OAR 461-180-0070 must meet all of the requirements of sections (1) to (5) of this rule, and:

(a) At least one member of the ERDC program filing group must have received a partial or full month of REF, SFPSS, or TANF program cash benefits from the State of Oregon in at least one of the preceding three months; and

(b) No member of the ERDC program filing group may be concurrently receiving TANF program benefits except as allowed under OAR 461-165-0030.

(7) An applicant re-applying for ERDC benefits who had a break in ERDC program benefits of more than two calendar months at the time of re-application is considered a new applicant and must meet the requirements of sections (1) to (6) of this rule.

(8) The Department will place each applicant (including applicants under section (7) of this rule) who is sent a decision notice (see OAR 461-001-0000) of ineligibility for the ERDC program on a Child Care Reservation List.

(9) After the Department selects an applicant from the Child Care Reservation List:

(a) Within 30 days of the date on the selection letter the Department has sent, the applicant must contact the Department to request child care benefits as follows:

(A) The applicant may request child care benefits from the Department without completing a new application while the previous application is within 45 days of its date of request (see OAR 461-115-0030); or

(B) The selected applicant must submit a new application for child care benefits to the Department.

(b) If an applicant does not contact the Department as described in subsection (a) of this section, the applicant is removed from the Child Care Reservation List and must re-apply for the ERDC program to be placed back on the Child Care Reservation List with a new reservation number.

(10) An applicant with a valid and selected reservation number from the Child Care Reservation List found eligible for ERDC program benefits remains eligible until one of the circumstances in the following subsections occurs:

(a) The client has a break in ERDC program benefits of more than two calendar months; or

(b) The client no longer meets the ERDC program eligibility requirements, excluding the requirement to have received REF, SFPSS, or TANF program cash benefits from the State of Oregon in the preceding three months.

Stat. Auth.: ORS 409.050, 411.060, 411.070

Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.010, 411.060, 411.070, 411.122, 411.141, 418.485, 2009 OL ch. 827

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 34-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 7-2011(Temp), f. & cert. ef. 2-16-11 thru 8-15-11

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

Adm. Order No.: SSP 8-2011(Temp)

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11 thru 8-28-11

Notice Publication Date:

Rules Amended: 461-115-0530, 461-135-1120, 461-155-0290, 461-155-0291, 461-155-0295

Subject: OAR 461-115-0530 about Oregon Health Plan (OHP) program certification periods is being amended to lengthen Oregon Health Plan - Adults (OHP-OPU) program certification period (the period for which a client is certified eligible for a program.)

OAR 461-135-1120 about when an Oregon Health Plan - Adult (OHP-OPU) program benefit group (the individuals who receive benefits) must pay a monthly premium to receive program benefits is being amended to restate how the Department determines when a premium payment is paid on time or past due, and to state when a premium payment is in arrears. This rule also is being amended to cross-reference other administrative rules for the definitions of terms used in this rule and to italicize the defined terms throughout the rule.

OAR 461-155-0290 about the income standards in the Qualified Medicare Beneficiaries - Basic (QMB-BAS) program, OAR 461-155-0291 about the income standards in the Qualified Medicare Beneficiaries - Disabled Worker (QMB-DW) program, and OAR 461-155-0295 about the income standards in the Qualified Medicare Beneficiaries - Specified Limited Medicare Beneficiary (QMB-SMB), and Qualified Medicare Beneficiaries - Qualified Individuals (QMB-SMF) programs are being amended to reflect the annual changes in the income standards based on changes to the federal poverty level. OAR 461-155-0295 is also being amended to clarify the income standards being applied.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0530

Certification Period; HKC, OHP

(1) For an HKC, OHP-CHP, OHP-OPC, OHP-OPU, or OHP-OP6 program applicant not currently receiving BCCM, EXT, HKC, MAA, MAF, OHP, OSIPM, REFM, SAC, or child welfare medical program benefits, the initial *certification period* (see OAR 461-001-0000) begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following twelve calendar months. Any other HKC, OHP-CHP, OHP-OPC, OHP-OPU, or OHP-OP6 program *certification period* is for twelve months.

(2) A client's HKC or OHP program benefits end before the end of the *certification period* if the client no longer meets the program eligibility requirements or the program ends.

(3) To establish a new *certification period*, an HKC or OHP program *benefit group* (see OAR 461-110-0750) must complete a redetermination of eligibility and be found eligible.

(4) When an individual wishes to be added to an OHP program *benefit group* already certified for OHP program, the entire group must establish a new *certification period*. If, as a result of the new redetermination process, the new *filing group* (see OAR 461-110-0400) is ineligible, the original *benefit group* remains eligible for the remainder of its *certification period*.

(5) When an HKC program *certification period* is established, the HKC program subsidy may not be reduced or eliminated during the *certification period*.

(6) When an individual wishes to be added to an HKC program *benefit group* already certified for HKC program benefits, the entire *benefit group* must be redetermined.

(a) If as a result of the new redetermination process, the new HKC program countable (see OAR 461-001-0000) income of the *filing group* increases from less than 251 percent of the Federal Poverty Level (FPL) and is equal to or greater than 251 percent of the FPL, the original HKC program *certification period* and subsidy is not affected. The individual is added to the existing *benefit group*. The new *benefit group* remains eligible at the same subsidy level for the remainder of the original *certification period*.

(b) If as a result of the new redetermination process, the new HKC program *countable* income of the *filing group* decreases to less than 251

ADMINISTRATIVE RULES

percent of the FPL, a new *certification period* is established for the new *benefit group*.

(7) If a member leaves an HKC or OHP program *benefit group*, that individual and other members of the *benefit group* remain eligible for the remainder of the *certification period*.

(8) If a current OHP program client moves into another current OHP program *filing group*, that client and the members of that *filing group* who are OHP program eligible are combined into one *benefit group* if the client is required to be in the current household's OHP program *filing group*. The *certification period* for the new *benefit group* ends the later of the date the current client's *certification period* or the filing group's period was set to end.

(9) If a current HKC program client moves into another current HKC program *filing group*, that client and the members of that *filing group* who are HKC program eligible are combined into one *benefit group* if the client is required to be in the current household's HKC program *filing group*. The *certification period* for the new *benefit group* ends the later of the date the current client's *certification period* or the filing group's period was set to end.

(10) A pregnant woman found eligible for the OHP OPP program is not assigned a *certification period* — she is eligible for the period described in OAR 461 135 0010.

Stat. Auth.: ORS 409.050, 411.060, 411.404 & 414.231
Stats. Implemented: ORS 409.010, 411.060, 411.404, 414.065 & 414.231
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 9-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

461-135-1120

Premium Requirement; OHP-OPU

In the OHP-OPU program, a monthly premium must be paid when the *benefit group* (see OAR 461-110-0750) includes at least one non-exempt (HPN) client (see OAR 461-135-1100) as follows:

(1) The following HPN clients are exempt from the premium requirement:

- (a) A member of a federally recognized Indian tribe, band, or group.
- (b) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act.
- (c) An individual eligible for benefits through an Indian Health Program.

(d) An individual eligible for the CAWEM program (see OAR 461-135-1070).

(e) An individual in a *need group* (see OAR 461-110-0630) with *countable* (see OAR 461-001-0000) income that is 10 percent or less of the federal poverty level in at least one of the following situations:

(A) Using income assigned to the *budget month* (see OAR 461-001-0000) at certification or recertification;

(B) Using income assigned to the *budget month* from the current certification for the *need group* formed when an HPN client leaves the filing group (see OAR 461-110-0310 and 461-110-0400); or

(C) Using income assigned to the *budget month* from the current certification when multiple OHP program cases are combined into one case.

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

(3) Each non exempt client in the *benefit group* is responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the *certification period* (see OAR 461-001-0000) unless the conditions under at least one of the following subsections apply:

- (a) An HPN client becomes pregnant.
- (b) An HPN client becomes eligible for another program (for example, MAA or OSIPM).
- (c) An HPN client leaves the filing group.
- (d) OHP program cases are combined during their certification periods.
- (e) An HPN client's exemption status changes.
- (f) An HPN client is no longer a member of the *benefit group*.

(5) A premium is considered paid on time when the payment is received by the Oregon Health Plan billing office on or before the due date which is the 20th of the month for which the premium was billed. The day the payment arrives in the billing office's post office box when sent via mail or the day it is submitted via telephone or electronically to the billing office is the date it is received. A premium not paid on time is in arrears. A pre-

mium is past due when it has not been paid within six months of the due date. A client will not be disenrolled during his or her *certification period* for premiums in arrears or past due premiums. All premiums in arrears and past due premiums for a filing group must be paid before a client can establish a new *certification period*.

(6) For any billed premium, the Department cancels the arrearage if the applicant is otherwise eligible for the OHP program and one of the following subsections applies:

(a) The arrearage was incurred while the client was exempt from the requirement to pay a premium; or

(b) The applicant is exempt from the requirement to pay premiums under subsection (1)(e) of this rule.

(7) The Department cancels any premium arrearage over three years old.

Stat. Auth.: ORS 411.060, 411.404, 411.431 & 411.432
Stats. Implemented: ORS 411.060, 411.404, 411.431, 411.432 & 414.025
Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 19-2003(Temp), f. & cert. ef. 7-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 3-2004(Temp), f. & cert. ef. 2-19-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

461-155-0290

Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2011 federal poverty level. [Table not included. See ED. NOTE.] [ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060 & 411.070
Stats. Implemented: ORS 411.060 & 411.070
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

461-155-0291

Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2011 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060 & 411.070
Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

461-155-0295

Income Standard; QMB-SMB, QMB-SMF

(1) Eligibility for QMB-SMB requires income greater than 100 percent (see OAR 461-155-0290) but less than 120 percent of the federal poverty level. The adjusted income standard for QMB-SMB is 120 percent of the 2011 federal poverty level. [Table not included. See ED. NOTE.]

(2) Eligibility for QMB-SMF requires income equal to or greater than 120 percent (see section (1) of this rule) but less than 135 percent of the federal poverty level. The adjusted income standard for QMB-SMF is 135 percent of the 2011 federal poverty level. [Table not included. See ED. NOTE.] [ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060 & 411.070
Stats. Implemented: ORS 411.060 & 411.070
Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert.

ADMINISTRATIVE RULES

ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 8-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

Department of Oregon State Police
Chapter 257

Rule Caption: Housekeeping change to keep rules in line with ODOT and FHwy definitions.

Adm. Order No.: OSP 3-2011

Filed with Sec. of State: 3-8-2011

Certified to be Effective: 3-8-11

Notice Publication Date: 2-1-2011

Rules Amended: 257-050-0200

Subject: Replaces "Traffic Control on State Highways for Short Term Work Zones" with current terminology "Oregon Temporary traffic Control Handbook".

Rules Coordinator: Cort Dokken—(503) 934-0228

257-050-0200

Mandatory Equipment Standards for Tow Trucks/Safety Related Requirements

(1) All tow vehicles operated by a qualified tow business under a letter of appointment under these rules shall have the following minimum equipment:

(a) Minimum of two (2) lights mounted behind the cab of the tow truck controlled by a dedicated on/off switch. This lighting must be capable of illuminating the area of the tow under darkened, foggy or dangerous conditions;

(b) An FCC licensed two-way radio, in conformance with Part 93 FCC Regulations, or cellular phone (citizen band radios so not meet this requirement);

(c) Cables or wire ropes as called for in each class. Cable/wire rope lengths shall be measured from the point of attachment on each drum. Cables/wire ropes shall meet the following requirements.

(A) Each cable shall be capable of being fully extended from and fully wound onto its drum;

(B) Cables or wire ropes shall be free from the following defects or conditions:

(i) There shall be no more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay;

(ii) There shall be no evidence of any heat damage from any cause;

(iii) There shall be no end attachments that are cracked, deformed, worn or loosened;

(iv) Where a wire rope is attached to a hook with clamps instead of being swaged, a minimum of three clamps shall be used on end attachments. Clamps shall be spaced at least six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the rope. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size.

(d) Two revolving or intermittent red or amber lamps with 360 degree visibility. The truck may also be equipped with flashing amber lights, which may be used in conjunction with the red lamp(s). Such lighting will not be used when responding to a call, but only at the scene when necessary to warn approaching traffic of impending danger.

(e) A broom and a shovel. The broom shall be at least twelve inches wide and have a handle at least four feet long. The shovel shall be flat scoop type with a minimum width of seven inches and overall length of a least three feet. Tow truck driver shall clean accident/incident scenes of all vehicle glass and debris required by ORS 822.225.

(f) A tow sling, wheel lift, car carrier or other comparable device made of a material designed to protect vehicles.

(g) Motorcycle Tows — A tow sling, wheel lift, car carrier or other comparable device that has the ability to tow motorcycles.

(h) One fire extinguisher, 25 BC rating or equivalent.

(i) One snatch block, or equivalent block, in good working condition for each working line.

(j) Commercially manufactured dollies on all class A recovery vehicles and class B recovery vehicles up to 26,000 GVW. Commercially man-

ufactured dollies are required for all tow class categories when dollies are used and/or defined for use up to 26,000 GVW.

(k) All class A and B tow vehicles that are inclusive of class DA and DB tow vehicles shall carry at least one pinch bar, or an equivalent device. The bar or equivalent device must be 4 feet in length and 3/4 inch in diameter, and the ends may either be tapered or flattened.

(l) Portable lights for unit being towed including, but not limited to, tail lights, stop lights and directional signals.

NOTE: Class D tow trucks roll backs are exempt from this section if not towing a second vehicle.

(m) All tow vehicles must have a minimum of two "wreck ahead" signs to be placed by tow truck drivers as required by ORS 822.220. The signs shall conform to all specifications as set forth in the Oregon Department of Transportation's publication "Oregon Temporary Traffic Control Handbook" (OTTCH) as adopted by OAR 734-020-0005 and the "Manual Uniform of Traffic Control Devices."

(n) All tow trucks and equipment used to perform services under these rules shall be maintained in good working order. Failure to maintain equipment shall be cause for suspension and removal of the defective equipment from the non-preference list. If equipment does not meet the Department's criteria for non-preference tows under these Administrative Rules, the Department may suspend and remove the equipment from the non-preference list.

(2) Class A Tow Trucks (Small): Tow trucks shall be provided that are capable of towing and recovery operations for passenger cars, pickup trucks, small trailers or equivalent vehicles. All equipment used in conjunction with the tow truck must be compatible with the manufacturer's basic boom rating and must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Ten thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Dual tires on the rear axle or duplex type tires, referred to as super single with a load rating that is comparable to dual tire rating;

(c) Six ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(d) A minimum of one hundred (100) feet of 3/8-inch continuous length cable; and

(e) A wheel lift for this class of tow truck.

(3) Class B Tow Trucks (Medium): Class B tow trucks shall be capable of towing and recovery operations for medium size trucks, trailers, motor homes or equivalent vehicles. In addition to standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Ten ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Class B tow trucks in excess of 26,000 pounds GVW will not be required to carry dollies when used for heavy towing;

(d) A wheel lift for this class of tow truck; and

(e) A minimum of 150 feet of seven-sixteenths inch cable.

(4) Class C Tow Trucks (Large): Tow trucks that are capable of towing and recovery operations for large trucks, trailers, motor homes or equivalent vehicles. In addition to the standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(b) Twenty-five ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Minimum of 150 feet of cable, five-eighths inch diameter;

(d) Air brakes and an air system capable of supplying air to the towed unit;

(e) Portable dollies are not required;

(f) Tandem rear axle truck chassis (three axle truck);

(g) May include an under-lift for this class of tow truck.

(h) Exception to commercially manufactured tow vehicles (for Class C recovery tow trucks/equipment only). Class C Recovery Tow Equipment that has been approved by the Oregon State Police to be used on the Department's non-preference towing list prior to the adoption of these Administrative Rules, but does not meet the criteria outlined under these Administrative Rules, may continue to be used for the Department's non-preference tows if the following conditions are met:

(A) The equipment must first be inspected and approved by the Oregon State Police;

ADMINISTRATIVE RULES

(B) If a qualified tow business has the only "Class C" tow truck in a zone, then the qualified tow business must replace the equipment after 5 years from the adoption date of these rules. The Oregon State Police reserve the option to extend the time period for the use of Class C Towing Equipment under this exception based on operational need by the Department; and

(C) If it is determined at any time that the equipment does not meet Oregon State Police criteria for towing under these Administrative Rules, then the Oregon State Police can remove the equipment from the non-preference list.

(5) Class D Tow Trucks (Trucks and equipment in this class are not considered recovery vehicles):

(a) Tow trucks and other vehicles in this class are to be used for towing and/or hauling purposes only. No recovery can be performed by equipment in this class;

(b) Equipment in this class capable of towing/hauling passenger cars, pickup trucks, trailers, trucks or equivalent vehicles, and debris is based on the size and ratings of the Class D tow unit used. All equipment used in conjunction with the tow truck must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(A) Class D-A:

(i) Eleven thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of fifty feet three-eighths inch continuous length cable;

(iv) May include wheel lift, if chassis GVW is over 14,500 pounds; and

(v) If a Metro unit, dollies and a wheel lift.

(B) Class D-B:

(i) Seventeen thousand pounds minimum manufacturer's gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of 50 feet of three-eighths inch cable;

(iv) May include wheel lift; and

(v) If a Metro unit, dollies and a wheel lift.

(C) Class D-C:

(i) Twenty-seven thousand five hundred pounds minimum manufacturer's gross vehicle weight rating or equivalent.

(ii) Minimum of 50 feet of cable, five-eighths inch diameter.

(iii) Tandem rear axle truck chassis (three axle truck).

(iv) May include wheel lift; and

(v) Air brakes and an air system capable of supplying air to the towed unit.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 3-2011, f. & cert. ef. 3-8-11

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Department of Oregon State Police, Office of State Fire Marshal Chapter 837

Rule Caption: The purpose is for updating standards, clarification of language, and housekeeping items.

Adm. Order No.: OSFM 1-2011

Filed with Sec. of State: 3-15-2011

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Rules Amended: 837-012-0510, 837-012-0515, 837-012-0520, 837-012-0525, 837-012-0535, 837-012-0540, 837-012-0550, 837-012-0555, 837-012-0560, 837-012-0565

Subject: These changes adopt the current edition of the Oregon Fire Code and National Fire Protection Association Standards. Other changes pertain to Oregon fireworks wholesale requirements and minor language updates.

Rules Coordinator: Pat Carroll — (503) 934-8276

837-012-0510

Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-012-0500 through 837-012-0570, the following definitions apply:

(1) "Agricultural Fireworks" means Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.

(2) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) "Carton, Container, or Case" means any box, parcel, bundle, or other package used to hold or contain Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for purposes of transportation and storage. The term does not include:

(a) The wrapping and packaging used to hold or contain a single or small number of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks; or

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(4) "Domicile" means a Person's legal home; the particular place that a Person intends to make the Person's fixed and permanent home and abode.

(5) "Exempt Fireworks" means Novelties and Trick Noisemakers.

(6) "Fireworks" has the meaning provided in ORS 480.110(1). The term includes Retail Fireworks, Public Display Fireworks and Agricultural Fireworks. The term does not include Exempt Fireworks.

(7) "Individual" means a single human being.

(8) "Individual Member of the General Public" means:

(a) For Persons in Oregon, any Person who has not been issued a Wholesale Permit, a general, limited or special effects public display permit, a retail permit, or an agricultural permit by the Office of State Fire Marshal.

(b) For Persons outside of Oregon, any Person who has not been issued a license or permit when such a license or permit is required, authorizing the Person to Sell, purchase, obtain, transport, possess, use or discharge Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(9) "In-state Wholesaler" means a Wholesaler who owns, possesses, or occupies a Wholesale Site located in Oregon.

(10) "Local Fire Authority" means the local fire official having jurisdiction over the Wholesale Site and Wholesale Operations.

(11) "Manager" means the Individual identified on the Permit Application who is responsible for, and directs the operations at, the Wholesale Site.

(12) "NFPA" means the National Fire Protection Association.

(13) "Novelties and Trick Noisemakers" means those items described in ORS 480.110(1)(a) and (b) and NFPA 1124, Section 1.4, 2003 Edition. It also means Exempt Fireworks.

(14) "Out-of-State Wholesaler" means a Wholesaler who owns, occupies, or possesses a Wholesale Site located outside of Oregon.

(15) "Permit Application" means the application forms and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a Wholesale Permit.

(16) "Public Display Fireworks" means Fireworks that are authorized under a general, limited, or special effects public display permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(17) "Residence" means the particular dwelling place where a Person lives and has a present intent to remain for a period of time.

(18) "Resident" means any Person who occupies a dwelling in a state and has a present intent to remain in the state for a period of time.

(19) "Retail Fireworks" means items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term includes a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(20) "Retailer" means any Person who, Sells, transfers, or provides by any other means, or intends to Sell, transfer or provide by any other means, Retail Fireworks to Individual Members of the General Public.

(21) "Sales Representative" means an Individual who is an employee of the Wholesale Permit holder and is authorized to conduct sales for the Wholesale Permit holder.

(22) "Sell" means to transfer possession of property from one Person to another Person for consideration.

(23) "Wholesale Operations" means the sale of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks and related activities, including the purchase, possession, storage and transportation of such Fireworks.

ADMINISTRATIVE RULES

(24) "Wholesale Permit" means the official written document issued by the Office of State Fire Marshal that authorizes the purchase, transport, possession, packaging, storing and sale of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks when otherwise in compliance with all applicable requirements of ORS 480.110 through 480.165, OAR Chapter 837, Division 12, and any other applicable federal, state and local laws, rules and regulations.

(25) "Wholesale Site" means the location where a Wholesaler's sales and storage facilities are operated and maintained.

(26) "Wholesaler" means any Person who Sells or provides by any other means, or intends to Sell or provide by any other means, Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

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

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 4-2006, f. & cert. ef. 3-10-06; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0515

General

(1) An Oregon wholesale permit issued by the State Fire Marshal must be obtained before any business or individual may Sell, provide by any other means, or intend to Sell or provide by any other means, Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural fireworks to:

- (a) Holders of permits issued by the State Fire Marshal, or
- (b) Individual members of the general public.

(2) Wholesalers desiring to engage in any Fireworks activities, including retail sales, agricultural use, or public displays must meet all applicable requirements in ORS 480.110 through 480.165 and OAR chapter 837, division 12, including those pertaining to obtaining permits for such activities from local, federal, and state authorities.

(3) A Wholesale Permit holder may not Sell or provide by any other means Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for shipment or transport in or into the State of Oregon, to any Person who does not possess and present to the Wholesaler for inspection at the time of sale, a valid permit issued by the Office of State Fire Marshal authorizing the holder of the permit to purchase, obtain, possess, use, discharge, transport, store, distribute, or Sell Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(4) Wholesale Permit holders must comply with all applicable federal, state, and local laws, rules and regulations pertaining to Fireworks, including:

- (a) ORS 480.110 through 480.165; and
- (b) OAR chapter 837, division 12

(5) Wholesale Permit holders must notify the Office of State Fire Marshal, in writing, within two weeks of the date of change of:

- (a) Identity of the Manager;
- (b) The Wholesale Permit holder's mailing address or telephone number;
- (c) Ownership of the Wholesale Site;
- (d) Ownership of the Wholesale Operation; or
- (e) The addition, or subtraction, of a Sales Representative for the Wholesale Permit holder.

(6) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR chapter 837, division 12. Exempt Fireworks may be sold and purchased at any time, and do not require a permit.

(7) Wholesale Permit holders, who provide 1.3g Fireworks, must provide, at a minimum, one general operator certification training course annually as required by OAR 837-012-0780.

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

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85; FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0125; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0520

Wholesale Permit Applications

(1) Any In-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, within Oregon, or from Oregon for delivery into another state, must first apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(2) Any Out-of-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, in or into Oregon must first apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(3) A separate Wholesale Permit must be applied for and obtained for each Wholesale Site that may conduct Wholesale Operations within, from, or into Oregon.

(4) The application for a Wholesale Permit must be made on a form provided by the Office of State Fire Marshal.

(5) All information provided by the applicant on the Permit Application must be true and correct to the applicant's knowledge.

(6) In addition to completion of the Wholesale Permit application forms, applicants must submit:

(a) A copy of a current photographic identification card of all applicants. The Office of State Fire Marshal may only accept photo identification issued by the Department of Motor Vehicles in the applicant's state of residency. For purposes of this rule, if the applicant is a corporation, the applicant must submit copies of photographic identification of all the corporate officers. If the applicant is a partnership, the applicant must submit copies of the photographic identification of all partners.

(b) A description of the types, pursuant to United States Department of Transportation classification, and the maximum quantities, by total gross weight, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to be stored at the Wholesale Site for which a Wholesale Permit has been applied;

(7) As part of the Permit Application process, the applicant must obtain the approval of the Local Fire Authority and the local building official prior to submitting their application to the Office of State Fire Marshal.

(8) Exception to 837-012-0520(7) If the applicant's Wholesale Site address was continuous during the year preceding the year for which the Wholesale Permit renewal is sought, the applicant is required only to re-submit to the Office of State Fire Marshal, as part of the Wholesale Permit renewal application, the approval of the Local Fire Authority.

(9) As part of the Permit Application, Wholesale Permit applicants who intend to Sell or provide 1.3G Fireworks must submit to the Office of State Fire Marshal a copy of their appropriate license issued by BATFE.

(10) Additional wholesale requirements pertaining to fireworks include:

(a) Provide \$1M premises liability insurance as part of wholesale permit application;

(b) Compliance with federal DOT insurance requirements of \$5,000,000 per shipment of 1.3G fireworks and \$1,000,000 per shipment of 1.4G fireworks;

(c) Hazardous Material Certificate of Registration required by 49 CFR Part 107, Subpart G; as part of wholesale permit application;

(d) File Federal DOT MCS 90, MCS 150B;

(e) Provide proof of wholesale permit to offer manufactured pyrotechnics into commerce as required by ORS 480.120;

(d) Compliance with BATF 5400;

(e) Annually file the Oregon Hazardous Substance Possession Survey;

(f) Submit a Certificate of Occupancy for all buildings as part of wholesale permit application;

(g) Compliance with NFPA 68 guide for explosive venting Hazardous group H as part of wholesale permit application;

(h) Compliance with NFPA 1124 manufacturing and storage requirements;

(i) Any structures utilized as storage exceeding 30 days must be classified as permanent storage and meet NFPA 1124 requirements.

(j) Compliance with Oregon Structural Building Code Section 307;

(k) Compliance with Oregon OSHA requirements.

(11) "BE" and "EX" numbers must be obtained before any manufactured pyrotechnic device is entered into commerce or transported.

(12) Applicants must submit the completed Permit Application to the Local Fire Authority for review and signature approving the Wholesale Site prior to submission of the Permit Application to the Office of State Fire Marshal.

(13) Permit Applications must be signed by all applicants.

ADMINISTRATIVE RULES

(a) If the applicant is a partnership, the application must be signed by every partner.

(b) If the applicant is a corporation, the application must be signed by an officer of the corporation.

(c) If the applicant is an Out-of-State Wholesaler, the application must be signed by the applicant and the Manager.

(14) Permit Applications may not be submitted to the Office of State Fire Marshal prior to October 1 of the year preceding the year for which the Wholesale Permit is sought.

(15) Permit Applications must be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than December 18 of the year preceding the year for which the Wholesale Permit is sought. If December 18 falls on a day when a postmark cannot be obtained, applications must be postmarked on the preceding business day when a postmark can be obtained. If December 18 falls on a day when the Office of State Fire Marshal is closed, and the applicant wishes to hand deliver their application, it must be delivered to the Office of State Fire Marshal at the Salem office on the preceding business day. However, due to limited resources in the fireworks program, it is recommended that wholesale fireworks permit applications be postmarked or submitted to the OSFM by December 1 of the year preceding the year for which the permit is sought.

(16) Relocation of the Wholesale Site requires submission of a new Permit Application and Wholesale Permit fee.

(17) Only one Wholesale Permit may be applied for or issued for each Wholesale Site.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110-480.165
Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85, FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0120; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 1-2008(Temp), f. & cert. ef. 1-25-08 thru 7-3-08; OSFM 2-2008, f. 4-3-08, cert. ef. 5-1-08; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0525

Wholesale Permits

(1) Within 30 days of receipt of a properly completed and timely submitted Permit Application and Wholesale Permit fee, the Office of State Fire Marshal must issue or propose to deny the Wholesale Permit.

(2) The Office of State Fire Marshal may not approve a Permit Application or issue a Wholesale Permit without the prior approval of the Local Fire Authority.

(3) The Office of State Fire Marshal will assign a unique number to each Wholesale Permit issued.

(4) The Office of State Fire Marshal will mail the original Wholesale Permit to the applicant at the mailing address listed on the Permit Application.

(5) Wholesale Permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen or destroyed. Written requests must be signed and dated by the applicant pursuant to OAR 837-012-0520(12).

(6) The issuance of a Wholesale Permit does not in any way constitute approval by the Office of State Fire Marshal of any Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks purchased, sold or provided by any other means pursuant to the permit.

(7) A Wholesale Permit allows the holder of the permit to engage in the purchase, transportation, possession, storage and sales of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, when those activities are otherwise in conformance with applicable requirements of ORS 480.110 through 480.165, OAR Chapter 837, Division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to Fireworks.

(8) A Wholesale Permit authorizes the holder of the permit to Sell or provide by any other means, Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, within or into Oregon, only to holders of:

- (a) General, limited, or special effects public display permits;
- (b) Retail permits;
- (c) Wholesale Permits; or
- (d) Agricultural use permits.

(9) A Wholesale Permit does not authorize the sale or provision by any other means, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to Individual Members of the General Public.

(10) The Wholesale Permit and permit number issued by the Office of State Fire Marshal are valid from January 1 to December 31 of the year for which they are issued. All Wholesale Permits and permit numbers expire on December 31 of the year in which they are valid. A Wholesale Permit holder may be issued the same permit number every year if the permit holder applies for and obtains a Wholesale Permit in consecutive years.

(11) The Wholesale Permit is not transferable to another Person nor can another Person perform any activities authorized by the Wholesale Permit unless that Person is listed in the Permit Application.

(12) Only the Wholesale Permit holder and the employees of the Wholesale Permit holder may engage in Wholesale Operations authorized by the Wholesale Permit.

(13) The Wholesale Permit holder's name, mailing address and Wholesale Permit number must be imprinted or affixed by the Wholesale Permit holder to:

(a) All sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the Wholesale Permit holder in conducting its Wholesale Operations; and

(b) The outside of all Cartons, Containers, or Cases of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks being shipped, transported, or otherwise provided by the Wholesale Permit holder.

(14) All shipments by a Wholesale Permit holder of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks must show on the outside of each Carton, Container or Case, sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the Wholesale Permit holder the full name and permit number of the permit holder to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being provided.

(a) If the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being shipped, transported or otherwise provided in or into Oregon, the shipment must show an Office of State Fire Marshal-issued permit number.

(b) If the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being shipped, transported or otherwise provided from Oregon for delivery into another state, the shipment must show the appropriate license or permit number, if the Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are being provided is required under the laws of the other state to possess a license or permit.

Stat. Auth.: ORS 476, 478 & 480
Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85, FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Amended and renumbered from 837-012-0120; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0535

Denial, Suspension and/or Revocation of Wholesale Permit

(1) The Office of State Fire Marshal may deny, suspend or revoke a Wholesale Permit if a Wholesale Permit holder, or an applicant for a Wholesale Permit, fails to comply with ORS 480.110 through 480.165 or OAR Chapter 837, Division 12.

(2) The period of denial, suspension or revocation may not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal may consider the following criteria:

(a) The severity of the violation or violations and the impact on public safety, particularly whether the circumstances of the violation or violations presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation or violations were willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the Wholesale Permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation or violations.

(3) Suspension or revocation of a Wholesale Permit may include suspension or revocation of the current permit and the right to apply for a renewal permit.

(4) The Office of State Fire Marshal may deny, suspend or revoke all Wholesale Permits issued to a Wholesale Permit holder or applicant for each of the permit holder's or applicant's Wholesale Sites pursuant to OAR 837-012-0520(3).

ADMINISTRATIVE RULES

(5) At any time after the expiration of any period of denial of a Permit Application, or suspension or revocation of a Wholesale Permit, imposed by the Office of State Fire Marshal, the applicant or Wholesale Permit holder subject to the denial, suspension or revocation may submit a Permit Application to the Office of State Fire Marshal. The Office of State Fire Marshal must either grant or deny the application pursuant to OAR 837-012-0525(1). If granted, the Wholesale Permit is valid for the remainder of the calendar year.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0540

Wholesale Sites Located in Oregon

(1) The location of a Wholesale Site may not present a significant risk to surrounding life and property or to the ability of local emergency response agencies to respond.

(2) The Wholesale Site must be designed, constructed, operated, maintained and separated in conformance with the applicable requirements of:

(a) NFPA 1124, Code for the Manufacture, Transportation, and Storage of Fireworks, 2003 Edition (The separation distances shall be met as required by NFPA 1124, 2003 Edition. All Fireworks stored at the Wholesale Site shall be considered in calculating the separation distances);

(b) NFPA 68, Guide for Explosion Venting, 2002 Edition;

(c) Oregon Structural Specialty Code, 2004 Edition;

(d) Oregon Fire Code, 2010 Edition;

NOTE: Wholesale Sites that are currently approved may not be required to be altered or updated to comply with these standards.

(3) Temporary structures, including tents, vehicles and trailers of less than 10,000 pound gross carrying capacity, and buildings, structures, vehicles, or trailers not approved by the Local Fire Authority and the Office of State Fire Marshal may not be used as Wholesale Sites.

(4) Security for storage facilities must be provided by construction and maintenance of a solid or chain-link fence, at least six feet high with locking gates, that surrounds the facility. Security may be provided by an alternative means only if first approved by the Local Fire Authority.

(5) Smoking, other ignition sources, or the use of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks may not be allowed within 100 feet of the storage or sales facilities.

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

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0550

Sales to Out-of-State Residents by In-State Wholesalers

(1) In addition to any other requirements set forth in these rules, the sale or provision by any other means, of Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks to out-of-state Residents must comply with the laws of the state where the Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are to be sold or provided resides and the laws of the state where the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are to be transported or shipped, if the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are to be transported or shipped to a state other than where the Person resides.

(2) The Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are sold or otherwise provided must present to the Wholesale Permit holder for inspection, at the time of sale or provision, the original or a certified copy of the Person's valid license or permit when such license or permit is required by the laws of the other state.

(3) The Person to whom the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are sold or otherwise provided must present to the Wholesaler for inspection, at the time of sale or provision, proof of the Person's identity. Such proof must be an official, signed and sealed photo-identification card, such as a driver's license issued by the Person's state of Residence or Domicile.

(4) Wholesale Permit holders with Wholesale Sites located 50 miles or less from the borders of the State of Oregon, must make a good faith

effort to determine if customers are Oregon Residents or out-of-state Residents.

(5) Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks may not be sold or otherwise provided to out-of-state Residents whose state of Residence prohibits the sale, provision, purchase, possession, or use of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks. Exception: This does not apply to an out-of-state resident that has applied for and been granted a permit pursuant to ORS 480.110 through 480.165 and OAR chapter 837, division 12.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0555

Prohibited Acts and Limitations

(1) Wholesale Permit holders may not create, maintain, or allow the existence of a fire hazard at any location under their control where Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks are stored, transported, sold, or used.

(2) No Wholesale Permit holder may Sell or provide by any other means, including donation:

(a) Fireworks or Public Display Fireworks to any Individual under 21 years of age;

(b) Retail Fireworks or Agricultural Fireworks to any Individual under 18 years of age if the sale or provision of Retail Fireworks or Agricultural Fireworks is to an Individual in Oregon;

(c) Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks to any Person who does not possess a valid permit for such Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks issued by the Office of State Fire Marshal, or if required, a valid license or permit issued by the equivalent agency in the Person's state of Residence or the state of destination for the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks;

(d) Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks which have been altered in any manner.

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR Chapter 837, Division 12, or who has had any Fireworks permit or operator certificate suspended, denied or revoked, may participate in any manner in Wholesale Operations, for a period not to exceed three years.

(4) A Wholesale Permit holder may not employ, or have direct business ties with, any Person whose Wholesale or Retail Fireworks Permit or operator certificate is revoked or suspended.

(5) No Individual under 18 years of age may participate in any manner in Wholesale Operations involving Fireworks, Retail Fireworks, or Agricultural Fireworks.

(6) No Individual under 21 years of age may participate in any manner in Wholesale Operations involving Public Display Fireworks.

(7) A Wholesale Permit holder may not fill out, complete or submit a general, limited, or special effects public display permit, retail permit, or agricultural use permit previously filled out or completed by a different Wholesaler unless the Wholesale Permit holder has applied for and received approval from the Office of State Fire Marshal to do so.

(8) Wholesale Permit holders may not sell, provide, ship, transport, keep, offer for sale, expose for sale, possess, use, explode or have exploded any Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks that have not been approved, certified or listed for transport by the United States Department of Transportation and the United States Consumer Product Safety Commission, or if the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks do not have a United States Bureau of Explosives Temporary Transfer Permit.

(9) A Wholesale Permit or permit number that has expired or has not been issued, does not authorize the purchase, use, discharge, transportation, storage, possession, sale or provision by any other means, including donation, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(10) Every Person who knows of, engages in, allows, or is otherwise a party to, Wholesale Operations not in conformance with ORS 480.110 through 480.165 and OAR chapter 837, division 12, may be subject to denial, revocation, or suspension of the Person's Fireworks permit or operator certificate issued by the Office of State Fire Marshal, and a civil penalty.

(11) No Person may purchase or otherwise obtain, possess, use, discharge, transport, offer for sale, sell, transfer or otherwise provide

ADMINISTRATIVE RULES

Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks without first applying for and obtaining the appropriate permit issued by the Office of State Fire Marshal pursuant to ORS 480.110 through 480.165 and OAR chapter 837, division 12.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 1-2005(Temp), f. & cert. ef. 1-13-05 thru 7-11-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 4-2006, f. & cert. ef. 3-10-06; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0560

Civil and Criminal Enforcement Actions

(1) The Office of State Fire Marshal, Local Fire Authority, or law enforcement authority may confiscate, remove or have removed any Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks offered for sale, sold, provided, transported, purchased or otherwise obtained, stored, possessed, used or discharged in violation of ORS 480.110 through 480.165 or OAR chapter 837, division 12.

(2) The Wholesale Permit holder, or any other Person responsible for any violation or violations, may be responsible for payment of the agency's costs in confiscating or removing any Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks pursuant to subsection (1) of this rule.

(3) Upon finding a violation, the Office of State Fire Marshal may order that any confiscated Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks be:

(a) Returned to the manufacturer of the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural fireworks; or

(b) Disposed of in any manner approved by the Office of State Fire Marshal, including destruction of the Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

837-012-0565

Transportation

(1) All shipments of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks within or into Oregon, or from Oregon for delivery to another state may be transported only by Persons who comply with all applicable United States Department of Transportation requirements and any other federal, state, or local laws, rules, or regulations pertaining to the transportation of Fireworks.

(2) All Persons engaged in the transportation of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks within, into or out of Oregon must verify that the outside of all Cartons, Containers or Cases, containing such Fireworks and any accompanying documentation, are marked with all the information required under OAR 837-012-0525(13) and (14).

(3) Wholesale Permit holders may not sell or provide Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to any Person for transport when the permit holder knows or should know that the Person cannot or will not transport such Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks in accordance with United States Department of Transportation requirements or any other applicable federal, state or local laws, rules or regulations.

(4) Common carriers shall immediately notify, verbally or in writing, the Local Fire Authority or the Office of State Fire Marshal of all shipments of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to be delivered within or into Oregon. Such shipments shall be subject to examination by the Local Fire Authority and the Office of State Fire Marshal to determine compliance with all applicable federal, state and local laws, rules, and regulations pertaining to Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks. If necessary, the Consumer Product Safety Commission, United States Customs, the United States Department of Transportation and the Oregon Department of Transportation may be contacted for assistance.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11

Rule Caption: Correlate 2010 Oregon Fire Code to 2010 Oregon Structural Specialty Code for the installation of Carbon Monoxide alarms.

Adm. Order No.: OSFM 2-2011

Filed with Sec. of State: 3-15-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 3-1-2011

Rules Amended: 837-040-0020

Subject: The rule change is necessary to correlate the 2010 Oregon Fire Code (OFC) to the 2010 Oregon Structural Specialty Code (OSSC) for the installation of Carbon Monoxide alarms per 2009 Legislative House Bill 3450, Lofgren and Zander Memorial Act, for new construction.

Rules Coordinator: Pat Carroll—(503) 934-8276

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 circumstances merit (Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications).

(3) Effective April 1, 2011, the 2010 Oregon Fire Code (OFC) is amended by the Office of State Fire Marshal as follows:

(a) Add new section 908.7, Carbon Monoxide alarms, to correlate with the change to the 2010 Oregon Structural Specialty Code.

(b) Amend Chapter 47, National Fire Protection Association (NFPA) Standards and Underwriters Laboratories Standards, as follows:

NFPA 720-09 Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment — 908.7.

UL 2034-08 Standard for single and Multiple Station Carbon Monoxide Alarms, with revisions through February 20, 2009 — 908.7.

[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; OSFM 2-2010(Temp), f. 2-3-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; OSFM 4-2010, f. & cert. ef. 11-3-10; OSFM 2-2011, f. 3-15-11, cert. ef. 4-1-11

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Amend core value definitions.

Adm. Order No.: DPSST 1-2011

Filed with Sec. of State: 2-24-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 2-1-2011

Rules Amended: 259-009-0070

Subject: Removes the duplicate language from the fire service core value definitions which makes it difficult to distinguish among the core values of the fire service profession.

Rules Coordinator: Linsay Bassler—(503) 378-2431

259-009-0070

Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

(2) For purposes of this rule, the following definitions will apply:

(a) "Denial" or "Deny" means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Conviction" means a conviction identified in OAR 259-009-0070(6).

(c) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-009-0070(4).

ADMINISTRATIVE RULES

(d) “Revocation” or “Revoke” means to withdraw the certification of a fire service professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in subsection (9) of this rule.

Grounds for Mandatory Denial or Revocation of Certification.

(3) Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:

(a) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(A) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state would constitute a crime listed in 137.700. Those crimes are:

163.095 Attempted Aggravated Murder;
163.115 Attempted Murder;
163.115 Murder;
163.118 Manslaughter in the First Degree;
163.125 Manslaughter in the Second Degree;
163.149 Aggravated Vehicular Homicide;
163.175 Assault in the Second Degree;
163.185 Assault in the First Degree;
163.225 Kidnapping in the Second Degree;
163.235 Kidnapping in the First Degree;
163.365 Rape in the Second Degree;
163.375 Rape in the First Degree;
163.395 Sodomy in the Second Degree;
163.405 Sodomy in the First Degree;
163.408 Sexual Penetration in the Second Degree;
163.411 Sexual Penetration in the First Degree;
163.427 Sexual Abuse in the First Degree;
163.670 Using a Child in a Display of Sexually Explicit Conduct
164.325 Arson in the First Degree (See exception under OAR 259-009-0070(4));
164.405 Robbery in the Second Degree;
164.415 Robbery in the First Degree;
167.017 Compelling Prostitution.

(B) The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

(b) For purposes of this rule, “discharged for cause”, means an employer initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the fire service professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

(i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(iii) Gross Misconduct means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable fire service professional or instructor would observe in a similar circumstance;

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor that remedial measures have been unable to correct.

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification.

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:

(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The fire service professional or instructor has been convicted of an offense listed in subsection (4)(c), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, the Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(A) Category I: Honesty. Honesty includes straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(B) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(C) Category III: Justice. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair.

(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

162.015 (Bribe Giving) — Category III;
162.025 (Bribe Receiving) — Category III;
162.065 (Perjury) — Category I;
162.117 (Public Investment Fraud) — Category I;
162.155 (Escape in the Second Degree) — Category II;
162.165 (Escape in the First Degree) — Category II;
162.185 (Supplying Contraband) — Category II;
162.205 (Failure to Appear in the First Degree) — Category II;
162.265 (Bribing a Witness) — Category III;
162.275 (Bribe Receiving by a Witness) — Category III;
162.285 (Tampering with a Witness) — Category III;
162.305 (Tampering with Public Records) — Category III;
162.325 (Hindering Prosecution) — Category III;
162.355 (Simulating Legal Process) — Category III;
162.365 (Criminal Impersonation) — Category I;
162.367 (Criminal Impersonation of a Peace Officer) — Category I;
162.415 (Official Misconduct in the First Degree) — Category II;
163.145 (Criminally Negligent Homicide) — Category III;
163.160 (Assault in the Fourth Degree) — Category III;
163.165 (Assault in the Third Degree) — Category III;
163.205 (Criminal Mistreatment in the First Degree) — Category III;
163.207 (Female Genital Mutilation) — Category III;
163.208 (Assaulting a Public Safety Officer) — Category III;
163.213 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace in the First Degree) — Category II;
163.245 (Custodial Interference in the Second Degree) — Category III;
163.257 (Custodial Interference in the First Degree) — Category III;
163.275 (Coercion) — Category III;
163.355 (Rape in the Third Degree) — Category III;
163.425 (Sexual Abuse in the Second Degree) — Category III;
163.465 (Public Indecency) — Category III;
163.515 (Bigamy) — Category III;
163.525 (Incest) — Category III;
163.535 (Abandonment of a Child) — Category III;
163.537 (Buying or Selling a Person Under 18 years of age) — Category III;
163.547 (Child Neglect in the First Degree) — Category III;
163.555 (Criminal Non-Support) — Category III;
163.670 (Using Child in Display of Sexually Explicit Conduct) — Category III;
163.684 (Encouraging Child Sexual Abuse in the First Degree) — Category III;
163.686 (Encouraging Child Sexual Abuse in the Second Degree) — Category III;
163.688 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;
163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;
163.732 (Stalking) — Category III;
163.750 (Violating Court’s Stalking Protective Order) — Category III;
164.045 (Theft in the Second Degree) — Category I;
164.055 (Theft in the First Degree) — Category I;
164.057 (Aggravated Theft in the First Degree) — Category I;
164.075 (Theft by Extortion) — Category I;
164.125 (Theft of Services: by Deception) — Category I;
164.135 (Unauthorized Use of a Vehicle) — Category I;
164.140 (Criminal Possession of Rented or Leased Personal Property: felony only) — Category I;
164.170 (Laundering a Monetary Instrument) — Category I;
164.172 (Engaging in a Financial Transaction in Property Derived from Unlawful Activity) — Category I;
164.215 (Burglary in the Second Degree) — Category III;
164.225 (Burglary in the First Degree) — Category III;
164.235 (Possession of a Burglary Tool or Theft Device) — Category III;
164.315 (Arson in the Second Degree) — Category II;
164.325 (Arson in the First Degree — If not a conviction under ORS 137.700) — Category II;
164.365 (Criminal Mischief in the First Degree) — Category III;
164.377 (Computer Crime) — Category III;
164.395 (Robbery in the Third Degree) — Category III;
164.868 (Unlawful Labeling of a Sound Recording) — Category III;
164.869 (Unlawful Recording of a Live Performance) — Category III;
164.872 (Unlawful Labeling of a Videotape Recording) — Category III;
164.885 (Endangering Aircraft) — Category II;
164.889 (Interference with Agricultural Research) — Category III;
165.013 (Forgery in the First Degree) — Category I;
165.022 (Criminal Possession of a Forged Instrument in the First Degree) — Category I;
165.032 (Criminal Possession of a Forgery Device) — Category I;
165.055 (Fraudulent Use of a Credit Card: Felony Only) — Category I;
165.065 (Negotiating a Bad Check) — Category I;
165.070 (Possessing Fraudulent Communications Device) — Category I;
165.074 (Unlawful Factoring of Payment Card Transaction) — Category I;
165.085 (Sports Bribery) — Category III;
165.090 (Sports Bribe Receiving) — Category III;

ADMINISTRATIVE RULES

165.579 (Cellular Counterfeiting in the Second Degree) — Category III;
165.581 (Cellular Counterfeiting in the First Degree) — Category III;
165.692 (Making False Claim for Health Care Payment) — Category I;
165.800 (Identity Theft) — Category I;
165.810 (Unlawful Possession of a Personal Identification Device) — Category I;
165.813 (Unlawful Possession of Fictitious Identification) — Category I;
166.005 (Treason) — Category II;
166.015 (Riot) — Category II;
166.085 (Abuse of Corpse in the Second Degree) — Category II;
166.087 (Abuse of Corpse in the First Degree) — Category II;
166.155 (Intimidation in the Second Degree) — Category III;
166.165 (Intimidation in the First Degree) — Category III;
166.220 (Unlawful Use of Weapon) — Category I;
166.270 (Possession of Weapons by Certain Felons: Felony only) — Category II;
166.275 (Possession of Weapons by Inmates of Institutions) — Category II;
166.370 (Possession of Firearm or Dangerous Weapon in Public Building or Court Facility; Exceptions; Discharging Firearm at School) — Category II;
166.382 (Possession of Destructive Device Prohibited) — Category II;
166.384 (Unlawful Manufacture of Destructive Device) — Category II;
166.429 (Firearms Used in Felony) — Category II;
166.438 (Transfer of Firearms at Gun Shows: Felony Only) — Category II;
166.450 (Obiteration or Change of Identification Number on Firearms) — Category II;
166.642 (Felon in Possession of Body Armor) — Category II;
166.643 (Unlawful Possession of Body Armor) — Category II;
166.649 (Throwing an Object Off an Overpass in the Second Degree) — Category III;
166.651 (Throwing an Object Off an Overpass in the First Degree) — Category III;
166.660 (Unlawful Paramilitary Activity) — Category III;
166.720 (Racketeering Activity Unlawful) — Category II;
167.012 (Promoting Prostitution) — Category III;
167.062 (Sodomosexual Abuse or Sexual Conduct in Live Show: Felony Only) — Category III;
167.164 (Possession of Gray Machine) — Category I;
167.212 (Tampering with Drug Records) — Category I;
167.262 (Adult Using Minor in Commission of Controlled Substance Offense: Felony Only) — Category III;
167.322 (Aggravated Animal Abuse in the First Degree) — Category III;
167.339 (Assaulting Law Enforcement Animal) — Category III;
475.840 (Prohibited Acts Generally: Manufacture or Deliver a Controlled Substance) — Category II;
475.846 (Unlawful Manufacture of Heroin) — Category II;
475.848 (Unlawful Manufacture of Heroin Within 1,000 Feet of School) — Category III;
475.850 (Unlawful Delivery of Heroin) — Category II;
475.852 (Unlawful Delivery of Heroin Within 1,000 Feet of School) — Category III;
475.854 (Unlawful Possession of Heroin) — Category II;
475.856 (Unlawful Manufacture of Marijuana) — Category II;
475.858 (Unlawful Manufacture of Marijuana Within 1,000 Feet of School) — Category III;
475.860 (Unlawful Delivery of Marijuana: Felony only) — Category II;
475.862 (Unlawful Delivery of Marijuana Within 1,000 Feet of School) — Category III;
475.864 (Unlawful Possession of Marijuana: Felony only) — Category II;
475.866 (Unlawful Manufacture of 3,4-Methylenedioxyamphetamine (Ecstasy)) — Category II;
475.868 (Unlawful Manufacture of 3,4-Methylenedioxyamphetamine (Ecstasy) Within 1,000 Feet of School) — Category III;
475.870 (Unlawful Delivery of 3,4-Methylenedioxyamphetamine (Ecstasy)) — Category II;
475.872 (Unlawful Delivery of 3,4-Methylenedioxyamphetamine (Ecstasy) Within 1,000 Feet of School) — Category II;
475.874 (Unlawful Possession of 3,4-Methylenedioxyamphetamine (Ecstasy)) — Category II;
475.876 (Unlawful Manufacture of Cocaine) — Category II;
475.878 (Unlawful Manufacture of Cocaine Within 1,000 Feet of School) — Category III;
475.880 (Unlawful Delivery of Cocaine) — Category II;
475.882 (Unlawful Delivery of Cocaine Within 1,000 Feet of School) — Category III;
475.884 (Unlawful Possession of Cocaine) — Category II;
475.886 (Unlawful Manufacture of Methamphetamine) — Category II;
475.888 (Unlawful Manufacture of Methamphetamine Within 1,000 Feet of School) — Category III;
475.890 (Unlawful Delivery of Methamphetamine) — Category II;
475.892 (Unlawful Delivery of Methamphetamine Within 1,000 Feet of School) — Category III;
475.894 (Unlawful Possession of Methamphetamine) — Category II;
475.904 (Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School) — Category III;
475.908 (Causing Another Person to Ingest a Controlled Substance) — Category III;
475.910 (Application of Controlled Substance to the Body of Another Person) — Category III;
475.914 (Prohibited Acts for Registrants: Deliver or Dispense Controlled Substance) — Category II;
475.962 (Distribution of Equipment, Solvent, Reagent or Precursor Substance with Intent to Facilitate Manufacture of Controlled Substances) — Category II;
475.967 (Possession of Precursor Substance With Intent to Manufacture Controlled Substance) — Category II;
475.977 (Possessing or Disposing of Methamphetamine Manufacturing Waste) — Category II;
811.182 (Criminal Driving While Suspended or Revoked) — Category II;
811.540 (Fleeing or Attempting to Elude Police Officer: Felony Only) — Category II;
811.705 (Failure to Perform Duties of a Driver to Person Injured) — Category II;
813.010 (DUI: Felony Only) — Category II.

Any crime that requires the fire service professional or instructor to register as a sex offender. "Attempt," "Solicitation," or "Conspiracy" to commit a crime listed in ORS 137.700 or in any other jurisdiction that, if committed in this state would constitute an attempt, solicitation, or conspiracy to commit a crime listed in 137.700 (and iden-

tified in OAR 259-009-0070(3)). Conviction of felony or Class A misdemeanor "Attempt", "Solicitation" or "Conspiracy" to commit a crime identified in this rule as a discretionary disqualifier.

(d) If a fire service professional or instructor held certification on or before January 15, 2008 and applies for a new certification, the Department will proceed as follows:

(A) No action will be taken on a discretionary conviction that occurred prior to January 15, 2003.

(B) The Department will not initiate revocation proceedings based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(C) The Department may initiate denial of a new certification based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(e) If a fire service professional or instructor held certification on January 15, 2008 and applies for or obtains certification after that date, the Department may initiate denial or revocation of all certifications held based on a discretionary disqualifying conviction that occurred prior to January 15, 2008.

(f) If a fire service professional or instructor is convicted of a discretionary disqualifying crime on or after January 15, 2008, the Department may initiate a denial or revocation of all certification(s) upon learning of the conviction.

Initial Minimum Periods of Ineligibility

(5) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct identified in section (4), the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

(a) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct listed in section (4) of this rule, the Fire Policy Committee and the Board will take into consideration any aggravating or mitigating factors subject to the provisions of section (7) of this rule.

(b) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for mandatory grounds identified in section (3) of this rule.

(c) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(d) Any subsequent eligibility to apply for certification will be determined by the Board, after a review by the Fire Policy Committee, subject to the provisions of section (9) of this rule.

Procedure for Denial or Revocation of a Certificate

(6) Scope of Revocation. Except as provided in (4) above, when the Department denies or revokes the certification of any fire service professional or instructor under the provisions of OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person.

(7) Denial and Revocation Procedure.

(a) Agency Initiated Review: When the entity utilizing a fire service professional or instructor requests that a fire service professional's or instructor's certification be revoked or denied, it must submit in writing to the Department the reason for the requested revocation or denial and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the fire service professional's or instructor's certification be revoked or denied.

(c) Department Staff Review: When the Department receives information, from any source, that a fire service professional or instructor may not meet the established standards for Oregon fire service professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through the Fire Policy Committee.

ADMINISTRATIVE RULES

(D) The Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's review.

(E) In misconduct cases in which there has been an arbitrator's opinion related to the fire service professional's or instructor's employment, the Department will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will consider mitigating and aggravating circumstances including, but not limited to the following:

(A) When the misconduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, the length of incarceration;

(C) Whether restitution was ordered, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date on which the parole or probation period expired or is set to expire;

(E) Whether the fire service professional or instructor has more than one conviction and if so, over what period of time;

(F) Whether the misconduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the misconduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

(L) What the fire service professional's or instructor's physical or emotional condition was at the time of the conduct.

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(f) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under 259-005-0015. The Department will have a copy of the notice served on the fire service professional or instructor.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0645.

(i) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed Order. The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(k) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(l) Final Order: A final order will be issued pursuant to OAR 137-003-0070 if a fire service professional or instructor fails to file exceptions and arguments in a timely manner.

(m) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.

Appeals, Reapplication, and Eligibility Determinations.

(8) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(9) Reapplication Process.

(a) Any fire service professional or instructor whose certification has been denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may reapply for certification within the applicable timeframes described in (4) and (5) of this rule.

(b) Any fire service professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the provisions of this rule until the maximum initial period of ineligibility identified in (5) of this rule has been satisfied.

(ii) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and the Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section (7)(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The fire service professional or instructor is employed or utilized by a fire service agency; and

(D) All requirements for certification have been met.

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

Stat. Auth.: ORS 181.640, 181.661, 181.662, 181.664 & 183.341

Stats. Implemented: ORS 181.640, 181.661, 181.662 & 181.664

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 1-15-08; DPSST

7-2009, f. & cert. ef. 7-13-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 1-2011, f.

2-24-11, cert. ef. 4-1-11

ADMINISTRATIVE RULES

Department of State Lands Chapter 141

Rule Caption: Revisions to be consistent with Divisions 89 and 93, improve clarity and modify agricultural exemptions.

Adm. Order No.: DSL 1-2011

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 12-1-2010

Rules Amended: 141-085-0506, 141-085-0510, 141-085-0515, 141-085-0520, 141-085-0525, 141-085-0530, 141-085-0534, 141-085-0535, 141-085-0540, 141-085-0545, 141-085-0550, 141-085-0555, 141-085-0560, 141-085-0565, 141-085-0575, 141-085-0585, 141-085-0590, 141-085-0595, 141-085-0665, 141-085-0676, 141-085-0680, 141-085-0685, 141-085-0690, 141-085-0695, 141-085-0700, 141-085-0705, 141-085-0710, 141-085-0715, 141-085-0720, 141-085-0725, 141-085-0730, 141-085-0735, 141-085-0740, 141-085-0745, 141-085-0755, 141-085-0760, 141-085-0765, 141-085-0770, 141-085-0775, 141-085-0780, 141-085-0785

Rules Repealed: 141-085-0675

Subject: The Division 85 rules required revisions to be consistent with statutory exemptions, Divisions 89, 93 and 100. Other changes were required to improve clarity and to modify the agricultural exemptions.

Rules Coordinator: Elizabeth Bolden—(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; soil and water conservation districts; drainage, irrigation and diking districts; 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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

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,

ADMINISTRATIVE RULES

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 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 through 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 this 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 streams designated pursuant to ORS 196.810 that are necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing, and any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to an ESH 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 amount of 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); 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 this 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 (HGM)" means the 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) "Independent Utility" as used in the definition of "project," means that the project accomplishes its intended purpose without the need for additional phases or other projects requiring further removal-fill activities.

(42) "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.

(43) "Interagency Review Team (IRT)" is an advisory committee to the Department on mitigation banks and other compensatory mitigation projects.

(44) "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.

(45) "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.

(46) "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.

(47) "Location" means the entire area where the project is located.

(48) "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.

(49) "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 of or immediately adjacent to a structure that is necessary to restore its serviceability, provided that the spoil is placed on upland.

(50) "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.

(51) "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.

(52) "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.

(53) "Mitigation Bank Prospectus" or "Prospectus" means the preliminary proposal prepared by a mitigation bank sponsor describing a proposed bank.

(54) "Mitigation Bank Sponsor" or "Sponsor" means a person or single legal entity that has the authority and responsibility to fully execute the terms and conditions of a mitigation bank instrument.

(55) "Navigational Servitude" means activities of the federal government that directly result in the construction or maintenance of congressionally authorized navigation channels.

(56) "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 and electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and manu-

ADMINISTRATIVE RULES

ally operated cable winches are examples of common non-motorized methods.

(57) “Non-Water Dependent Uses” means uses that do not require location on or near a waterway to fulfill their basic purpose.

(58) “Non-Wetland Waters” means waters of this state other than wetlands, including bays, intermittent streams, perennial streams, lakes and all other regulated waters.

(59) “Office of Administrative Hearings” means the state agency unit that provides Administrative Law Judges to conduct contested case proceedings.

(60) “Ordinary High Water Line (OHWL)” means the line on the bank or shore to which the high water ordinarily rises. The OHWL excludes exceptionally high water levels caused by large flood events (e.g., 100-year events).

(61) “Oregon Rapid Wetland Assessment Protocol (ORWAP)” is a method for rapidly assessing wetland functions and values (as well as other attributes) in all wetland types throughout Oregon.

(62) “Payment In-Lieu Mitigation” means compensatory mitigation for waters of this state that is fulfilled by using funds paid to the Department. The payment in-lieu program is not approved to compensate for impacts to waters of the United States.

(63) “Perennial Stream” means a stream that has continuous flow in parts of its bed all year long during years of normal precipitation.

(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 and stirring of soil to prepare it for planting 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 this state having exceptional ecological features.

(68) “Private Operator” means any person undertaking a project for an exclusively non-income-producing and nonprofit purpose.

(69) “Project” means the primary development or use, having independent utility, proposed by one person. A project may include more than one removal-fill activity.

(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 non-motorized 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” means 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 reconstructed each water-use season; high water usually flattens or breaches them; and equipment is used to breach or flatten them at the close of the water-use season.

(75) “Reasonably Expected Adverse Effect” and “Adverse Impact” means 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 search or explore for samples of gold, silver or other precious minerals by removing, filling or moving material from or within the bed of a stream, using non-motorized equipment or a motorized surface dredge having an intake nozzle with an inside diameter not exceeding four inches and a muffler meeting or exceeding factory-installed noise reduction standards.

(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 a manner that is inconsistent with any provision of the Removal-Fill Law (ORS 196.600 through 196.990), 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 non-navigable 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 a removal-fill 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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

ADMINISTRATIVE RULES

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; DSL 1-2011, f. & cert. ef. 3-1-11

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 subsections (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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0520

Removal-Fill Jurisdiction by Volume of Material

The following criteria are used to determine jurisdictional volume thresholds that trigger the requirement for an authorization.

(1) Oregon State Scenic Waterways (SSWs). The threshold volume is any amount greater than zero,

(2) Streams Designated as Essential Indigenous Anadromous Salmonid Habitat (ESH). The threshold volume is any amount greater than zero.,

(3) Compensatory Mitigation Sites. The threshold volume is any amount greater than zero for compensatory mitigation sites referenced in an authorization.

(4) All Other Waters of This State.

(a) For fill activities, any combination of either organic or inorganic material deposited by artificial means at any one location in waters of this state equal to or exceeding 50 cubic yards or the equivalent weight in tons; and

(b) For removal activities, the taking or movement by artificial means of more than 50 cubic yards of inorganic material or the equivalent weight in tons in any calendar year.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0525

Measuring and Calculating Volume of Removal and Fill

(1) Calculating Removal Volume. Removal volume for all waters includes the full extent of the excavation within the jurisdictional area.

(2) Calculating Fill Volume. For waters other than wetlands, fill volume is measured to the ordinary high water line (OHWL). For wetlands, fill volume is measured to the height of the fill, excluding buildings.

(3) Calculating Volume for Channel Relocation. When calculating the volume for channel relocation the threshold is met considering either the volume of material removed to construct the new channel or the volume needed to fill the old channel to the OHWL.

ADMINISTRATIVE RULES

(4) Projects that Involve Both Fill and Removal. For projects that involve both fill and removal, the combined volumes are used to determine whether a permit is required.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

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 this 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 must be directly connected with a forest management practice conducted in accordance with ORS 527.610 through 527.770, 527.990 and 527.992, such as:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species; and
- (d) Disposal of slash.

(2) Fill for Construction, Operation and Maintenance of Certain Dams and Water Diversion Structures. Filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or will be issued under ORS Chapters 537 or 539 and for which preliminary permits or licenses have been or will be issued under ORS 543.010 through 543.610 is exempt.

(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 or both for maintenance or reconstruction of water control structures such as culverts, dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches, and tile drain systems are exempt if:

- (a) The project meets the definition of maintenance under OAR 141-085-0510(49);
- (b) The structure was serviceable within the past five years; and
- (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.

(5) Maintenance and 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.

(6) Prospecting and Non-Motorized Activities within Designated Essential Indigenous Anadromous Salmonid Habitat (ESH). 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 non-motorized activities may be conducted only within the bed or wet perimeter of the waterway and must not occur at any site where fish eggs are present.

(7) Fish Passage and Fish Screening Structures in Essential Indigenous Anadromous Salmonid Habitat (ESH). Less than 50 cubic yards of removal-fill for construction or maintenance of fish passage and fish screening structures that are constructed, operated or maintained under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645. This exemption includes removal of material that inhibits fish passage or prevents fish screens from functioning properly.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0534

Exemptions for Certain Voluntary Habitat Restoration Activities

(1) Definitions. 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: Activities described in Sections (3) through (8) of this rule are exempt from permit requirements under the following conditions:

(a) Activities are not conducted in areas designated as State Scenic Waterways;

(b) 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;

(c) The in-water activities conform to ODFW fish passage requirements (ORS 509.580 through 509.910), unless otherwise approved in writing by ODFW;

(d) The activities will not convert waters of this state to uplands;

(e) The activities will cause no more than minimal adverse impact on waters of this state including impacts related to navigation, fishing, and public recreation;

(f) The activities will 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

(g) 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 management plan. Fill or removal in waters of this 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 30 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 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 this 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 30 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 this state. This includes the disposal of material resulting from the restoration activities within the project area as 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 30 calendar days prior to commencing the activity.

(9) Removal of Trash, Garbage and Rubble. A permit is not required for the removal of any amount of inorganic trash, garbage and rubble (e.g., tires, metal, broken concrete, asphalt, foam, plastic) from waters of this state. The project must meet the following criteria:

(a) There are no adverse impacts to waters of this state or woody vegetation as a result of the project;

(b) There is no stockpiling of collected trash, garbage or rubble in waters of this state; and

(c) The trash and garbage is disposed of at a licensed Department of Environmental Quality collection facility.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 8-2009, f. 12-15-09 cert. ef. 1-1-10; DSL 1-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

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 under OAR 141-085-0535(3) and (4) 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; and
- (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 and designated in the city or county comprehensive plan are exempt:

- (a) Drainage or maintenance of farm or stock ponds;
- (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 ORS 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by the Natural Resources Conservation Service, as 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 must not exceed 50 cubic yards of material.

(8) Agricultural Drainage Ditch Maintenance. Exempt maintenance of agricultural drainage ditches under OAR 141-085-0530(4) includes disposal of dredged material in a thin layer on converted wetlands, provided such disposal does not change wetland to upland. For the purposes of this exemption, "ditch" is defined in OAR 141-085-0510(26).

(9) Push-Up Dams.

(a) Department-authorized push-up dams equal to or 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 through 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 from the Removal-Fill Law if they meet the following tests:

- (A) Are reconstructed, serviceable and used within the past five years;
- (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 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0540

Types of Authorizations

One of the following types of authorizations is required for regulated activities in waters of this state.

(1) Individual Permits. IPs are issued for projects that do not qualify for other types of authorizations.

(2) General Authorizations. GAs are adopted by rule for a category of activities that have minimal impacts to waters of this state (OAR 141-089).

(3) General Permits. GPs are adopted by rule and apply to a category of activities statewide or on a geographical basis for use by any person, or for use by a specific person for multiple activities. The Department may initiate rulemaking or a person may request the Department to initiate rulemaking to create a General Permit (OAR 141-093).

(4) Emergency Authorizations. EAs are issued in circumstances that pose an immediate threat to public health, safety or substantial property including crop and farmland.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0545

Fees; Amounts and Disposition

(1) Disposition of Fees: All applications that require a fee, except for an emergency authorization, must include the fee at the time of application.

(2) Project Applications that Require a Fee: Except as provided in Section (3) of this rule, the following types of projects require a fee for a complete application:

(a) Individual and General Permit applications must be accompanied by the applicable base fee and volume fee in accordance with the current fee schedule;

(b) General Authorization notifications which require a fee under OAR 141-089-0635, must be accompanied by the flat fee when proposed removal-fill activity is 50 cubic yards or more; and

(c) Emergency Authorization holders, except for erosion or flood repair, must submit the required fee to the Department within 45 calendar days of receiving the authorization.

(3) Project Applications that Do Not Require a Fee: No application fee or renewal fee is required when submitting an application or notification for the following:

(a) An agency determination that the project does not require a permit from the Department;

(b) Erosion-flood repair or stream bank stabilization projects, regardless of the authorization type;

(c) Voluntary habitat restoration projects directed at habitat improvement, regardless of the authorization type; and

(d) A general authorization when the project involves less than 50 cubic yards of removal-fill activity.

(4) Calculating Application Fees. For each application that involves both removal and fill activity, the application fee is calculated separately for each activity using the base and volume fees. The required fee to be submitted with the application is the greater of the two calculated fees.

(5) Base Fees. Base fees are based on the following applicant classifications:

(a) Private operator, or a person contracting to perform services for a private operator;

(b) Public body; or

(c) Commercial operator.

(6) Volume Fees. In addition to the base fee established under Section (5) of this rule, each applicant may be required to also pay, as part of the application, an additional fee based on the volume of material according to the following schedule:

(a) Less than 500 cubic yards;

(b) 500 to less than 5,000 cubic yards;

(c) 5,000 to less than or equal to 50,000 cubic yards; or

(d) Over 50,000 cubic yards.

(7) Annual fees. For individual permits that are renewed or valid for more than one year, an annual fee is assessed for each year that the permit is in effect. The annual fee is equal to the base fee at the time of renewal or annual billing and is due by the anniversary date of issuance of the permit.

(8) Multiyear Permits. 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 must include:

(a) The application fee; and

(b) Any applicable annual fees for the duration of the term of the permit.

ADMINISTRATIVE RULES

(9) Adjusting 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 CPI and post the fee schedule on the Department's website (<http://oregonstatelands.us/>).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0550

Application Requirements for Individual Permits

(1) Written Application Required. A person who is required to have an individual permit to remove material from the bed or banks, or fill any waters of this state, must file a written application with the Department for each individual project. A permit must be issued by the Department before performing any regulated removal-fill activity.

(2) Complete and Accurate Information Required. Failure to provide complete and accurate information in the application may be grounds for administrative closure of the application file or denial, suspension or revocation of the authorization.

(3) Fee Required for a Complete Application. A complete application must include the appropriate fee.

(4) 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 on the degree of adverse impacts, the level of public interest and other factors that increase the complexity of the project.

(5) Required Information: A completed and signed application on forms provided by the Department, including any maps, necessary photos and drawings, is required. The information must be entered in the appropriate blocks on the application form and must include all of the following:

(a) The applicant and property owner information including name, mailing address, phone number and e-mail address:

(A) If the applicant is not the owner of the land upon which the removal-fill activity (including mitigation) is to occur and does not hold an easement allowing the activity on that land, a written authorization from the owner of the land consenting to the application must be provided. For the purpose of this rule, a condemner is the landowner when:

(i) If using state condemnation authority, the condemner has complied with ORS Chapter 35, filed an eminent domain action in court and deposited the condemner's estimate of just compensation with the court for the use and benefit of the defendants, or it has a court's order authorizing its possession of the land; or

(ii) If using federal authority, the condemner has complied with Federal Rules of Civil Procedure 71.1 and, if other than the United States, has a court's order authorizing its possession of the land.

(B) If the application is on behalf of a business entity, a certificate of incumbency must be provided to certify that the individual signing the application is authorized to do so.

(C) If permittee-responsible mitigation is proposed and the application for a permit or authorization is submitted on behalf of a closely held corporation, limited partnership, Limited Liability Company (LLC) or trust, the Department will require from each shareholder or stockholder, limited partner, member, trustee, current beneficiary or other principal:

(i) A joint and several personal guarantee securing compliance with mitigation obligations; and

(ii) A written promise to make all reasonable efforts to maintain the business entity in active status until all mitigation obligations have been satisfied.

(iii) For the purpose of paragraph (C) of this section, a "closely held corporation" is one in which all shares are held by less than five individuals.

(b) 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.

(c) The location of any off-site disposal or borrow sites, if these sites contain waters of this state.

(d) Project information including:

(A) Description of all removal-fill activities associated with the project;

(B) Demonstration of independent utility to include all phases, projects or elements of the proposed project which will require removal-fill activities;

(C) Volumes of fill and removal within jurisdictional areas expressed in cubic yards;

(D) Area of removal and fill within jurisdictional areas expressed in acres to the nearest 0.01-acre for impacts greater than 0.01 of an acre or expressed in acres to the nearest 0.001-acre for impacts less than 0.01 of an acre; and

(E) Description of how the project will be accomplished including construction methods, site access and staging areas.

(e) A description of the purpose and need for the project. All projects must have a defined purpose or purposes and be based on a documented need or needs. The project purpose and need statement must be specific enough to allow the Department to determine whether the applicant has considered a reasonable range of alternatives.

(f) 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 must also be included so that the amount and extent of the impact to jurisdictional areas can be readily determined.

(g) 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.

(h) 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.

(i) A description of the navigation, fishing and public recreation uses, when the project is proposed on state-owned land.

(j) If the proposed activity involves wetland impacts, a wetland determination or delineation report that meets the requirements in OAR 141-090 must be submitted, unless otherwise approved in writing by the Department. 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 must be obtained prior to the permit decision.

(k) A functions and values assessment that meets the requirements in OAR 141-085-0685 when permanent impacts to wetlands are proposed.

(L) Any information known by the applicant concerning the presence of any federal or state listed species.

(m) Any information known by the applicant concerning historical, cultural and 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 Parks and Recreation Department.

(n) 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 must 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.

(o) If applicable, a complete compensatory mitigation plan that meets the requirements listed in OAR 141-085-0680 through 141-085-0715 to compensate for unavoidable permanent impacts to waters of this state and a complete rehabilitation plan if unavoidable temporary impacts to waters of this state are proposed.

ADMINISTRATIVE RULES

(p) For each proposed removal-fill impact site and physical mitigation site, a list of the names and addresses of the adjacent property owners, including those properties located across a street or stream from the proposed project.

(q) Mailing labels, when there are more than five names and addresses of adjacent property owners.

(r) A signed local government land use affidavit.

(s) A signed Coastal Zone Certification statement, if the project is in the coastal zone.

(6) Additional Requirements for Estuarine Fill. If the activity is proposed in an estuary for a non-water-dependent use, a complete application must 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.

(7) Additional Information as Requested. The Department may request additional information as necessary to make an informed decision on whether or not to issue the authorization.

(8) Waiver of Required Information. At its discretion, the Department may waive any of the information requirements listed in section (5) of this rule for voluntary restoration projects.

(9) 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.

(10) 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.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0555

Individual Removal-Fill Permit Application Review Process

(1) Completeness Review. Within 30 calendar days of the receipt of an application, the Department will review the application to determine if it is complete and adequately addresses the application requirements.

(2) Notification of Completeness Determination. Following the completeness review, the Department will inform the applicant of one of the following findings:

(a) The application is complete and will proceed to the public review process;

(b) The application is incomplete because of certain deficiencies; or

(c) The project does not require an authorization from the Department (no state permit required).

(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 be suspended awaiting revision. To initiate a new completeness review, the applicant must resubmit the entire amended application package for consideration, 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 Resubmittal 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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0560

Public Review Process for Individual Removal-Fill Permit Applications

(1) Circulation of the Application for Public Review. Once the application has been deemed complete and sufficient, the Department will

provide notification of the availability of the application for review either by U.S. mail or electronically (e.g., facsimile, e-mail, posting on the Internet) to adjacent property owners, watershed councils, public interest groups, affected local government land use planning departments, state agencies, federal agencies and tribal governments in the geographic area affected by the permit.

(2) Copies of the Application by Request. The Department will furnish to any member of the public, upon written request and at the expense of the member of the public, a printed copy of any application.

(3) Deadline for Receipt of Public Comments. All recommendations and comments regarding the application must be submitted in writing to the Department within the period established by the Department, but not more than 30 calendar days from the date of the notice, except as noted under subsection (a), below:

(a) The Department will grant an extension of up to 75 calendar days to the Department of Environmental Quality if the application requires Section 401 certification under the Federal Water Pollution Control Act (P.L. 92-500) as amended.

(b) If a commenter fails to comment on the application within the comment period, the Department will assume the commenter has no objection to the project.

(4) Department Review of Public Comments and Public Hearing. The Department will review and consider substantive comments received during the public review period, and may conduct any necessary investigations to develop a factual basis for a permit decision. Necessary investigations may include but are not limited to the following:

(a) The Department may, as a result of the public review process or the Department's investigations, request that the applicant submit supplemental information and answer additional questions prior to the Department making the permit decision. The Department may schedule a permit review coordination meeting with interested agencies or groups and the applicant to provide the applicant an opportunity to explain the project and to resolve issues; and

(b) At the Department's discretion, the Department may hold a public hearing to gather necessary information that may not otherwise be available to make a decision.

(5) Applicant Response to Comments.

(a) Comments resulting from the public review process will be forwarded to the applicant after the comment period deadline.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of additional information to support the application and/or revisions to the project that address the comments.

(c) If no response is received from the applicant by the date specified by the Department, the Department will presume that the applicant does not intend to provide additional supporting information or revisions to the application.

(6) Final Review

(a) The Department will make a final permit decision within 90 calendar days after determining an application is complete; or

(b) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department may agree to extend the timeline for making a final permit decision beyond 90 calendar days. If no agreement is reached, the Department will make a final permit decision within the original 90-day time period.

(7) Application Withdrawal. An applicant may withdraw an application at any time prior to the permit decision. In the event the applicant fails to respond to the Department's requests for information or otherwise fails to reasonably proceed with the application process, the Department may administratively withdraw the application with at least 30 calendar days' notice to the applicant. There will be no refund of the application fee in either case.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

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.

ADMINISTRATIVE RULES

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; DSL 1-2011, f. & cert. ef. 3-1-11

(3) Department Determinations. The Department will issue a permit if it determines the project described in the application:

(a) Has independent utility;

(b) 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

(c) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation, when the project is on state-owned lands.

(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 196.800.

(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);

(d) Removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging);

(e) Placement of greater than 2,500 cubic yards of riprap in coastal streams or estuaries;

(f) Removal-fill in the Oregon Territorial Sea in accordance with Statewide Planning Goal 19-Ocean Resources; and

(g) 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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

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 must be in writing and must be received within 21 calendar days of the decision. The request must include the reasons for the request for hearing.

(2) Other Aggrieved Person 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 for a hearing with the Department within 21 calendar days after the authorization approval date. The request must 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 must be either "adversely affected" or "aggrieved":

(a) To be "adversely affected" by the Department's individual removal-fill permit decision, the person must 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; or

(b) To be "aggrieved" by the Department's individual removal-fill permit decision the person must 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 will be referred to the Office of Administrative Hearings for hearing, and will be conducted as follows:

(a) The hearing will 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 will 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 will 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) The Proposed Order. The Administrative Law Judge will 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) The 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 will 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 must be made to the Department and will be either granted or denied by the Department. The permit will 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 irreparable damage and would be inconsistent with ORS 196.800 through 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 196.600 - 196.692, 196.795 - 196.990

ADMINISTRATIVE RULES

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

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 must be provided to the Department before the transfer; or

(b) If the authorization has expired, but there is a pending mitigation obligation, the mitigation obligation will be transferred to the transferee through an acknowledgement letter. If financial security was required for the pending mitigation obligation, a new financial security instrument must be provided, naming the transferee as the obligor prior to the transfer.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

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 must respond with a request to renew the permit. The request for renewal must:

(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 OAR 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 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0595

Permit Requirements and Interagency Coordination for Department of Environmental Quality Approved Remedial Action, Corrections Facilities, Solid Waste Land Fills and Energy Facilities

(1) **DEQ Remedial Action Waiver.** Pursuant to ORS 465.315, no removal-fill authorization is required for remedial action conducted on a site selected or approved by the Department of Environmental Quality. The responsible party must notify the Department of its intended action, pay applicable fees, and comply with the substantive requirements that the Department would otherwise apply.

(2) **Application Process Requirements for Specific Siting Entities.** Upon submission by the applicant of a complete application and payment of the proper fees, the Department will issue the permits authorized by the authorized siting entity listed below, subject to the conditions set forth by the siting entity (including conditions supplied to the siting authority by the Department). The Department will continue to exercise enforcement authority over a permit issued pursuant to this section. These siting entities are:

(a) The Department of Corrections, pursuant to ORS 421.628, relating to siting corrections facilities;

(b) The Environmental Quality Commission, pursuant to ORS 459.047, relating to siting solid waste land fills; and

(c) The Energy Facility Siting Council, pursuant to ORS 469.300 et seq. related to siting energy facilities.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

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 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 may, upon the request of OBDD, designate a site for expedited planning and processing. The project proponent or sponsor will have authority to authorize the Department or its agents physical access to the site.

ADMINISTRATIVE RULES

(3) Department-Appointed Project Leader. The Director will assign a project leader from the Department to work with the 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 delimitation 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 as 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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

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 must 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 must 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 five calendar days confirming the issuance and setting forth the conditions of operation.

(6) Term. The term of the emergency authorization will be limited to the time necessary to complete the planned project and will 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
- (d) Any other condition necessary to minimize reasonably expected adverse impacts on waters of this state.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0680

Compensatory Wetland and Tidal Waters Mitigation (CWM); Applicability and Principal Objectives

(1) Applicability. OAR 141-085-0680 through 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, and payment in-lieu mitigation). OAR 141-085-0680 through 141-085-0760 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 must 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 will be located within the 4th field Hydrologic Unit Code (HUC) in which the removal-fill site is located.

(b) Impacts to tidal waters must be replaced in the same estuary unless the Director determines that it is environmentally preferable to exceed this limitation.

(c) Projects that involve 0.20 acres or less of permanent wetland impact may use mitigation banks, in-lieu fee, or payment in-lieu mitigation without addressing the principle objectives set forth in Section (2) of this rule.

(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 the permit decision.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

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 must 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;

ADMINISTRATIVE RULES

(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) 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 must 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 must 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 on best professional judgment must 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 must be discussed.

(c) If best professional judgment is used, wetland functions and values to be assessed must 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 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0690

Additional Requirements for CWM

(1) Replacement by Class and Functions and Values. The CWM project must 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 a CWM ratio 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 must 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; and

(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.

(e) The Department may increase the ratios when:

(A) Mitigation is proposed to compensate for an unauthorized removal-fill activity; 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; and

(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 must 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 must not degrade areas with existing high natural resource values (e.g., forested uplands).

(7) CWM Hydrology Must Be Self-Sustaining. CWM must 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;

ADMINISTRATIVE RULES

(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 pre-development 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 must conform to the following additional requirements. Enhancement must:

(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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0695

Administrative Protection of CWM Sites

(1) Administrative Protection Instruments. All CWM sites must be protected from adverse impacts in perpetuity with appropriate protection instruments.

(2) Protection Instrument Standards. Protection instruments must meet the following standards:

(a) The permanent protection instrument must prohibit any uses of the CWM site that would violate conditions of the removal-fill authorization or otherwise adversely affect functions and values provided by the CWM site;

(b) Any proposed revisions to the protection instrument require prior approval from the Department;

(c) A conservation easement may only be granted to qualifying parties set forth in ORS 271;

(d) Conservation easements must provide the Department a third party right-of-enforcement; and

(e) An access easement, conveyed to the Department, must be recorded on the deed for all CWM sites on non-public lands, using a template provided by the Department.

(3) Publicly Owned CWM Sites. For publicly owned CWM sites, administrative protection may be provided through an adopted management plan. Such plan will provide for appropriate protection of the CWM site as determined by the Department.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

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. The Department may allow 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 issued by a bank authorized to do business in the State of Oregon that are irrevocable prior to release by the Department; and

(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 must file the financial security instrument or instruments on a form or forms prescribed and furnished by the Department. Financial security instruments must be made payable to the Department and must 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 will begin at the time of authorization issuance. The liability period must be renewed 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 must 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 must file a request with the Department for the release of all or part of a financial security instrument. The request must 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

ADMINISTRATIVE RULES

(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 must 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 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0705

Requirements for All CWM Plans

(1) CWM Plan Content. CWM Plan detail must 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 must 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 must 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 must 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 must be documented in the first year mitigation monitoring report; and

(iv) Plans that involve enhancement must 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 must 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 must be placed in the body of the CWM plan, and supporting data sheets or assessment model outputs must 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 must show relevant tidal elevations relative to mean lower low water (MLLW) using the nearest local tidal datum. The elevation of MLLW must 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 must identify the long-term protection instrument for the CWM site in accordance with OAR 141-085-0695.

(1) 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 must 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 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 must 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.

ADMINISTRATIVE RULES

(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) must 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.

(g) For authorizations involving a mitigation bank credit purchase, proof of the purchase of the required number of mitigation bank credits must be received by the Department prior to issuance of the authorization.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0710

Monitoring Requirements for CWM

(1) Purpose. The purpose of the CWM monitoring requirement is to provide information for the Department to:

(a) Determine whether the CWM complies with the conditions of the authorization and whether the CWM has achieved its stated goals, objectives and performance standards;

(b) Determine whether the CWM is replacing wetland and tidal waters area and functions and values; and

(c) Provide information for removal-fill program monitoring.

(2) Monitoring Reports. The permit holder must monitor the CWM site and provide to the Department monitoring reports commensurate with CWM site size and complexity. Those reports must include at minimum:

(a) A post construction report demonstrating as built conditions and discussing any variation from the approved plan. Unless waived by the Department, the post construction report must be submitted within 90 calendar days of completing grading;

(b) An annual written monitoring report that includes all data necessary to document compliance with CWM conditions and performance standards; and

(c) A sufficient number of permanent monitoring points to provide a representative sampling of the CWM site and buffers.

(3) Duration. Monitoring must be conducted for five years unless otherwise specified by the Department.

(4) Final Monitoring Report Requirements. To determine whether the CWM project will meet acreage and functional replacement requirements, the Department must receive by not later than the fifth year of the monitoring program the following additional documentation:

(a) Mapping of the CWM site boundary and verification of quantities of actual restoration, creation and enhancement acreages achieved by HGM and Cowardin class; and

(b) Comparison of actual functions and values attained at the CWM site compared to the predicted functions and values for the CWM site identified in the CWM Plan.

(5) Additional Monitoring. The Department may require modifications to the CWM plan, as well as require additional monitoring, if the Department determines that the CWM fails to meet performance standards, replacement acreage requirements, or replace functions and values.

(6) Release From Monitoring Obligations. When the Department determines that the CWM complies with the conditions of the removal-fill authorization, the Department will notify the permit holder in writing that additional monitoring is not required.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0715

Mitigation for Temporary Impacts

Applicants for projects that involve temporary impacts to waters of this state must provide a rehabilitation plan for rectification of temporary impacts. Rectification must include re-establishment of pre-existing contours and replacement of pre-existing vegetation. A monitoring plan to confirm the reestablishment of wetland or tidal waters, or reestablishment of vegetation may be required.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0720

Mitigation Banking Purpose, Applicability and Policies

(1) 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.

(2) 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.

(3) Development of Mitigation Banks is Encouraged. The Department encourages the development and will facilitate the expeditious approval of mitigation banks.

(4) Compensation for Expected or Historical Losses to Aquatic Resources. Mitigation banks must 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.

(5) Banks Must Meet Principal Objectives for CWM: Mitigation banks established and operated under these rules specifically for wetlands must meet the principal objectives of compensatory wetland mitigation in OAR 141-085-0680.

(6) Subject to All CM Rules. Mitigation banks are subject to all rules governing CWM and CNWM, as applicable.

(7) 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 will not generate transferable mitigation credit.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0725

Process for Establishing Mitigation Banks

(1) Pre-prospectus Meeting with the Department. To initiate a mitigation bank, a prospective bank sponsor must 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 (MBI) 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 must submit a Mitigation Bank Prospectus. A Mitigation Bank Prospectus must 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;

ADMINISTRATIVE RULES

(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 OAR 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. Following the Prospectus completeness review, the Department will inform the applicant of one of the following findings:

(a) The Prospectus is complete and will proceed to the public notice; or

(b) The Prospectus is 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 must 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 must develop a Draft Mitigation Bank Instrument (MBI) for submittal to the Department. If the sponsor intends that the MBI serve as the permit application, the sponsor must 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 must meet the requirements for fees, content, and review procedures as specified in OAR 141-085-0545 through 141-085-0565. The draft MBI must contain:

(a) If the proposed bank is for wetland mitigation, all requirements for CWM plans per OAR 141-085-0680 through 141-085-0710; and

(b) The applicant must 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 must 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. Following the review, the Department will 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 must 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 must 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 must 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 will be administered according to OAR 141-085-0575.

(17) Construction Timing. At their own risk, a sponsor may begin construction of a bank before approval of the final MBI if the sponsor:

ADMINISTRATIVE RULES

(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 before 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 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

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 this 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 Credits. Credits may be granted on an area basis for upland buffers at the discretion of the Department. Such buffers may be essential to protect the functions of a bank from potentially adverse effects of adjacent land uses, and will 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 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

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 will 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. Each credit sale transfers the mitigation obligation from the permit applicant to the sponsor.

(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 will 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 must 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 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0740

Authorization for Mitigation Banks

(1) Authorization Requirement. Bank sponsors must obtain a removal-fill permit for any removal-fill necessary to create a proposed bank in jurisdictional areas. At the discretion of the Department, the MBI may serve as the application if complete pursuant to OAR 141-085-0550, and may also serve as the Department's authorization. If the Department accepts the MBI as the application for a removal-fill permit, the bank sponsor must pay the applicable fee for a removal-fill application.

(2) Baseline Conditions Must Be Approved Prior to Construction. When removal-fill permits are not required to establish a mitigation bank, the Department will approve baseline conditions prior to construction.

(3) MBI Constitutes a Department Order. If a removal-fill permit is not required to construct a mitigation bank, the Department will consider the fully executed MBI an enforceable order.

(4) Draft MBI May Be Circulated for Public Notice. For mitigation banks that do not require a permit for construction, or for such banks that the Department elects to allow the MBI to serve as the permit application, a 15-calendar day public notice will be provided to the public of the Department's intent to approve the bank. The Department may elect to circulate a public notice of the MBI according to OAR 141-085-0560. If an MBI is used in place of a removal-fill permit application, it must meet the requirements for fees, content, and review procedures as specified in OAR 141-085-0545 through 141-085-0565.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

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 through 141-085-0740).

(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, before Department approval of the mitigation site.

(2) Policies. In-lieu fee mitigation is subject to all rules governing mitigation banking (OAR 141-085-0720 through 141-085-0745), 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 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 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. DSL 1-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

141-085-0755

Advance Mitigation; Standard Path

(1) Set-Aside Excess Credits. As part of the existing, active individual removal-fill permit application process, an applicant may request that the Department consider that the proposed permittee-responsible CWM (as documented in a CWM Plan prepared in accordance with OAR 141-085-0705) could produce mitigation credits in excess of those needed to satisfy project requirements.

(2) Additional Information Required. If the applicant desires to preserve the option of receiving additional mitigation credit from the excess credits for future projects by the same applicant and by up to one additional party, then the following additional information must be submitted as a part of the applicant's CWM plan:

(a) The specific area(s) of the CWM site that compensates for the specific permitted effect, and identification of the specific areas of the CWM site that are proposed for credit in future projects;

(b) A table showing how much credit, in acres under suitable mitigation ratios, is being claimed at the CWM site; and

(c) The name of any additional person who would use the advance credits.

(3) Applicant Assumes All Risk. If the applicant elects to pursue this option, he/she does so completely at his/her own risk. CWM in advance does not create the presumption that a proposed future wetland impact will be authorized, or that the CWM will be considered suitable CWM. A separate alternatives analysis will be required for each and every separate individual removal-fill permit application.

(4) Monitoring Requirements. Monitoring to determine if success criteria are met must continue for five years or until the success criteria are achieved, whichever is longer. Such monitoring requirements will apply to each designated mitigation area, or for the entire mitigation site if constructed at one time.

(5) Conversion of Unused Credits. Unused credits created by standard path advance mitigation may be converted to alternate path mitigation credits at the discretion of the applicant and in accordance with OAR 141-085-0760.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0760

Pilot Program for Advance Mitigation; Alternate Path

(1) Objective. The objective of advance mitigation is to provide compensatory wetland mitigation that replaces wetland functions and values before authorized wetland impacts. Currently, the Department has an advance mitigation option available through the mitigation banking program (OAR 141-085-0720 through 0745.) and standard path advance mitigation program (OAR 141-085-0755). The current methods of advance mitigation remain in effect and are not modified by this alternate path approach. The purpose for creating alternate path advance mitigation is to:

(a) Reduce or eliminate the temporal loss of wetland functions and values associated with permittee responsible CWM;

(b) Reduce the risk of mitigation site failure by demonstrating mitigation site success prior to credit release;

(c) Reduce entry requirements associated with wetland mitigation banking by reducing initial administrative requirements and performance security requirements; and

(d) Reduce the Department's administrative burden for authorizing advance mitigation.

(2) Implementation. The Department will establish a method for implementing the alternate path advance mitigation program, including, but not limited to the following elements:

(a) Requirements for baseline condition documentation, including but not limited to: wetland delineation, wetland functions and values assessment, site selection criteria, proposed success criteria, and monitoring plan;

(b) Department approval of baseline documentation;

(c) Advance mitigation site development including removal-fill authorization, as necessary;

(d) Mitigation site monitoring by the advance mitigation proponent; and

(e) Petition to the Department for credit certification including, but not limited to, final wetland delineation and functions and values assessment, monitoring results, credit ledger management, and long-term management and site protection plan.

(3) Term of Pilot Program. The Department will evaluate the pilot program no later than five years after implementation and may continue,

modify or suspend the program depending on evaluation outcome. The Department's evaluation will consider the extent to which the program:

(a) Accomplishes the program purposes described in Section (1) of this rule;

(b) Provides CWM of quality at least commensurate with wetland mitigation banking; and

(c) Influences the viability of the existing wetland mitigation banking program.

(4) Applications May Be Limited. The Department may limit the number of applicants for the alternate path advance mitigation pilot program.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0765

Compensatory Non-Wetland Mitigation (CNWM)

(1) Compensatory Non-Wetland Mitigation (CNWM) for Waters Other Than Wetlands or Tidal Waters. The Department will also require CNWM for unavoidable impacts to waters of this state for waters other than wetlands or tidal waters. Such conditions may impose obligations on the permit holder beyond the expiration of the authorization.

(2) Scope of CNWM. CNWM will be commensurate with removal-fill impacts and may include, but is not limited to:

(a) Offsite or onsite enhancement, creation, restoration and preservation of water resources of this state such as rivers, intermittent and perennial streams, lakes, ponds and springs; and

(b) Offsite and onsite improvements to enhance navigation, fishing and public recreation uses of waters of this state.

(3) CNWM Approval Standard. In order for the Department to approve compensatory mitigation for impacts to waters of this state other than wetlands or tidal waters, the applicant must demonstrate in writing, using a method approved by the Department, that the compensatory mitigation plan will replace or provide comparable substitute water resources of this state.

(4) CNWM Conditions of Approval. The Department may require that the CNWM include:

(a) Defined performance standards;

(b) Site monitoring and reporting using a method approved by the Department;

(c) Administrative protection of the CNWM site; and

(d) Financial security.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0770

Complaints and Investigations

(1) Violations. A violation is:

(a) Removal-fill without a valid authorization;

(b) Non-compliance with any condition of an authorization;

(c) Obtaining an authorization or reporting on conditions of an authorization by misrepresentation or by failure to fully disclose known material facts;

(d) Failing to comply with any terms of an enforcement order;

(e) Failing to comply with the requirements of the Removal-Fill Law or these rules; or

(f) Violation of any condition of an approved wetlands conservation plan.

(2) Reporting Suspected Violations; Complaints. Alleged or suspected violations may be reported as complaints to the Department in person, by e-mail, facsimile, telephone or in writing. When reports of alleged or suspected violations are submitted to the Department in confidence, as expressly requested by the complainant, and the information is not otherwise required by law to be submitted, the Department may keep the name of the person making the report confidential if the criteria set forth in ORS 192.501 or 192.502 are met.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0775

Enforcement Actions and Procedures; Appeals

(1) Enforcement Powers. The Department is authorized to take or recommend such civil, criminal or administrative actions as are necessary to enforce the Removal-Fill Law and these rules.

ADMINISTRATIVE RULES

(2) Administrative Remedies. The Department may take appropriate action to remedy violations or alleged violations or to enforce these rules, a permit or authorization, or a final order.

(a) Appropriate enforcement action depends upon the nature of the violation and may include, but is not limited to, requiring the violator to:

- (A) Comply with conditions of a permit, authorization or order;
- (B) Remove an unpermitted fill;
- (C) Restore the site of an unpermitted removal;
- (D) Pay a civil penalty;
- (E) Provide compensatory mitigation; and
- (F) Forfeit their right to apply for new removal-fill permits or authorizations (debarment).

(b) The following administrative remedies may be used to implement appropriate enforcement actions:

(A) Cease and desist orders may be issued to prevent damage. The Department may issue an order requiring any person to cease and desist from any project if the Department determines that such violation or threatened violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(i) A cease and desist order may be entered without prior notice or hearing and will be served upon the person by personal service or by registered or certified mail.

(ii) A cease and desist order will state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 calendar days after receipt of the order.

(iii) If a person subject to a cease and desist order files a timely request for a hearing, the Department will hold a contested case hearing before the Office of Administrative Hearings pursuant to the applicable provisions of ORS 183.310 through 183.550.

(iv) Cease and desist orders will not be stayed during the pendency of a hearing conducted under this section.

(v) Neither the Department nor any duly authorized representative of the Department will be liable for any damages a person may sustain as a result of a cease and desist order issued under this section.

(B) Consent agreements and consent orders are cooperative in nature and are used when an agreement can be reached to resolve the violation. In signing a consent agreement, the violator waives his or her right to appeal;

(C) Restoration orders may be issued when cooperative agreement cannot be reached to resolve the violation. Restoration orders are appealable;

(D) Revocation or suspension of an authorization, as per OAR 141-085-0780; and

(E) Consent agreements, consent orders and restoration orders may include a civil penalty and corrective action necessary to resolve the violation.

(3) Notice and Due Process. The Department will give notice of any proposed restoration order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or public body affected. Any proposed restoration order will include a notice of violation and will describe the nature and extent of the violation.

(4) Request for Hearing. If a person subject to a restoration order under this section files a timely request for hearing, the Department will hold a contested case hearing before the Office of Administrative Hearings according to the applicable provisions of ORS 183.310 through 183.550. If the person fails to request a hearing, a final order will be issued upon a prima facie case made on the record of the agency.

(5) Restoration Orders Must be Appealed Within 20 Calendar Days. Any person aggrieved by a proposed restoration order may request a hearing within 20 calendar days of the date of personal service or mailing of the notice.

(6) Written Requests for Hearings. Any written request for a hearing concerning a cease and desist or proposed restoration order shall admit or deny all factual matters stated in the proposed restoration order and shall state any and all claims or defenses regarding the alleged violation. Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing.

(7) Civil Remedies. Any violation of ORS 196.600 to 196.990 or of any rule or final order of the Department under ORS 196.600 to 196.990 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Department may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Civil remedies sought under this

section may also include property liens. Proceedings thus brought by the Department will set forth, if applicable, the dates of notice and hearing and the specific rule or order of the Department, together with the facts of non-compliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0780

Revoking or Suspending an Authorization; Allowing Corrective Action

(1) Revocation or Suspension if Out of Compliance. The Department may revoke or suspend an authorization if an alleged violator is not in compliance with any conditions of an authorization, or if the applicant failed to provide complete and accurate information in the permit application.

(2) Suspension for Delinquency of Payment. Any authorization may be suspended during any period of delinquency of payment of the renewal fee and will be treated as though no authorization had been issued.

(3) Procedures to Revoke or Suspend Authorization. The Department may initiate the following proceedings to revoke an authorization:

(a) The Department will issue a Notice of Intent to Revoke or Suspend to the alleged violator stating the intent to revoke or suspend the authorization; and

(b) The Notice will include the following information:

(A) A statement of the alleged violator's right to a contested case hearing within 20 calendar days of receiving the notice;

(B) A statement of the authority and jurisdiction under which the contested case hearing is to be held;

(C) Citations for the relevant sections of law and rule;

(D) A short and plain statement of the matters asserted or charged as constituting the violation(s); and

(E) A statement of any action that is necessary by the alleged violator to correct or offset the effects of the violation including, but not limited to, removal of filled material or replacement of removed material.

(c) Any action specified in the notice will include a reasonable time period in which to complete the corrective action.

(A) If the alleged violator completes such action within the specified time period, the revocation or suspension procedure will be terminated; and

(B) If the authorization holder fails to request a contested case hearing, the Department may issue a final order revoking or suspending the authorization after presenting a prima facie case demonstrating that a violation has occurred.

(4) Revocation or Suspension of Multi-Year Authorizations. If a person fails to comply with reporting requirements or any other condition of a multi-year authorization the Department may revoke the multi-year status and require annual renewal, suspend the permit pending correction, or take any other enforcement action available to the Department.

(5) Appeals Procedures. Procedures for requesting an appeal on a revocation or suspension are as set forth in OAR 141-085-0775(4) and (6).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

141-085-0785

Civil Penalties; Appeals

(1) Civil Penalties May Be Assessed. In addition to any other remedy allowed by law or these rules, the Department may assess a civil penalty for any violation of the Removal-Fill Law, these rules, an authorization or an order issued pursuant to OAR 141-085.

(2) Each Day is a Separate Offense. Each day a violation continues constitutes a separate offense for which the Department may assess a separate penalty.

(3) Multiple Penalties May Be Assessed. A civil penalty assessed on an initial violation may be followed by one or more separate civil penalties for failure to comply with a restoration order issued on the same violation.

(4) Required Notice; Right to Appeal Within 20 Calendar Days. The Department will give written notice of intent to assess a civil penalty by personal service or by registered or certified mail to the permit holder or person (hereinafter referred to as "party") incurring the civil penalty. The notice will include the following:

(a) The particular section of the statute, rule, order or authorization involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 20 calendar days of receiving the notice;

ADMINISTRATIVE RULES

(d) A statement of the amount of civil penalty assessed and terms and conditions of payment; and

(e) Notification that the party may request a contested case hearing.

(5) Appeals Procedures. Procedures for requesting an appeal on a civil penalty are as set forth in OAR 141-085-0775(4) and (6).

(6) Calculating the Civil Penalty.

(a) The amount of civil penalty (F), as expressed in U.S. currency dollars, will be determined by the Department using the following formula: F = BPCI:

(A) B is the base fine factor of \$1,000;

(B) "P" is the prior knowledge factor to be determined as follows:

(i) A value of 1 will be applied if the alleged violator was unaware of the Removal-Fill Law at the time of the alleged violation;

(ii) A value of 2 will be applied if the alleged violator was aware of the Removal-Fill Law at the time of the alleged violation and in cases of permit non-compliance; or

(iii) A value of 5 will be applied if the alleged violator had a previous violation. A previous violation exists, if there was an adjudication (either in court or administrative hearing), or the violator failed to appeal an enforcement order (and a final order was issued), or the violator signed a consent agreement. This value will not be imposed if the previous violation occurred more than five years prior to the current incident.

(C) The cooperation value (C) will be determined by the Department after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value will be assessed as follows:

(i) A value of 1 will be applied when the person responds to communications from the Department, supplies information requested by the Department, permits access to the site to conduct site investigations and/or complies with restoration as requested by the Department; or

(ii) A value of 3 will be applied when the person is not responsive to communications from the Department, not cooperative in providing information as requested by the Department and/or the person does not, after receiving verbal or written notification from the Department, cease the activity alleged to constitute a violation or threatened violation.

(D) "I" is the water resource adverse effect factor to be determined as follows:

(i) A value of 1 will be applied if the damage to the resource is minimal and/or the resource is expected to naturally self-restore within one year; or

(ii) A value of 3 will be applied if the adverse impacts are significant and/or not expected to naturally self-restore within one year. In the case of permit non-compliance, a value of 3 will be applied if failure to correct the deficiency could result in reasonably expected adverse impacts to waters of this state or a deficiency in the obligation to provide mitigation.

(b) In cases where the prior knowledge (P) factor is greater than one (1) and the cooperation (C) factor is greater than one (1), the total amount of the civil penalty (F), in dollars U.S. currency, will be doubled, not to exceed \$10,000 per day.

(c) In determining whether to assess a separate penalty for each day a violation continues, the Department may consider the number of days during which the activity alleged to constitute a violation occurred, as well as the number of days the adverse effect of this activity continues unabated.

(7) Failure to Pay Civil Penalty. Once the final adjudication of any civil penalty has been calculated and noticed, the amount of the civil penalty will increase by the amount of the original civil penalty for every 20 calendar days that pass without the alleged violator remitting payment to the Department for the full amount of the civil penalty and the Department taking receipt of the payment. In no case will the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid, interest will accrue at the rate of nine percent per annum on the unpaid balance (pursuant to ORS 82.010).

(8) Civil Penalty Relief. The alleged violator may request from the Department a reduction or waiver of the civil penalty by showing evidence of financial hardship. The request must be received within 20 calendar days from the date of personal service or mailing of the notice of civil penalty. Evidence provided as to the alleged violator's economic and financial condition may be presented without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation. The Department will reduce or waive a civil penalty upon request if the Department determines that the imposition of the full civil penalty would result in extreme financial hardship for the violator, and that the public interest in avoiding extreme financial hardship outweighs the public interest in deterring future violations.

(9) Settlement. The Department may settle violations and penalties in the exercise of its discretion taking into account the cooperation of the violator in addressing the violation.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 1-2011, f. & cert. ef. 3-1-11

Rule Caption: Complete revision to General Authorization Rules to be consistent with ORS 196.850.

Adm. Order No.: DSL 2-2011

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 12-1-2010

Rules Adopted: 141-089-0620, 141-089-0625, 141-089-0630, 141-089-0635, 141-089-0640, 141-089-0645, 141-089-0650, 141-089-0655, 141-089-0656, 141-089-0660, 141-089-0665, 141-089-0670, 141-089-0675, 141-089-0680, 141-089-0685, 141-089-0690, 141-089-0695, 141-089-0700, 141-089-0705, 141-089-0710, 141-089-0715, 141-089-0720, 141-089-0725, 141-089-0730, 141-089-0735, 141-089-0740, 141-089-0745, 141-089-0750, 141-089-0755, 141-089-0760, 141-089-0765, 141-089-0770, 141-089-0775, 141-089-0780, 141-089-0785, 141-089-0790, 141-089-0795, 141-089-0800, 141-089-0805, 141-089-0810, 141-089-0815, 141-089-0820, 141-089-0825, 141-089-0830, 141-089-0835

Rules Repealed: 141-089-0095, 141-089-0100, 141-089-0105, 141-089-0110, 141-089-0115, 141-089-0120, 141-089-0125, 141-089-0130, 141-089-0135, 141-089-0140, 141-089-0145, 141-089-0150, 141-089-0155, 141-089-0160, 141-089-0165, 141-089-0170, 141-089-0175, 141-089-0180, 141-089-0185, 141-089-0190, 141-089-0192, 141-089-0195, 141-089-0200, 141-089-0205, 141-089-0210, 141-089-0215, 141-089-0220, 141-089-0225, 141-089-0230, 141-089-0235, 141-089-0240, 141-089-0245, 141-089-0250, 141-089-0255, 141-089-0260, 141-089-0265, 141-089-0270, 141-089-0275, 141-089-0280, 141-089-0285, 141-089-0290, 141-089-0295, 141-089-0300, 141-089-0302, 141-089-0305, 141-089-0310, 141-089-0400, 141-089-0405, 141-089-0410, 141-089-0415, 141-089-0420, 141-089-0423, 141-089-0425, 141-089-0430, 141-089-0500, 141-089-0505, 141-089-0510, 141-089-0515, 141-089-0520, 141-089-0525, 141-089-0530, 141-089-0585, 141-089-0590, 141-089-0595, 141-089-0600, 141-089-0605, 141-089-0607, 141-089-0610, 141-089-0615

Subject: The division 89 General Authorization (Gas) are being completely revised to be consistent with ORS 196.850. Statute requires only that a person notify the Department in writing before conducting an action under a General Authorization. There is a 30-day eligibility verification process. The GAs have been modified to ensure no more than a minimal adverse environmental effect.

Rules Coordinator: Elizabeth Bolden—(503) 986-5239

141-089-0620

General

(1) Special Headings and Fonts. Where headings, special fonts or double-spacing are used, they are for the convenience of the user only and have no substantive effect.

(2) Applicability of OAR 141-085. Unless otherwise specified under OAR 141-089, the provisions of OAR 141-085 apply to General Authorizations.

(3) Previous GAs Repealed. OAR 141-089-0095 through 141-089-0615 were repealed on March 1, 2011.

(4) Projects Authorized under Previous GAs. Authorizations issued under the previous OAR set forth in Section (3) of this rule will remain in effect until January 1, 2012. At the Department's discretion, limited extensions may be allowed for projects that have been started but not competed by this date. Written approvals for extensions must be obtained from the Department before January 1, 2012.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

141-089-0625

General Authorizations (GA); Process for Establishing; Standards and Criteria

GAs are adopted individually by rule and can be found in OAR 141-089-0660 through 141-089-0835.

(1) Waiver of Permit Requirements. An individual removal-fill permit may not be necessary if a proposed activity meets the requirements of a General Authorization (GA). Any person proposing to conduct a removal-fill activity under a GA must first notify the Department in writing and pay any applicable fee to the Department.

(2) Establishment. General Authorizations are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 through 183.550). A General Authorization may be granted on a statewide or other geographic basis.

(3) Criteria for Adoption. The Department may adopt a GA based upon a finding that the category of activities of removal-fill:

- (a) Are substantially similar in nature;
- (b) Would cause only minimal individual and cumulative environmental impacts; and

(c) Would not result in long-term harm to the water resources of this state.

(4) Department Findings. These General Authorizations are made pursuant to ORS 196.850 and are based upon the determination that the authorized activities are similar in nature and when conducted in accordance with these rules will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(5) Amend or Rescind. The Department may amend or rescind any GA, through rulemaking, upon a determination that the removal-fill activity 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 apply this provision. Such a request must include the specific General Authorization to be rescinded or amended and the reasons for the request.

(6) Expiration of General Authorizations. The Department will conduct a review of the GAs on or before March 1, 2016. The review will include public notice and opportunity for public hearing. At the completion of its review, the Department will decide whether to modify, reissue or rescind the GAs.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0630

Project Applicability

(1) Applicability. This rule sets forth conditions under which a person may, without an individual removal-fill permit from the Department, place or remove material within waters of this state, excluding State Scenic Waterways, as defined in OAR 141-085 for the purposes set forth in each GA.

(2) Department Determination of Eligibility. To be eligible for a GA, a project must comply with the general conditions described in OAR 141-089-0650 as well as individual GA purpose, eligibility, authorized activities and activity-specific conditions. In the event a dispute arises concerning or about the applicability of a General Authorization to any project notification, the Department will make the final determination.

(3) Thresholds and Best Management Practices (BMPs). BMPs necessary to comply with the general conditions are not included in the thresholds under each General Authorization.

(4) Project with More Than Minimal Impacts. The Department may require an individual removal-fill permit for a project that would otherwise be authorized by a general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an application for an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

(5) Combining Activities. The following General Authorizations may be combined to cover a single project when the combined activities result in no more than minimal impacts:

- (a) Waterway Habitat Restoration;
- (b) Wetland Ecosystem Restoration;
- (c) Waterway Bank Stabilization;
- (d) Piling Placement and Removal;
- (e) Certain Transportation-Related Activities in ESH; and

(f) Temporary Impacts to Non-Tidal Wetlands.

(6) Entire Project. Projects eligible for GAs must rely solely on GAs for their authorization. GAs may not be combined with either Individual Permits or authorizations under General Permits.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0635

Fees; Disposition of Fees

(1) Fees. For removal-fill volumes that equal or exceed 50 cubic yards, a flat fee of \$250.00 will be assessed and must be submitted with the notification for the following GAs:

- (a) Certain Transportation-Related Activities in ESH;
- (b) Temporary Impacts to Non-Tidal Wetlands;
- (c) Piling Placement or Removal; and
- (d) Removing and Disposing of Sediment Behind Tidegates and Within Hydraulically Closed Perimeters.

(2) Fee for Project with Combined GAs. For a project which combines multiple GAs under OAR 141-089-0630 and for which a fee is required for more than one of the GAs according to OAR 141-089-0635(1), a flat fee of \$250.00 will be required for the project.

(3) Fees Deposited in the Common School Fund. The Department will credit any fee collected under this section to the Common School Fund for use by the Department in administration of ORS 196.600 through 196.905.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0640

Pre-Construction Notification

(1) Project Notification Required. A complete project notification must be submitted to the Department at least 30 calendar days before starting the project. A complete notification is one that contains all the information required on the form provided by the Department and all required attachments. The project may begin 30 calendar days from agency receipt of the notification.

(2) Review of the Notification. Within 30 calendar days of receipt, the Department will review the notification for completeness and eligibility, make one of the following determinations and notify the responsible party that:

(a) The notification is complete and the project is eligible under the GA;

(b) The notification is incomplete and the person must supply certain specified missing, inaccurate or insufficient information. The person may amend and resubmit the notification within 120 calendar days of the notice for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended notification starts a new 30-day review period; or

(c) The project is ineligible for certain specified reasons. The person may then either revise the project and submit for reconsideration within 120 days of the notification or apply for an individual permit under OAR 141-085. Submission of an amended notification commences a new 30-day review period.

(3) Timeframe for Resubmittal of Incomplete or Ineligible Notifications. If a revised notification or application is not resubmitted within 120 calendar days of an incompleteness or ineligible determination, the Department will presume that the responsible party does not intend to provide revisions to the notification and may administratively close the file. If the Department closes the file under these circumstances, the Department will retain the application fee. If the Department receives a subsequent notification or application for the same or similar project after a file has been closed, the responsible party must pay any applicable fees for the new notification at time of submission.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0645

Expiration of Project Eligibility

(1) Except as provided below under Section (2) of this rule for the Recreational and Small Scale Placer Mining GA (See OAR 141-089-0820):

- (a) A notification confirmed as eligible under a GA will be valid for three years or until the project is complete, whichever occurs first; and
- (b) Requests for renewals or extensions will not be granted.

(2) Expiration and Renewal of Recreational Placer Mining Authorizations are according to the following:

ADMINISTRATIVE RULES

(a) Authorizations issued under the Recreational Placer Mining GA expire on December 31 of each year;

(b) When an authorization is issued, a completed Recreational Placer Mining Report Form must be submitted to the Department by December 31 of each year the authorization was active; and

(c) Renewal of the authorization will require submission of a completed Recreational Placer Mining Report for the previous year.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0650

General Conditions

The following conditions apply to all general authorizations except for Removing and Disposing of Sediment Behind Tidegates and Within Hydraulically Closed Perimeters (OAR 141-089-0760 through 141-089-0775):

(1) Responsible Party. The person listed on the notification as the responsible party is responsible for the activities of all contractors or other operators involved in project work covered by the GA.

(2) Copy of Approved Notification Available for Inspection. A copy of the notification approved by the Department must be available at the work site whenever noticed activities are being conducted.

(3) Site Access Required. Employees of the Department and all authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under a notification.

(4) Archeological Resources. If any archeological sites, resources or artifacts are discovered during construction, work must immediately cease and the State Historic Preservation Office must be contacted.

(5) ODFW Fish Passage Requirement. The noticed activity must meet Oregon Department of Fish and Wildlife requirements for fish passage before the project is started (ORS 509.580 through 509.901 and OAR 635-412-0005 through 635-412-0040).

(6) Hazards to Recreation, Navigation and Fishing. The activity must be timed so as not to interfere with or create a hazard to recreational and commercial navigation and fishing.

(7) Work Period in Jurisdictional Areas. Fill or removal activities below the Ordinary High Water Line must be conducted when recommended by ODFW, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. Work is prohibited when fish eggs are present within the reach where activities are being conducted.

(8) Pre-Construction Resource Area Fencing or Flagging. Prior to any site grading, the boundaries of any avoided wetlands, waterways and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. There must be no vegetation removal or heavy equipment within marked areas. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

(9) Erosion Control Methods. The following erosion control measures must be installed at the construction site prior to construction and maintained during and after construction to prevent erosion and minimize movement of soil into waters of this state:

(a) All exposed soils must be stabilized during and after construction in order to prevent erosion and sedimentation;

(b) Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands;

(c) To prevent erosion, use of compost berms, impervious materials or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;

(d) Unless part of the permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control if native vegetation is unavailable. If soils are to remain exposed for more than seven days after completion of the permitted work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed;

(e) Where vegetation is used for erosion control on slopes steeper than 2:1, tackified seed mulch must be used so the seed does not wash away before germination and rooting;

(f) Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands;

(g) Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized; and

(h) All erosion control structures must be removed when the project is complete and soils are stabilized and vegetated.

(10) Hazardous, Toxic, and Waste Material Handling. Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Barges must have a containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

(11) Raising or Redirecting Water. The project must not cause water to rise or be redirected and result in damage to structures or property.

(12) Wetlands of Conservation Concern. The project must not involve impacts to wetlands identified as a wetland type of conservation concern. Wetlands of Conservation Concern are bogs, fens, playas, salt flats, alkaline lakes, hot springs, native wet prairies, vernal pools, inter-dunal wetlands, mature forested wetlands, ultramafic soil wetlands, wooded tidal wetlands, and un-diked tidal wetlands, as determined by the Department.

(13) Waste Disposal. Old piling and other waste material discarded by the project must be disposed of in an appropriate disposal facility. There must be no temporary storage of piling or other waste material below top of bank, in any wetland, Federal Emergency Management Administration designated floodway, or an area historically subject to landslides.

(14) DSL May Halt or Modify. DSL retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.

(15) Work Area Isolation. The work area must be isolated from the water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction conditions. All fish must be salvaged from the isolated area in accordance with Oregon Department of Fish and Wildlife requirements.

(16) Spoil Disposal. Spoil materials, not used in the project, must be placed in an upland location. Spoil materials used in the project must be included in the cumulative removal-fill calculation for the activity.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0655

Enforcement

Failure to adhere to the terms of any general authorization when performing activities authorized under this division, is a violation of the Removal-Fill Law and may be subject to appropriate enforcement in accordance with OAR 141-085.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0656

Authorization Decision Appeals

A person whose project is determined by the Department to be ineligible for a General Authorization may appeal the Department's decision according to OAR 141-085-0575(1), (5) through (10) and OAR 141-085-0580.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0660

Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, fill, remove or move small quantities of material for certain activities within waters of this state designated Essential Indigenous Anadromous Salmonid Habitat (ESH).

ADMINISTRATIVE RULES

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0665

Eligibility Requirements

Activities are limited to four cubic yards of removal and fill at any individual site and, cumulatively, not more than 10 cubic yards of removal and fill within a designated ESH stream for the entire project.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0670

Authorized Activities

Eligible projects are limited to installation, removal, construction, maintenance and inspection for the following activities:

(1) Investigative Drilling. Investigative drilling to gather necessary technical data for designing structures.

(2) Scientific Measurement. Scientific measurement devices, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures, whose purpose is to measure and record scientific data.

(3) Surveys. Surveys for historical resources.

(4) Maintenance of Water Intake Structures. Removal of sediment, sand and gravel necessary to maintain flow for an existing water intake structure.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0675

Activity-Specific Conditions

Projects eligible for this General Authorization must adhere to the General Conditions listed under OAR 141-089-0650.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0680

Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, place or remove piling in waters of this state designated as Essential Indigenous Anadromous Salmonid Habitat (ESH) as described in OAR 141-102.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0685

Eligibility Requirements

To be eligible, a project must adhere to the following:

(1) Purpose. Individual piling and piling placed for over-water structure support (e.g., piling associated with docks, piers, boardwalks), mooring and turning dolphins, navigational aids without footings or other support structure as approved by the Department.

(2) Piling Material. Round steel piling 24 inches in diameter or smaller, steel H-piling designated as HP24 (depth of section 24 inches or less) or smaller, or untreated wood, pre-cast concrete or plastic piling.

(3) Limited Placement. Piling must be placed:

(a) So as not to form headwalls or other bank treatment structures;

(b) So as not to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;

(c) So as not to create new uplands;

(d) In non-wetland waters;

(e) In non-tidal waters; and

(f) By vibratory hammer or impact hammer, subject to the activity-specific conditions set forth in OAR 141-089-0695. Hydraulic jetting is not allowed.

(4) Removal. Piling must be removed by means of vibratory method only according to the activity-specific conditions set forth in OAR 141-089-0695.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0690

Authorized Activities

(1) Number of Piling Installed is Limited. Placement of no more than five pilings or one dolphin consisting of three to five pilings; and

(2) Number of Piling Removed is Limited. Removal of no more than five pilings or one dolphin consisting of three to five pilings.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0695

Activity-Specific Conditions

Projects eligible for this GA must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Minimum Necessary. Number of pilings must be the minimum necessary to fulfill the essential purpose.

(2) Sound Attenuation. A vibratory hammer must be used whenever feasible. If an impact hammer must be used to drive or proof steel piles, sound attenuation measures including cushion blocks (wood blocks between pile and hammer) and bubble curtains operated to distribute air bubbles around 100 percent of the piling for the full depth of the water column must be used:

(a) If water velocity is 1.7 miles per hour or less, an unconfined bubble curtain may be used; or

(b) If water velocity is greater than 1.7 miles per hour, a confined bubble curtain (e.g., bubble ring surrounded by fabric or metal sleeve) must be used.

(3) Method for Removal of Piling. Removal of piling must be conducted using a vibratory method:

(a) Piling must not intentionally be broken by twisting or bending;

(b) Upon removal, piling must be handled to effectively contain all adhering sediment. All return flows must meet state water quality standards; and

(c) Piling and containment materials must be disposed in an approved upland disposal site.

(4) Removal Problems in Uncontaminated Sediment. If wood piling breaks above or below the bed surface within an area of uncontaminated sediment, piling must be cut at least three feet below the bed surface or otherwise pushed into that depth, then covered with a cap of clean substrate.

(5) Removal Problems in Contaminated Sediment. If wood piling breaks above the bed surface within an area of known contaminated sediment, piling must be cut at the bed surface or otherwise pushed to that depth. If piling breaks in contaminated sediment below the bed surface, no further attempt at removal may be made and the hole must be covered with a cap of clean substrate.

(6) Prevent Perching. Piling must be fitted with devices to effectively prevent perching by fish-eating bird species.

(7) Barge or Top of Bank Position. Piling must be placed or removed from a barge-mounted or above top-of-bank position. If barge-mounted, barge must not at any time be grounded in the bed or banks.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0700

Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, temporarily place or remove material in non-tidal wetlands for purposes of construction staging, placement or maintenance of utility lines or constructing temporary access.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0705

Eligibility Requirements

To be eligible, a project must adhere to the following:

(1) Wetland Conversion. Activities must not permanently convert wetland to upland.

(2) Woody Vegetation. The project must not convert forested or shrub wetlands to a different Cowardin class.

(3) Wetland Delineation and Concurrence. A copy of a valid, Department-approved wetland delineation map and concurrence letter must be provided with the notification, unless otherwise directed by the Department.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

141-089-0710

Authorized Activities

The project is limited to temporary impacts of 0.2 acres or less of non-tidal wetlands. This threshold applies to all activities associated with the project (e.g., placement of the utility lines, material stockpiling, equipment storage, staging and vehicle access).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0715

Activity-Specific Conditions

Projects eligible for this GA must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Temporary Impact Rectification. Rectification of temporary impacts includes re-establishment of pre-existing contours and pre-existing vegetation.

(2) Timing of Temporary Impact Rectification. Re-establishment of pre-construction contours must be completed immediately following project completion and within the same construction season as the temporary impact. Planting must be completed within six months of re-establishment of pre-existing contours.

(3) Post-Construction Report Required. Within two years of planting, a report must be submitted to the Department. The report must include:

(a) Data plots, according to OAR 141-090, to confirm that the wetland area impacted by the project meets wetland criteria; and

(b) Photos taken at the previously established photo points.

(4) Protection of Ground Surface. Before placing temporary fill in wetlands, fabric must be placed to allow complete removal of all temporary materials from the wetlands. If necessary to assist with removal of the fill, chain link fence or similar material may be placed under the fill. All fabric, fencing and other materials must be completely removed at project completion.

(5) Stockpile Topsoil. When trenching, the upper 12 inches of topsoil must be removed and stockpiled separately from subsurface soils and used as the final layer in backfilling.

(6) Prevent Hydraulic Piping. The project must be constructed to prevent underground hydraulic piping to dewater the site or adjacent wetlands. If the native underlying soils are not used as bedding material, and a coarser, non-native soil or other material is used, preventive measures must be used such as restoration of the restrictive layer and placement of clay or other impermeable plugs. Such plugs must be placed at each wetland boundary.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0720

Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, place or remove material in non-tidal waterways for the purpose of stabilizing the actively eroding banks of non-tidal waters.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0725

Eligibility

To be eligible, a project must be for the purpose of bank stabilization in non-tidal waters and meet the project criteria for the authorized activities listed in OAR 141-089-0730.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0730

Authorized Activities

(1) Bio-Engineering. This activity includes placement of woody vegetation, vegetated geogrids, biodegradable logs, straw bales or straw logs used for bank protection, bank reshaping, terracing and erosion control.

(2) Bank Terracing. This activity includes bank terracing and sloping to facilitate establishment of woody vegetation. The project must meet the following criteria:

(a) The slope must not be steeper than 3:1 (H/V) ratio;

(b) Bank treatments must be replanted with native woody vegetation; and

(c) If fabric is necessary, no petroleum-based fabric is allowed.

(3) Placement of Large Wood. Trees or root wads may be used. The project must meet the following criteria:

(a) Trees must have a trunk diameter greater than or equal to 12 inches;

(b) The basal ends must be oriented upstream;

(c) If fastening is necessary, only smooth, single-string wire, degradable rope or pinning may be used. Braided wire cable is not allowed; and

(d) If anchoring is necessary, only rock ballast, untreated wood posts, stabilizing wood or key pieces of wood may be used as anchors.

(4) Engineered Log Jams. Log jams may be placed in order to stabilize the bank for woody vegetation establishment. The project must meet the following criteria:

(a) The length of key pieces of wood with trimmed rootwads must be one and one-half times the bankfull width or a minimum of 25 feet in length when bankfull width exceeds 15 feet. The length of key pieces of wood with trimmed rootwads must be the twice the bankfull width or a minimum of 30 feet in length when bankfull width exceeds 15 feet;

(b) Large wood must be intact, hard and undecayed to partially decayed hardwoods or conifers;

(c) The log jam must not occupy more than 20 percent of the bankfull width;

(d) If fastening is necessary, only smooth, single-string wire, pinning or degradable rope may be used. Braided wire cable is not allowed; and

(e) If anchoring is necessary, only rock ballast, untreated posts, stabilizing wood or key pieces of wood may be used as anchors.

(5) Log Toe Placement. The project must meet the following criteria:

(a) Log toes must not extend more than one foot above the elevation of the water at base flow; and

(b) Logs must be large enough to withstand the hydraulic energy in the stream and be anchored securely to the bank by burial.

(6) Porous Weir. This activity includes the construction of a self-sustaining, low profile, structure including but not limited to cross vanes and artificial riffles. A porous weir delays but does not store water. It is used to redirect flow toward the center of the channel, provide energy dissipation and promote increased sedimentation along banks while allowing fish passage through a porous design. The project must meet the following criteria:

(a) Porous weirs must be placed so scour pools occur in areas where pools would naturally form in a pool and riffle complex;

(b) Porous weirs must not result in culvert inlet or outlet scour;

(c) Porous weirs must be sized appropriately for the system so as not to require annual maintenance;

(d) Porous weirs must be constructed of materials that mimic natural substrate found within the system;

(e) The structure must not exceed 100 cubic yards and 40% of the channel cross-section width; and

(f) The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0735

Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Anchoring. Anchoring materials must:

(a) Not restrict or redirect flows; and

(b) Be set below grade to minimize the appearance.

(2) Ballast. Use of rock and gravel for ballast and porous weirs is limited as follows:

(a) Only the minimal amount necessary may be used to achieve project objectives;

(b) Rock must be placed in a manner that does not increase the upland surface area;

(c) Rock must be placed in a way as to minimize adverse impacts to the active channel;

(d) All rock must be placed, not dumped, from above the bank line; and

(e) Only erosion resistant rock from an upland source may be used. No broken concrete or asphalt is allowed.

(3) Natural Materials. Material used must be similar to materials currently or historically found naturally in the stream reach.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

141-089-0740

Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, fill or remove material in waters of this state for certain transportation-related activities.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0745

Eligibility Requirements

(1) In order to be eligible, a project must be for one of the authorized activities listed in OAR 141-089-0750.

(2) When replacing an existing culvert for fish passage under OAR 141-089-0750 (4), notification must be accompanied by an ODFW-signed Fish Passage Plan for a Road Stream Crossing.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0750

Authorized Activities

A project must adhere to the following:

(1) Removal of Garbage. Removal of garbage, trash and rubble (e.g., broken concrete, broken asphalt, and metal waste) from in and around transportation structures is allowed in all waters of this state when:

(a) The removal does not adversely affect woody vegetation, wetlands or waters;

(b) The trash, garbage and rubble removed under this GA are disposed at a facility licensed to accept trash and garbage; and

(c) There is no stockpiling of removed garbage, trash and rubble within waters of this state.

(2) Large Wood Relocation. Large wood located in and around transportation structures may be relocated below the Ordinary High Water Line, below the highest measured tide, and in wetlands.

(3) Investigative Drilling. Drilling of test holes and borings is allowed for the purposes of planning and designing a transportation structure.

(4) Replacement of Existing Culverts for Fish Passage. Culvert replacement for fish passage is allowed when the new footprint of the structure exceeds the exempt maintenance allowance.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0755

Activity-Specific Conditions

Proposed projects eligible for this GA must adhere to the general conditions listed in OAR 141-089-0650.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0760

Purpose

(1) These rules set forth conditions under which a project proponent may, without an individual removal-fill permit from the Department, dispose (fill), and place (fill), remove (removal), or alter material in waters of this state for the purposes of removing and disposing of sediment while maintaining or cleaning natural or artificially created drainage ditches upstream from tidegates and within hydraulically closed perimeters. For the purposes of this General Authorization, "hydraulically closed perimeters" means, all water flow and hydraulic connectivity to the surrounding watershed is controlled by pumps.

(2) This general authorization is exclusive to:

(a) The disposal of sediments within waters of this state, such as wetlands, removed as a result of ditch maintenance and cleaning in drainage ditches upstream of tidegates; and

(b) The removal of material from drainage ditches (cleaning) upstream of tidegates that does not meet the requirements described in OAR 141-089-0760(4) below.

(3) Drainage ditches that have a free and open connection to other natural waterways and are presumed to contain food and game fish are waters of this state.

(4) The regular maintenance of ditches as defined in OAR 141-085-0510(26) is exempt from regulation under the Removal-Fill Law and this General Authorization as set forth in OAR 141-085-0535(8).

(5) The placement of sediment removed from drainage ditches on wetlands may be an activity subject to the Removal-Fill Law, OAR 141-085 and this General Authorization.

(6) A notification must be sent to the Department before any person starts an activity authorized by this General Authorization. The term and conditions of issuance shall be stated in the approved notification. The term shall not exceed the expiration date on the approved notification.

(7) This General Authorization is made pursuant to ORS 196.850 and is based on the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(8) This General Authorization does not apply to activities or waters exempt from the Removal-Fill Law as described in OAR 141-085.

(9) Other structures, uses and activities included in the notification for this General Authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this General Authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(10) Unless otherwise specified, the terms used in this General Authorization are defined in OAR 141-085.

(11) In the event a dispute arises about the applicability of this General Authorization to any project notification, the Department shall make the final determination. The Department shall rely on the responsible party's notification and supporting documentation for its decision.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0765

Eligibility Requirements; Ineligible Projects

(1) This rule sets forth conditions under which a person may, without an individual removal-fill permit from the Department, place or remove material within waters of this state, excluding State Scenic Waterways, as defined in OAR 141-085 for the purposes set forth in this GA. The activity must:

(a) Be conducted for the specific purpose of disposal of sediments within waters of this state (e.g. wetlands) as a result of maintenance/cleaning of drainage ditches upstream of tidegates and within hydraulically closed perimeters; or

(b) Be conducted for the specific purpose of the removal of material (cleaning) from drainage ditches upstream of tidegates and within hydraulically closed perimeters that does not meet the requirements described in OAR 141-089-0760(4) above; and

(c) Remove, fill or alter 50 or more cubic yards in waters of this state.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements; or

(b) The project notification includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0770

Mandatory Requirements

The Department will review each notification to ensure that a project complies with the following mandatory requirements:

(1) The removal of sediments from drainage ditches must be kept to the minimum amount necessary to remove recently deposited materials. Additional channel widening or deepening beyond that amount is not allowed under this General Authorization.

(2) The sediments removed from drainage ditches may be spread in a thin layer (three inches or less) on farmed wetland or wet pasture provided the effects are temporary and there is no permanent conversion from wetland to upland. Freshwater wetland (other than farmed wetland or wet pasture mentioned above), salt marsh, tidal flats or permanent or semi-permanent open water areas must not be used for sediment disposal.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0775

Conditions of Issuance of General Authorization

Responsible parties must adhere to the conditions of the general authorization.

(1) The responsible party must conduct all work in compliance with the comprehensive plan, zoning requirements and other local, state and federal regulations pertaining to the project. Local land use planning depart-

ADMINISTRATIVE RULES

ment approval must be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits must be obtained before starting the authorized project. All necessary approvals and permits must be obtained before starting the project under this General Authorization.

(2) The responsible party must obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The responsible party must conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period. Work is prohibited when fish eggs are present within the reach where activities are being conducted.

(4) The responsible party must ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the responsible party must comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the responsible party must contact the Department as soon as possible.

(6) The responsible party must not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the responsible party must immediately stop work at the discovery site and contact the Department.

(7) The responsible party must ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The responsible party must ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access.

(9) The responsible party must ensure that areas disturbed in the course of completing the authorized work are stabilized with the appropriate erosion control best management practices and re-vegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department. Grass seed mixes of exotic and certified-free of noxious weeds that will hold the soil and not persist, are permitted.

(10) The responsible party must ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The responsible party must adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification must be retained on site.

(12) For drainage ditch cleaning activities, the responsible party must comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This General Authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (e.g., drainage ditch banks and work areas) must be minimized through re-vegetation with grass and/or planting of trees and shrubs;

(d) Removal must be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department;

(e) At any time excavated material is placed on adjacent dikes it must be stabilized to eliminate erosion back into the drainage ditch; and

(f) If excavated material is to be thinly spread over adjacent wetland, wet pasture or farmed wetland, it is to be spread before the onset of winter rains, and controlled from eroding back into the drainage ditch.

(13) The responsible party must not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(14) The responsible party must keep a copy of the approved notification available at the work site whenever the authorized activity is being conducted.

(15) Employees of the Department and all duly authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this General Authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance,

except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents and employees must be held harmless from any claim, suit or action for property damage or personal injury or death arising out of the design, material, construction or maintenance of the authorized improvements.

(18) The Department may add other project-specific conditions to the approved notification as necessary to meet the requirements of this General Authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected responsible parties, revoke or modify any approved notification of a project granted under this General Authorization if it determines the conditions of the General Authorization are insufficient to minimize individual or cumulative environmental effects.

(20) The responsible party is responsible for the activities of all contractors or other operators involved in project work covered by the notification.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0780

Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, place or remove material in waterways of this state for the purpose of improving aquatic habitat and facilitating species recovery in waterways.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0785

Eligibility Requirements

Projects eligible for this general authorization must be for the purpose of waterway habitat restoration.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0790

Authorized Activities

The following activities may be combined for a single project and the volume thresholds for each activity may be calculated separately:

(1) Barrier Removal. Barriers may be removed to reconnect waterway corridors, reestablish wetlands, restore natural channel and flow conditions, and assist fish and wildlife movement. The project must meet the following criteria:

(a) Removal is limited to artificially created barriers including, but not limited to culverts, dams, earthen embankments, spillway systems, tide-gates, outfalls and pipes; and

(b) Cumulative removal-fill volume for this activity must not exceed 200 cubic yards.

(2) Grade Control. This activity includes construction of grade control structures to stabilize channel grade, reduce erosion, reconnect a waterway to the floodplain or reduce channel incision. The project must meet the following criteria:

(a) Grade control structures must be constructed of materials that mimic natural substrate found within the system;

(b) Grade control structures must be sized appropriately for the system to prevent creating a fish passage barrier or require annual maintenance; and

(c) The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.

(3) Fish and Wildlife Passage. This activity includes installation or replacement of fish passage structures including, but not limited to vertical slot fishways, nature-like fishways and lamprey ramps to aid fish and/or wildlife passage. The project must meet the following criteria:

(a) Oregon Department of Fish and Wildlife (ODFW) must be notified;

(b) Passage structures must be designed to consider the velocity, depth, pool-length and jump-height preferences of native species;

(c) Passage structures must be sized appropriately for the system yet be stable; and

(d) The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.

ADMINISTRATIVE RULES

(4) Installation or Replacement of Fish Screening Structures. The project must meet the following criteria:

(a) Oregon Department of Fish and Wildlife (ODFW) must be notified;

(b) Screens must meet ODFW fish screen criteria; and

(c) Cumulative removal-fill for this activity must not exceed 100 cubic yards in waters of this state.

(5) Porous Weir. This activity includes the construction of a self-sustaining, low profile, structure. A porous weir delays but does not store water. It is used to redirect flow toward the center of the channel, provide energy dissipation and promote increased sedimentation along banks while allowing fish passage through a porous design. This activity includes, but is not limited to cross vanes and artificial riffles. The project must meet the following criteria:

(a) Porous weirs must be placed so scour pools occur in areas where pools would naturally form in a pool and riffle complex;

(b) Porous weirs must not result in culvert inlet or outlet scour;

(c) Porous weirs must be sized appropriately for the system so as not to require annual maintenance;

(d) Porous weirs must be constructed of materials that mimic natural substrate found within the system;

(e) The structure must not exceed 100 cubic yards and 40% of the channel cross-section width; and

(f) The activity is limited to 100 cubic yards for every one-half mile of waterway, unless otherwise approved by the Department.

(6) Side Channel and Alcove Habitat. This activity is limited to reconnecting existing side channel or alcove habitat, as follows:

(a) Cumulative removal-fill volume may not exceed 200 cubic yards unless otherwise approved by the Department;

(b) Reconnection consists only of the removal of artificial barriers; and

(c) The side channel or alcove being reconnected must be naturally formed and does not require alteration or reconstruction.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0795

Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Anchoring. Anchoring materials must not restrict or redirect flows, be set below grade to minimize the appearance, and be placed in areas naturally containing such material.

(2) Rock and Gravel Placement. Rock and gravel placement are subject to the following conditions:

(a) Only the minimal amount necessary may be used to achieve project objectives;

(b) Rock must be placed in a manner that does not increase the upland surface area;

(c) Rock must be placed to minimize adverse impacts to the active channel;

(d) All rock must be placed, not dumped, from above the bank line; and

(e) Only erosion-resistant rock from an upland source may be used. No broken concrete or asphalt is allowed.

(3) Natural Materials. Material used must be similar to materials currently or historically found naturally in the stream reach.

(4) Self Sustaining. Activities other than installation or replacement of passage structures or fish screens must be self-sustaining and not require annual maintenance or manipulation.

(5) Post-Project Reporting. Upon completion of the project, the project must be reported to the Oregon Watershed Enhancement Board at <http://www.oregon.gov/OWEB> by completing the Oregon Watershed Restoration Inventory (OWRI) form. The DSL General Authorization number must be included on the reporting form.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0800

Purpose

These rules set forth the conditions under which a person may, without an individual removal-fill permit from the Department, carry out restoration activities for the purpose of wetland ecosystem restoration. Under this General Authorization (GA), wetland ecosystem restoration

means the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historical functions to a disturbed or altered wetland.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0805

Eligibility Requirements

(1) Project Purpose. The project purpose is to improve the existing condition of a site to repair (rehabilitate) or return (re-establish) natural or historical functions to a disturbed or former wetland. The project may not be for the purpose of altering a site to produce conditions that did not previously exist in order to augment specific functions.

(2) Compatible with Management Plans. The project must not be detrimental to existing functions and values that address problems identified in a watershed management plan or water quality management plan.

(3) Evidence Required. Current site conditions must exhibit alterations in topography, soils, native vegetation or hydrology that have resulted in wetland loss or wetland disturbance that is potentially reversible.

(4) Conversion. The project will not result in conversion of wetlands to uplands and will not include the conversion of existing, functional wetland ecosystems to another aquatic use.

(5) Minimal Adverse Impacts. The project will not cause more than minimal adverse impacts to undisturbed wetland communities on-site or adjacent to the site.

(6) Non-native Species. The project will not involve the introduction of non-native plants other than for temporary soil stabilization. Native seed mixes are preferred. When native seed mix is not available, non-native seed mix that will hold the soil and not persist may be used if certified free of noxious weeds.

(7) Hydrology. Hydrologic manipulation must result in the hydrology of the restored site approximating the conditions that existed before the disturbance or alteration, to the extent practicable. Hydrology conditions include timing of inflow and outflow, duration, frequency and hydroperiod.

(8) Consistent with Wetland Conservation Plan. If the project is in an area for which there is a Department-approved Wetland Conservation Plan, the activities must be in conformance with that plan.

(9) Compensatory Mitigation. Projects cannot be for the purpose of constructing compensatory wetland mitigation.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0810

Authorized Activities

The following activities are allowed under this general authorization:

(1) Vegetation Management. Ground-altering activities needed to re-establish and maintain native vegetation, such as mechanized land clearing to remove non-native vegetation and disking for seedbed preparation and planting of native wetland species.

(2) Floodplain Contouring. Floodplain contouring of wetland terraces to reconnect a waterway to an adjacent wetland or expand the area of seasonal inundation. This activity does not include modification of a stream channel.

(3) Microtopography Establishment. Grading and contouring to re-establish microtopography (hummocks, minor ridges, very shallow depressions) in areas that have been previously leveled, scalped or otherwise disturbed to eliminate pre-existing microtopography. Activity is limited to six-inch maximum elevation rise or drop.

(4) Macrotopography Establishment. Shallow excavation to create scrapes, basins, meanders and swales that do not exceed two feet in depth from existing or original ground surface and have minimum side slopes of 6:1 or gentler. If shallow excavation is combined with berm construction described in Section 6 of this rule, the maximum depth of inundation must not exceed two feet.

(5) Removal of Materials. Removal of soil or other materials that have been placed in a wetland for the purpose of restoring the natural and/or historical topography.

(6) Low Earthen Berms and Spillways. Construction of low earthen berms and vegetated spillways that impede, contain or direct surface water may be used to extend the area or duration of shallow inundation. The design height of the berms must be no more than 18 inches from the existing ground level and have a maximum top width of four feet, variable slopes at a minimum of 6:1 or gentler on the water side, and maximum slopes of 6:1 on the land side, unless gentler slopes do not result in the conversion of wetland to upland. These structures may be installed to manipu-

ADMINISTRATIVE RULES

late seasonal water depth, duration and degree of fluctuation that would be characteristic of natural or historical hydrologic conditions and to manage invasive species. When berms are combined with shallow excavation described in Section (4) of this rule, the maximum depth of inundation must not exceed two feet.

(7) Removal of Structures. Removal of diversion structures, water control structures, small (three feet high or less) berms and tidegates, as long as the removal does not cause water to rise or be redirected in such a manner to result in damage to structures or substantial property.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0815

Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Invasive Species. Persons must control invasive species and comply with Oregon's weed laws (ORS Chapters 452, 561 and 570); and

(2) Post-Project Reporting. Upon completion of the project, the project must be reported to the Oregon Watershed Enhancement Board at <http://www.oregon.gov/OWEB> by completing the Oregon Watershed Restoration Inventory (OWRI) form. The DSL General Authorization number is required to be included on the reporting form.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0820

Purpose

These rules set forth conditions under which a person may, without an individual removal-fill permit from the Department, fill, remove and move material in waters of this state for the purpose of recreational placer mining within areas designated as Essential Indigenous Anadromous Salmonid Habitat (ESH) that is not designated as State Scenic Waterway (SSW).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0825

Eligibility Requirements

(1) Purpose. The activity is for the specific purpose of recreational placer mining.

(2) Essential Salmonid Habitat. The activity is conducted within ESH.

(3) Threshold. The activity will remove, fill or move less than twenty-five (25) cubic yards of material annually from or within the bed of a stream designated as ESH.

(4) Wetted Perimeter. The activity is confined to the wetted perimeter.

(5) Disturbance of Woody Vegetation. The activity does not disturb the streambank, including any rooted or embedded woody plants below the Ordinary High Water Line.

(6) Fish Passage. The activity does not divert a waterway or obstruct fish passage.

(7) Minimization of Impounded Water. The activity creates only the minimal area of impounded water necessary to operate the dredge and the impoundment structure is removed immediately upon completion of the mining activity.

(8) No Disturbance of Stream Structure. No movement is allowed of boulders, logs, stumps or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(9) Dredge Intake Nozzle Limited. If a motorized suction dredge is used, it must have an intake nozzle that has an inside diameter not exceeding four inches.

(10) Expiration of Recreational Placer Mining Authorizations. Authorizations issued under the Recreational Placer Mining GA expire on December 31 of each year.

(11) Renewal. Renewal of the authorization will require submission of a completed Recreational Placer Mining Report for the previous year to the Department.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0830

Authorized Activities

Recreational placer mining in Essential Indigenous Anadromous Salmonid Habitat including motorized suction dredging, not to exceed 25 cubic yards annually.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

141-089-0835

Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650 and the following activity-specific conditions:

(1) Prevent Fish Stranding. Upon completion of the activity at a given location, the responsible party must level all piles and fill all furrows, pot-holes and other depressions created by the activity.

(2) Wetted Perimeter. The activity is confined to the wetted perimeter.

(3) Disturbance of Woody Vegetation. The activity does not disturb the streambank, including any rooted or embedded woody plants below the Ordinary High Water Line.

(4) Fish Passage. The activity does not divert a waterway or obstruct fish passage.

(5) Minimization of Impounded Water. The activity creates only the minimal area of impounded water necessary to operate the dredge and the impoundment structure is removed immediately upon completion of the mining activity.

(6) No Disturbance of Stream Structure. No movement is allowed of boulders, logs, stumps or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(7) Dredge Intake Nozzle Limited. If a motorized suction dredge is used, it must have an intake nozzle that has an inside diameter not exceeding four inches.

(8) Annual Report Required. By December 31 of each year, the responsible party must submit to the Department an annual report, on a form provided by the Department, the estimated amount of material filled, removed or moved in each specific waterway mined during the preceding calendar year. When no jurisdictional activity was conducted, the report must be submitted reporting zero cubic yards for the year.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11

Rule Caption: New division established for General Permits.

Adm. Order No.: DSL 3-2011

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 12-1-2010

Rules Adopted: 141-093-0100, 141-093-0103, 141-093-0104, 141-093-0105, 141-093-0107, 141-093-0110, 141-093-0115, 141-093-0120, 141-093-0125, 141-093-0130, 141-093-0135, 141-093-0140, 141-093-0141, 141-093-0145, 141-093-0150, 141-093-0151, 141-093-0155, 141-093-0160, 141-093-0165, 141-093-0170, 141-093-0175

Subject: A new division, Division 141-093, was established for the issuance of General Permits (GPs) according to ORS 196.817. Two new GPs are established: State General Permit for Transportation-Related Structures and General Permit for Minor Removal-Fill Impacts to Certain Non-Tidal Wetlands. Authorization under these GPs requires the applicant to provide enough information for the agency to determine the activities are substantially similar in nature, are recurring or on-going and have predictable effects and outcomes. Application fees are required under this Division.

Rules Coordinator: Elizabeth Bolden—(503) 986-5239

141-093-0100

General

(1) Special Headings and Fonts. Where headings, special fonts or double-spacing are used, they are for the convenience of the user only and have no substantive effect.

(2) Applicability of OAR 141-085. Unless otherwise specified under OAR 141-093, the provisions of OAR 141-085 apply to General Permits (GPs).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

141-093-0103

Agency Process and Standards for Establishing General Permits

(1) May Apply Statewide or Regionally. The Department may undergo rulemaking to develop GPs on a statewide or geographic basis for an applicant or group of applicants.

(2) Activities Similar and Predictable. Activities authorized under a GP must be substantially similar in nature, be recurring or ongoing, and have predictable effects and outcomes.

(3) Rulemaking. The Department will adopt GPs by rule, and will condition each GP to minimize adverse environmental effects.

(4) Periodic Review. The GPs will be periodically reviewed for compliance with the review standards set forth in ORS 196.600 through 196.905 and the Department must find that each GP will not result in long-term harm to water resources of this state.

(5) Amend or Rescind. The Department will amend or rescind any GP established by rule upon a determination that the activities conducted under the GP have resulted in unacceptable individual or cumulative environmental effects or long-term harm to the water resources of this state.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0104

Project Applicability

(1) Applicability. This rule sets forth conditions under which a person may, without an individual removal-fill permit from the Department, place or remove material within waters of this state, excluding State Scenic Waterways, as defined in OAR 141-085 for the purposes set forth in each GP.

(2) Department Determination of Eligibility. To be eligible for a GP, a project must comply with the general conditions described in OAR 141-093-0135 as well as individual GP purpose, eligibility, authorized activities and activity-specific conditions. In the event a dispute arises as to the applicability of a GP to any project application, the Department will make the final determination.

(3) Thresholds and Best Management Practices (BMPs). BMPs necessary to comply with the general conditions are not included in the thresholds under each GP.

(4) Individual Permit May Be Required. The Department may require an individual removal-fill permit for a project that would otherwise be authorized by a GP if:

(a) The activity conducted under the permit may have unpredictable effects or outcomes which may result in unacceptable individual or cumulative environmental effects to waters of this state; or

(b) The activity might result in long-term harm to the water resources of this state; or

(c) If the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department request that the Department do so.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0105

Application Requirements and Completeness Review for Authorizing Projects under a General Permit

(1) Authorization Required. Authorization from the Department is required before starting any project covered by a GP.

(2) Required Information. A complete, signed application must be submitted on forms provided by the Department, and must contain all applicable information set forth in OAR 141-085-0550. An approved, unexpired wetland delineation is required when wetlands are proposed for impact, unless otherwise approved by the Department.

(3) Applicant Signature Required. The applicant signature is required. As used in this section, "applicant" means a person who has the authority and responsibility to fully execute the terms and conditions of an authorization issued under these rules. The applicant becomes the authorization holder. The OAR 141-085-0510(1) definition of "applicant" does not govern use of the term in this Division.

(4) Fee Required. Any person proposing to conduct an activity under a GP must apply to the Department in accordance with the procedures set forth in OAR 141-085-0545.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0107

Completeness and Eligibility Review for Authorizing Projects under a GP

(1) Initial Review. The Department will review the application within 15 calendar days of agency receipt of the application to determine whether the application is complete and the project is eligible for a GP.

(a) Complete and Eligible Application. A complete application is one that contains all the information required in the Department's application. An eligible project is one that meets the eligibility requirements, activity-specific application requirements and authorized activities listed under the GP.

(b) Incomplete Application Notification. 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 applicant may resubmit the entire amended package for reconsideration within 120 calendar days from date of the Department's notice, unless instructed by the Department to do otherwise. Submission of a new or amended application package starts a new 15-calendar day initial review period.

(b) Ineligible Projects. If the review of the application results in a determination that the project is ineligible for a GP, the applicant will be notified and informed of the reason for ineligibility. The applicant may then either revise the project and resubmit the application for reconsideration or apply for an Individual Permit under OAR 141-085 within 120 calendar days from date of agency determination.

(2) Timeframe for Resubmittal. If a revised application is not resubmitted within 120 calendar days of an incompleteness or ineligibility determination, the Department may administratively close the application. If the Department closes the file under this circumstance, the Department will retain the application fee. A subsequent application for the same or similar project will require payment of an application fee.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0110

Public Review Process for Authorizing Projects under a GP

(1) Circulation of the Application for Public Review. Once the application has been deemed complete, the Department will provide notification of the availability of the application for review either by U.S. mail or electronically (e.g., facsimile, e-mail, posting on the internet) to adjacent property owners, watershed councils, public interest groups, affected local government land use planning departments, state agencies, federal agencies and tribal governments in the geographic area affected by the permit.

(2) Copies of the Application by Request. The Department will furnish to any member of the public, upon written request and at the expense of the member of the public, a printed copy of any application.

(3) Deadline for Receipt of Public Comments. All recommendations and comments regarding the application must be submitted in writing to the Department within the period established by the Department, but not more than 15 calendar days from the date of the notice. If a commenter fails to comment on the application within the comment period, the Department will assume the commenter has no objection to the project.

(4) Department Review of Public Comments. The Department will review and consider substantive comments received during the public review period. The Department may request the applicant to provide additional information to address comments.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0115

Department Determinations and Considerations in Evaluating Applications to Authorize Projects under a GP

(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 authorization under a GP. The Department will render a decision within 40 calendar days of receipt of a complete application.

(2) Extension of Decision Deadline. The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department may agree to extend the timeline for making a final authorization decision beyond the 40 calendar days following receipt of a complete application. If no agreement is reached, the Department will make a final authorization decision within the original 40-day time period.

ADMINISTRATIVE RULES

(3) 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.

(4) Department Determinations. The Department will issue an authorization under a GP if it determines the project described in the application:

(a) Has independent utility;

(b) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 through 196.990;

(c) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation, when project is on state-owned lands; and

(d) Meets the purpose and eligibility requirements in the GP.

(5) Department Considerations. In determining whether to issue an authorization under a GP, the Department will consider all of the following:

(a) The public need for the proposed fill or removal and the social, economic and other public benefits likely to result from the proposed fill or removal. When the applicant for an authorization under a GP is a public body, the Department may accept and rely on 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 196.800.

(6) Alternatives Analysis. The applicant bears the burden of providing the Department with the alternatives analysis used to derive the practicable alternative that has the least reasonably expected adverse impacts on waters of this state. The alternatives analysis must provide the Department all the underlying information necessary to support its considerations under section (5) of this rule.

(7) 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.

(8) Written Findings. In the following cases, the Department will prepare written findings to document a decision for an authorization under a GP:

(a) Permit denial;

(b) Fill of two acres or more in wetlands;

(c) Fill in estuaries (except cable crossings, pipelines, or bridge construction);

(d) Removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging);

(e) Placement of greater than 2,500 cubic yards of riprap in coastal streams or estuaries;

(f) Removal-fill in the Oregon Territorial Sea in accordance with Statewide Planning Goal 19-Ocean Resources; and

(g) Any permit decision that is contrary to the final decision recommendation of a state agency.

(9) 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, protect or otherwise further the studying, monitoring, enforcement and protection of the reserve or marine protected area.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0120

Expiration and Annual Billing

(1) Term of Authorizations Issued Under a General Permit. Authorizations under a General may be kept active for up to three years, provided annual fees are received by the Department before the anniversary date of the authorization.

(2) Annual Billing Notice. An annual fee is assessed for each year that the authorization is in effect. The annual fee is equal to the base fee in effect at the time of annual billing and is due by the anniversary date of issuance of the authorization. Before the anniversary date of authorization, the Department will send an annual billing notice to the authorization holder.

(3) Failure to Pay Annual Billing Fee. When an GP authorization holder fails to submit the annual fee, the Department will expire the authorization on the anniversary date of the authorization.

(4) One-Time Fee Assessment for Authorization under a General Permit. Authorization under a GP may be issued for up to three years, the Department may, at the request of the applicant, assess a one-time fee based on the fee schedule in effect at the time of the application or annual billing. The one-time fee must include:

(a) The application fee; and

(b) Any applicable annual fees for the duration of the term of the authorization.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0125

Enforcement

Failure to adhere to the terms of any authorization issued under this division is a violation of the Removal-Fill Law and may be subject to appropriate enforcement in accordance with OAR 141-085.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0130

Appeal Process for Authorizations Issued under General Permits

The provisions of OAR 141-085-0575 and 141-085-0580 are incorporated here by reference.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0135

General Conditions

(1) Responsible Party. The person listed on the application as the applicant is responsible for the activities of all contractors or other operators involved in project work covered by the authorization under the GP.

(2) Copy of Authorization Available for Inspection. A copy of the authorization must be available at the work site whenever authorized activities are being conducted.

(3) Site Access Required. Employees of the Department and all authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(4) Archeological Resources. If any archeological sites, resources or artifacts are discovered during construction, work must immediately cease and the State Historic Preservation Office must be contacted.

(5) ODFW Fish Passage Requirement. The authorized activity must meet Oregon Department of Fish and Wildlife requirements for fish passage before commencing the project (ORS 509.580 through 509.901 and OAR 635-412-0005 through 635-412-0040).

(6) Hazards to Recreation, Navigation or Fishing. The activity must be timed not to interfere with or create a hazard to recreational or commercial navigation or fishing.

(7) Work Period in Jurisdictional Areas. Fill or removal activities below the Ordinary High Water Line must be conducted when recommended by ODFW, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. Work is prohibited when fish eggs are present within the reach where the authorized activities are being conducted.

(8) Pre-Construction Resource Area Fencing or Flagging. Prior to any site grading, the boundaries of any avoided wetlands, waterways and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. There will be no vegetation removal or heavy equipment within marked areas. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

ADMINISTRATIVE RULES

(9) Erosion Control Methods. The following erosion control measures must be installed at the construction site before construction and maintained during and after construction to prevent erosion and minimize movement of soil into waters of this state:

(a) All exposed soils must be stabilized during and after construction in order to prevent erosion and sedimentation;

(b) Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands;

(c) To prevent erosion, use of compost berms, impervious materials or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;

(d) Unless part of the permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings or seeding. Sterile grass may be used instead of native vegetation for temporary sediment control if native vegetation is unavailable. If soils are to remain exposed for more than seven days after completion of the permitted work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed;

(e) Where vegetation is used for erosion control on slopes steeper than 2:1, tackified seed mulch must be used so the seed does not wash away before germination and rooting;

(f) Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands;

(g) Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized; and

(h) All erosion control structures must be removed when the project is complete and soils are stabilized and vegetated.

(10) Hazardous, Toxic, and Waste Material Handling. Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Barges must have a containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

(11) Raising or Redirecting Water. The project must not cause water to rise or be redirected and result in damage to structures or property.

(12) Wetlands of Conservation Concern. The project must not involve impacts to wetlands identified as a wetland type of conservation concern. Wetlands of Conservation Concern are bogs, fens, playas, salt flats, alkaline lakes, hot springs, native wet prairies, vernal pools, inter-dunal wetlands, mature forested wetlands, ultramafic soil wetlands, wooded tidal wetlands, and un-diked tidal wetlands, as determined by the Department.

(13) Waste Disposal. Old piling and other waste material generated by the project must be disposed of in an appropriate disposal facility. There must be no temporary storage of piling or other waste material below top of bank, in wetlands; in a Federal Emergency Management Administration designated floodway, or in an area historically subject to landslides.

(14) DSL May Halt or Modify. DSL retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.

(15) Work Area Isolation. The work area must be isolated from the water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction conditions. All fish must be salvaged from the isolated area in accordance with Oregon Department of Fish and Wildlife requirements.

(16) Spoil Disposal. Spoil materials, not used in the project, must be placed in an upland location. Spoil materials used in the project must be included in the cumulative removal-fill calculation for the activity.

(17) Additional Conditions. The Department may impose additional conditions, if necessary, to eliminate and reduce the reasonably expected adverse impacts of project development to waters of this state.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0140

Purpose

This General Permit (GP) authorizes removal-fill for certain activities related to existing transportation structures.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0141

Eligibility Requirements

(1) Thresholds. To be eligible a project must be limited to no more than:

(a) In waters of this state, other than wetlands, a total of five thousand (5,000) cubic yards of material filled, removed or altered, for the entire project. Up to one thousand (1,000) cubic yards of the allowable 5,000 cubic yards of material may be used for streambank stabilization; and

(b) One-half (0.5) acre of permanent impact to wetlands is allowed for the entire project.

(2) Wetlands of Conservation Concern. The project must not involve impacts to wetlands identified as a wetland type of conservation concern. Wetlands of Conservation Concern are bogs, fens, playas, salt flats, alkaline lakes, hot springs, native wet prairies, vernal pools, interdunal wetlands, mature forested wetlands, ultramafic soil wetlands, wooded tidal wetlands, and undiked tidal wetlands, as determined by the Department.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0145

GP-Specific Application Requirements for Authorizing Projects

(1) Compensatory Wetland Mitigation. Unless otherwise approved by the Department, compensatory mitigation options are:

(a) Bank credit purchase from a Department-approved mitigation bank with a service area that includes the proposed removal-fill site and supplies the appropriate Ecologic System and Class (e.g., Palustrine emergent) under the Cowardin Classification System;

(b) In-lieu fee credit purchase; and

(c) Cash payment to the Department's payment in-lieu program.

(2) Compensatory Non-Wetland Mitigation. Compensatory non-wetland mitigation must be provided by the permit holder, unless otherwise approved by the Department.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0150

Authorized Activities

(1) Existing Structures. Widening, replacing, expanding use, maintaining and removing existing:

(a) Roads;

(b) Bridges;

(c) Pedestrian paths;

(d) Culverts;

(e) Boat ramps; and

(f) Airport runways and taxiways.

(2) Integrally-Related Activities. Activities integrally related with existing roadway structures, such as geo-technical borings, signs, guardrails and maintenance of stormwater facilities.

(3) Increase in Scour Protection. Providing larger footprint for new scour protection and bank stabilization associated with projects listed above.

(4) Restoring Fluvial Processes. Restoration or enhancement of natural stream health, including fluvial processes, associated with projects listed above.

(5) Fish and Wildlife Habitat Enhancement. Providing fish or wildlife passage or habitat in conjunction with transportation-related structures.

(6) Grade Control. Installing grade control where necessary to prevent channel headcut migration for the projects listed above.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0151

General Permit-Specific Conditions

(1) General Conditions Apply. All the requirements, procedures and conditions set forth in OAR 141-093-0105 through 141-093-0135 apply to this GP.

(2) Proof of Mitigation Purchase. Before an authorization is approved, the Department must have proof of purchase of wetland mitigation bank

ADMINISTRATIVE RULES

credit, in-lieu fee credit purchase, or cash payment of the correct in-lieu amount.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0155

Purpose

Non-Tidal Wetland Impacts. This General Permit (GP) authorizes removal-fill activity in certain non-tidal wetlands subject to the terms and conditions contained herein.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0160

Eligibility Requirements

(1) Threshold. The removal-fill activity in certain non-tidal wetlands must not exceed two-tenths (0.20) of an acre for the entire project.

(2) No Impact to Tidal Wetlands. The project must not involve impacts to tidal wetlands.

(3) No Impacts to Waterways. The project must not involve impacts to any non-wetland waters.

(4) No Impacts to ESH or State Scenic Waterways. The project must not involve impact to Essential Indigenous Anadromous Salmonid Habitat or State Scenic Waterway-designated areas.

(5) No Impacts to Wetlands of Conservation Concern. The project must not involve impacts to wetlands identified as a wetland type of conservation concern. Wetlands of Conservation Concern are bogs, fens, playas, salt flats, alkaline lakes, hot springs, native wet prairies, vernal pools, interdunal wetlands, mature forested wetlands, ultramafic soil wetlands, wooded tidal wetlands, and undiked tidal wetlands, as determined by the Department.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0165

Compensatory Wetland Mitigation

Unless otherwise approved by the Department, compensatory mitigation options are:

(1) Bank credit purchase from a Department-approved mitigation bank with a service area that includes the proposed removal-fill site and supplies the appropriate Ecologic System and Class (e.g., Palustrine emergent) under the Cowardin Classification System;

(2) In-lieu fee credit purchase; and

(3) Cash payment to the Department's payment in-lieu program.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0170

Authorized Activities

This GP authorizes a person to conduct removal-fill activity in certain non-tidal wetlands in an amount equal to or less than two-tenths (0.20) of an acre per project.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

141-093-0175

General Permit-Specific Conditions

(1) General Conditions Apply. All the requirements, procedures and conditions set forth in OAR 141-093-0105 through 141-093-0135 apply to this GP.

(2) Proof of Mitigation Purchase. Before an authorization is approved, the Department must have proof of purchase of wetland mitigation bank credit, in-lieu fee credit purchase, or payment of the correct in-lieu amount.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 3-2011, f. & cert. ef. 3-1-11

Rule Caption: Modifications for the issuance of permits in State Scenic Waterways and related adjacent lands.

Adm. Order No.: DSL 4-2011

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 12-1-2010

Rules Adopted: 141-100-0035, 141-100-0052

Rules Amended: 141-100-0010, 141-100-0020, 141-100-0030, 141-100-0040, 141-100-0055, 141-100-0060, 141-100-0070, 141-100-0080, 141-100-0090

Rules Ren. & Amend: 141-100-0000 to 141-100-0005, 141-100-0050 to 141-100-0045

Subject: The Division 100 rules required revisions to be consistent with statute ORS 390.835. Other changes were necessary to improve clarity and address how the agency will issue permits for recreational placer mining in State Scenic Waterway.

Rules Coordinator: Elizabeth Bolden—(503) 986-5239

141-100-0005

Definitions

In addition to the definitions contained in ORS 390.805 through 390.835 and in OAR 141-085, the following definitions apply:

(1) "Beds" means the land within the wet perimeter and any adjacent non-vegetated dry gravel bar.

(2) "Emergency Circumstances" means immediate natural or human caused events the effects of which require prompt action to prevent irreparable harm, injury or damage to persons or property.

(3) "Irreparable" means without reasonable possibility of repair or restoration, or an extreme condition that cannot be corrected.

(4) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using non-motorized methods, from among small quantities of aggregate.

(5) "Recreational Placer Mining in State Scenic Waterways" means to search or explore for samples of gold, silver or other precious minerals and remove, fill or move by artificial means, either through motorized or non-motorized methods, from or within the bed of a State Scenic Waterway by methods other than dredging. Note-Due to action by the 2001 Oregon Legislative Assembly (Oregon Laws 2001, Chapter 499, Section 4), the Department is no longer authorized to issue permits for dredging related to recreational placer mining in State Scenic Waterways.

(6) "Related Adjacent Land" means all land within 1/4 of one mile of the bank of Waldo Lake, or a river or segment of river within a State Scenic Waterway, except land that, in the Oregon Parks and Recreation Department's (OPRD) judgment, does not affect the view from the waters within a State Scenic Waterway.

(7) "State Scenic Waterway" means Waldo Lake, or a river or a segment of a river that has been designated under ORS 390.805 through 390.925 or any subsequent act, and includes related adjacent lands.

(8) "State Scenic Waterway Emergency Removal-Fill Permit" is an authorization issued by the Director for temporary, emergency-specific removal-fill activity in a State Scenic Waterway or jurisdictional waters within its related adjacent land.

(9) "State Scenic Waterway Individual Removal-fill Permit" is an authorization issued by the Department for any removal, filling or alteration of the bed and banks of a State Scenic Waterway and its related adjacent lands.

(10) "Special Attribute" means an aesthetic, scenic, environmental, scientific, recreational or similar feature identified by OPRD in a State Scenic Waterway Management Plan as the value that caused a particular waterway to be included in the Oregon Scenic Waterway Program. (ORS 390.845).

(11) "Waters of a State Scenic Waterway" are any waters within a designated State Scenic Waterway, including waters within its related adjacent lands that are subject to the jurisdiction of the Department.

(12) "Wet Perimeter" 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.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; Renumbered from 141-100-0000, DSL 4-2011, f. 7 cert. ef. 3-1-11

141-100-0010

Purpose

Pursuant to ORS 390.835(2) and (3), these rules establish procedures for the consideration and processing of permit applications for fill, removal and other alterations of the beds and banks of a State Scenic Waterway and in jurisdictional waters within related adjacent lands.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 4-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

141-100-0020

Policy

The Department will:

(1) Preserve. Preserve the natural setting and free-flowing character of State Scenic Waterways and related adjacent lands for recreation, fish and wildlife uses for present and future benefit to the public.

(2) Recognize Best Use of Waters. Recognize recreation, fish and wildlife uses as the highest and best uses of the waters of a State Scenic Waterway.

(3) Protect. Protect the outstanding scenic, geological, botanical, historic, archaeological, outdoor recreation and fish and wildlife values along State Scenic Waterways by protecting the special attributes (as listed in each Scenic Waterway Management Plan prepared by OPRD) that caused the waterway to be included in the Scenic Waterway system.

(4) Require Non-structural Techniques. Require applicants to employ streambank stabilization and rehabilitation techniques utilizing native riparian vegetation and other non-structural alternatives, unless it can be demonstrated such approaches are unlikely to be effective for the given situation under consideration by the Department.

(5) Require Permits Prohibit filling, removal and alteration of the beds and banks of State Scenic Waterways, except as provided under OAR 141-100-0035, unless a permit is issued by the Director as provided in these rules.

(6) Cooperate with Local, State and Federal Agencies. Recognize the interrelated nature of regulatory activities affecting State Scenic Waterways and the need to achieve coordinated management and protection of State Scenic Waterway values. The Department shall work in close cooperation with state, local and federal agencies, particularly OPRD, Water Resources Department (WRD), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), U.S. Army Corps of Engineers (COE), affected tribes, and local government land use planning agencies.

(7) Provide for Public Comment. Recognize the high level of public interest in State Scenic Waterway management by providing opportunities for comment on proposed policies or rules and individual applications.

(8) Ensure Compatibility with Land Use. Adhere to the Department's State Agency Coordination Plan (OAR 141-095-0005 through 141-095-0015), to assure compliance with the statewide planning goals and compatibility with acknowledged city and county comprehensive land use plans.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0030

Coordination with Key Agencies Involved in Scenic Waterway Management

(1) Cooperative Effort. Managing the State Scenic Waterway Program is a cooperative effort of the OPRD, WRD and the Department. In addition, ODFW, DEQ, the Department of Forestry (DOF) and the Oregon State Marine Board play key roles. Therefore, the Department will:

(a) Coordinate the review and issuance of all State Scenic Waterway removal-fill permits with the affected state agencies;

(b) Coordinate the investigation of alleged State Scenic Waterway removal-fill violations with affected agencies;

(c) Advise applicants of the need to obtain concurrence from OPRD for projects on related adjacent lands; and

(d) Seek to utilize the expertise of other state agency's staff.

(2) Tribal and Federal Coordination. Because many State Scenic Waterways are also included in the federal Wild and Scenic River system or similar designations on tribal lands, the Department will work closely with the appropriate federal agencies including the U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM), the U.S. Army Corps of Engineers (USACE) and affected tribes as follows:

(a) Fully coordinate the review and issuance of all State Scenic Waterway removal-fill permits with the analysis outlined in the Application Review Procedures for Scenic Waterway Removal-fill Permits (OAR 141-100-0045), and participate in National Environmental Protection Act review or any similar evaluations conducted by federal agencies; and

(b) Immediately notify the appropriate federal agency or affected tribe of alleged State Scenic Waterway removal-fill violations.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0035

Exemptions from Permit Requirements in State Scenic Waterways

(1) Prospecting. A permit will not be required for non-motorized methods of recreational prospecting resulting in 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 State Scenic Waterway in a single year. Recreational prospecting is prohibited from any site where fish eggs are present.

(2) Oregon Department of Fish and Wildlife (ODFW). ODFW may construct facilities or make improvements to facilitate the passage or propagation of fish and exercise other responsibilities in managing fish and wildlife resources.

(3) Oregon Water Resources Department (OWRD). OWRD may construct and maintain stream gauge stations and other facilities related to OWRD's duties in the administration of the water laws.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Hist.: DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0040

Permit Types

Unless exempt under OAR 141-100-0035, one of the following types of permits is required prior to undertaking any amount of removal-fill activity within the bed and banks of a State Scenic Waterway and in waters of this state on related adjacent lands:

(1) State Scenic Waterway Individual Removal-fill Permit; or

(2) State Scenic Waterway Emergency Removal-fill Permit.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0045

State Scenic Waterway Individual Removal-Fill Permits

(1) Application Procedures. Applications for approval of all regulated removal-fill activities in State Scenic Waterways must be submitted to the Department in writing, in advance of the proposed activity, and must include all information needed to evaluate the request. The application must be submitted on the Joint Permit Application Form of the COE and the Department and must meet the standards for completed applications in OAR 141-085.

(2) Fees. Fees must be submitted for a complete application in accordance with the current fee schedule under OAR 141-085.

(3) Application Review Procedures:

(a) Applications must be reviewed within 30 calendar days from receipt and processed in a manner consistent with OAR 141-085, the Department rules for individual removal and fill permits;

(b) In reviewing an application, the Department will conduct the necessary investigations to develop a rational basis for a decision consistent with the requirements of the policies of this rule; and

(c) The Department may consult with any person, group or agency interested in or affected by a permit decision.

(4) Public Review Process. All applications for impact to State Scenic Waterways must be available for public comment for 30 calendar days.

(a) The Department will provide application notice for comment to the Department of Fish and Wildlife, Department of Environmental Quality, Department of Land Conservation and Development, Department of Agriculture, Water Resources Department, Business Development Department, State Parks and Recreation Department, State Historic Preservation Office, Department of Geology and Mineral Industries, Department of Transportation, Department of Forestry, and any other affected state and federal agency and tribes. The Department will also provide application notice to adjacent property owners listed on the application and interested persons who request notice;

(b) In accordance with the procedures in the State Agency Coordination Program, the Department will provide application notice to the appropriate local government planning department(s) for a determination of the proposed activity's compatibility or non-compatibility with the affected city and county comprehensive plan(s) and land use regulations. If it is necessary to adopt findings of compliance with the statewide planning goals, the Department will act in accordance with its State Agency Coordination Program; and

(c) Recommendations and comments regarding the project must be submitted in writing to the Director within 30 calendar days from the date the application is provided for comment. The Department will give reasonable consideration to permit conditions or comments offered by any person.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925

ADMINISTRATIVE RULES

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; Renumbered from 141-100-0050, DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0052

Agency Considerations and Determinations

(1) Issuance. The Department will issue State Scenic Waterway removal-fill permits only upon written findings that:

(a) The proposed activity is consistent with the State Scenic Waterway Act (ORS 390.805 through 390.925 or an applicable OPRD Scenic Waterway Management Plan or interim classification. The Department will coordinate with OPRD and WRD prior to making this determination;

(b) The proposed activity is consistent with ORS 196.800 through 196.990 administered according to OAR 141-085 related to removal of materials from the beds or banks and filling of any waters of this state;

(c) The proposed activity meets a demonstrated need and minimizes adverse impacts to special attributes of designated State Scenic Waterways; and

(d) The proposed activity, individually or collectively, would not degrade fish, wildlife or recreation values.

(2) Denial. The Director will deny any permit application, based upon written findings, if the proposed activity is not consistent with the policies under ORS 390.805 through 390.925 for State Scenic Waterways or ORS 196.800 through 196.825 and 196.845 through 196.870 for removal of material from the bed and banks and filling any waters of this state.

(3) Findings. Written findings are required for all authorizations or denials of a permit application.

(4) Expiration. No State Scenic Individual Removal-Fill Permit will be issued for more than five years from issue date.

(5) Renewal. State Scenic Individual Removal-Fill Permits, not associated with recreational placer mining issued under OAR 141-100-0055, may be renewed for multi-year projects in the same manner as OAR 141-085.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0055

Recreational Placer Mining within State Scenic Waterways

(1) Limited Activities. No placer mining is permitted on waters within State Scenic Waterways other than recreational placer mining.

(2) Threshold. A complete application in accordance with OAR 141-085-0550 and authorization under OAR 141-100-0045 will be required for non-dredge recreational placer mining involving filling, removing or moving by artificial means any amount of material from within the bed or wet perimeter of any single scenic waterway or waters within jurisdictional waters within related adjacent lands.

(3) Eligibility Criteria. To be eligible for a Scenic Waterway Individual Removal-Fill permit for recreational, non-dredge placer mining, the operation must conform to the following:

(a) The activity must be for recreational placer mining as defined in OAR 141-100-0005(5);

(b) The activity must not dam or divert a waterway or obstruct fish passage;

(c) The activity must not occur outside the wet perimeter, nor extend the wet perimeter;

(d) The activity must not involve disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars);

(e) The activity must not include excavation from the streambank between the edge of the wet perimeter and the Ordinary High Water Line;

(f) The activity must not include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and non-motorized equipment;

(g) Upon completion of the mining activity all piles, pits, furrows or potholes outside the main channel of the waterway created by the activity must be leveled by hand;

(h) The recreational placer miner must obtain landowner permission before operating;

(i) The activity must occur only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" and is prohibited during periods when fish eggs could be in the activity site;

(j) The activity must comply with other applicable local, state, and federal laws and regulations, including the federal Endangered Species Act; and

(k) The activity must not impede recreational boating.

(4) Annual Report Required. The authorization holder must report, on a form provided by the Department, the amount of material removed, placed or altered in each State Scenic Waterway in during the year of authorization. The Department must receive this report before December 31 of each year that the individual permit is valid.

(5) Expiration. The State Scenic Waterway Individual Removal-Fill Permit for recreational placer mining is valid for up to one year.

(6) Renewal. The State Scenic Waterway Individual Removal-Fill permit for recreational placer mining may be conditionally renewed for up to five years when annual reports are submitted for the previous year according to OAR 141-100-0055(4).

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0060

Scenic Waterway Emergency Removal/Fill Permits

(1) Application Procedures. Applications for a State Scenic Waterway Emergency Removal-Fill Permit may be made verbally (e.g., by phone), or by written application, including facsimile, by the following procedures:

(a) Applicants must provide the Department the following information:

(A) Location of emergency;

(B) A description of the emergency;

(C) The proposed action to be taken; and

(D) The potential consequences of taking no action.

(b) Within five calendar days of receiving a verbal confirmation of an emergency permit for removal-fill activities, the applicant must submit to the Department a written emergency permit application and applicable fees, in accord with the procedures herein.

(2) Review Standards. The Director may issue State Scenic Waterway Emergency Removal-Fill Permits only after determination that:

(a) Natural or human-caused situation exist which cause the emergency circumstance, such as, but not limited to, flooding, landslides, wildfire, and hazardous substance spills; and

(b) It is necessary to make repairs or take action to prevent irreparable harm, injury, or damage to persons or property.

(3) Review Procedures. The Director may conduct the review of State Scenic Waterway Emergency Removal-Fill Permit applications by:

(a) Consulting with ODFW and OPRD before issuing a temporary Emergency Removal-Fill Permit as provided by ORS 390.835(3)(a) and DEQ and WRD, if applicable. Consultation may be achieved by Memorandum of Agreement with the applicable agencies or on a case-by-case permit review;

(b) Completing an investigation sufficient to develop a rational basis for a decision consistent with the requirements of the Issuance Standards;

(c) Consulting with any applicable tribes or federal land managers and regulators, as allowed by circumstances and time constraints, and by reasonable consideration to those agencies' recommendations for temporary permit conditions; and

(d) Assuring compatibility of the project, to the extent practical, with the affected local government(s) comprehensive plan and land use regulations.

(4) Permit Decisions:

(a) The Director may issue a State Scenic Emergency Removal-Fill Permit, only if all the review standards for emergency waterway permits are met. Emergency permit issuance by the Director may be made by written confirmation to the applicant, verbally (to be followed by written confirmation), or through procedures established in Memoranda of Agreement with other agencies (e.g., through the Oregon Emergency Response System);

(b) The Department staff may visit the site of the emergency permitted activity as soon as practicable following permit issuance; and

(c) Following the issuance of an emergency permit, the Department may review the emergency permit and determine if any further action is necessary to modify the permit conditions after the emergency has passed.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

141-100-0070

Appeals

(1) Applicants. Any applicant whose application to the Department for a permit has been denied, or who objects to any of the permit conditions imposed by the Director, may, within 21 calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Director. The hearing will be conducted as a contested case hearing in accordance with ORS 196.825(6).

(2) Aggrieved or Adversely Affected Persons. Any person, excluding permit applicants, aggrieved or adversely affected by issuance or denial of a permit by the Director may file a written request for hearing within 21 calendar days after the date the permit was granted in the manner provided by ORS 196.835.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0080

Enforcement

The Director is authorized to take civil, criminal and administrative action to enforce the requirements of this Division using the authorities provided by the Removal-Fill Law according to ORS 196.860 through 196.990 and OAR 141-085.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

141-100-0090

Appeals of Enforcement Orders

Any person aggrieved by a proposed enforcement order of the Director for a removal-fill violation in a State Scenic Waterway may request a contested case hearing within 20 calendar days of the date of personal service or mailing of the notice of order. However, requesting a contested case hearing on a Cease and Desist Order must be made within 10 calendar days of the date of personal service or mailing of the notice of order. Hearing procedures are the same as for other Removal-Fill Law violations as provided in OAR 141-085.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990, 390.805 - 390.925
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09; DSL 4-2011, f. & cert. ef. 3-1-11

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

Rule Caption: Driver Improvement Programs.

Adm. Order No.: DMV 2-2011

Filed with Sec. of State: 3-2-2011

Certified to be Effective: 3-2-11

Notice Publication Date: 12-1-2010

Rules Amended: 735-072-0020, 735-072-0050

Subject: DMV amended OAR 735-072-0020 to state that if multiple convictions or a preventable accident and conviction(s) stem from the same incident that only one will be counted as a driver improvement violation. DMV anticipates the change will result in more people receiving a license restriction before receiving a suspension of driving privileges, which is how the program is designed to work. DMV believes that this change will result in better Driver Improvement Programs, resulting in suspension of driving privileges for those who truly show a pattern of bad driving behavior.

DMV amended OAR 735-072-0050 to make it a defense to a driver improvement suspension if the suspension results solely from convictions that occurred while the person was licensed in another jurisdiction and the person has not previously been issued driving privileges in Oregon. The purpose of the driver improvement program is to improve the driving behavior of drivers in this state. A driver who has not had notice of Oregon's laws, specifically the driver improvement program, should not be subject to a suspension sanction for conduct that occurred before becoming an Oregon driver.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-072-0020

Driver Improvement Program Definitions

The following definitions apply to rules for both Driver Improvement Programs:

(1) "Adult Driver" is a driver 18 years of age or older.

(2) "Combination" means one or more driver improvement violations and one or more preventable accidents. For purposes of these rules, a driver improvement violation and a preventable accident arising from a single incident is not a combination.

(3) "Conviction" means a determination of guilt by a court of law upon a plea, verdict, finding, or unvacated bail forfeiture. For purposes of section (6) of this rule if a person is convicted of more than one offense arising from a single traffic stop or preventable accident, the convictions for separate offenses constitute one conviction and are a driver improvement violation if at least one of the convictions is for an offense listed in OAR 735-064-0220.

(4) "DMV" means the Driver and Motor Vehicle Services Division of the Department of Transportation.

(5) "Driver Improvement Course" means a traffic safety, defensive driving, traffic violator, or similar program or course of instruction approved by DMV.

(6) "Driver Improvement Violation" means:

(a) One conviction for an offense listed in OAR 735-064-0220; or

(b) Five convictions for an offense listed in OAR 735-072-0035.

(7) "License" has the meaning specified in ORS 801.245.

(8) "Preventable Accident" is a traffic accident reported by a police officer that indicates a driver failed to do everything a driver reasonably could have done to prevent the accident. Factors used to determine preventability include but are not limited to:

(a) Violations of the law even if a citation is not issued;

(b) Failure to use defensive driving techniques;

(c) Road conditions existing at the time of the accident; or

(d) Speed of the driver's vehicle.

(9) "Provisional Driver" means a driver who has reached 14 years of age but has not yet reached 18 years of age.

(10) "Record Review Date" means:

(a) The date DMV records a driver improvement violation or preventable accident to a person's driving record; or

(b) The date DMV grants driving privileges or fully reinstates the driving privileges following a suspension or revocation.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.480

Stats. Implemented: ORS 809.480

Hist.: MV 24-1985, f. 12-31-85, ef. 1-1-86; MV 23-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0310; DMV 10-1994, f. 9-30-94, cert. ef. 10-1-94; DMV 29-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 12-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 2-2011, f. & cert. ef. 3-2-11

735-072-0050

Rights to a Hearing or Administrative Review

Hearing and administrative review procedures for suspensions under OAR 735-072-0023 and 735-072-0027 are as established by ORS 809.440(1), (2) and (5).

(1) A person whose suspension is based solely on conviction records received from a court is entitled to an administrative review.

(2) A person whose suspension is based, in any part, on a report of a preventable accident is entitled to a contested case hearing.

(3) It shall be a defense to a suspension under OAR 735-072-0023 and 735-072-0027 if the person can establish that all of the convictions on which the department's suspension action is based occurred when the person had valid driving privileges issued by another jurisdiction.

Stat. Auth.: ORS 184.616, 184.619 & 809.480

Stats Implemented: ORS 809.480

Hist.: MV 24-1985, f. 12-31-85, ef. 1-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0325; MV 19-1991, f. & cert. ef. 9-18-91; DMV 29-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 12-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 2-2011, f. & cert. ef. 3-2-11

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

Rule Caption: Annual readoption of IRP, HVUT, and IFTA regulations and designation of voting official.

Adm. Order No.: MCTD 1-2011

Filed with Sec. of State: 2-18-2011

Certified to be Effective: 2-18-11

Notice Publication Date: 1-1-2011

Rules Amended: 740-200-0010, 740-200-0020, 740-200-0040

ADMINISTRATIVE RULES

Subject: Many provisions of the International Registration Plan (IRP) related to commercial vehicle apportioned registration have been revised, making it necessary to amend OAR 740-200-0010 to adopt the revised version of IRP and its amendments (effective January 1, 2011) to ensure compliance with, and uniformity in application of the IRP. The plan requires the assignment of a voting member from each jurisdiction. The amendment specifies the Administrator of the Motor Carrier Transportation Division (MCTD) as the designated voting member for Oregon.

Title 26 Code of Federal Regulations (CFR) Part 41 (Heavy Vehicle Use Tax – HVUT) requires the State to confirm proof of payment of the tax, and require proof of payment by the State as a condition of issuing a registration for a highway motor vehicle. The amendment of OAR 740- 740-200-0020 adopts HVUT and its amendments (effective January 1, 2011), and ensures Oregon remains current with national commercial motor vehicle registration standards.

International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material (effective January 1, 2011) as the procedures and guidelines for Oregon-based IFTA participants to ensure Oregon remains current with the international IFTA standards.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-200-0010

Prorate Registration

(1) The provisions contained in the “International Registration Plan” (IRP), the IRP Audit Procedures Manual and the IRP Policies and Procedures Manual and all amendments thereto in effect January 1, 2011, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles. Unless otherwise revised by written delegation, the designated person to cast a vote on an IRP ballot for Oregon is the Administrator of the Motor Carrier Transportation Division.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty, late payment charges and interest described in ORS 825.490;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes shall be the previous July through June twelve-month period.

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

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003

Stats. Implemented: ORS 826.005 & 826.007

Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11

740-200-0020

Adoption of Federal Rules Governing Payment of Heavy Vehicle Use Tax (HVUT)

The Department hereby adopts the rules of the United States Internal Revenue Service contained in 26 CFR Part 41 (HVUT) and all amendments thereto in effect January 1, 2011. These rules apply to carriers conducting operations subject to ORS Chapter 826. As provided in CFR Title 26 Part 41.6001-2(b)(3), the Department will suspend the registration of a vehicle

for which proof of HVUT payment has not been received within four months of the effective date of registration.

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

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003

Stats. Implemented: ORS 803.370(5) & 826.007

Hist.: PUC 19-1990, f. & cert. ef. 12-31-90 (Order No. 90-1919); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 1-2011, f. & cert. ef. 2-18-11

740-200-0040

Adoption of International Fuel Tax Agreement

(1) The provisions contained in the International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual, and all amendments thereto in effect January 1, 2011, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department shall assess a penalty of \$50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) Upon proposing an additional assessment as the result of an audit, the Department shall assess a penalty of 10 percent of the amount of delinquent taxes due;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

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

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 825.555

Stat. Implemented: ORS 825.490, 825.494 & 825.555

Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04; MCTD 4-2004, f. 12-28-04, cert. ef. 1-1-05; MCTD 2-2008, f. 6-23-08, cert. ef. 7-1-08; MCTD 4-2009, f. 12-22-09, cert. ef. 1-1-10; MCTD 1-2011, f. & cert. ef. 2-18-11

Department of Transportation, Transportation Safety Division Chapter 737

Rule Caption: Emergency Vehicle designation for ODOT and non-ODOT vehicles.

Adm. Order No.: TSD 2-2011

Filed with Sec. of State: 2-18-2011

Certified to be Effective: 2-18-11

Notice Publication Date: 1-1-2011

Rules Adopted: 737-100-0010, 737-100-0040

Rules Ren. & Amend: 735-100-0030 to 737-100-0030

Subject: These amendments are intended to streamline internal and customer processes resulting in labor and time savings for all affected parties. ODOT had internal policies in place that precluded it from having to provide the same information that non-ODOT requestors of Emergency Vehicle designation must provide. This rule change clarifies procedures for ODOT-owned vehicles, and more clearly defines external candidate vehicles. Also, this rule revision moves the rule from Chapter 735 (DMV) to Chapter 737 (TSD) which has administrative responsibility for Emergency Vehicle designations.

Rules Coordinator: Lauri Kunze—(503) 986-3171

ADMINISTRATIVE RULES

737-100-0010

Definitions

- (1) "Ambulance" is defined in ORS 682.025 and means the vehicle is currently licensed by Oregon Health Division.
- (2) "Competent mechanic" means a person who:
 - (a) Is active at repairing vehicles of the type for which the designation is requested; and
 - (b) Receives a substantial part of their income by repairing vehicles.
- (3) "Designated emergency vehicle" means a vehicle so designated, as allowed by ORS 801.260(3) and as specified in 735-100-0030(2).
- (4) "Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.
- (5) "ODOT Incident Response Vehicle" means a vehicle that is marked with external markings to identify the vehicle as an Oregon Department of Transportation Emergency or Incident Response vehicle.
- (6) "Owner" means a person or firm who owns the vehicle, or their authorized representative.

Stat. Auth.: ORS 184.616, 184.619, 801.260, 820.350, 820.370
Stats. Implemented: ORS 801.260, 815.230, 816.310, 820.350, 820.370
Hist.: TSD 2-2011, f. & cert. ef. 2-18-11

737-100-0030

Designation of Emergency Vehicles

- (1) This rule applies to vehicles designated as emergency vehicles by the Transportation Safety Division of the Department of Transportation (Transportation Safety) under the authority of ORS 801.260.
- (2) An ambulance is considered an emergency vehicle.
- (3) This rule does not apply to ODOT Emergency or Incident Response Vehicles or operators.
- (4) Transportation Safety Division will consider issuance of an emergency vehicle designation upon receipt of:
 - (a) A written request from the owner, that details:
 - (A) A complete description of the vehicle. This includes year model, make, body style, identification number, and the Oregon plate number, if a plate is assigned;
 - (B) How the vehicle will be used in emergency situations;
 - (C) The explicit need for this type of emergency vehicle in the area where it will be used; and
 - (D) Any other data that shows special qualifications of the vehicle for emergency use. For example, it was manufactured as a fire truck, or, it has been specially converted or equipped with emergency supplies, life support equipment, etc.
 - (b) A map, detailing the actual area or routes where the vehicle will be used as an emergency vehicle;
 - (c) A certification, signed by a competent mechanic, that the vehicle is in a safe operating condition;
 - (d) A written recommendation from the sheriff's office of the county of registration of the vehicle; and
 - (e) Written recommendation(s) from all other law enforcement agencies in the area(s) in which the vehicle will be used as an emergency vehicle.
- (5) Designated emergency vehicles shall be equipped with warning lights and sirens as required by ORS 801.260 that:
 - (a) Comply with Oregon law regarding types and usage, and with standards and requirements of Transportation Safety; and
 - (b) Are used only in emergency situations and as allowed by Oregon law.
- (6) Designations that are approved shall be reviewed by Transportation Safety every two years to assure the vehicle and its usage still qualify for the designation. New data, as listed in section (3) of this rule, may be requested from the owner.
- (7) Special traffic law privileges of ORS 820.300 and 820.320 apply to drivers of designated emergency vehicles:
 - (a) When the vehicle is actually being used in an emergency situation; and
 - (b) When the vehicle is operated in compliance with all traffic laws, including these special privileges.
- (8) An emergency vehicle designation shall not be issued for law enforcement purposes.
- (9) An emergency vehicle designation shall not authorize the vehicle to use blue warning lights.
- (10) An emergency vehicle designation shall not be transferred to another vehicle. The owner may submit a written request that a replacement vehicle be designated. The request shall include:
 - (a) A description of both vehicles;

- (b) A statement that there have been no changes in the emergency use of the vehicle; and
 - (c) A competent mechanic's certification for the replacement vehicle.
- (11) An emergency vehicle designation issued under these rules may be cancelled when:
- (a) The vehicle has been sold;
 - (b) The vehicle will no longer be used as an emergency vehicle or in the area specified in the owner's request;
 - (c) A law enforcement agency requests cancellation due to abuse or violation of the designation or special traffic law privileges, or withdrawal of their favorable recommendation;
 - (d) A city, county or other governing body requests, and provides supporting data for cancellation;
 - (e) The vehicle is operated as an emergency vehicle other than as permitted by the designation;
 - (f) The vehicle is operated in violation of Oregon law; or
 - (g) There is no longer a need because adequate emergency services are now provided in the area.

Stat. Auth.: ORS 184.616, 184.619, 801.260, 820.350, 820.370
Stats. Implemented: ORS 801.260, 815.230, 816.310, 820.300, 820.320, 820.350, 820.370
Hist.: MV 2-1987, f. & ef. 3-16-87; Administrative Renumbering 3-1988, Renumbered from 735-160-0020; Renumbered from 735-100-0030, TSD 2-2011, f. & cert. ef. 2-18-11

737-100-0040

Emergency Vehicle Designation for ODOT Incident Response Vehicles

- (1) The Transportation Safety Division of the Oregon Department of Transportation adopts these requirements regarding Emergency Vehicle designation for ODOT Emergency or Incident Response Vehicles.
- (2) Emergency Vehicle designation is assigned to the vehicle. Transportation Safety will consider issuance of an emergency vehicle designation to ODOT Emergency or Incident Response Vehicles upon receipt of a written request from the ODOT region manager or designee that details:
 - (a) A complete description of the vehicle. This includes year model, make, body style, gross vehicle weight rating (GVWR), vehicle identification number, fleet identification number and the Oregon E-plate number;
 - (b) How the vehicle will be used in emergency situations;
 - (c) The region and district, staging location, name and working title of the individual that the vehicle is assigned to; and
 - (d) The explicit need for this type of emergency vehicle in the area where it will be used.
- (3) ODOT Incident response vehicles shall be marked with external markings that identify the vehicle as an ODOT Emergency or Incident Response vehicle.
- (4) Designated emergency vehicles shall be equipped with warning lights and sirens as required by ORS 801.260 that:
 - (a) Comply with Oregon law regarding types and usage, and with standards and requirements of Transportation Safety; and
 - (b) Are used only in emergency situations and as allowed by Oregon law.
- (5) Designations that are approved shall be reviewed by Transportation Safety every two years to assure the vehicle and its usage still qualify for the designation. New data, as listed in section (2) of this rule, may be requested from the region manager or designee.
- (6) ODOT Emergency Vehicle designation may be cancelled when:
 - (a) The vehicle has been sold or transferred;
 - (b) The vehicle will no longer be used as an emergency vehicle or in the area specified in the request;
 - (c) There is no longer a need, because adequate emergency services are now provided in the area. Need will be determined by the ODOT State Maintenance & Operations Engineer.

Stat. Auth.: ORS 184.616, 184.619, 801.260, 820.350, 820.370
Stats. Implemented: ORS 801.260, 815.230, 816.310, 820.350, 820.370
Hist.: TSD 2-2011, f. & cert. ef. 2-18-11

Employment Department
Chapter 471

Rule Caption: Revises prevailing rate of pay to use median wage instead of average.

Adm. Order No.: ED 2-2011(Temp)

Filed with Sec. of State: 2-18-2011

Certified to be Effective: 3-1-11 thru 8-28-11

Notice Publication Date:

Rules Amended: 471-030-0037, 471-030-0038

ADMINISTRATIVE RULES

Subject: The proposed change replaces the term ‘average’ with ‘median’ as it relates to the rate of pay for an individual. Using average takes into account all wages paid to an individual for a particular industry. This can be skewed by a few individuals who make substantially more than the majority of workers. Using the median wage takes out the impact of a few high wage earners and provides a more accurate representation of the wage an individual would be expected to receive for a particular occupation.

Rules Coordinator: Courtney Brooks—(503) 947-1724

471-030-0037

Prevailing Rate of Pay

(1) For the purposes of ORS 657.176(2)(d), and for the purposes of ORS 657.195(1)(b), work is not suitable if the rate of pay is substantially less favorable than the rate prevailing in the locality. A rate of pay is substantially less favorable than the rate prevailing in the locality when the rate of pay is at least ten percent lower than the median rate of pay for similar work in the locality. The median rate of pay prevailing in the locality shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

(2) In applying the provisions of ORS 657.176(2)(e), and for the purposes of ORS 657.195(1)(b), if inadequate rate of pay was one of the reasons for refusing to accept new work, the work is not suitable if the rate of pay is substantially less favorable than the rate prevailing in the locality. A rate of pay is substantially less favorable than the rate prevailing in the locality when the rate of pay is at least ten percent lower than the median rate of pay for similar work in the locality. The median rate of pay prevailing in the locality shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.176(2)(d), 657.176(2)(e) & 657.195(1)(b)

Hist.: IDE 151, f. 9-28-77, ef. 10-4-77; ED 2-1991, f. & cert. ef. 10-14-91; ED 2-1992, f. & cert. ef. 6-29-92; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2011(Temp), f. 2-18-11, cert. ef. 3-1-11 thru 8-28-11

471-030-0038

Work Separations, Job Referrals and Job Refusals

(1)(a) As used in ORS 657.176(2)(a), (b) and (c) and sections (1) through (5) of this rule the term “work” means the continuing relationship between an employer and an employee. An employment relationship exists even in circumstances where the work performed is not subject employment as set forth in ORS Chapter 657. This section does not apply where no employment relationship exists because the worker is an independent contractor or operating an independently established business. With the exception of the provisions of ORS 657.221(2)(a), the date an individual is separated from work is the date the employer-employee relationship is severed. In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship shall be deemed severed at the time that a work assignment ends.

(b) In the case of absence due to labor dispute, the employee is separated from work on the date there is a complete dissociation from all participation in the labor dispute and no re-employment rights are claimed.

(c) As used in this rule, “wantonly negligent” means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.

(d) As used in this rule, the following standards apply to determine whether an “isolated instance of poor judgment” occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer’s reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer’s reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment rela-

tionship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

(e) For purposes of this rule, “compelling family reasons” means:

(A) Domestic violence, as defined in OAR 471-30-0150, which causes the individual reasonably to believe that the individual’s continued employment would jeopardize the safety of the individual or a member of the individual’s immediate family; or

(B) The illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off; or

(C) The need to accompany the individual’s spouse or domestic partner;

(i) To a place from which it is impractical for such individual to commute; and

(ii) Due to a change in location of the spouse’s or domestic partner’s employment.

(f) As used in OAR 471-030-0150 and this rule, “a member of the individual’s immediate family” includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child.

(2) The distinction between voluntary leaving and discharge is:

(a) If the employee could have continued to work for the same employer for an additional period of time the separation is a voluntary leaving of work;

(b) If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer the separation is a discharge.

(3)(a) As used in ORS 657.176(2)(a) and (b) a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer’s interest is misconduct.

(b) Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct.

(c) The willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual.

(d) Discharge for “compelling family reasons,” when the individual has made the attempt to maintain the employer-employee relationship, is not misconduct.

(4) Good cause for voluntarily leaving work under ORS 657.176(2)(c) is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. For an individual with a permanent or long-term “physical or mental impairment” (as defined at 29 CFR 1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work. Except as provided in OAR 471-030-0038(5)(g), for all individuals, the reason must be of such gravity that the individual has no reasonable alternative but to leave work.

(5) In applying section (4) of this rule:

(a) If an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay:

(A) An amount equal to or in excess of the weekly benefit amount; or
(B) An amount greater than the work left.

(b) Leaving work without good cause includes, but is not limited to:

(A) Leaving suitable work to seek other work;

(B) Leaving work rather than paying union membership dues;

(C) Refusing to join a bona fide labor organization when membership therein was a condition of employment;

(D) Leaving to attend school, unless required by law;

(E) Willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved, so long as such failure is reasonably attributable to the individual;

(F) Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct;

(G) Leaving work for self employment.

ADMINISTRATIVE RULES

(c) Good cause for voluntarily leaving work while on layoff status shall be determined solely under the provisions of section (4) of this rule without regard to the provisions of subsections (a) and (b) of this section;

(d) Reduction in rate of pay: If an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area. The median rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

(A) This section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.

(B) An employer does not reduce the rate of pay for an employee by changing or eliminating guaranteed minimum earnings, by reducing the percentage paid on commission, or by altering the calculation method of the commission.

(C) An employer does not reduce the rate of pay by loss or reduction of fringe benefits.

(D) If the Employment Department cannot determine the median rate of pay, the provisions of OAR 471-030-0038(4) apply.

(e) Reduction in hours: If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received;

(f) Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of section (4) of this rule.

(g) Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons.

(6) As used in ORS 657.176(2)(d) and (e), the term "work" means the performance of services for which remuneration, compensation or wages is intended to be received or earned. Good cause as used in ORS 657.176(2)(d) and (e) is such that a reasonable and prudent person, exercising ordinary common sense, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR 1630.2(h)) good cause is such that a reasonable and prudent person with the characteristics and qualities of such individual, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. In determining disqualification under this section, consideration shall be given to suitable work factors and exceptions as set forth in ORS 657.190 and 657.195.

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

Stat. Auth.: ORS 657.176, 657.260, 657.265 & 657.610

Stats. Implemented: ORS 657.176

Hist.: 1DE 1-1979(Temp), f. & ef. 4-30-79; 1DE 5-1979, f. & ef. 8-27-79; 1DE 1-1984, f. & ef. 3-21-84; 1DE 2-1986, f. & ef. 4-14-86; ED 5-1992, f. & cert. ef. 12-14-92; ED 2-1993(Temp), f. & cert. ef. 8-12-93; ED 4-1993, f. & cert. ef. 11-22-93; ED 6-1999, f. 9-23-99, cert. ef. 9-26-99; ED 7-2001(Temp), f. 5-17-01, cert. ef. 5-20-01 thru 11-11-01; ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04; ED 1-2009(Temp), f. 6-25-09, cert. ef. 6-29-09 thru 12-26-09; ED 6-2009, f. 10-30-09, cert. ef. 11-1-09; ED 2-2011(Temp), f. 2-18-11, cert. ef. 3-1-11 thru 8-28-11

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Oregon Health Authority, Addictions and Mental Health Division: Addiction Services Chapter 415

Rule Caption: DUII Marijuana Diversion and Alcohol and Drug Evaluation and Screening Specialists and Approval of Demonstration Projects.

Adm. Order No.: ADS 2-2011

Filed with Sec. of State: 3-8-2011

Certified to be Effective: 3-9-11

Notice Publication Date: 10-1-2010

Rules Adopted: 415-054-0400, 415-054-0410, 415-054-0420, 415-054-0430, 415-054-0440, 415-054-0450, 415-054-0460, 415-054-0470, 415-054-0480, 415-054-0490, 415-054-0500, 415-054-0510, 415-054-0520, 415-054-0530, 415-054-0540, 415-054-0550, 415-054-0560, 415-054-0570, 415-054-0580

Rules Repealed: 415-054-0005, 415-054-0010, 415-054-0015, 415-054-0017, 415-054-0018, 415-054-0045, 415-054-0050, 415-054-

0055, 415-054-0060, 415-054-0070, 415-054-0075, 415-054-0076, 415-054-0080, 415-054-0090, 415-054-0100, 415-054-0200, 415-054-0210, 415-054-0220, 415-054-0230, 415-054-0240, 415-054-0300, 415-054-0310, 415-054-0320, 415-054-0330, 415-054-0340, 415-054-0350, 415-054-0360, 415-054-0370, 415-054-0400(T), 415-054-0410(T), 415-054-0420(T), 415-054-0430(T), 415-054-0440(T), 415-054-0450(T), 415-054-0460(T), 415-054-0470(T), 415-054-0480(T), 415-054-0490(T), 415-054-0500(T), 415-054-0510(T), 415-054-0520(T)

Subject: These new rules are revisions of existing rules related to Marijuana Diversion and Alcohol and Drug Evaluation Specialists (ADES) and to Demonstration Projects, and accomplish the following:

(1) Clarify the necessary qualifications, application and recertification process and the roles of the ADES;

(2) Newly address conflicts of interest and continuing education requirements;

(3) Expand sections about individual rights and documentation requirements and

(4) Clarify the requirements which must be met in order for certification as a Demonstration Project.

Rules Coordinator: Richard Luthe—(503) 947-1186

415-054-0400

Purpose

These rules prescribe the standards and requirements for DUII Information Programs, for certification and services provided by Alcohol and Drug Evaluation and Screening Specialists and for approval to establish a demonstration project, both related to individuals ordered by the court for DUII screening, diagnostic and referral to treatment services.

Stat. Auth.: ORS 409.410, 413.042

Stats. Implemented: ORS 409.410, 813.021, 813.206

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011, f. 3-8-11, cert. ef. 3-9-11

415-054-0410

Definitions

(1) "Alcohol and Drug Evaluation and Screening Specialist" (ADES) means an individual who possesses a valid certificate issued by the Addictions and Mental Health Division (Division) of the Oregon Health Authority (Authority), as prescribed in these rules.

(2) "Assistant Director" means the Assistant Director of the Addictions and Mental Health Division of the Oregon Health Authority.

(3) "Certificate" means a document issued to a person by the Division which authorizes the person to practice as an ADES.

(4) "CFR 42 Part 2" means the Code of Federal Regulations, Title 42, Volume 1, Chapter 1, Part 2 entitled Confidentiality of Alcohol and Drug Abuse Patient Records.

(5) "Conflict of Interest" means use of a personal relationship to obtain financial gain or avoidance of financial detriment; making business decisions which create a pattern of biased or preferential treatment; or initiating a professional role with someone with whom there was a pre-existing personal relationship. The conflict of interest may be actual or potential.

(6) "Diversion Agreement" means a petition approved by the court meeting the criteria established in ORS 813.200 through 813.260.

(7) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(8) "DUII" means driving under the influence of intoxicants.

(9) "DUII Diagnostic Assessment" means an examination by an ADES to determine if a person has a problem condition involving alcohol or controlled substance as described in ORS 813.040.

(10) "DUII Demonstration Project" means an agency approved by the Assistant Director to demonstrate the effectiveness of combining diagnostic assessment and treatment services in a single agency or organization for persons charged with the offense of driving under the influence of intoxicants.

(11) "DUII Information Program" means a short term (12-20) hours in duration), didactic alcohol and drug education program which meets the minimum curriculum, instructor and hourly standards established by the Division.

(12) "Individual" means any person being considered for or receiving services regulated by these rules including adolescents referred pursuant to ORS 419C.443.

ADMINISTRATIVE RULES

(13) "Individual Record" means the confidential, permanent individual record including all documentation, written or electronic, from the point of entry through service conclusion.

(14) "Marijuana Diversion Agreement" means a petition approved by the court pursuant to ORS 135.907 through 135.921.

(15) "Re-referral" means a referral which occurs after an individual disengages from initial treatment and then receives a new referral to the same or different treatment program.

(16) "Risk" means an individual's use of alcohol or drugs is a problem indicated by a substantial impairment or endangerment to the individual's health or that of others, or because the individual's social or economic function is substantially disrupted.

(17) "Screening Interview" means determining the most appropriate treatment provider and making a referral to that provider for an individual convicted of a DUII.

(18) "Single Agency or Organization" means any one person or business entity, any combination of persons or business entities acting together as a program, an agency or any other arrangement which provides or has a financial interest in providing DUII diagnostic assessment and screening interview services approved by the Assistant Director under OAR 415-054 and any DUII treatment services defined in OAR 309-032.

(19) "Transfer" means an individual is referred from one approved DUII treatment program to another as requested by the individual, the ADES or the first treatment program.

(20) "Treatment Program" means an approved alcohol and drug treatment program which meets all standards established by the Division evidenced by a current letter of approval and which specializes in services to individuals with court ordered DUII convictions or diversions, or marijuana diversions.

(21) "Treatment Services" means those services provided by the treatment program which are individualized, planned and medically appropriate and which are designed to remediate the problem condition involving alcohol or drugs.

(22) "Variance" means an exception from a requirement in these rules, granted in writing by the Division on a case by case basis.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 419C.443, 409.410, 813.021, 813.206, 813.040

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0420

Screening and Referral

(1) Each individual shall be assured the same civil and human rights as other persons. The ADES shall provide services in a manner that protects individual privacy and dignity.

(2) The ADES must provide the rights to the individual in written form or in a requested primary language or other alternative format, explain the rights and respond to the individual's related questions.

(3) The ADES must place in the individual record the individual's signed acknowledgement that the individual received these rights.

(4) In addition to all applicable statutory and constitutional rights, every individual receiving services has the right to:

(a) Participate in the selection of the treatment program;

(b) Have the role of the court, treatment program and ADES monitoring process explained where the DUII system is concerned;

(c) Confidentiality and the right to consent to disclosure in accordance with 42 CFR Part 2.

(d) Give informed consent in writing prior to the start of services, except as otherwise permitted by law;

(e) Pursuant to ORS 179.505, inspect all parts of their individual record which originated from the ADES within five working days of the request. The individual must obtain copies of documents which originated from other sources from the original source. The individual may be responsible for the cost of duplication.

(f) Receive prior notice of service conclusion or transfer, unless the circumstances necessitating service conclusion or transfer pose a threat to health and safety;

(g) Be free from harassment, abuse or neglect and to report any incident of harassment, abuse or neglect without being subject to retaliation;

(h) Have religious freedom;

(i) Be informed of the policies and procedures, service agreements and fees applicable to the services provided;

(j) Have a custodial parent, guardian or representative assist with understanding any information presented;

(k) Receive a copy of the ADES's or demonstration project's grievance process which shall include the Division and Disability Rights of Oregon telephone numbers. The individual shall:

(A) File a written grievance without any form of reprisal;

(B) Receive a written response to the grievance within 30 days and

(C) File an appeal with the Division if dissatisfied with the ADES's response.

(l) Exercise all rights described in this rule without any form of reprisal or punishment

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 109.675, 179.505, 430.010, 430.205 - 430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.055 & 813.200 - 813.270

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0430

Administrative Requirements for Information Programs

(1) An information program that contracts directly with the Division or indirectly with the Division through the (CMHP) administered by the Division shall comply with the contracting rules of the Division and contract agents governing reimbursement for services and refunds.

(2) An information program shall develop and implement written policies and procedures that describe program operations. Policies and procedures shall include a quality assurance process ensuring that clients receive appropriate services and that the program is in compliance with relevant administrative rules.

(3) Instructors shall have one year of education, experience, and/or training in one or more of the following areas: social science, psychology, counseling, alcohol/drug rehabilitation, education, or other related field approved by the Division.

(4) If two or more staff provide services, the program shall have and implement the personnel policies and procedures which address:

(a) Rules of conduct and standards for ethical practices of program practitioners, including conflict of interest;

(b) The requirement of a Drug Free Workplace with procedures for managing incidents of use and abuse and

(c) Compliance with the federal and state personnel regulations including the Civil Rights Act of 1964 as amended in 1972, Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title I of the Americans with Disabilities Act, Oregon civil rights laws related to employment practices, and any subsequent amendments effective on or before the effective date of these rules. The DUII information program shall give individualized consideration to all applicants who, with or without reasonable accommodation, can perform the essential functions of the job position.

(5) Personnel records for each member of the program's staff, volunteers, and interns/students shall be kept and shall include:

(a) Résumé and/or employment application and job description;

(b) Documentation of applicable qualification standards and requirements;

(c) Annual performance appraisals based on pre-established performance criteria founded on the specific responsibilities of the position as stated in the job description;

(d) Documentation of any performance problem and formal corrective action taken due to the problem and

(e) For volunteers or interns/students, the record need only include information required by subsections (5)(a) and (5)(d) of this rule and the written work plan for such person.

(6) Records shall be maintained and utilized in such a way as to ensure program staff confidentiality and shall be retained for a period of three years following the departure of a program staff person.

(7) Information programs receiving public funds must comply with Title 2 of the Americans with Disabilities Act of 1990, 42 USC § 1231 et seq. after July 26, 1992.

(8) Each program shall maintain the following client record requirements:

(a) Each record shall include all information about clients as required by these rules in permanent client records;

(b) Maintain each client record to assure permanency, identification, accessibility, uniform organization, and completeness of all components required by these rules and in a manner to protect against damage or separation from the permanent client or program record;

(c) Keep all documentation in the permanent client record current (unless specified otherwise), within seven days of delivering the service or obtaining the information;

ADMINISTRATIVE RULES

(d) Include the signature of the person providing the documentation and service;

(e) Not falsify, alter, or destroy any client information required by these rules to be maintained in a client record or program records;

(f) Document all procedures in these rules requiring client consent and the provision of information to the client on forms describing what the client has been asked to consent to or been informed of, and signed and dated by the client. If the program does not obtain documentation of consent or provision of required information, the reasons must be specified in the client record and signed by the person responsible for providing the service to the client;

(g) Require that errors in the permanent client record shall be corrected by lining out the incorrect data with a single line in ink, adding the correct information, and dating and initialing the correction. Errors may not be corrected by removal or obliteration through the use of correction fluid or tape so they cannot be read; and

(h) Permit inspection of client records upon request by the Division to determine compliance with these rules.

(9) Client records shall be kept for a minimum of seven years. If a program is taken over or acquired by another program, the original program is responsible for assuring compliance with the requirements of 42 CFR § 2.19(a)(1) and/or (b), whichever is applicable. If a program discontinues operations, the program is responsible for:

(a) Transferring fiscal records required to be maintained under section (1) of this rule to the Division if it is a direct contract or to the CMHP administering the contract, whichever is applicable; and

(b) Destroying client records or, with client consent, transferring client records to another program.

Stat. Auth.: ORS 409.010, 409.050, 409.410

Stats. Implemented: ORS 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011, f. 3-8-11, cert. ef. 3-9-11

415-054-0440

Information Program Detail

(1) A DUII information program shall include a minimum of four sessions over a four-week period and shall include 12-20 hours of education.

(2) Required Content/Topics of Education Curriculum:

(a) Victim's panel when possible;

(b) A pre- and post-test that has been approved by the Division;

(c) History, use, and definition of alcohol;

(d) Alcohol as a drug;

(e) Physiological effects of alcohol;

(f) Other drugs — legal and illegal — and their effects on driving when used separately and/or in combination with alcohol;

(g) Psychological and sociological consequences of abuse of alcohol or drugs to include the effect on families;

(h) Blood alcohol concentration and effects on driving performance;

(i) Court penalties;

(j) Motor Vehicles Division laws and penalties;

(k) Alcoholism as a problem and a disease (one hour minimum); and

(l) Alternatives to drinking and driving.

(3) A minimum of one urinalysis sample shall be observed and collected during the first two weeks of a client's DUII information program:

(a) The sample shall be tested for at least three controlled drugs from a list of targeted drugs specified by the Division using the process set out in the definition of "urinalysis testing" in OAR 415-054-0010; and

(b) The program may use methods of testing for the presence of alcohol or other drugs in the client's body other than urinalysis tests if the program has obtained the prior review and approval of such methods by the Division.

(4) The DUII information program shall establish and follow a procedure to assure communication with the evaluation specialist about whether a client should be referred to a rehabilitation program. Clients who test positive for illicit drugs must be referred to a DUII rehabilitation program for assessment and further treatment.

Stat. Auth.: ORS 409.410 & 413.042

Stats. Implemented: ORS 813.010 - 813.052 & 813.200 - 813.270

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011, f. 3-8-11, cert. ef. 3-9-11

415-054-0450

Information Program Approval

(1) In order to receive a Letter of Approval (LOA) from the Division, a DUII information program shall meet the standards set forth in these rules and any other administrative rules applicable to the program.

(2) A DUII information program seeking approval under these rules shall establish to the satisfaction of the Division that the local alcoholism and other drug planning committee was actively involved in the review of the DUII information program as it relates to the CMHP plan.

(3) The Division shall inspect at least every two years each information program under these rules.

(4) The renewal of a letter of approval shall be governed by OAR 415-012-0040.

(5) The denial, revocation, nonrenewal, or suspension of a letter of approval/license for an information program may be based on any of the grounds set forth in OAR 415-012-0060.

(6) In addition to the grounds set forth in OAR 415-012-0060, the Assistant Director may deny, revoke, refuse to renew or suspend a letter of approval when he or she determines that the issuance or continuation of the letter of approval would be inconsistent with the public interest. In determining the public interest, the Assistant Director shall consider the following factors, or any one of them, which apply to the applicant, licensee, or any person holding a 5 percent or greater financial interest in the program or which apply to the medical director, clinical supervisor, or staff:

(a) Any convictions under any federal or state law relating to any controlled substance;

(b) Furnishing of false, misleading, or fraudulent material in an application for a letter of approval; or

(c) Any other factors relevant to, and consistent with, the public health or safety.

(7) Without the approval of the Assistant Director, no agency or person may provide DUII information program services to a client who has also been referred by a judge to the same agency or person for a DUII related diagnostic assessment. Failure to comply with this section will be considered a violation of ORS Chapter 813. If the Assistant Director finds such a violation, the Assistant Director may deny, suspend, revoke, or refuse to renew a Letter of Approval.

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

Stat. Auth.: ORS 409.410 & 413.042

Stats. Implemented: ORS 813.010 - 813.052 & 813.200 - 813.270

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011, f. 3-8-11, cert. ef. 3-9-11

415-054-0460

ADES Application and Certification Process

(1) Minimum qualifications for ADES certification include:

(a) A Bachelor Degree in social sciences, psychology, sociology, substance abuse or a related subject with course work specific to alcohol or other drug treatment; or

(b) Four years of full time supervised experience in alcohol or drug evaluation, treatment or counseling; or

(c) A combination of two years of education or training in alcohol or drug treatment, evaluation, education or counseling and two years of full-time supervised experience in alcohol or drug service delivery.

(2) A person who wishes to be certified as an ADES must submit a packet of information which includes at minimum an application, three letters of reference, the completed conflict of interest form designated by the Division and a written court Designation that explains the need for an additional ADES in that court's jurisdiction. Examples of need are an increased number of DUII cases or the need for an ADES with specific language proficiency.

(3) An applicant may be denied a certificate for reasons which include but are not limited to insufficient education or experience, poor reference feedback, a confirmed or potential conflict of interest or if the Division determines a lack of need for an ADES in the applicant's geographical area.

(4) Prior to final certification the applicant must have completed ADES specific training curriculum pre-approved by the Division, which includes the following subjects:

(a) The scope, authorities and responsibilities of the ADES as addressed in related Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR) and Division policies and procedures;

(b) A summary of related roles of the court and the treatment provider and how their roles differ from those of the ADES;

(c) A review of professional issues such as conflict of interest, other ethics standards, confidentiality, releases of information and individuals' rights;

(d) The process of conducting screening interviews, diagnostic assessments, interpreting court and other legal documents, determining risk and formulating a screening summary, referral procedures and reporting requirements;

ADMINISTRATIVE RULES

(e) Determining the appropriate treatment provider for each case based upon the screening or diagnostic assessment results and individual needs and referral procedures;

- (f) Interpretation of toxicology and urinalysis tests results and
(g) Standards and requirements of individual permanent records.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0470

Other Requirements

(1) The ADES shall fully cooperate with program reviews conducted by the Division and with all corrective actions required by the Division.

(2) During all working hours the ADES shall not be under the influence of nor use or have present in any amounts in his or her body any alcohol or drugs to include controlled substances, unless pursuant to a current prescription from a licensed physician.

(3) The ADES must serve a minimum of twelve individuals over the calendar year.

(4) The ADES must comply with Title 2 of the Americans With Disabilities Act of 1990, 42 USC Section 12131 et seq.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0480

Screening Interview and Diagnostic Assessments

(1) The ADES must perform a screening interview for individuals convicted of a DUII to determine the most appropriate DUII treatment provider in making a referral to that provider. The ADES must use documents and procedures designated by the Division.

(2) The ADES must perform a diagnostic assessment for individuals under a DUII Diversion Agreement to determine if the individual has a problem condition involving alcohol or drugs including controlled substances and to determine the most appropriate DUII treatment provider. In making the referral to that provider the ADES must use documents and procedures designated by the Division.

(3) Screening interviews and diagnostic assessments shall be conducted in a face-to-face interview whenever possible. If a telephone interview is used the ADES shall document in the individual's record a full explanation for the absence of a face-to-face interview.

Stat. Auth.: 409.010, 409.050, 409.410

Stats. Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0490

Referrals

(1) The ADES shall perform the referral process by thoroughly completing all documents and following all procedures designated by the Division.

(2) The ADES shall provide to the individual a list of all Division approved treatment programs:

- (a) Within the geographic area preferred by the individual and

(b) Those treatment programs in any other geographic area capable of responding to a specific need including, but not limited to ability to pay or seek reimbursement through insurance, primary language or hours of treatment which allow an individual to maintain a work schedule.

(3) The process of selecting the treatment program shall be collaborative between the ADES and the

individual, however the ADES shall make the final determination in referring the individual to an approved DUII information or treatment program. The ADES shall explain the rationale for the information or treatment program which the ADES believes most closely provides services specific to the individual's treatment needs, including the individual's request for a restricted driver's license.

(a) The ADES shall confirm that the individual participated in the selection of the information or treatment program by documenting in a statement which must be co-signed by the individual and placed in the individual record.

(4) The ADES may not refer an individual to a program if doing so may cause an actual or potential conflict of interest.

(5) Whenever possible referrals of adolescents shall be to programs that specialize in treatment for adolescents.

(6) Within five days of the screening the ADES shall forward to the selected information or treatment program a copy of the referral form, the screening cover sheet and the completed screening instrument.

(7) If the individual has a court approved Marijuana Diversion Agreement the screening and referral process is identical to those for individuals referred for DUII charges.

(8) If the screening results indicate the individual does not have a problem condition as defined in ORS 813.040 for the use of marijuana the ADES shall indicate so on the screening instrument and then refer the individual back to court.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0500

Transfers, Re-Referrals and Out-of-State Offenders

(1) When a transfer from one treatment program to another is requested by the individual or the current treatment program, the ADES shall consider and document the logistic, financial or other reasons for the request and the rationale for either an acceptance or denial of the request.

(2) A transfer may not be approved if the individual refuses to sign a release of information which permits an exchange of verbal and written communications between the current and the proposed next treatment program.

(3) When the individual resides in a state other than Oregon, the ADES may refer the individual to a treatment program licensed by and located in the individual's home state.

(4) The ADES' roles concerning out-of-state offenders shall be identical as those for Oregon residents.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0510

Monitoring

The ADES shall monitor the individual throughout the information or treatment process by:

(1) Verifying the individual began the information or program within 30 days of the referral;

(2) Verifying whether or not the individual satisfactorily completed all requirements of the program;

(3) Notifying the court concerning the individual's compliance with program requirements and

(4) Documenting in the individual record each contact with the program and the court.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0520

Individual Records and Fees

(1) The ADES must develop and maintain a confidential permanent individual record for each individual. The record must, at minimum include a copy of:

- (a) All legal documents received;

(b) A form signed by the individual acknowledging receipt of confidentiality rights pursuant to 42 CFR Part 2;

(c) All completed documents required in these rules and any related Division procedures;

- (d) Documentation of each contact related to the individual's case;

(e) All status reports and other documents received from the DUII approved treatment program;

(f) All documents related to any re-referral or request for transfer from one treatment program to another and

- (g) All documents related to any out-of-state referrals.

(2) Any errors in the individual record shall be corrected by drawing a single ink line through the error and adding the correction date and ADES's initials. The use of correction fluid or tape or any other attempt to make the error illegible is unacceptable.

(3) The ADES shall maintain each individual record for seven years in a location which assures accessibility, organization, the individuals' confidentiality and which protects against damage or loss.

(4) Pursuant to ORS 813.021 and 813.240, the ADES may charge \$150.00 for their services to each individual.

ADMINISTRATIVE RULES

(a) The ADES must itemize in the individual record all fees received by the individual, indicating the service(s) provided and any outstanding fees.

(5) The ADES shall permit the Division to inspect all permanent records to determine compliance with these rules.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 4-2010(Temp), f. & cert. ef. 9-20-10 thru 3-9-11; ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0530

Reporting Requirements

(1) By the 10th of each month, the ADES shall send to the Division the monthly report of DUI and marijuana diversion individuals served by the ADES caseload.

(2) Any potential or actual conflict of interest must immediately be declared to the Division on the designated form.

(3) An ADES who decides to close the business voluntarily must notify the Division in writing within 60 days of the proposed closure with a plan for:

(a) Transferring service responsibility for each individual the ADES is currently monitoring to another ADES, who agrees in writing to the plan and

(b) Secure storage of all individual records less than seven years old, pursuant to OAR 166.040. The Division may approve a plan to transfer the records to another ADES within the same court jurisdiction who indicates in writing the willingness to accept responsibility for their secure storage.

(4) When a program is discontinued, its current certificate is immediately void and shall be returned to the Division. A discontinued program is one which has terminated its services for which it had been approved or licensed.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0540

Revocation, Non-renewal or Suspension of the ADES Certificate

The Division may deny a request for a certificate renewal, or may revoke or temporarily suspend an existing ADES certificate when it finds any of the following:

(1) The ADES has substantially failed to comply with applicable administrative rules, state or federal law or with local codes or ordinances;

(2) Failure to demonstrate competencies specified in these rules;

(3) Received a prior denial, suspension, revocation or refused renewal of any other Authority license or certificate;

(4) The applicant or ADES submits fraudulent or untrue information to the Division;

(5) The applicant or ADES has a history of, or currently demonstrates financial insolvency including but not limited to filing for bankruptcy, a foreclosure or failure to pay taxes;

(6) The applicant or ADES refuses to allow immediate access and onsite inspection by the Division;

(7) The applicant or ADES is found to have permitted, aided or abetted the commitment of an unlawful act;

(8) Deviation by the ADES from the plan or operation originally approved and certified which, in the judgment of the Division, adversely affects the quality or scope of the intended services;

(9) Does not meet the minimum requirement of serving a minimum of one individual per month over the course of one year;

(10) Failure to allow an individual to exercise rights as defined in these rules;

(11) Failure to declare in writing any potential or actual conflict of interest or

(12) Failure to fully comply with any corrective action plan designated by the Division.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0550

Demonstration Project Approval Process

(1) Only an ADES with a valid certificate and a single agency or organization with a valid letter of approval to provide treatment services may be approved as a demonstration project.

(2) Requests for approval under these rules must include a narrative which describes or otherwise addresses the following:

(a) That a clearly defined and significant problem exists in the separate provision of diagnostic assessment, information and treatment services as defined in these rules;

(b) The problem cannot be resolved as long as the diagnostic assessment, information and treatment functions are performed by separate agencies or organizations;

(c) There is relevant research or other data which shows that a particular method for combining the performance of these functions in a single agency is an effective and appropriate means of resolving the problem;

(d) The person or agency proposing to conduct a demonstration of the particular method has, and can maintain for the duration of the project:

(A) The appropriate clinical and managerial knowledge, skills and abilities required by administrative rule for ADES services, information and treatment programs and

(B) A process to evaluate the effectiveness of the demonstration project which:

(i) Is conducted independent of the demonstration project;

(ii) Compares the demonstration project program with non-project programs;

(iii) Compares outcomes of post-project service recipients to those in a control group;

(iv) Includes the cost effectiveness of the demonstration project and

(v) Includes cost savings to service recipients.

(e) An assurance the applicant has not previously failed to resolve problems or satisfactorily conduct or complete other programs or projects for private or public entities;

(f) The effect on other ADES, information and treatment programs and whether referrals will also be made to outside agencies and

(g) The geographic location to be served; the participating persons or agencies and their respective roles in the proposed project; the length of time proposed for the project and the expected outcomes.

(3) The application packet must also include:

(a) Letters of endorsement from courts and other relevant persons or agencies;

(b) Written assurances of participation by each proposed participant;

(c) Documentation that the request for approval has been reviewed and a recommendation made by the Community Mental Health Program director of the proposed geographic area and the local alcoholism and drug planning committee and

(d) Any additional information requested by the Division.

(4) Approval of a demonstration project is at the discretion of the Assistant Director. The Division shall review requests and shall notify the requestor of the approval or denial within 60 days of the date the request is received by the Assistant Director.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0560

Demonstration Project General Requirements

(1) The approved demonstration project must comply with all ADES, information and treatment program requirements detailed in OAR 415-054 and 309-032.

(2) The effectiveness of the approved demonstration project must be evaluated as agreed upon between the applicant and the Division.

(3) Results of the program evaluation must be submitted to the Division within timelines approved by the Assistant Director.

Stat. Auth.: ORS 409.410, 413.042

Statutes Implemented: ORS 409.410, 813.021, 813.260

Hist.: ADS 2-2011. f. 3-8-11, cert. ef. 3-9-11

415-054-0570

Revocation or Denial of Approval for Demonstration Projects

(1) Approval of an application for a demonstration project is at the Assistant Director's discretion.

(2) The Assistant Director may deny, revoke or refuse to renew approval for any of the reasons detailed in OAR 415-054 or due to a finding that the demonstration project is not resolving the problems explained in the original application.

(3) The Assistant Director may refuse to renew approval if the program evaluation required under these rules fails to demonstrate the effectiveness of combining the diagnostic assessment and the treatment functions within a single agency or organization.

(4) When a request for approval to operate a demonstration project is denied, a current approval is suspended or revoked, or renewal is denied, notice of the action shall be sent by certified mail and shall include information about contested case hearings.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 409.410, 413.042
Statutes Implemented: ORS 409.410, 813.021, 813.260
Hist.: ADS 2-2011, f. 3-8-11, cert. ef. 3-9-11

415-054-0580

Variations

(1) A variance request must be submitted to the Division in writing and must include:

- (a) The section of the rule for which the variance is sought;
- (b) The reason for the request and the proposed alternative plan and
- (c) If temporary in nature, a timetable for compliance with the related rule.

(2) If the request is denied an appeal may be made to the Assistant Director whose decision shall be final.

(3) The document from the Division granting a variance must remain in the ADES's permanent business file.

Stat. Auth.: ORS 409.410, 413.042
Statutes Implemented: ORS 409.410, 813.021, 813.260
Hist.: ADS 2-2011, f. 3-8-11, cert. ef. 3-9-11

Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Updates and changes to the Preferred Drug List (PDL).

Adm. Order No.: DMAP 2-2011(Temp)

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11 thru 8-20-11

Notice Publication Date:

Rules Amended: 410-121-0030

Subject: The Pharmaceutical Services Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. The Division will amend 410-121-0030 to remove ineligible products from the PDL (Table 121-0030-1). The failure of certain manufacturers to execute Supplemental Rebate Agreements with the State resulted in the Net Price of their drug products being above the ANP for their drug class. Consequently, the Division must immediately amend OAR 410-121-0030 to remove those drugs from the PDL that are no longer eligible for placement on the PDL under the Division's rules.

Rules Coordinator: Darlene Nelson—(503) 945-6927

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 shall 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 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 the Department, 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 shall identify the drug(s) in the class that the Department 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 shall include drugs in the class that are Medicaid reimbursable and 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 the Department that reduce the cost of their drug below that of the Average Net Price for the class, the Department, 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/rulebooks/CRB121rb101810p.pdf in table 121.0030-1

(3) PMPDP PDL Selection Process:

(a) The Department shall utilize the recommendations made by the HRC, that result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) The Department shall determine the drugs identified in (3)(a) that are available for the best possible price and shall consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. The Department will determine relative price using the methodology described in subsection (4);

(c) The Department shall evaluate drug classes and selected drugs for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Department 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 shall be non-preferred until the new drug has been reviewed by the HRC;

(C) The Department shall make all changes or revisions to the PDL, using the rulemaking process and shall publish the changes on the Department's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) The Department shall 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) The Department may also consider dosing issues, patterns of use and compliance issues. The Department shall weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) The Department shall determine the Average Net Price for each PDL drug class;

(d) The Department shall 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 shall be as follows:

(a) If the prescribing practitioner, in their professional judgment, wishes to prescribe a physical health drug not on the PDL, they 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 shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) 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.

(7) Table 121-0030-1, PMPDP PDL (Revised, effective 3/1/11).

[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; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-10; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11

Oregon Health Authority, Office of Private Health Partnerships Chapter 442

Rule Caption: Amend Family Health Insurance Assistance Program rules.

Adm. Order No.: OPHP 3-2011

Filed with Sec. of State: 2-25-2011

ADMINISTRATIVE RULES

Certified to be Effective: 2-25-11

Notice Publication Date: 7-1-2010

Rules Amended: 442-005-0010, 442-005-0050, 442-005-0060, 442-005-0100

Subject: FHIAP is amending:

442-005-0010 — to clarify income definitions.

442-005-0050 — to clarify application eligibility requirements.

442-005-0060 — changes to the period of uninsurance.

442-005-0100 — typo.

Rules Coordinator: Margaret Moran—(503) 378-5664

442-005-0010

Definitions

(1) “Alien Status Requirement.” A qualified non-citizen meets the alien status requirement for FHIAP if the individual is one of the following:

(a) A person who was admitted as a qualified non-citizen on or before August 22, 1996;

(b) A person who entered the U.S. on or after August 22, 1996 and it has been five years since he or she became a qualified non-citizen;

(c) A person who has obtained their qualified non-citizen status less than five years ago, but entered the U.S. prior to August 22, 1996. The non-citizen must show that he or she has been living in the U.S. continuously for five years from a date prior to August 22, 1996 to the date the non-citizen obtained their qualified status and did not leave during that five-year period. If the non-citizen cannot establish the five-year continuous residence before he or she obtained their qualified status, the person is not considered to have entered the U.S. prior to August 22, 1996;

(d) Regardless when they were admitted, a person with one of the following designated statuses:

(A) A person who is admitted as a refugee under section 207 of the INA;

(B) A person who is granted asylum under section 208 of the INA;

(C) A person whose deportation is being withheld under section 243(h) of the INA;

(D) A Cuban or Haitian entrant who is either a public interest or humanitarian parolee;

(E) A person who was granted immigration status according to the Foreign Operations Export Financing and Related Program Appropriation Act of 1988;

(F) A person who is a victim of a severe form of trafficking.

(e) Regardless of when they were admitted, a qualified non-citizen who is:

(A) A veteran of the U.S. Armed Forces, who was honorably discharged not on account of alien status and who fulfills the minimum active-duty service requirement; or

(B) On active duty in the U.S. Armed Forces (other than active duty for training);

(C) The spouse or unmarried dependent child of the veteran or person on active duty described in (e)(A) and (B).

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(g) A member of an Indian tribe (as described in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(h) Any legal non-citizen who was approved for a FHIAP subsidy prior to November 1, 2004.

(2) “Appeal” means an applicant’s request for an administrative review of a FHIAP employee’s decision or action.

(3) “Applicant” means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined to be eligible to receive such subsidy or continued subsidy. “Applicant” also includes dependents as defined in OAR 442-005-0010(8).

(4) “Benchmark” means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Office in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government.

(5) “Carrier” means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(6) “Certified carrier” means a carrier that has been certified by the Office to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) “Citizen” for the purposes of FHIAP means a native or naturalized member of the United States who can show proof of identity and citizenship as required in the Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 109-171).

(8) “Dependent” means:

(a) An applicant’s spouse;

(b) All of the applicant’s and applicant’s spouse’s unmarried children, step children, legally adopted children or children placed under the legal guardianship of the applicant or applicant’s spouse who are under the age of 23 and reside with the applicant, and all dependent children of a dependent child;

(c) An unborn child of any applicant or applicant’s dependent as verified by written correspondence from a licensed medical practitioner; or

(d) An elderly relative or an adult disabled child, regardless of age, who lives in the home of the applicant, may be included as a dependent:

(A) For the purpose of FHIAP administration as it relates to ORS 414.841 dependent elderly relative means any person 55 and older.

(B) For the purpose of FHIAP administration as it relates to ORS 414.841 adult disabled child means:

(i) A child of the applicant or applicant’s spouse who is unmarried, a step child, a legally adopted child, or a child placed under the legal guardianship of the applicant or applicant’s spouse who is over the age of 18 and resides with the applicant; and

(ii) A child who is disabled with a physical or mental impairment that: (I) Is likely to continue without substantial improvement for no less than 12 months or to result in death; and

(II) Prevents performance of substantially all the ordinary duties of occupations in which a person not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the individual with the physical or mental impairment.

(e) Dependent does not include a separated spouse as determined by FHIAP.

(9) “Federal poverty level” means the United States Department of Health and Human Services poverty income guidelines. FHIAP will adopt guidelines no later than May 1 each year.

(10) “FHIAP” means the Family Health Insurance Assistance Program established by ORS 414.842.

(11) “Group” means insurance offered through an employer or an association.

(12) “Incarcerated” means a person living in a correctional facility, such as:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center; or

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work; or

(c) Individuals on leave of less than 30 days from a correctional facility; or

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(13) “Income” includes, but is not limited to, earned and unearned gross income received by adults and unearned income received by children. Income includes bartering, or working in exchange for goods and services, sale of personal property, discounts on goods and services, working in exchange for rent, and payments made for personal living expenses from business funds:

(a) For purposes of determining average monthly income, an applicant may deduct child or spousal support payments made by the applicant for a child or spouse that FHIAP does not consider a dependent. No deduction is allowed for support that is owed but not paid and collected through an offset against the applicant’s state income tax refund;

(b) Income does not include educational grants or scholarships.

(c) “Medicaid,” see OHP.

(15) “Medicare” means coverage under either parts A or B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et. seq., as amended.

(16) “Member” means a person approved for FHIAP and enrolled in a health insurance plan using the subsidy, or a Homecare Union Benefits Board (HUBB) applicant enrolled in a health benefit plan and approved for, but not yet enrolled in FHIAP.

(17) “Misrepresentation” means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

ADMINISTRATIVE RULES

(18) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(19) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member, as well as any civil penalty assessed by the Office.

(20) "Qualified non-citizen" for the purposes of FHIAP. A person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq);

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service;

(i) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply;

(j) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(k) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. § 5303A(d);

(l) A member of the U.S. Armed Forces on active duty (other than active duty for training);

(m) The spouse or dependent child of a person described in either (k) or (l) above;

(n) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2004.

(21) "Redetermination" means the periodic review and determination of a member's continued eligibility or subsidy level.

(22) "Reservation list" means a waiting list of potential applicants for FHIAP.

(23) "Resident" means a citizen or qualified non-citizen who resides in Oregon or a full-time college student who is a citizen or qualified non-citizen with a parent who resides in Oregon.

(24) "Self-employment income" means gross receipts of a business owned, in whole or in part, by a FHIAP applicant or dependent if the gross receipts are reported on an Internal Revenue Service (IRS) Schedule C or 1099. Self-employment income also includes income received for providing adult foster care if the recipient of the care lives in the applicant's home and child care providers who are not employed by a childcare business. Self-employment does not include income received from a partnership, S-corporation, C-corporation, or adult foster care if the care is not provided in the caregiver's home. Self-employment does not include income received from a Limited Liability Company except in the following situations:

(a) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule C for said income, that income will be treated as self-employment and subject to business deductions;

(b) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule F or J for said income, that income will be treated as Farming, Fishing or Ranching and subject to business deductions.

(25) "Support" means any court-ordered monetary payment for a child or former spouse or domestic partner whom FHIAP does not count in the applicant's family.

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

Stat. Auth.: ORS 735.724, 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPH 2-2007, f. 6-18-07, cert. ef. 7-9-07; OPH 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPH 3-2010, f. & cert. ef. 7-22-10; OPH 3-2011, f. & cert. ef. 2-25-11

442-005-0050

Eligibility

In order for an applicant to qualify for a FHIAP subsidy, applicants must:

(1) Be a resident of Oregon or a full-time college student with a parent who is a resident of Oregon.

(2) Be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(3) Not be eligible for or receiving Medicare benefits.

(4) Have income of zero through 200 percent of the Federal Poverty Level in effect at the time of eligibility determination. Income determination is outlined in OAR 442-005-0070.

(5) Meet one of the statutory definitions of family in ORS 414.841(3) at the time of eligibility determination. To be included in the family size for FHIAP eligibility determination, the applicant's family members must meet the definition of dependent under OAR 442-005-0010(8):

(a) A dependent may be counted in two separate households for the purposes of determining eligibility for FHIAP and any other state assistance program;

(b) A dependent may be counted in two separate households for the purpose of determining eligibility for both families in FHIAP;

(c) A dependent may not be enrolled in FHIAP and OHP (or any other state medical assistance program) at the same time;

(d) A dependent may be enrolled in FHIAP and any other state assistance program (except medical) at the same time;

(e) If a dependent is counted in two separate households for the purpose of determining eligibility in two different assistance programs, enrollment will be determined by criteria established in procedure.

(6) Meet either a period of uninsurance requirement or exceptions listed in OAR 442-005-0060.

(7) Not be incarcerated for more than 30 days or be a ward of the State.

(8) Provide necessary materials by the dates specified in FHIAP correspondence in order to allow for eligibility determination. If information submitted is not submitted by the dates specified in FHIAP correspondence or the information is inconsistent or incomplete, the applicant may be denied.

(9) If applying for subsidy in the group market, must be able to enroll in a group insurance plan that meets the benchmark standard established by the Office within twelve months of eligibility determination. If an applicant to the group market does not have access to a group plan, the group plan they have access to does not meet the benchmark standard, or they cannot enroll into their group plan within twelve months of eligibility determination, the applicant will be denied and placed on the reservation list for an individual subsidy using the same date they were placed on the group reservation list.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; IPGB 3-2006(Temp), f. & cert. ef. 11-27-06 thru 5-25-07; Administrative Correction, 6-16-07; OPH 1-2007, f. & cert. ef. 6-18-07; OPH 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPH 3-2010, f. & cert. ef. 7-22-10; OPH 3-2011, f. & cert. ef. 2-25-11

442-005-0060

Period of Uninsurance Requirement

In order for an applicant to be eligible for a FHIAP subsidy, an applicant must have been without any health insurance coverage for two months immediately prior to either the signature date on the application, the date of eligibility determination, or any reservation entry date. This requirement does not apply if any applicant:

(1) Is currently enrolled in the OHP;

(2) Was enrolled in the OHP within the last 120 days;

(3) Is a former FHIAP member;

(4) Has enrolled in an insurance plan while on the reservation list as long as they have met the two-month period of uninsurance immediately prior to enrolling in the insurance plan;

(5) Has coverage through the Kaiser Child Health Program or any benefit plan authorized by ORS 735.700-735.714;

(6) Has a military insurance plan;

(7) Has enrolled in group coverage within the 120 days prior to getting on the FHIAP reservation list, as long as the applicant had been without any insurance coverage for six consecutive months immediately prior to becoming insured under the group plan;

(8) Has recently become unemployed and lost health insurance coverage as a result; or

(9) Has lost health insurance coverage while still employed. (e.g. reduction in hours, employer stops providing coverage, etc.)

ADMINISTRATIVE RULES

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPHP 3-2010, f. & cert. ef. 7-22-10; OPHP 5-2010, f. & cert. ef. 9-2-10; OPHP 3-2011, f. & cert. ef. 2-25-11

442-005-0100 Subsidy Levels

(1) All FHIAP children (ages 0 through 18) are subsidized at 100 percent of the child's monthly premium.

(2) When a family has average gross monthly income up to 125 percent of federal poverty level in effect at the time of determination, adults (ages 19 and up) will receive a subsidy of:

(a) 95 percent of the member's monthly premium amount in the individual health benefit plan market; or

(b) 95 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(3) When a family has average gross monthly income from 125 up to 150 percent of federal poverty level in effect at the time of determination, adults (ages 19 and up) will receive a subsidy of:

(a) 90 percent of the member's monthly premium amount in the individual health benefit plan market; or

(b) 90 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(4) When a family has average gross monthly income from 150 up to 170 percent of federal poverty level in effect at the time of determination, adults (ages 19 and up) will receive a subsidy of:

(a) 70 percent of the member's monthly premium amount in the individual health benefit plan market; or

(b) 70 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(5) When a family has average gross monthly income from 170 through 200 percent of federal poverty level in effect at the time of determination, adults (ages 19 and up) will receive a subsidy of:

(a) 50 percent of the member's monthly premium amount in the individual health benefit plan market; or

(b) 50 percent of the member's share of the monthly premium amount in the group health benefit plan market.

(6) The subsidy amounts for adults (ages 19 and up) will never exceed 50 percent, 70 percent, 90 percent, or 95 percent of the total premium based on percentage of federal poverty level in effect at the time of eligibility determination.

(7) With the exception of administrative error or audit, subsidy percentage levels will only be re-evaluated at reapplication. Subsidy dollar amounts may change, however, if the actual premium being subsidized changes.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740
Stats. Implemented: ORS 735.720 - 735.740
Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-5-10; Administrative correction 7-27-10; OPHP 3-2010, f. & cert. ef. 7-22-10; OPHP 3-2011, f. & cert. ef. 2-25-11

Rule Caption: Adopt and amend administrative rules for the Healthy KidsConnect program.

Adm. Order No.: OPHP 4-2011

Filed with Sec. of State: 3-8-2011

Certified to be Effective: 3-8-11

Notice Publication Date: 1-1-2011

Rules Adopted: 442-010-0065, 442-010-0075, 442-010-0085

Rules Amended: 442-010-0010, 442-010-0020, 442-010-0030, 442-010-0040, 442-010-0050, 442-010-0055, 442-010-0060, 442-010-0070, 442-010-0080, 442-010-0090, 442-010-0100, 442-010-0110, 442-010-0120, 442-010-0130, 442-010-0140, 442-010-0150, 442-010-0160, 442-010-0170, 442-010-0180, 442-010-0190, 442-010-0200, 442-010-0210, 442-010-0220, 442-010-0230, 442-010-0240, 442-010-0250, 442-010-0260, 442-010-0270, 442-010-0280

Subject: The Office of Private Health Partnerships is amending administrative rules for the Healthy KidsConnect program. Rules include: Purpose and Statutory Authority, Definitions, Carrier and Plan Selections, Member Billing, Member Payments, Carrier Payments, Member Refunds, Enrollment in Healthy Kids Employee Sponsored Insurance (HK ESI), Vendor Set-up/State Accounting System, Employer Verification (HK ESI), Subsidy Payments (ESI), Cobra/Portability, Adding Family Members, Member Reporting, HKC or HK ESI Plan Termination. These rules, 442-010-0010

through 442-010-0190, apply to all Healthy KidsConnect and Healthy Kids Employer Sponsored Insurance plans issued on or after February 1, 2010.

OPHP is also adopting additional administrative rules for the Healthy KidsConnect Program. Rules include: Eligibility Redetermination — Subsidized Members, Cost Sharing Out of Pocket Maximum, Member Payments — HKC, Misrepresentation/Civil Penalty, Overpayments, Payment Plans, Collections, Audits, Appeals, Contested Case Hearings, Member/HKC Carrier — Grievances and Appeals, Rule Authorizing Agency Representative. These rules 442-010-0200 through 442-010-0280 apply to all Healthy KidsConnect and Healthy Kids Employer Sponsored Insurance plans issued on or after February 1, 2010.

Rules Coordinator: Margaret Moran—(503) 378-5664

442-010-0010

Purpose and Statutory Authority

(1) OAR 442-010-0010 to 442-010-0190 are adopted to carry out the purpose of ORS 414.231 and 414.826, establishing within the Office of Private Health Partnerships (OPHP) the Healthy KidsConnect (HKC) private health options. Healthy KidsConnect (HKC) and Employer Sponsored Insurance (ESI) options are for Oregon children who are residents and whose families earn from zero up to and including 300 percent of the federal poverty level (FPL). Two subsidy program options are available:

(a) Healthy Kids Employer Sponsored Insurance (HK ESI) for children in families who earn from zero up to and including 300 percent FPL.

(b) Healthy KidsConnect (HKC) private insurance for children in families who are over 200 up to and including 300 percent FPL.

(2) Children in families who are over 300 percent FPL may enroll in a HKC plan but will pay full cost. OPHP will not pay subsidies to families at this income level.

(3) OAR 442-010-0010 to 442-010-0280 are adopted pursuant to the general authority of the Oregon Health Authority under ORS 414.231 and the specific authority in ORS 414.231 and 414.826.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0020

Definitions

(1) "Appeal" means a process for requesting a formal change to an official decision (ref. 442-010-0250).

(2) "Benchmark" means a specific minimum level of health insurance benefits that qualify for subsidy. The benchmark is:

(a) Established by the Office in agreement with the Health Insurance Reform Advisory Committee; and

(b) Sent to and approved by the federal government.

(3) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(4) "Citizen" for the purpose of HKC and HK ESI means:

(a) A native or naturalized member of the United States who can show proof of identity and citizenship as required in the Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 109-171); or

(b) A baby born in the United States

(5) "Contracted HKC carrier" means a carrier hired by OPHP (see OAR 442-010-0030 "Carrier and Plan Selection") to take part in the HKC program.

(6) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. The Oregon Health Authority adopts these guidelines no later than May 1 each year.

(7) Healthy Kids (HK) is also known as the Health Care for All Oregon Children program. (ref. ORS 414.231)

(8) Healthy KidsConnect (HKC) is part of the Oregon Healthy Kids program providing health care to Oregon children through the private insurance market.

(9) HKC also refers to the benefit plans offered through the HK private insurance option. For subsidized members the benefit plans must:

(a) Meet or exceed the requirements for a federal standard benchmark described in ORS 414.856;

ADMINISTRATIVE RULES

(b) Be comparable to the health services provided to children receiving Oregon Health Plan Plus medical assistance, including mental health, vision, pharmacy, and dental services;

(c) Not exclude or delay coverage for preexisting conditions;

(d) Limit subsidized family's cost sharing to no more than 5 percent of the family's annual income; and

(e) Qualify for federal financial participation.

(10) HK ESI means Employer Sponsored Insurance that is subsidized by HK funds. It is also known as group insurance for families eligible for HK ESI.

(11) "Member" means a child enrolled in HKC or a HK ESI plan or the child's parent or adult representative.

(12) "Member share" means the portion of the health insurance premium a family pays.

(13) "Misrepresentation" means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

(14) "OHP" means the Oregon Health Plan Medicaid program and other programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(15) "Open Enrollment" means the HKC enrollment period for children over 300 percent FPL.

(16) "Overpayment" means any subsidy payment paid to, received by, or on behalf of the member that exceeds the amount for which the member is eligible. Overpayment also includes any civil penalty assessed by the OPHP or the Office of Payment and Recovery (OPAR).

(17) "Premium" means the amount charged for health insurance.

(18) "Subsidy" means the amount OPHP pays on behalf of the member to offset monthly premium costs. Subsidy is also known as "premium assistance."

(a) HKC subsidies are paid directly to the HKC carriers; and

(b) HK ESI subsidies are paid by reimbursing the member's portion of the premium.

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

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0030

HKC Carrier and Plan Selection

(1) OPHP selects health insurance carriers to offer Healthy KidsConnect benefit plans through a competitive bid process. The process includes releasing a request for proposal (RFP). Selection criteria may include, but is not limited to:

- (a) Administrative and Online Services;
- (b) Case, Disease, Utilization and Pharmacy Management;
- (c) Member Access and Provider Network Capacity;
- (d) Information Services and Reporting;
- (e) References; and
- (f) Premium rates.

(2) HKC benefit plans for families receiving subsidies must:

(a) Be comparable to the health services provided to children receiving the Oregon Health Plan (OHP Plus) benefit package, including medical, mental health, vision, dental, and pharmacy services;

(b) Not exclude or delay coverage for preexisting conditions;

(c) Limit the subsidized family's cost sharing to no more than 5 percent of the family's annual income; and

(d) Qualify for federal financial participation.

(3) HKC benefit plans for full cost families (over 300 percent FPL):

(a) Are not required to be comparable to OHP Plus;

(b) Do not limit the family's cost sharing to 5 percent of the family's annual income;

(c) Do not exclude or delay coverage for preexisting conditions.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: IPGB 1-2005, f. & cert. ef. 3-1-05; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0040

Member Eligibility

(1) The Department of Human Services (DHS) determines whether children are eligible for HKC or HK ESI based on family size, income, Oregon residency, citizenship and other criteria.

(2) HKC and HK ESI applicants must be uninsured for two months prior to the eligibility determination as described in the federal Children's Health Insurance Program State Plan or in subsequent written directive by CMS. This requirement can be waived if the individual has a condition that is not covered under their current coverage and this condition would be life

threatening or would cause permanent loss of function or disability if not treated.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0050

HKC Premium Rates

(1) Families over 200 percent up to and including 300 percent FPL with more than one child pay family tier premium rates based on the number of eligible children in the family.

(2) Families over 300 percent FPL are not eligible for family tier rates and pay the full cost of the premium per child.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0055

Subsidy Levels

(1) HK ESI subsidies are on a sliding scale based on household income and federal poverty level. Members:

(a) Zero up to and including 200 percent of the federal poverty level will receive 100 percent subsidy;

(b) Over 200 up to and including 250 percent of the federal poverty level will receive about 90 percent subsidy;

(c) Over 250 up to and including 300 percent of the federal poverty level will receive about 85 percent subsidy; and

(d) Over 300 percent of the federal poverty level will not receive a subsidy.

(2) HKC is an option for families with or without access to ESI. Subsidies are on a sliding scale based on household income and federal poverty level. Members:

(a) Zero up to and including 200 percent of the federal poverty level are not eligible for HKC;

(b) Over 200 up to and including 250 percent of the federal poverty level will receive about 90 percent subsidy;

(c) Over 250 up to and including 300 percent of the federal poverty level will receive about 85 percent subsidy;

(d) Over 300 percent of the federal poverty level will not receive a subsidy.

(3) Eligible American Indian/Alaska Native (AI/AN) children over 200 percent FPL up to and including 300 percent FPL will receive 100 percent subsidy and will pay no coinsurance or copayments. AI/AN families above 300 percent FPL are not eligible for subsidy, and will pay full premium per child, and pay all regular out of pocket expenses.

(4) Subsidy levels will be reevaluated once each year at redetermination. Subsidy levels may also be reviewed when:

(a) An administrative error is made. If this error results in direct coverage (OHP) and the change occurs before the member is enrolled in HKC, DHS will enroll the child in direct coverage as of the date of request (DOR). If the change occurs after the member is already enrolled, the change will be effective the first of the following month;

(b) An audit identifies an error; or

(c) The family circumstances. If the family requests it, DHS will recalculate the member's FPL based on the family circumstance change:

(A) If the new FPL results in a better subsidy or direct coverage (OHP), the change may be made will be effective no earlier than the first of the following month.

(B) If the new FPL results in less or no subsidy, no change is made until the end of the 12-month eligibility period, unless the member requests that it be changed.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0060

Enrollment In HKC

(1) An applicant must enroll in a Healthy KidsConnect plan within the program's timeframes to remain eligible for the subsidy.

(a) Subsidized members have at least 45 days to choose a plan. If the member does not choose a plan within the established timeframe, DHS will close the eligibility case file. OPHP may request that DHS extend the enrollment timeframe for administrative issues.

(b) Children approved for HKC must select a plan by the 23rd of the month or the last business day before the 23rd of the month for insurance

ADMINISTRATIVE RULES

to be effective the 1st of the following month. OPHP may approve an extension for administrative issues.

(2) A family may choose to enroll approved children into HKC or HK ESI. Families are not required to enroll all their children in health insurance. Those who receive a state subsidy, however, must choose a plan within the same market (not split between HKC and HK ESI) for all enrolled children. Subsidized and non-subsidized families choosing HKC must choose the same plan insurance carrier for all eligible children.

(3) Newborn children are covered on the date of birth if the child is born to a:

- (a) Covered HKC member; or
- (b) Family in which there is a covered HKC sibling.

(4) A newborn will not be covered any earlier than children from the same family enrolled in the plan.

(a) Premiums are due for the full birth month no matter what date the child was born. Premiums will not be prorated.

(b) OPHP will pay the first month's premium for children in subsidized families.

(5) Non-member pregnant teens who want their unborn to be covered effective the date of birth, must:

- (a) Apply for HK;
- (b) Be determined eligible and enroll in HKC; and
- (c) Be covered under the selected HKC plan before the child is born.

(6) Adults who want their unborn child to be covered on the date of birth, must:

- (a) Apply for HK for the unborn child;
- (b) Be determined eligible for HKC contingent on a live birth; and
- (c) Choose a plan and complete enrollment documents by the 23rd of the month or the last business day prior to the 23rd.

(d) Coverage for newborns who have been pre-enrolled will be effective the first of the month following enrollment or the date of birth, whichever is later.

(7) HKC members may not be enrolled in or receiving benefits from other private, government, or public health options while receiving benefits from a HKC plan, except:

(a) During the brief overlap period when the child is moving between OHP and HKC; or

(b) If the child has end stage renal disease and needs dialysis or a kidney transplant.

(A) These children may enroll in both Medicare and a Healthy KidsConnect plan

(B) It is not mandatory for the child to be enrolled in Medicare. If there is coordination of benefits, the HKC carrier is secondary.

(8) Members over 300 percent FPL may only enroll during HKC open enrollment periods except for children born to currently enrolled members. These unborn children are considered eligible and conditionally covered under HKC from their date of birth. The request to enroll in HKC and any necessary premium must be received within 31 days of birth.

(9) HKC has two open enrollment periods each year. Once referred to OPHP, members must enroll by the next full open enrollment period. Members who do not enroll by the end of the next full open enrollment period will have to reapply through DHS.

(10) If a carrier elects to discontinue participation in HKC, members served by that carrier will have to select another HKC carrier within 60 days of notification. Members who do not enroll within 60 days must reapply through DHS.

(a) Members electing coverage through a new plan must select the plan by the 23rd of the month to be covered the first of the following month. OPHP may extend the enrollment timeframe for administrative issues.

(b) Carriers who elect to discontinue participation in HKC will not be responsible for any claims incurred after the HKC contract period ends.

(c) If a member does not timely enroll in a new plan, the member will be responsible to pay for services received during any period of uninsurance.

(11) Subsidized members may only change HKC carriers:

- (a) At their next eligibility determination;
- (b) If they move out of the carrier's service area; or
- (c) If their carrier terminates as an OPHP contractor.

(12) Members over 300 percent FPL may only change HKC carriers:

(a) Once annually during the open enrollment period coinciding with or following their annual renewal date;

- (b) If the member moves out of the carrier's service area; or
- (c) If the member's carrier terminates as an HKC contractor.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0065

Eligibility Redetermination — Subsidized Members:

(1) DHS will redetermine the eligibility for subsidized members each year.

(2) Subsidized members who continue to be eligible for a subsidy may choose to change insurance carriers at annual redetermination.

(3) If the member's subsidy rate and premiums change as a result of the annual redetermination, OPHP will notify the member and the carrier of the changes.

(4) If the redetermination shows that the member is no longer eligible for a subsidy, the member may choose:

- (a) To enroll in the benefit plan available to full cost members; or
- (b) A portability plan.

(5) Full cost members must stay with the same carrier until the next open enrollment period.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0070

Annual Renewal — Non-subsidized Members

(1) Each year OPHP will contact enrolled full cost members at least 45 days in advance of the next open enrollment period. OPHP will update member account records and carrier choice.

(2) If the family's income level or situation has changed, OPHP will let the member know that they can submit an application to DHS to apply for subsidy.

(3) The member may choose to change HKC carriers when their status changes from a full cost plan to a subsidized plan.

(4) If the full cost member is not eligible for a subsidy at the annual renewal, the member may choose to:

- (a) Continue with HKC on their current plan;
- (b) Choose a portability plan through their current insurance carrier;
- (c) Discontinue coverage through HKC.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0075

Cost Sharing Out of Pocket Maximum

(1) Out of Pocket (OOP) expenses for the purposes of subsidized HKC members include: copayments, coinsurance and member premiums.

(2) Annual OOP expenses for subsidized HKC members are limited to five percent of the family's annual income.

(3) Accumulated OOP expenses are re-set to zero on January 1 each year for all HKC members, regardless of income level.

(4) When a member reapplies or at annual redetermination:

(a) If the member remains eligible at the same subsidy level and chooses to stay with the same carrier, OOP expenses will continue to accumulate until the end of the calendar year. The OOP limit will reset in January of the next calendar year.

(b) If the member remains eligible but the subsidy level changes, OPHP will notify the member and the carrier of the new out of pocket maximum to be used for the remainder of the calendar year.

(5) If a subsidized member chooses to change carriers at annual redetermination, the new carrier is not responsible for OOP costs incurred while covered with the former carrier.

(a) The former carrier will provide OPHP with an estimated year-to-date total of the member's out of pocket costs within 30 days of the member's coverage termination;

(b) The former carrier will report a final corrected total within 90 days of the member's coverage termination.

(c) OPHP will calculate the amount remaining on the member's OOP limit and report that information to the new carrier.

(6) If the member is determined ineligible for a subsidy at redetermination the family has two options:

(a) The family may enroll the member in a full cost benefit plan with the same carrier until the next open enrollment period. At open enrollment the family may change carriers; or

(b) Choose portability through their current insurance carrier.

(c) Accumulated OOP costs will not be applied to the full cost plan's OOP maximum.

(7) When a full cost member is determined eligible for subsidy, OPHP will calculate the five percent OOP maximum. OOP expenses generated

ADMINISTRATIVE RULES

when the member was enrolled in the full cost plan (except premiums) will be applied to the OOP limit.

(a) Premiums paid while the member was enrolled in the full cost plan are excluded from expenses that apply to the family's new maximum OOP.

(b) Families will continue to pay the member's share of the premium costs.

(c) If the member has exceeded the five percent OOP under the full cost plan, no additional coinsurance or co payments will be charged to the member.

(d) The member is not eligible for refunds of any amount exceeding the maximum OOP.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0080

Member Billing — HKC

Subsidies are available for members who choose HKC and are over 200 percent and up to and including 300 percent of the federal poverty level. OPHP will bill members for their share of the monthly premium.

(1) OPHP pays the first full month's premium to the carrier for each subsidized child.

(2) OPHP pays the first full month's premium for new members on a one-time only basis unless the member was enrolled in error. If a member terminates and then reapplies for coverage, the member will be responsible for their share of the first month's premium.

(3) Beginning the second month, after initial enrollment, OPHP will only pay the carrier once the agency receives the member's portion of the premium.

(4) OPHP mails bills to members at least one month before the HKC carrier due date to ensure timely payment.

(5) Members must pay their share of the premiums by the monthly billing due date.

(6) Members are given a minimum of 30 days from the due date to pay.

(7) OPHP mails a final premium reminder notice about 15 days after the due date.

(8) Members are given at least 7 calendar days to pay their portion of the premium after the final premium reminder has been mailed.

(9) OPHP mails a reminder to members with unpaid balances greater than \$5.00.

(10) OPHP sends a subsidy cancellation notice at the end of the 30-day grace period if the member payment is not received by the due date.

(11) If a member's coverage is terminated for nonpayment of premium, OPHP may grant the member a one-time exception.

(a) Payment must be received by the 5th of the termination effective date.

(b) If a one-time exception is granted, the carrier will reinstate the member's benefits with no break in coverage.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0085

Member Payments — HKC

(1) OPHP will process member payments at least once each business day.

(2) OPHP will notify members of payments returned by the bank for non-sufficient funds (NSF):

(a) OPHP considers NSF checks the same as non-payment.

(b) Members must replace funds by the premium due date or within 10 calendar days of the notification letter date if the account is past due.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0090

Carrier Payments — HKC

OPHP will only pay the carrier once the member's share of the premium is received except for the first month's premium for brand new subsidized accounts.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0100

Carrier Refunds — HKC

(1) OPHP will resolve premiums overpaid by the member by requesting a refund from the carrier when necessary.

(a) OPHP will not process refunds for overpaid premiums that are older than three months unless the carrier approves an exception.

(b) OPHP will not process refunds resulting from member misrepresentation or NSF checks.

(2) OPHP will request a refund from the HKC carrier for the first full month's premium for new members who were enrolled in error.

(3) OPHP will request carrier refunds within 60 days of determining premiums were overpaid.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0110

Member Refunds — HKC

(1) Active member:

(a) Refunds for amounts not yet paid to the HKC carrier will be:

(A) Processed for amounts over \$25.00;

(B) Processed at least once weekly; and

(C) Sent to members only for their share of the premiums.

(b) Amounts under \$25.00 will be applied as a credit to future premiums.

(2) Terminated member:

(a) Refunds for amounts not yet paid to the carrier will be:

(A) Processed at least once weekly; and

(B) Sent to members for their share of the premiums only. Members are not eligible for a refund for the first month's premium if paid by OPHP.

(b) Refunds for amounts already paid to the HKC carrier will be paid once the carrier refunds OPHP.

(c) There is no minimum balance required for a refund on a terminated account except if the refund includes money from both OPHP and the HKC carrier. Then the amounts will be combined and refunded together.

(d) At the member's request, OPHP will refund the agency's portion separately as long as the agency and carrier refund amounts are each over \$25.00.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0120

Enrollment in Healthy Kids — ESI

(1) Subsidies are available to eligible members who choose to enroll in their ESI.

(2) Subsidies will only be paid for children enrolled in an ESI plan that meets the federal benchmark.

(3) Subsidized families have at least 45 days to enroll in their employer plan. If the family does not enroll in an approved plan within the established timeframe, DHS will close the eligibility case file. OPHP may request that DHS extend the enrollment timeframe for administrative purposes.

(4) If the referred member is unable to enroll in the employer plan for a period of time, the member may enroll in a HKC plan while they wait for the ESI enrollment period. If the member later enrolls in their employer plan, and then loses coverage during the same eligibility period, the member must re-enroll with the same HKC carrier. The member may choose a new HKC carrier their next eligibility period.

(5) The subsidy effective date will be determined based on the referral date and ESI enrollment date. If an approved child is able to enroll in the family's ESI plan the same month the case is referred to OPHP, the agency will begin paying subsidies for that month.

(6) In no case will subsidies be paid until the employer plan has been benchmarked. If the benchmark process delays subsidy payment, OPHP will retroactively reimburse the member's portion of the premium back to the referral month as long as the plan meets the federal benchmark. If the plan does not meet the federal benchmark, OPHP will not subsidize the premiums.

(7) Subsidy reimbursement is based on the coverage month, not when the premium is paid. Examples:

(a) Insurance premium deductions are taken in advance for the coverage month (e.g. the member's portion of the premium is paid in October for November coverage. If the child is referred to OPHP in November and

ADMINISTRATIVE RULES

enrolled and covered by the ESI plan in that same month. OPHP will reimburse the October premium payment if it is for November coverage).

(b) Insurance premium payments are taken after the coverage month (e.g. the member's portion of the premium is paid in November for October coverage). OPHP will begin subsidy payments in December for the November coverage month.

(8) Subsidy will be paid for the full referral month no matter what day in the month the referral was made. Premiums and subsidies will not be prorated.

(9) OPHP will subsidize various coverage options referenced in 442-010-0160 if:

- (a) A member loses ESI coverage due to loss of employment;
- (b) The employer discontinues the ESI plan; or
- (c) The member chooses to disenroll during an open enrollment period.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0130

Vendor Set-up/State Accounting System

Subsidy payments may be payable to:

(1) The member or member's employed spouse from whose paycheck the premium is being deducted.

(2) Parents or adult representative of member children.

(3) Carriers.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0140

Employer Verification — HK ESI

(1) Members must report employer plan changes or changes in circumstances to OPHP per 442-010-0180. OPHP may extend this timeframe.

(2) OPHP will request a new employer verification form annually or if the payroll deduction amount changes. OPHP will continue to subsidize the member at the established rate until new rates are received. Adjustments will be made when changes are approved.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0150

Subsidy Payments — ESI

(1) OPHP will subsidize the member's monthly insurance premium minus any employer's contribution.

(2) OPHP will reimburse the eligible member's portion of the ESI premium using submitted payment verification. Verification can include, but is not limited to payroll records, paycheck stubs, employer letters, carrier invoices, receipts, and cancelled check copies.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0160

Continuing Coverage Options

Eligible members who lose their insurance coverage may choose COBRA, a prevailing portability plan, a state continuation plan, OMP, or HKC.

(1) OPHP will subsidize premiums for any of these options if the member is eligible. Options available to members are based on the member's individual circumstances.

(2) Eligible plans must meet the federal benchmark. Low cost portability plans are not eligible for a subsidy.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0170

Adding Family Members

(1) Subsidized families may add members to their HKC or HK ESI enrollment at any time throughout the 12-month eligibility period as long as the family member applies through DHS and meets the eligibility requirements.

(2) HKC premium rates and the member's portion of the premium may change as a result of adding new family members. The reimbursement amount may change for ESI members.

(3) HKC plan rates may change each year in January. Plan rate changes may result in member premium changes.

(4) DHS will recalculate the member FPL based on family circumstance changes. If the new FPL results in a better subsidy or direct coverage (OHP) the change may be effective the first of the following month if the new FPL results in less or no subsidy, no change will be made until the end of the 12-month eligibility period.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0180

Member Reporting

(1) Members must report changes in circumstance to OPHP or DHS within 10 calendar days of the change. Members may report changes by phone or in writing. Changes include:

- (a) Name;
- (b) Employer;
- (c) Family size including pregnancy, birth or death of a child, or if a child moves out of the household or state;
- (d) Home or mailing address, even if temporarily away (more than 30 days);

(e) Loss of health insurance;
(f) New or additional health insurance including ESI;
(g) Any family member who becomes ineligible for their health insurance; and
(h) Employer contribution amounts for OPHP members receiving subsidy in ESI.

(2) Failure to report any of the above changes may result in termination from the program, subsidy suspension, loss of insurance coverage or an overpayment.

(3) If the member reports an eligibility change to OPHP, OPHP must notify DHS of the change in writing within 10 calendar days of receiving notice from the member.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0190

HKC or HK ESI Member Termination

(1) Termination may occur when:

(a) Payment of the member's share of the premium is not received by the due date;
(b) The member is no longer a permanent Oregon resident;
(c) The member loses their HK ESI and fails to notify OPHP;
(d) DHS determines the member to be ineligible at redetermination or any time during the eligibility year;

(e) A member is found to be currently enrolled in another private, public, or government sponsored health insurance plan, qualified employer-sponsored health insurance plan, or any other insurance plan while enrolled in HKC and the member fails to timely terminate from one program after being notified by OPHP to do so;

(f) An HK ESI member fails to provide monthly verification of coverage, premiums, and employer contribution within 30 days from the date OPHP requests documentation;

(g) The member fails to pay an overpayment amount as per OAR 442-010-0210;

(h) A member is found to have committed misrepresentation. A civil penalty may be imposed;

(i) Projected program costs exceed the funding available to cover subsidy payments for those enrolled; or

(j) The member turns 19 years old;

(A) The coverage is terminated at the end of the member's birthday month.

(B) DHS will notify the member prior to the change in their benefits.

(C) The member may have the right to apply for medical assistance or other DHS programs.

(D) OPHP will notify the family 60 days in advance of the pending termination.

(2) If OPHP terminates a subsidized member for non-payment of premium, the member must wait two months to re-enroll in a HKC plan. Once a member is terminated, they must reapply through DHS. HKC members

ADMINISTRATIVE RULES

over 300 percent must wait at least two months to re-enroll and can only re-enroll during one of two open enrollment periods during the year.

(3) If a member is terminated for non-payment of premium, any outstanding balance due must be paid before the member can re-enroll in HKC or be subsidized for an ESI plan.

(4) If a member is terminated with an outstanding balance, the balance will be handled per OAR 442-010-0230 (Collections). Terminated members with an unpaid balance who re-qualify for the program must establish a payment plan per 442-010-0220 in order to be eligible to re-enroll.

(5) Members will be notified of their right to appeal decisions made by HKC.

(6) HKC terminations resulting from a DHS referral administrative error will be effective the first of the month following when the paid coverage month ends.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2010(Temp), f. & cert. ef. 3-23-10 thru 9-18-10; OPHP 4-2010, f. & cert. ef. 8-31-10; OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0200

Misrepresentation/Civil Penalty

(1) OPHP may investigate any member or former member for misrepresentation in obtaining subsidy benefits. Such investigations may be through random file audits or by management request.

(2) OPHP may ask appropriate legal authorities to start civil or criminal action under Oregon laws when, in its judgment, available evidence allows such action.

(3) OPHP will notify a member of the agency's intent to take action against them.

(4) When OPHP decides a member has committed misrepresentation the member is:

- (a) Terminated from HKC/HKC ESI;
- (b) Legally responsible to repay OPHP the full amount of the overpayment OPHP has established;
- (c) Legally responsible for any civil penalty set by OPHP up to a statutory limit of \$1,000. The civil penalty amount will be set by using a sliding scale based on the amount of subsidy paid on the member's behalf.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0210

Overpayments

(1) Any overpayment amount is a debt owed to the State of Oregon and may be subject to collection. An overpayment may result from member error, misrepresentation, or civil penalty.

(2) An overpayment is a member error if it is caused by the member's misunderstanding. Examples include, but are not limited to, instances where the member intentionally or unintentionally:

- (a) Did not provide correct or complete information to OPHP;
- (b) Did not report changes in circumstances to OPHP;
- (c) Claimed and was reimbursed for an ineligible subsidy period.

(3) A misrepresentation error includes but is not limited to the member sending false information that result in an incorrect or ineligible subsidy payment. Misrepresentation may result in civil penalty.

(4) An overpayment may occur when a member is enrolled in a Healthy KidsConnect program and another state medical or private insurance plan during the same benefit period.

(5) OPHP will notify members in writing of overpayments. This written notice will inform members of:

- (a) The amount of and the reason for the overpayment;
- (b) Their appeal and contested case hearing rights.
- (6) OPHP will collect overpayment amounts in one lump sum if the member is financially able to repay the overpayment amount in that manner.

(7) If the member is financially unable to pay the amount due in one lump sum, OPHP will accept regular installment payments as outlined in 442-010-0230 - Payment Plans.

(8) If OPHP is unable to recover the overpayment amount from the member within overpayment guidelines:

(a) OPHP may renegotiate the payment plan agreement or refer the balance to the Department of Revenue, the Department of Justice, or another outside agency for collection. If an account is referred to an outside agency for collection, any expenses incurred for collection will be added to the member's balance due.

(b) OPHP may file civil action to obtain a court ordered judgment for the amount of the debt. OPHP may also declare a claim for costs and fees associated with obtaining a court judgment for the debt. When a judgment for costs is awarded, OPHP will collect this amount in addition to the overpayment amount, using the methods of recovery allowable under state law and administrative rule.

(9) If the member submits an appeal or contested case hearing request, OPHP will discontinue any attempts at collection until the conclusion of the appeal or hearing.

(10) If the appeal decision is in the member's favor, OPHP will refund any money collected as overpayment recovery as outlined in OAR 442-010-0210, 442-010-0220 and 442-010-0230.

(11) In order to re-enroll, any former HKC or HK ESI member with an outstanding overpayment balance must agree to pay the overpayment amount using one of the following options:

- (a) In one lump sum;
- (b) A minimum of \$10 per month;
- (c) The amount necessary to collect the balance due in one year; or
- (d) An approved payment plan as referenced in 442-005-0220.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0220

Payment Plans

Subsidy overpayments that are paid on the member's behalf are the member's responsibility. Members may be eligible to establish a payment plan to reimburse OPHP.

(1) Payment plans may be established for currently enrolled members. Members will have an option to either repay the overpayment in full or through a payment arrangement.

(2) Once a payment plan is approved, OPHP sends the member a letter that:

- (a) Outlines the agreed upon payment arrangement; and
- (b) Informs the member of OPHP's method for collecting the overpayment. OPHP will:

(A) Bill HKC members for the overpayment amount in addition to the normal monthly billed amount; or

(B) Deduct the overpayment amount from subsidy payments made to HK ESI members.

(3) If the member does not follow the payment plan, OPHP will terminate the account for non-payment. Enrollment and Billing will transfer the unpaid balance to the Fiscal Recovery Unit for collection. See Collections section 442-010-0230.

(4) Terminated members with an unpaid balance who re-qualify for the program must establish a payment plan in order to be eligible to re-enroll.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0230

Collections

(1) OPHP staff will reconcile terminated accounts with unpaid balances.

(2) OPHP staff will notify the member in writing of the collection amount. The terminated member may appeal the collection decision as provided in OAR 442-010-0250.

(3) Terminated members may be eligible to establish a payment plan as outlined in OAR 442-010-0220.

(4) If OPHP is unable to recover the unpaid balance from the terminated member or no payment is made within 90 days, OPHP may:

(a) Renegotiate the collection agreement or refer the balance to the Department of Revenue, the Department of Justice, or another outside agency for collection. If an account is referred to an outside agency for collection, any expenses incurred for collection will be added to the member's balance due; or

(b) File civil action to obtain a court ordered judgment for the amount of the debt. OPHP may also file a claim for costs and fees associated with obtaining a court judgment for the debt. When a judgment for costs is awarded, OPHP will collect this amount in addition to the overpayment amount, using the methods of recovery allowable under state law and administrative rule.

Stat. Auth.: ORS 414.231 & 414.826
Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839
Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

ADMINISTRATIVE RULES

442-010-0240

Audits

(1) Quality assurance audits will be performed to verify that State and Federal laws, rules, policies and procedures are followed correctly.

(2) As a result of an audit:

(a) A member or former member may be determined ineligible for a HK subsidy.

(b) A member or former member may be determined ineligible for a prior subsidy period.

(c) OPHP may adjust the subsidy level for a current or previous subsidy period.

(3) An audit determination could result in an overpayment or underpayment to a member or former member.

(4) The member or former member must submit additional verification when OPHP requests it. OPHP may verify any factors affecting program eligibility, subsidy levels or any reported information. This information includes, but is not limited to:

(a) Any information submitted by the member that is inconsistent;

(b) Information provided by DHS; and

(c) Any other information needed.

(d) OPHP may decide to verify other information.

(e) OPHP may end ongoing subsidy when requested verification is not provided.

(5) If additional information is requested during an audit, the member has 30 days from the date of the Request for Information letter to submit the information. If a member fails to cooperate with an OPHP audit, the member may be disenrolled.

(6) If a decision is different than the original eligibility determination, OPHP will notify the member in writing of the reason for the denial or change in determination, the effective date of the action, and the member's appeal and contested case hearing rights.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0250

Appeals

(1) All HKC and HK ESI notices that inform members of decisions or actions will include appeal language and instructions for filing an appeal.

(2) A member may appeal any OPHP decision or action that adversely impacts the member's account.

(3) The member must advise OPHP of the appeal in writing. The written appeal must be received within 30 days of the notice date. OPHP may approve an extension for administrative issues if failure to meet the deadline was caused by circumstances beyond the member's reasonable control.

(4) The written appeal must include reasons for the appeal. The reasons must be limited to the decision or actions cited in the notice.

(5) OPHP will acknowledge the appeal in writing within 10 days of receipt.

(6) OPHP may consider additional information during the appeal process.

(7) If OPHP requests information, the member has 15 days from the request date to provide the information.

(8) OPHP will notify the member in writing of the appeal decision within 30 days of the appeal request. Appeal decision notices will include information on how to request a contested case hearing.

(9) OPHP will not take any adverse action or pursue collection of any overpayment during the appeal process.

(10) If an account remains open during the appeal process, the member must continue to pay premiums in order for the health coverage and subsidy to remain active.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0260

Contested Case Hearings

(1) A member may request a hearing in lieu of appealing a decision or action. A member may also request a hearing about an OPHP appeal decision.

(2) A member must request a hearing in writing. The member or the member's attorney must sign the request.

(3) If the member requests a hearing in lieu of filing an appeal, the member has 30 days from the notice date to request the hearing. If the member requests a hearing about an appeal decision, the member has 10 days to request a hearing about an appeal decision or action.

(4) The hearing request must include the reasons for the hearing. The reasons must be limited to the decision or action cited in the notice or appeal decision.

(5) OPHP will conduct a contested case hearing according to ORS 183.413 to 183.470.

(6) OPHP may conduct the hearing in cooperation with DHS.

(7) Once a hearing is requested, OPHP will not pursue collection of any overpayment until the Administrative Law Judge (ALJ) has issued a final order that confirms the overpayment.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0270

Member/HKC Carrier — Grievances and Appeals

A member appealing a HKC carrier decision or action will follow the Grievances and Appeal process outlined in the carrier contracts and member handbooks.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

442-010-0280

Rule Authorizing Agency Representative

(1) OPHP adopts by reference OAR's 137-003-0000 to 137-003-0700.

(2) With the Attorney General's approval, OPHP may use an employee to represent the agency in contested case hearings.

Stat. Auth.: ORS 414.231 & 414.826

Stats. Implemented: ORS 414.231, 414.826, 414.828 & 414.839

Hist.: OPHP 2-2011, f. & cert. ef. 1-18-11; OPHP 4-2011, f. & cert. ef. 3-8-11

Oregon Health Authority, Public Employees' Benefit Board Chapter 101

Rule Caption: Suspends/adopts rules to support program integrity efforts and clarifies audit processes for accurate benefit program enrollment.

Adm. Order No.: PEBB 1-2011(Temp)

Filed with Sec. of State: 3-9-2011

Certified to be Effective: 3-9-11 thru 8-4-11

Notice Publication Date:

Rules Adopted: 101-015-0006, 101-020-0026

Rules Suspended: 101-015-0005, 101-020-0025

Subject: Suspends OAR 101-015-0005 and 101-020-0025 and adopts 101-015-0006 and 101-020-0026 for purposes of supporting PEBB's program integrity efforts and clarifying routine audit process to be used to verify accurate enrollment in benefit programs at any time of the year.

Rules Coordinator: Cherie Taylor—(503) 378-6296

101-015-0005

Eligible Individuals

(1) The following individuals are eligible to participate in PEBB-sponsored benefit plans:

(a) An eligible employee as defined in OAR 101-010-0005(14).

(b) A seasonal or intermittent employee described as follows:

(A) An individual hired for the first time is eligible for PEBB-sponsored benefit plans if expected to work at least a 90-day continual period and work at least half-time or in a position classified as job share. The eligible employee must enroll within 30 days of his or her hire date or eligibility.

(B) An individual hired for the first time, working at least half-time or in a position classified as job share and not expected to work a 90-day or more continual period is eligible for PEBB-sponsored benefit plans if they work more than a 90-day continual period. When the eligible employee submits enrollment forms, the benefits are retroactive to the first of the month following 30 days from the individual's hire date.

(C) A previously ineligible employee returning to work is eligible for benefit plans once they accumulate a total of 60 calendar days of employment within the current or immediately previous plan year. The 60 calendar days of employment need not be consecutive.

(c) A current spouse, domestic partner, or an eligible dependent child listed by the eligible employee on the required enrollment form or the elec-

ADMINISTRATIVE RULES

tronic equivalent. An ex-spouse or ex-domestic partner is not eligible for active, or retired, employee PEBB plan coverage.

(d) An appointed and elected official. Eligibility for benefit plans begins on the first day of the month following the date the official takes the oath of office.

(2) The eligible employee is responsible to maintain a valid PEBB enrollment for all eligible individuals receiving coverage. See OAR 101-020-0025.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-066, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11; Suspended by PEBB 1-2011(Temp), f. & cert. ef. 3-9-11 thru 8-4-11

101-015-0006

Eligible Individuals

(1) The following individuals are eligible to participate in PEBB-sponsored benefit plans:

(a) An eligible employee as defined in OAR 101-010-0005(14).

(b) A seasonal or intermittent employee described as follows:

(A) An individual hired for the first time is eligible for PEBB-sponsored benefit plans if expected to work at least a 90-day continual period and work at least half-time or in a position classified as job share. The eligible employee must enroll within 30 days of his or her hire date or eligibility.

(B) An individual hired for the first time, working at least half-time or in a position classified as job share and not expected to work a 90-day or more continual period is eligible for PEBB-sponsored benefit plans if they work more than a 90-day continual period. When the eligible employee submits enrollment forms, the benefits are retroactive to the first of the month following 30 days from the individual's hire date.

(C) A previously ineligible employee returning to work is eligible for benefit plans once they accumulate a total of 60 calendar days of employment within the current or immediately previous plan year. The 60 calendar days of employment need not be consecutive.

(c) A current spouse, domestic partner, or an eligible dependent child. An eligible spouse, domestic partner, or dependent child is enrolled only after being listed by the eligible employee on the required enrollment form or the electronic equivalent. An ex-spouse or ex-domestic partner is not eligible for active or retired employee PEBB plan coverage.

(d) An appointed or elected official. Eligibility for benefit plans begins on the first day of the month following the date the official takes the oath of office.

(2) The eligible employee is responsible to maintain a valid PEBB enrollment for all eligible individuals receiving coverage. See OAR 101-020-0025.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 243.302, 659A.060 - 659A.066, 743.600 - 743.602 & 743.707

Hist.: PEBB 1-2011(Temp), f. & cert. ef. 3-9-11 thru 8-4-11

101-020-0025

Terminating Coverage due to a Midyear Plan Change Event, Rescissions, Agency Premium Refunds

(1) An employee can experience a qualified midyear change event that will permit or require the employee to request a termination of coverage for other individuals on their healthcare coverage. The employee's request for any coverage termination for an individual must be submitted within 30 days of the qualifying midyear change event, and submitted to the employee's agency on the appropriate forms.

(a) When an employee experiences a qualifying midyear change that permits the employee to remove an individual from coverage, but does not require the employee to terminate the coverage due to a loss of eligibility agencies must terminate the coverage prospectively. Coverage ends prospectively, the last day of the month following receipt of the appropriate forms. Submission of the forms beyond 30 days will result in a denial of the termination. The employee must wait until open enrollment and move the individual at that time.

Example: Bill currently provides PEBB coverage for his 22-year-old son, Mark. On May 5th Mark starts a new job that provides him with health care coverage. Bill can continue Mark's PEBB coverage, or based on the qualified midyear event of "Gain of Coverage Eligibility under Another Employer's Plans" Bill can terminate the coverage. Bill decides to terminate coverage for Mark and submits a midyear change form to his agency on June 1. (Within 30 days of the event date) The agency will terminate Mark's coverage effective June 30.

(b) An employee must request termination of coverage for an individual receiving PEBB coverage under their enrollments that becomes ineligible

for the coverage. Examples of individuals who no longer meet eligibility and require termination from coverage include, but are not limited to, an ex-spouse, ex-domestic partner, a child by affidavit no longer eligible due to age limitation within the legal responsibility document, and a disabled child who no longer meets criteria. Agencies will terminate an ineligible individual's coverage prospectively, coverage ends the last day of the month following receipt of the appropriate forms from the employee. The exception to prospective termination is termination of coverage for an ex-spouse, ex-domestic partner, and their children who are not biological children or adopted children of the employee, in which case PEBB coverage must terminate retroactively to the last day of the month that the eligibility is lost. PEBB must process and complete all retroactive terminations.

Example 1: Ann's divorce is final on June 6. On June 22, she submits the correct change form to her agency to remove her ex-spouse from coverage. The agency can process Ann's former spouse's termination from PEBB coverage effective June 30.

Example 2: Mary's divorce is final on June 15. On July 1, Mary submits the correct change forms to her agency to remove her ex-spouse from coverage. The notification to the agency is in the month following the date of divorce however it is within the allowable 30 days of the event date. The ex-spouse coverage must terminate retroactively. The agency will send Mary's forms to PEBB to process, coverage will terminate June 30.

(c) An ineligible individual will receive a COBRA availability notice when the coverage terminates within 60 days from eligibility loss.

(2) PEBB must receive all employee requests for termination of coverage of ineligible individuals beyond the allowable 30 days. PEBB will follow 1(b) of this rule in determining the correct termination date for the ineligible individual.

(a) When the coverage termination for the ineligible individual is prospective, the employee must pay an imputed value tax for each month of coverage that the ineligible individual received coverage. PEBB will communicate to the agency the imputed value to add to the employee's taxable wages.

(b) When coverage must terminate retroactively:

(A) The agency will receive the following months of premium refunds for the most recent months of coverage received by the ineligible individual, (i) from PEBB up to six months for self-funded plans, (ii) from fully funded plans, up to one year.

(B) An eligible employee may be responsible to repay claims paid by benefit plans for an ineligible individual during any period of ineligibility for which premiums are refunded.

(3) An employee's failure to report a family member's or domestic partner's loss of eligibility during the 12-month period before the start of each annual open enrollment period can result in civil or criminal charges against the employee for fraud or the intent to misrepresent the material facts of enrollment. To the extent allowed by law, PEBB may rescind coverage back to the last day of the month of the plan year when eligibility was lost. Rescission of coverage can occur to an employee, or an individual for whom the employee provides coverage. The following actions will occur during a rescission of coverage action taken by PEBB:

(a) PEBB will provide at least 30 calendar days' advance notice of the rescission date to the ineligible individual. Coverage will rescind to last day of the month and plan year in which the individual lost eligibility.

(b) PEBB will include a notice of appeal rights with the rescission notice to the individual losing coverage.

(c) The agency may request premium refunds as described in (2)(b)(A) of this rule.

(d) An agency may determine that an employee must repay to the agency the premiums paid for coverage during the ineligible period.

(e) As contractually agreed to, a plan may determine that an employee must repay insurance claims paid by a plan for the ineligible individual during the ineligible period.

(f) An employee's agency can take disciplinary action against the employee for the employee's failure to remove an ineligible individual from coverage.

(g) The employee may have imputed value added to their taxable income for premiums not refunded by the plans or repaid by the employee to the agency.

Example: Ann's divorce is final on June 6, 2010. Ann submits her update form to her agency a year later on June 1, 2011, after she certified during the October 2010 open enrollment period that all individuals receiving coverage in the new plan year were eligible for coverage. The agency sends Ann's update forms to PEBB. PEBB sends a notice to Ann's ex-spouse at the last known address informing the individual that on July 1, 2011 PEBB will rescind the individual's coverage to June 30, 2010 (the month that eligibility was lost). PEBB includes a notice of appeal rights. The ex-spouse will receive a COBRA unavailability notice due to the employee's late notice of loss of eligibility. Ann's agency can receive premium refunds for the most recent months of allowable premium according to this rule. When premiums are refunded to the agency, Ann will be responsible for any claims paid by the plans for the ex-spouse during the refund period. For months of non-refunded premium paid by the agency and according to her agency's policy, Ann may be responsible to repay the premium cost for her ex-spouse or responsible to pay an imposed imputed value tax for the months of coverage not refunded.

ADMINISTRATIVE RULES

(4) When PEBB discovers an ineligible individual receiving coverage, PEBB can terminate coverage according to this rule whether requested by the employee or not.

(5) A benefit plan may remove from coverage or deny the claims of an eligible employee, a family member, domestic partner, or domestic partner's dependent child because of fraud, intentional misrepresentation of a material fact as prohibited by the terms of the plan, eligibility violations, or policy term violations. When a plan removes an employee from coverage for violations:

(a) The employee may choose, as a midyear plan change, an alternative PEBB plan to replace the terminated plan. If no alternative PEBB plan is available in the employee's service area, there is no coverage.

(b) The plan may retain all premiums paid and has the right to recover from the employee, the benefits paid because of such wrongful activity that are in excess of the premiums.

(c) The plan may deny future enrollments of the individual.

Stat. Auth.: ORS 243.061 - 302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 2-2007, f. 9-28-07, cert. ef. 10-1-07; PEBB 2-2008, f. & cert. ef. 8-1-08; PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; Suspended by PEBB 1-2011(Temp), f. & cert. ef. 3-9-11 thru 8-4-11

101-020-0026

Terminating Coverage due to a Midyear Plan Change Event, Eligibility Verifications, Rescissions, Agency Premium Refunds

(1) An employee can experience a qualified midyear change event that will permit or require the employee to request a termination of coverage for other individuals on their healthcare coverage. The employee's request for any coverage termination for an individual must be submitted within 30 days of the qualifying midyear change event, and submitted to the employee's agency on the appropriate forms.

(a) When an employee experiences a qualifying midyear change that permits the employee to remove an individual from coverage, but does not require the employee to terminate the coverage due to a loss of eligibility, the employee's agency must terminate the coverage prospectively. Coverage ends the last day of the month following receipt of the appropriate forms. Submission of the forms beyond 30 days will result in a denial of the termination. The employee must wait until open enrollment and move the individual at that time.

EXAMPLE: Bill currently provides PEBB coverage for his 22-year-old son, Mark. On May 5th Mark starts a new job that provides him with health care coverage. Bill can continue Mark's PEBB coverage, or based on the qualified midyear event of "Gain of Coverage Eligibility under Another Employer's Plans" Bill can terminate the coverage. Bill decides to terminate coverage for Mark and submits a midyear change form to his agency on June 1. (Within 30 days of the event date) The agency will terminate Mark's coverage effective June 30.

(b) An employee must request termination of coverage for an individual receiving PEBB coverage under their enrollments that becomes ineligible for the coverage. Examples of individuals who no longer meet eligibility and require termination from coverage include, but are not limited to, an ex-spouse, ex-domestic partner, a child by affidavit no longer eligible due to age limitation within the legal responsibility document, and a disabled child who no longer meets either the medical or other eligibility criteria. Agencies will terminate an ineligible individual's coverage prospectively. Coverage ends the last day of the month following receipt of the appropriate forms from the employee. The exception to prospective termination is termination of coverage for an ex-spouse, ex-domestic partner, and their children who are not biological children or adopted children of the employee, in which case PEBB coverage must terminate retroactively to the last day of the month that the eligibility is lost. PEBB must process and complete all retroactive terminations.

EXAMPLE 1: Ann's divorce is final on June 6. On June 22, she submits the correct change form to her agency to remove her ex-spouse from coverage. The agency can process Ann's ex-spouse's termination from PEBB coverage effective June 30.

EXAMPLE 2: Mary's divorce is final on June 15. On July 1, Mary submits the correct change forms to her agency to remove her ex-spouse from coverage. The notification to the agency is in the month following the date of divorce, however it is within the allowable 30 days of the event date. The ex-spouse's coverage must terminate retroactively. The agency will send Mary's forms to PEBB to process and coverage will terminate June 30.

(c) An ineligible individual will receive a COBRA availability notice when the coverage terminates within 60 days from eligibility loss.

(2) PEBB must receive all employee requests for termination of coverage of ineligible individuals beyond the allowable 30 days. PEBB will follow (1)(b) of this rule in determining the correct termination date for the ineligible individual.

(a) When the coverage termination for the ineligible individual is prospective, the employee must pay an imputed value tax for each month of coverage that the ineligible individual received coverage. PEBB will com-

municate to the agency the imputed value to add to the employee's taxable wages.

(b) When coverage must terminate retroactively:

(A) The agency will receive the following months of premium refunds for the most recent months of coverage received by the ineligible individual, (i) from PEBB up to six months for self-funded plans, (ii) from fully funded plans, up to one year.

(B) An eligible employee may be responsible to repay claims paid by benefit plans for an ineligible individual during any period of ineligibility for which premiums are refunded.

(3) An employee's failure to report a family member's or domestic partner's loss of eligibility during the 12-month period before the start of each annual open enrollment period can result in civil or criminal charges against the employee for fraud or the intent to misrepresent the material facts of enrollment. To the extent allowed by law, PEBB may rescind coverage back to the last day of the month of the plan year when eligibility was lost. Rescission of coverage can occur to an employee, or an individual for whom the employee provides coverage. The following actions will occur during a rescission of coverage action taken by PEBB:

(a) PEBB will provide at least 30 calendar days' advance notice of the rescission date to the ineligible individual. Coverage will rescind to last day of the month and plan year in which the individual lost eligibility.

(b) PEBB will include a notice of appeal rights with the rescission notice to the individual losing coverage.

(c) The agency may request premium refunds as described in (2)(b)(A) of this rule.

(d) An agency may determine that an employee must repay to the agency the premiums paid for coverage during the ineligible period.

(e) As contractually agreed to, a plan may determine that an employee must repay insurance claims paid by a plan for the ineligible individual during the ineligible period.

(f) An employee's agency can take disciplinary action against the employee for the employee's failure to remove an ineligible individual from coverage.

(g) The employee may have imputed value added to their taxable income for premiums not refunded by the plans or repaid by the employee to the agency.

EXAMPLE: Ann's divorce is final on June 6, 2010. Ann submits her update form to her agency a year later on June 1, 2011, after she certified during the October 2010 open enrollment period that all individuals receiving coverage in the new plan year were eligible for coverage. The agency sends Ann's update forms to PEBB. PEBB sends a notice to Ann's ex-spouse at the last known address informing the individual that on July 1, 2011 PEBB will rescind the individual's coverage to June 30, 2010 (the month that eligibility was lost). PEBB includes a notice of appeal rights. The ex-spouse will receive a COBRA unavailability notice due to the employee's late notice of loss of eligibility. Ann's agency can receive premium refunds for the most recent months of allowable premium according to (2)(b)(A) of this rule. When premiums are refunded to the agency, Ann will be responsible for any claims paid by the plans for the ex-spouse during the refund period. For the months of non-refunded premium and according to her agency's policy, Ann may be responsible to repay the agency's premium cost for her ex-spouse or responsible to pay an imposed imputed value tax for the months of coverage not refunded.

(4) PEBB may at any time request information from an individual receiving PEBB coverage or from the eligible employee under whom that individual is enrolled, to verify that the individual is eligible under these rules. Based on the information provided, PEBB may determine the individual's eligibility for coverage under a PEBB sponsored plan.

(a) PEBB's verification process may require submission of any information related to determining eligibility, including but not limited to a written certification or requested verification documents. Verification documents may include, but are not limited to, a birth certificate, adoption order, placement agreement, guardianship order, physician documentation of an overage child's disability, marriage certificate, tax return, certificate of registered domestic partnership, or affidavit of domestic partnership. During the verification process, employees and other persons enrolled to receive PEBB benefits must, within the time period set forth in PEBB's request for information, furnish such information as PEBB may request for the purpose of eligibility verification.

(b) PEBB will terminate coverage for individuals that do not respond as required to verification requests or if the verification process determines that an individual is ineligible to receive PEBB coverage.

(c) PEBB will terminate coverage according to this rule or at any time an ineligible individual is discovered receiving PEBB coverage, whether or not the employee requested termination. Termination of coverage will be retroactive if so required by this rule, except that during a verification process PEBB may announce a period of time during which member-initiated disenrollment of ineligible individuals will be prospective only.

(d) Paragraph (4)(a) of this rule applies only to an individual enrolled in PEBB as a spouse, domestic partner, or dependent child. PEBB may use

ADMINISTRATIVE RULES

a contractor to perform any function described in paragraph (4)(a) of this rule. A PEBB member or individual enrollee is not required to pursue any internal appeals process provided by the contractor for relationship eligibility verification before filing an appeal to PEBB under OAR 101-020-0066.

(5) A benefit plan may remove from coverage or deny the claims of an eligible employee, a family member, domestic partner, or domestic partner's dependent child because of fraud, intentional misrepresentation of a material fact as prohibited by the terms of the plan, eligibility violations, or policy term violations. When a plan removes an employee from coverage for violations:

(a) The employee may choose, as a midyear plan change, an alternative PEBB plan to replace the terminated plan. If no alternative PEBB plan is available in the employee's service area, there is no coverage.

(b) The plan may retain all premiums paid and has the right to recover from the employee, the benefits paid because of such wrongful activity that are in excess of the premiums.

(c) The plan may deny future enrollments of the individual.

Stat. Auth.: ORS 243.061 - 302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

Hist.: PEBB 1-2011(Temp), f. & cert. ef. 3-9-11 thru 8-4-11

Oregon Health Authority,
Public Health Division
Chapter 333

Rule Caption: Registry Enrollment, Qualification and Certification of Health Care Interpreters (HCI).

Adm. Order No.: PH 2-2011

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 12-1-2010

Rules Amended: 333-002-0000, 333-002-0010, 333-002-0020, 333-002-0030, 333-002-0035, 333-002-0040, 333-002-0050, 333-002-0060, 333-002-0070, 333-002-0080, 333-002-0100, 333-002-0120, 333-002-0130, 333-002-0140, 333-002-0150, 333-002-0160, 333-002-0170, 333-002-0180, 333-002-0190, 333-002-0200, 333-002-0210, 333-002-0220, 333-002-0230

Rules Repealed: 333-002-0090, 333-002-0110

Subject: The Oregon Health Authority, Public Health Division is permanently amending and repealing Oregon Administrative Rules in chapter 333, division 2 related to registry enrollment, qualification and certification of health care interpreters. The proposed changes are crucial to meet national standards and practices of health care interpreters. Without these rule amendments, patients may not receive adequate health care due to poor communication with their health care provider, which may result in due harm to the patients' health care outcomes. This may occur when utilizing an unqualified health care interpreter who has not received proper education and training, and who does not have proper credentials attesting to their interpreting skills and abilities. These rules need to be adopted in order for the Authority to implement the rules to meet National Standards of Practice of Health Care Interpreters and to enable the Authority to contract with testing centers in order for the state of Oregon to be in compliance with the qualification portion of the rule (testing language proficiency of interpreters) and to work towards contracting with a national testing center(s) to implement the certification portion of the rule.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-002-0000

Purpose

(1) Title VI of the Civil Rights Act of 1964 mandates that no person in the United States shall, on grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The purpose of these rules is to establish a central registry and procedures for the qualification or certification of health care interpreters for persons with Limited English Proficiency (LEP).

(2) Any individual providing interpreting services, either in-person or remotely, and using the techniques of consecutive interpreting, sight translation, or simultaneous interpreting may elect to participate in the Health Care Interpreter program.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0010

Definitions

As used in chapter 333, division 2 the following definitions apply:

(1) "Applicant" means any individual who has applied under OAR 333-002-0050 for registry enrollment, qualification, or certification as a health care interpreter for any of the following languages: Cantonese, Korean, Mandarin, Russian, Spanish, or Vietnamese. The state reserves the right to encompass additional languages at a later date.

(2) "Authority" means the Oregon Health Authority.

(3) "Central Registry" means a registry of individuals recognized as health care interpreters maintained by the Authority in accordance with OAR 333-002-0030.

(4) "Certified Health Care Interpreter" means an individual who has been issued an approved certificate by the Authority under the provisions of OAR 333-002-0150.

(5) "Consecutive Interpreting" means the conversion of a speaker's message into another language after the speaker pauses.

(6) "Formal Training" means training obtained in a formal academic setting, seminars, in-service trainings, or other substantive distance learning.

(7) "Fluency" means the ability to effectively communicate between the patient and the medical provider including, but not limited to, the ability to interpret the dialect, slang, or specialized vocabulary of a language to ensure the provision of high quality care.

(8) "Health Care" means medical, surgical or hospital care, or any other remedial care recognized by state law, including mental health care.

(9) "Health Care Interpreter" (HCI) means an individual who is readily able to communicate with an individual with limited English proficiency and to accurately translate the written and interpret the oral statements of the individual with limited English proficiency into English, and who is readily able to translate the written and interpret the oral statements of other individuals into the language of the individual with limited English proficiency.

(10) "Interpreting" means the process of understanding and analyzing a spoken message and re-expressing that message completely, accurately and objectively in another language, taking the cultural and social context into account.

(11) "Interpreting Knowledge" means an entry-level range of interpreting knowledge and skills that includes but is not limited to: language fluency, ethics, cultural competency, terminology, integrated interpreting skills and translation of simple instructions.

(12) "Interpreting Proficiency" means a wide range of interpreting knowledge and skills that includes but is not limited to: language fluency, ethics, cultural competency, terminology, integrated interpreting skills and ability to translate the necessary information between the medical provider and the patient.

(13) "Limited English Proficient" or (LEP) means a legal concept referring to a level of English proficiency that is insufficient to ensure equal access to public services without an interpreter.

(14) "Office of Multicultural Health and Services" (OMHS) means a central administrative support office of the Authority.

(15) "Oregon Council on Health Care Interpreters" means the advisory body of experts in the areas of language and health care interpreting, industry professionals, educators and community representatives.

(16) "Qualified Health Care Interpreter" means an individual who has been issued a valid letter of qualification by the Authority under the provisions of OAR 333-002-0140.

(17) "Remote Interpreting" means interpreting services provided via telephone, video, online or any other electronic means where at least one of the principal participants is physically present in Oregon.

(18) "Sight Translation" means translation of a written document into spoken language.

(19) "Simultaneous Interpreting" means converting a speaker's message into another language while the speaker continues to speak.

(20) "Translation" means the conversion of written text into a corresponding written text in a different language.

(21) "Verifiable Evidence" means documented proof by means that are reasonably reliable to establish authenticity of submitted documents. Documentation may include employer endorsement, pay statement, services contract, remittance advice, student practicum, or intern time log.

(22) "Written verification" means documented proof by means that are reasonably reliable to establish authenticity of submitted documents.

ADMINISTRATIVE RULES

Documentation may include official transcripts, a certificate of completion, or an endorsement from an agency or institution whose training curriculum is approved by the Authority.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0020

Health Care Interpreter Services

Any individual providing Consecutive Interpreting, Interpreting Services, Remote Interpreting, Sight Translation or Simultaneous Interpreting as defined in this division may:

(1) Voluntarily meet the eligibility standards for registry enrollment established in OAR 333-002-0040 and be added to the central registry under the provisions of OAR 333-002-0130; or

(2) Voluntarily meet the requirements of qualification established in OAR 333-002-0040 and be issued a valid letter of qualification by the Authority under the provisions of OAR 333-002-0140; or

(3) Voluntarily meet the requirements of certification established in OAR 333-002-0040 and be issued a valid letter of certification by the Authority under the provisions of OAR 333-002-0150.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621 & 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0030

Central Registry

The Authority will maintain a central registry of individuals who are registered, qualified, and certified to provide health care interpreter services as defined in OAR 333-002-0020.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621 & 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0035

Fees

The Authority establishes the following Health Care Interpreter program fees:

(1) An HCI Registry Enrollment Application shall require a fee of \$25 per application.

(2) An HCI Registry Renewal Application shall require a fee of \$25 per application.

(3) An HCI Qualification Application and Request for Evaluation shall require a fee of \$25 per application.

(4) An HCI Certification Application and Request for Evaluation shall require a fee of \$30 per application.

(5) An HCI Interpreting Assessment for a subspecialty shall require a fee of \$400 per attempt.

(6) An HCI Certification Renewal Application shall require a fee of \$30 per application.

(7) An HCI External Transcript Review Request shall require a fee of \$125 per request.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621 & 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0040

Eligibility Standards for Registry Enrollment, Qualification and Certification

(1) Applicants seeking enrollment in the HCI registry must:

(a) Be at least 18 years of age;

(b) Submit applicable forms and fees;

(c) Successfully complete the HCI orientation session set by the Authority. Information presented shall include but is not limited to the following topics:

(A) Presentation of ORS 409.615 through 409.623 and OAR chapter 333, division 2;

(B) Review of Authority, health care interpreter, provider and patient roles and responsibilities; and

(C) Review of National Code of Ethics and National Standards of Practice for Interpreters in Health Care.

(d) Abide by the National Code of Ethics for Interpreters in Health Care as established by OAR 333-002-0100;

(e) Abide by the National Standards of Practice for Interpreters in Health Care as established by OAR 333-002-0110; and

(f) Have a high school diploma or a GED from an accredited school in the United States of America, or an equivalent diploma from another country.

(2) In addition to complying with the requirements set out in section (1) of this rule, applicants seeking qualification must be able to:

(a) Provide written verification of at least 60 hours of formal training as defined in OAR 333-002-0060;

(A) Educators and trainers of health care interpreters that have worked in the field for two consecutive years in the state of Oregon at any time from January 2, 1996 to the present may count time spent training health care interpreters toward the 60 credit hours, up to 40 hours.

(B) The individual must submit a signed letter from an accredited institution to be eligible for this exception.

(b) Provide verifiable evidence of 40 hours of experience; and

(c) Demonstrate health care interpreting knowledge by passing a qualification skill evaluation offered by an Authority approved language proficiency testing center as defined in OAR 333-002-0070 or to meet equivalent language proficiency requirements set by the Authority.

(3) In addition to complying with the requirements set out in section (1) of this rule, applicants seeking certification must be able to:

(a) Provide written verification of at least 60 hours of formal training as defined in OAR 333-002-0060;

(A) Educators and trainers of health care interpreters that have worked in the field for two consecutive years in the state of Oregon at any time from January 2, 1996 to the present may count time spent training health care interpreters toward the 60 credit hours, up to 40 hours.

(B) The individual must submit a signed letter from an accredited institution to be eligible for this exception.

(b) Provide verifiable evidence of 80 hours of work experience as an HCI; and

(c) Demonstrate health care interpreting proficiency by passing an approved national certification test as defined in OAR 333-002-0070.

(4) Each HCI applicant seeking certification must first have completed all required documentation to become an Oregon Qualified HCI. Each HCI applicant seeking certification must show proof of national certification.

(5) The Authority shall accept formal training from entities outside of Oregon that can demonstrate that their criteria are equal to or exceed Oregon criteria as established by these rules. The Authority shall maintain a list of Authority approved training centers where applicants may receive the required education.

(6) An applicant who has taken and passed a health care interpreter or medical interpreter certification test from an Authority approved testing center prior to March 1, 2011 is not required to comply with subsection (3)(c) of this rule.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621 & 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 15, 2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 1-10-11; Administrative correction 1-25-11; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0050

Application Procedure

(1) Upon request, the Authority shall provide an application packet or a link to the HCI webpage where the applicant may complete an online application, download an application, or obtain a printable paper application, to any individual seeking registry enrollment for qualification or certification as an HCI.

(2) Applicants must submit standard forms along with required documentation and applicable fees to the Authority.

(3) All application materials submitted in a language other than English must be accompanied by:

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

(b) A translator's certificate certifying that the documents that have been translated are true and accurate, by an independent translator other than the applicant.

(4) The applicant shall pay for any translation costs for documents required by the Authority.

(5) If the Authority determines that the application is not complete or that the required documentation is not acceptable, the Authority shall notify the applicant within 30 days of receipt. An incomplete application includes, but is not limited to, an application that lacks:

(a) Required information or original signatures; or

(b) Required forms, documentation or fees.

(6) Applicants may withdraw from the process at any time by submitting written notification to the Authority; however the Authority shall not refund any fees that are paid.

ADMINISTRATIVE RULES

(7) Applicants must submit a request for qualification testing directly to the Authority approved testing center. Applicants must pay the required testing fees directly to the testing center. Once testing has been completed the testing results shall become part of the applicant's permanent record. Applicants shall authorize the Authority to receive a copy of their testing results from the authorized testing center.

(8) Applicants must submit a request for certification directly to the Authority approved testing center. Applicants must pay the required testing fees directly to the testing center. Once the testing has been completed the testing results shall become part of the applicant's permanent record. Applicants shall authorize the Authority to receive a copy of their testing results from the authorized testing center.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0060

Training and Work Experience Requirement

(1) Applicants seeking HCI qualification or certification must provide written verification of the successful completion of formal training at an Authority approved training center. Required subjects include Medical Terminology, Anatomy, Physiology, Concepts and Modes of Health Care Interpreting, and Health Care Interpreting Ethics. Applicants must meet or exceed the minimum training requirement for the credential being sought.

(2) Each HCI applicant seeking qualification or certification must complete at least 60 hours of Authority approved training, including a minimum of:

(a) Fifty-two hours of integrated Medical Terminology, Anatomy and Physiology, Introductory Health Care Interpreting Concepts and Modes; and

(b) Eight hours of Health Care Interpreting Ethics.

(3) Each HCI applicant seeking qualification must show proof of 40 working professional hours as a health care interpreter, which may include practical experience as an intern with a practicing health care interpreter, by providing verifiable evidence from an employer where the applicant has previously worked.

(4) Each HCI applicant seeking certification must show proof of 80 working professional hours as a health care interpreter by providing verifiable evidence from a previous employer.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 15, 2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 1-10-11; Administrative correction 1-25-11; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0070

Approval of Testing Centers, Skill Evaluation and Assessment

(1) The Authority shall enter into a Memorandum of Agreement with health care interpreter or medical interpreter testing centers and language proficiency testing centers that are approved for testing. The Agreement shall establish the manner and means for testing Oregon applicants for health care interpreter testing, and shall include a process for sharing testing information with the Authority and the applicant.

(2) The Authority shall maintain a list of approved health care interpreter or medical interpreter certification testing centers. This list shall be made readily available to the public at all times.

(3) The Authority may proctor testing and may determine testing locations, unless the approved testing centers have their own testing centers available and can verify the applicant's identity before testing.

(4) Government issued photo identification showing the name and address of the applicant must be presented to enter an evaluation or assessment. This identification could be a valid driver's license, state identification card, military identification, current passport, or immigration or naturalization documents.

(5) An applicant whose conduct interferes with or disrupts the testing process may be dismissed and disqualified from future evaluations and assessments. Such conduct includes but is not limited to the following behaviors:

(a) Giving or receiving evaluation or assessment data, either directly or indirectly, during the testing process;

(b) Failure to follow written or oral instructions relative to conducting the evaluation or assessment, including termination times and procedures;

(c) Introducing unauthorized materials during any portion of the evaluation or assessment;

(d) Attempting to remove evaluation or assessment materials or notations from the testing site; or

(e) Violating the credentialing process by:

(A) Falsifying or misrepresenting educational credentials or other information required for admission to the evaluation or assessment;

(B) Having an impersonator take the evaluation or assessment on one's behalf; or

(C) Impersonating an applicant.

(6) Test questions, scoring keys, and other data used to administer evaluations and assessments are exempt from disclosure under ORS 192.410 through 192.505.

(7) The Authority may release statistical information regarding evaluation or assessment pass/fail rates by group, evaluation or assessment type, and subject area to any interested party.

(8) Applicants needing accommodation because of a disability may apply to the testing center for accommodations to complete an evaluation or assessment.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0080

Skill Evaluation or Assessment Appeal

Applicants who fail to pass a test at an Authority approved testing center may appeal the results with the testing center directly and pay any fees associated with the request. The testing center's determination is final. Applicants have no further appeal rights with the Authority.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0100

Code of Ethics and Standards of Practice for Interpreters in Health Care

(1) Health care interpreters must adhere to the National Code of Ethics for Interpreters in Health Care as established by the National Council on Interpreting in Health Care.

(2) Health care interpreters must adhere to the National Standards of Practice for Interpreters in Health Care as established by the National Council on Interpreting in Health Care.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0120

Continuing Education

(1) Upon application for renewal of certification, an HCI must:

(a) Have completed 30 hours of continuing education; and

(b) Sign and submit an Authority supplied continuing education form and written verification indicating they have completed the required number of hours of continuing education.

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

(3) Continuing education records must be maintained by the HCI for a minimum of three years.

(4) If the Authority finds indications of fraud or falsification of records, investigative action will be instituted. Findings may result in disciplinary action including revocation of the certificate.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0130

Registry Enrollment

(1) If the Authority determines that the applicant has met all requirements of these rules or meets all eligibility standards, the applicant shall be added to the central registry of health care interpreters.

(2) Registry enrollment is valid for 12 months from the date of enrollment and is renewable.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

ADMINISTRATIVE RULES

333-002-0140

Letter of Qualification

(1) If the Authority determines that OAR 333-002-0040, 333-002-0050, 333-002-0060, 333-002-0070, and 333-002-0090 have been met, a letter of qualification shall be issued.

(2) Letters of Qualification are valid for 36 months from the date of issue and are not renewable for languages for which certification is available. For other languages, qualification may be renewed every 36 months.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0150

Certificate

(1) If the Authority determines that OAR 333-002-0040, 333-002-0050, 333-002-0060, 333-002-0070, and 333-002-0090 have been met, a certificate shall be issued.

(2) Certificates are valid for 36 months from the date of issue and are renewable.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0160

Registry Enrollment Renewal

(1) Applicants for registry enrollment renewal must provide the Authority with:

- (a) The completed renewal form provided by the Authority;
- (b) Applicable fees;

(c) A current signed copy of the commitment form, included with the renewal form, acknowledging that the applicant has read and agrees to abide by the National Code of Ethics for Interpreters in Health Care; and

(d) A current signed copy of the commitment form, included with the renewal form, acknowledging that the applicant has read and agrees to abide by the National Standards of Practice for Interpreters in Health Care.

(2) The materials required by section (1) of this rule must be submitted to the Authority no less than 30 days prior to the enrollment expiration date. The date of submission of these materials shall be considered to be the date postmarked by the US Postal Service, or if not postmarked, by the date they are received by the Authority.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0170

Certification Renewal

(1) A certified HCI must renew certification every 36 months and provide the Authority with:

- (a) The completed renewal form provided by the Authority;
- (b) All applicable fees;

(c) Written verification of a minimum of 30 hours of continuing education as defined in OAR 333-002-0120 during the preceding three years;

(d) A current signed copy of the commitment form, included with the renewal form, acknowledging that the applicant has read and agrees to abide by the National Code of Ethics for Interpreters in Health Care; and

(e) A current signed copy of the commitment form, included with the renewal form, acknowledging that the applicant has read and agrees to abide by the National Standards of Practice for Interpreters in Health Care.

(2) The materials required by section (1) of this rule must be submitted to the Authority no less than 30 days prior to the letter of certificate expiration date. The date of submission of these materials shall be considered to be the date postmarked by the US Postal Service, or if not postmarked, by the date they are received by the Authority.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0180

Denial, Revocation, Suspension or Refusal to Renew Registry Enrollment

The Authority shall deny, revoke, suspend or refuse to renew registry enrollment under the following conditions:

(1) Applicant for initial registry enrollment fails to meet the eligibility standards of OAR 333-002-0040;

(2) Applicant for registry enrollment renewal fails to comply with the requirements of OAR 333-002-0160;

(3) Applicant submits information that cannot be verified; or

(4) Applicant engages in conduct or practices found by the Authority to be in violation of the National Code of Ethics for Interpreters in Health Care or the National Standards of Practice for Interpreters in Health Care.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0190

Denial, Revocation, or Suspension of Letters of Qualification

The Authority shall deny, revoke, or suspend a letter of qualification under the following conditions:

(1) Applicant for an initial letter of qualification fails to meet the requirements of OAR 333-002-0040;

(2) Applicant submits information that cannot be verified; or

(3) Applicant engages in conduct or practices found by the Authority to be in violation of the National Code of Ethics for Interpreters in Health Care or the National Standards of Practice for Interpreters in Health Care.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0200

Denial, Revocation, Suspension or Refusal to Renew Certification

The Authority shall deny, revoke, suspend or refuse to renew a certificate under the following conditions:

(1) Applicant for an initial certification fails to meet the requirements of OAR 333-002-0040;

(2) Applicant for a certification renewal fails to comply with the requirements of OAR 333-002-0170;

(3) Applicant submits information that cannot be verified; or

(4) Applicant engages in conduct or practices found by the Authority to be in violation of the National Code of Ethics for Interpreters in Health Care or the National Standards of Practice for Interpreters in Health Care.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0210

Complaints

(1) Any affected party or witness may submit a complaint against an HCI. Complaints must be submitted on the standard form provided by the Authority, signed and dated by the person alleging the complaint. A complaint that does not comply with the requirements of this rule will not be accepted, responded to or acted upon by the Authority.

(2) The Authority may commence an investigation of an HCI as a result of information received from any party.

(3) Complaint forms received by the Authority shall be made available to the accused HCI and others involved in the investigation of the allegations.

(4) The Authority shall conduct a preliminary review of the complaint to ensure there is sufficient cause to justify proceeding and that the allegations against the respondent are such that, if proven, could result in a violation of the National Code of Ethics for Interpreters in Health Care or the National Standards of Practice for Interpreters in Health Care.

(5) If the complaint is determined to be valid, the Authority shall notify the respondent of the allegations by mail and request written comments. The respondent must submit written comments to the Authority within two weeks after the notification was first mailed, unless an extension is authorized by the Authority under the following circumstances; only one extension may be allowed and the extension may not exceed 30 days. The Authority shall evaluate the complaint using available evidence.

(6) Complaints and all evidence obtained, including any documents or information received from the complainant, respondent, witnesses, Authority investigators or Authority staff, shall be referred to the Oregon Council on Health Care Interpreters for review and recommendations.

(7) During the review, the respondent's identity shall remain confidential

(8) The Authority may not consider oral arguments from the complainant or respondent unless the Authority determines that further information is required.

(9) If evidence is insufficient to show cause for action, the complainant and respondent shall be notified in writing.

ADMINISTRATIVE RULES

(10) If evidence is sufficient to show cause for action, the Authority shall determine appropriate disciplinary action. The respondent shall be notified in writing and that determination shall become public record.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621 & 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0220

Discipline

The Authority may refuse to issue or renew, or may suspend or revoke qualification or certification, or impose remedial education or corrective actions if an applicant, registry enrollee, qualified or certified health care interpreter engages in any of the following conduct:

(1) Represents that he or she is a qualified or certified health care interpreter without having been issued a valid letter of qualification or certificate by the Authority.

(2) Knowingly gives misinformation or false information to the Authority.

(3) Violates the credentialing process by:

(a) Falsifying or misrepresenting educational credentials or other information required for admission to an evaluation or assessment;

(b) Having an impersonator take an evaluation or assessment on one's behalf; or

(c) Impersonating an applicant.

(4) Has had a credential to practice health care interpreting in another state, territory or country suspended or revoked based upon acts by the HCI similar to acts described in this rule.

(5) Has been convicted of a crime in this state, or any other state, territory or country, or convicted of a federal crime, which demonstrably relates to the practice of health care interpreting.

(6) Has engaged in false, deceptive or misleading advertising of their qualification or certification credentials, which includes but is not limited to advertising health care interpreting using the titles of qualified or certified health care interpreter in any private or public communication or publication by an individual who is not credentialed by the Authority. For the purposes of this rule, "advertise" includes telephone directory listings, business cards, social media networking, or any other source of advertisement.

(7) Allows the use of an Authority issued credential by a non-credentialed person.

(8) Has presented as one's own credential, the credential of another.

(9) Has practiced health care interpreting services under a false or assumed name without notification to the Authority.

(10) Has impersonated another HCI.

(11) Has used or attempted to use an HCI credential that has been revoked, suspended, or lapsed.

(12) Has practiced or offered to practice beyond the scope of the National Code of Ethics or National Standards of Practice for Interpreters in Health Care.

(13) Fails to cooperate with the Authority in any credentialing action or disciplinary proceeding. Such acts include but are not limited to:

(a) Failure to furnish requested papers or documents;

(b) Failure to furnish a written response to a matter contained in any complaint filed with the Authority; or

(c) Failure to respond to requests for information issued by the Authority whether or not the recipient is accused in the proceeding.

(14) Fails to comply with any request issued by the Authority or an assurance of discontinuance entered into with the Authority.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

333-002-0230

Hearings

An individual who wishes to contest the denial, non-renewal, suspension or revocation of their registry enrollment, qualification or certification may request a contested case hearing. The contested case hearing process is conducted in accordance with ORS 183.441 through 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621 & 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 2-2011, f. & cert. ef. 3-1-11

Oregon Health Licensing Agency Chapter 331

Rule Caption: Investigatory appearances before the agency and active military status protocols for authorization holders.

Adm. Order No.: HLA 1-2011(Temp)

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11 thru 8-28-11

Notice Publication Date:

Rules Adopted: 331-010-0050

Rules Amended: 331-020-0040

Subject: The purpose of this temporary rule is to clarify what constitutes an appearance before the agency during investigations of alleged violations of statutes or rules under the authority of the agency, its boards or councils.

The purpose of this temporary rule is to allow authorization holders in active military status waiver of renewal, fees and continuing education requirements, as well as protocols for restoration of former authorization status.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-010-0050

Authorization Holders; Military Leave

(1) A practitioner authorized to practice under a program listed in ORS 676.606 is not required to renew the authorization or pay renewal fees while in active military service unless required by the authorization holders branch of the military.

(2) To be restored to former authorization status the authorization holder must notify the agency in writing within 60 days of being honorably discharged.

(3) No fees will be due until the following renewal period.

(4) Requirements for completing continuing education hours during an authorization holder's active duty period shall be evaluated on a case by case basis.

Stat. Auth.: ORS 676.615
Stats. Implemented: ORS 676.607 & 676.608
Hist.: HLA 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

331-020-0040

Complaint Processing and Investigation

Pursuant to ORS 676.608, complaints filed with the Oregon Health Licensing Agency will be handled as follows:

(1) The agency will determine if the complaint is related to a profession or occupation regulated and administered by the agency and the complaint falls within authority delegated to the agency by statute.

(2) The agency investigator(s):

(a) Will review the information and as applicable, interview parties and witnesses, and examine physical evidence relating to the complaint;

(b) Will advise on whether an authorization holder or other individual practiced within the acceptable standards of the particular program;

(c) Will make recommendations for agency action.

(3) After receiving advice from the investigator(s), the agency will determine what action will be taken in accordance with ORS 676.608.

(4) As used in ORS 676.608(8), to "appear before the agency" includes: an investigative interview conducted on agency premises or before a board, council, or subcommittee of a board or council; any depositions authorized by the agency; pre-hearing conferences; contested case hearings; and appearances compelled by subpoena. It does not include an investigative interview conducted telephonically or outside of agency premises.

Stat. Auth.: ORS 183, 676.605, 676.608 & 676.615
Stats. Implemented: ORS 183, 676.605, 676.608 & 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09; HLA 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

Oregon Health Licensing Agency, Board of Cosmetology Chapter 817

Rule Caption: Amend requirements regarding application, certificate of identification and reinstatement of a certificate.

Adm. Order No.: BOC 1-2011(Temp)

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11 thru 8-10-11

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Amended: 817-030-0005, 817-030-0015, 817-030-0018, 817-035-0050, 817-040-0003

Subject: It is necessary to amend OAR 817-030-0005 and 817-030-0015 because the agency and the board do not have statutory authority to send non-credentialed candidates to a school for additional training or a practical examination. The Department of Education Private Career Schools may refer the candidate to a career school if documentation listed under ORS 345.400 is not available.

It is necessary to amend OAR 817-030-0018 "Examination for Reinstatement of Certification" to require an individual attain a passing score on the Board approved written examination(s) within two years of application. Align delinquency fee with three year late renewal deadline.

It is necessary to amend OAR 817-035-0050 "Application and Criteria for Certificate of Identification" to align with renewal requirements for other professions regulated by OHLA, and to provide clarity regarding specific requirements to renew a certification of identification.

It is all necessary to remove OAR 817-035-0050(7) in order to align with statutory requirements regarding where services can be provided by a Certificate of Identification holder.

Rules Coordinator: Samantha Patnode—(503) 373-1917

817-030-0005

Qualification and Training Requirements

To obtain an Oregon certificate in one or more fields of practice, individuals must complete required application documentation prescribed by the agency under OAR 331-030-0000 and 817-030-0015 provide satisfactory evidence of meeting certification requirements, which includes qualifying criteria listed in one of the following certification pathways, and submit payment of required fees.

(1) **CERTIFICATION PATHWAY ONE Graduate from Oregon Licensed Career School:** Applicants must meet the education and training requirements in effect at the time of application. Applicants shall complete and pass courses required by the Oregon Department of Education, Private Career Schools, in one or more of the following educational programs offered through an Oregon licensed career school, and must also pass a written and practical examination approved or recognized by the Board of Cosmetology in accordance with OAR 817-030-0040:

- (a) Hair design — 1,450 hour course;
- (b) Barbering — 1,100 hour course;
- (c) Esthetics — 250 hour course;
- (d) Nail technology — 350 hour course;

(e) Mandatory completion of a 150 hour safety and infection control course and a 100 hour career development course in addition to any one or more of the approved programs listed in (a) through (d) of this rule. The Board recognizes a final practical examination, prescribed by the Department of Education, Private Career Schools in collaboration with the Board, which establishes standard examination criteria and testing protocols, as its qualifying practical certification examination. Authorized Oregon licensed career school personnel conduct the practical examination.

(2) **CERTIFICATION PATHWAY TWO Oregon Certification by Reciprocity:** The Board recognizes at its discretion other states', and countries', equivalent education, examination and licensing requirements. To be certified in one or more a field of practice, applicants are required to meet OAR 817-030-0015(1) and the following criteria:

(a) The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(b) Completion of a state-approved board examination for certification/licensure and graduation from a licensed cosmetology school.

(c) Completion of the Oregon Laws and Rules examination.

(3) Applicants holding current certification/licensure from out-of-state who do not qualify for Oregon certification by means of reciprocity as specified in subsection (3) of this rule must complete and pass the qualifying examination(s) required in OAR chapter 817, division 030.

Stat. Auth.: ORS 690.035, 690.046 & 690.165

Stats. Implemented: ORS 690.035, 690.046 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09;

Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09; BOC 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-10-11

817-030-0015

Practitioner Application Requirements

(1) Applicants must meet all of the requirements of OAR 331-030-0000 in addition to the provisions of this rule. Before being authorized to take an examination at any of the agency approved testing locations, the completed application documentation must be on file with the agency and eligibility for examination established. Refer to OAR 817-030-0020.

(2) Applicants must provide, or cause to be delivered to the agency, prescribed documentation verifying training and/or licensure, according to one of the qualification pathways listed under OAR 817-030-0005:

(a) Official transcript/Oregon Career School: completed official transcript, issued by an Oregon licensed career school of barbering, hair design, esthetics or nail technology, and completed original official transcript of practical examination, signed by the authorized school personnel proctoring the Board sanctioned examination, certifying that criteria for the practical examination was met and that the applicant satisfactorily demonstrated minimum competencies established by the Department of Education, Private Career Schools, in collaboration with the Board.

(b) Reciprocity: The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(3) Application documentation required for an examination and certification must be submitted to the Oregon Health Licensing Agency in English. If documents require translation, a copy of the official document(s), in the original language, must be submitted with the written translation in English.

Stat. Auth.: ORS 676.615, 690.035 & 690.165

Stats. Implemented: ORS 676.615, 690.035 & 690.165

Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; Renumbered from 817-030-0010; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2001(Temp), f. 1-31-01, cert. ef. 2-1-01 thru 7-29-01; BOC 3-2001, f. 3-30-01, cert. ef. 4-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09; BOC 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-10-11

817-030-0018

Examination for Reinstatement of Certification

Pursuant to ORS 690.085(5), a certificate that has expired beyond three years, unless previously approved by the board, may be reinstated upon compliance with all of the following criteria and submission of required documentation:

(1) A signed and completed application form prescribed by the agency in accordance with requirements specified in OAR 331-030-0000 and 817-030-0015, which includes the applicant's expired certificate number(s);

(2) A completed official practical examination transcript issued by the appropriate Oregon licensed career showing attainment of a passing score on the practical examination conducted by the Oregon licensed career school within two years preceding the date of application;

(3) Attainment of a passing score on the Board approved written examination(s) within two years preceding the date of application; and

(4) Payment of the required application, examination and certificate fees specified in OAR 817-040-0003.

Stat. Auth.: ORS 690.035, 690.046, 690.048 & 690.165

Stats. Implemented: ORS 690.035, 690.046, 690.048 & 690.165

Hist.: BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-10-11

817-035-0050

Application and Criteria for Certificate of Identification

(1) Pursuant to ORS 690.123, a practitioner who provides services outside of a licensed facility must hold a certificate of identification.

(2) The applicant for a certificate of identification must:

(a) Submit a completed application prescribed by the agency, indicating applicant's name, current residential address (and mailing address if applicable), telephone number, and certificate number;

(b) Pay required application, examination and certificate of identification fees;

(c) Pass the Oregon Laws and Rules examination. Completion of the examination is not required if the applicant passed the Oregon Laws &

ADMINISTRATIVE RULES

Rules examination within two years before the date of application for a certificate of identification.

(d) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a certificate of identification, and submits with certificate of identification application a current copy of the ABN filing.;

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of States, Corporations Division under ORS 648.005 through 648.990.

(3) Subject to ORS 676.612 and OAR 331-030-0000, upon qualification, the agency will issue a certificate of identification indicating the fields of practice the practitioner is certified to perform outside of a licensed facility.

(4) The certificate of identification is issued as a separate document from the certificate authorizing the holder to perform services.

(5) A certificate of identification may be renewed upon submission of an application for renewal, payment of required fees and passage of the Oregon Laws and Rules examination or completion of the agency's Safety & Infection Control class every two years from the date the certificate of identification becomes invalid.

(6) A holder of a certificate of identification shall:

(a) Provide each client with the agency's name, address and telephone number, for comment on any of the services received or on any of the sanitary procedures followed while performing services;

(b) Display the practitioner's certificate number and certificate of identification number on all advertising when soliciting business;

(c) Comply with the Board's health, safety, and infection control rules and regulations; and

(d) Be subject to random audit to verify compliance with safety, infection control and licensing requirements.

(7) The certificate of identification may be suspended or revoked by the agency if the Board has taken action to refuse to issue or renew, or has suspended or revoked the practitioner's certificate.

Stat. Auth.: ORS 676.615, 690.048, 690.123 & 690.165

Stats. Implemented: ORS 676.615, 690.048, 690.123 & 690.165

Hist.: BH 4-1984, f. & cert. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, f. & cert. ef. 7-1-94; Renumbered from 817-020-0040; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 1-2009, f. & cert. ef. 6-1-09; BOC 3-2010(Temp), f. 11-10-10, cert. ef. 11-15-10 thru 5-10-11; BOC 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-10-11

817-040-0003

Fees

(1) Applicants and authorization holders are subject to provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency, in consultation with the Board, are as follows:

(a) Application:

(A) Practitioner certificate: \$25 per field of practice.

(B) Practitioner certificate by reciprocity: \$100 per field of practice.

(C) Independent contractor registration: \$50.

(D) Freelance authorization: \$25.

(E) Facility license: \$100.

(F) Temporary facility permit: \$50.

(G) Demonstration permit: \$25.

(b) Examination:

(A) Oregon laws & rules: \$50.

(B) Barbering: \$50.

(C) Hair design: \$50.

(D) Esthetics: \$50.

(E) Nail technology: \$50.

(F) Freelance authorization: \$25

(c) Original issuance of authorization to practice:

(A) Practitioner certificate: \$40 for two years.

(B) Practitioner certificate by reciprocity: \$45 for two years.

(C) Independent contractor registration: \$100 for one year.

(D) Freelance authorization: \$100 for one year.

(E) Facility license: \$110 for one year.

(d) Permits:

(A) Temporary facility: \$100.

(B) Demonstration: \$50.

(e) Renewal of authorization to practice:

(A) Practitioner certificate: \$45 for two years.

(B) Practitioner certificate: on-line payment: \$40 for two years.

(C) Independent contractor registration: \$100 for one year.

(D) Freelance authorization: \$100 for one year.

(E) Facility license: \$110 for one year.

(f) Other administrative fees:

(A) Delinquency fee: \$30 for each year in expired status up to three years.

(B) Replacement of certificate, license or registration, including name change: \$25.

(C) Duplicate certificate, license or registration document: \$25 per copy with maximum of three.

(D) Affidavit of licensure: \$50.

(E) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

(F) Information packets: \$10.

Stat. Auth.: ORS 676.605, 676.606, 676.615 & 690.235

Stats. Implemented: ORS 676.605, 676.615, 690.235 & 30.701

Hist.: BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1990(Temp), f. 4-20-90 & cert. ef. 6-1-90; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 2-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 12-25-09; BOC 3-2009(Temp), f. 12-21-09, cert. ef. 12-26-09 thru 5-31-10; BOC 1-2010, f. 3-31-10, cert. ef. 4-1-10; BOC 2-2010, f. & cert. ef. 10-1-10; BOC 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-10-11

Oregon Health Licensing Agency, Environmental Health Registration Board Chapter 338

Rule Caption: Change to one year renewal cycle in order to reduce financial burden to registrants.

Adm. Order No.: EHRB 1-2011(Temp)

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11 thru 8-28-11

Notice Publication Date:

Rules Amended: 338-005-0030

Subject: On November 5, 2010 the Environmental Health Registration Board proposed going from a two year renewal cycle to a one year cycle in order to reduce the financial burden imposed on environmental health and waste water specialists including state and local governments with employees who are required to be registered and who incur the cost of renewal.

Rules Coordinator: Samantha Patnode—(503) 373-1917

338-005-0030

Fees

(1) Applicants and registrants 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) Registration — environmental health specialist: \$150.

(B) Registration — waste water specialist: \$150.

(C) Registration by reciprocity: \$200.

(D) Trainee registration — environmental health specialist: \$150.

(E) Trainee registration — waste water specialist: \$150.

(b) Examination:

(A) Oregon laws & rules: \$50;

(B) Written — environmental health specialist: \$250.

(C) Written — waste water specialist: \$250.

(c) Original issuance of registration (including by reciprocity):

(A) Environmental health specialist: \$150 for one year.

(B) Waste water specialist: \$150 for one year.

(C) Trainee registration — environmental health specialist: \$300 for two years.

(D) Trainee registration — waste water specialist: \$300 for two years.

(d) Renewal of registration:

(A) Environmental health specialist: \$150 for one year.

(B) Waste water specialist: \$150 for one year.

(e) Trainee extension (six month increments):

(A) Environmental health specialist trainee: \$100.

(B) Waste water specialist trainee: \$100.

(f) Other administrative fees:

(A) Delinquent (late) renewal of registration: \$50 for each year in expired status up to three years.

ADMINISTRATIVE RULES

- (B) Replacement of registration, including name change: \$25.
- (C) Duplicate registration document: \$25 per copy with maximum of three.
- (D) Affidavit of licensure: \$50.

(E) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

(F) Reactivation of registration: \$150.

Stat. Auth.: ORS 676.605, 700.080 & 700.240

Stats. Implemented: ORS 676.605, 700.080 & 700.240

Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 4(Temp), f. & ef. 7-1-75 thru 10-28-75; SRB 5, f. 10-14-75, ef. 11-11-75; SRB 1-1981, f. & ef. 4-8-81; SRB 1-1984, f. & ef. 10-26-84; SRB 1-1985, f. & ef. 11-1-85; SRB 1-1993(Temp), f. & cert. ef. 10-22-92; SRB 1-1993, f. & cert. ef. 3-18-93; SRB 1-1996(Temp), f. 5-15-96, cert. ef. 6-1-96; SRB 3-1996, f. 6-28-96, cert. ef. 7-1-96, Renumbered from 338-010-0020; SRB 1-1997(Temp), f. & cert. ef. 7-23-97; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-1999(Temp), f. 3-30-99, cert. ef. 4-1-99 thru 9-27-99; Administrative correction 11/17/99; SRB 1-2000, f. 1-28-00, cert. ef. 2-1-00; SRB 2-2000, f. 9-29-00, cert. ef. 10-1-00; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04; SRB 1-2008, f. 9-15-08 cert. ef. 10-1-08; EHRB 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

Rule Caption: Change to one year renewal cycle in order to reduce financial burden to registrants.

Adm. Order No.: EHRB 2-2011(Temp)

Filed with Sec. of State: 3-3-2011

Certified to be Effective: 3-4-11 thru 8-28-11

Notice Publication Date:

Rules Amended: 338-005-0030

Subject: On November 5, 2010 the Environmental Health Registration Board proposed going from a two year renewal cycle to a one year cycle in order to reduce the financial burden imposed on environmental health and waste water specialists including state and local governments with employees who are required to be registered and who incur the cost of renewal.

Rules Coordinator: Samantha Patnode—(503) 373-1917

338-005-0030

Fees

(1) Applicants and registrants 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) Registration — environmental health specialist: \$150.

(B) Registration — waste water specialist: \$150.

(C) Registration by reciprocity: \$200.

(D) Trainee registration — environmental health specialist: \$150.

(E) Trainee registration — waste water specialist: \$150.

(b) Examination:

(A) Oregon laws & rules: \$50.

(B) Written — environmental health specialist: \$250.

(C) Written — waste water specialist: \$250.

(c) Original issuance of registration (including by reciprocity):

(A) Environmental health specialist: \$150 for one year.

(B) Waste water specialist: \$150 for one year.

(C) Trainee registration — environmental health specialist: \$300 for two years.

(D) Trainee registration — waste water specialist: \$300 for two years.

(d) Renewal of registration:

(A) Environmental health specialist: \$150 for one year.

(B) Waste water specialist: \$150 for one year.

(e) Trainee extension (six month increments):

(A) Environmental health specialist trainee: \$100.

(B) Waste water specialist trainee: \$100.

(f) Other administrative fees:

(A) Delinquent (late) renewal of registration: \$25 for the first month in expired status, and \$10 each month thereafter while in an expired status.

(B) Replacement of registration, including name change: \$25.

(C) Duplicate registration document: \$25 per copy with maximum of three.

(D) Affidavit of licensure: \$50.

(E) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

Stat. Auth.: ORS 676.605, 700.080 & 700.240

Stats. Implemented: ORS 676.605, 700.080 & 700.240

Hist.: SRB 2, f. 4-7-72, ef. 5-1-72; SRB 4(Temp), f. & ef. 7-1-75 thru 10-28-75; SRB 5, f. 10-14-75, ef. 11-11-75; SRB 1-1981, f. & ef. 4-8-81; SRB 1-1984, f. & ef. 10-26-84; SRB 1-1985, f. & ef. 11-1-85; SRB 1-1993(Temp), f. & cert. ef. 10-22-92; SRB 1-1993, f. & cert. ef. 3-18-93; SRB 1-1996(Temp), f. 5-15-96, cert. ef. 6-1-96; SRB 3-1996, f. 6-28-96, cert. ef. 7-1-96, Renumbered from 338-010-0020; SRB 1-1997(Temp), f. & cert. ef. 7-23-97; SRB 1-1998, f. 4-29-98, cert. ef. 5-1-98; SRB 1-1999(Temp), f. 3-30-99, cert. ef. 4-1-99 thru 9-27-99; Administrative correction 11/17/99; SRB 1-2000, f. 1-28-00, cert. ef. 2-1-00; SRB 2-2000, f. 9-29-00, cert. ef. 10-1-00; SRB 2-2004, f. 6-29-04, cert. ef. 7-1-04; SRB 1-2008, f. 9-15-08 cert. ef. 10-1-08; EHRB 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11

Oregon Housing and Community Services Department Chapter 813

Rule Caption: Removes the maximum project award limit of \$300,000.

Adm. Order No.: OHCS 2-2011

Filed with Sec. of State: 2-17-2011

Certified to be Effective: 2-17-11

Notice Publication Date: 1-1-2011

Rules Amended: 813-042-0030

Subject: 813-042-0030 — Removes the maximum project award limit of \$300,000.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-042-0030

Distribution of Funds

(1) The Department shall develop a distribution formula which takes into account the relative housing needs of regions in the state, and shall concentrate funds in those areas of the state with the greatest need for low- and very-low income housing as may be evidenced by factors including, but not limited to, the unmet housing need, extent of overcrowding or number of poverty households.

(2) The distribution formula shall provide for a minimum amount of funds to regions of the state. If there are not enough applications submitted from a particular region to use the minimum regional amount, the funds may be distributed to other regions.

Stat. Auth.: ORS 456.515 - 456.720, 458.600 - 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 7-2007, f. & cert. ef. 1-11-07; OHCS 12-2010(Temp), f. & cert. ef. 8-24-10 thru 2-18-11; OHCS 2-2011, f. & cert. ef. 2-17-11

Rule Caption: Removes the maximum project award limit of \$300,000.

Adm. Order No.: OHCS 3-2011

Filed with Sec. of State: 2-17-2011

Certified to be Effective: 2-17-11

Notice Publication Date: 1-1-2011

Rules Amended: 813-043-0030

Subject: 813-043-0030 — Removes the maximum project award limit of \$300,000.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-043-0030

Distribution of Funds

(1) The Department shall develop a distribution formula which takes into account the relative housing needs of regions and shall concentrate funds in those areas of the state with the greatest housing need, as may be evidenced by factors including but not limited to, the unmet housing need, extent of overcrowding, and number of poverty households.

(2) The distribution formula shall provide for a minimum amount of funds to regions of the state. If an inadequate number of applications are submitted from a particular region to use the minimum regional amount, then the funds may be redistributed to other regions.

Stat. Auth.: ORS 458.600 - 458.650

Stats. Implemented: ORS 458.600 - 458.650 & Ch. 740, OL 1991

Hist.: HSG 4-1991(Temp), f. & cert. ef. 10-10-91; HSG 4-1992, f. & cert. ef. 4-28-92; OHCS 13-2010(Temp), f. & cert. ef. 8-24-10 thru 2-18-11; OHCS 3-2011, f. & cert. ef. 2-17-11

Rule Caption: Landlord Notice Requirements to Tenants When a Manufactured Dwelling Park or Marina is Closed.

Adm. Order No.: OHCS 4-2011(Temp)

Filed with Sec. of State: 3-1-2011

Certified to be Effective: 3-1-11 thru 8-27-11

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Adopted: 813-065-0120, 813-065-0130, 813-065-0140, 813-065-0150, 813-065-0200, 813-065-0210, 813-065-0220, 813-065-0230, 813-065-0240

Rules Suspended: 813-008-0010, 813-008-0020, 813-008-0025, 813-008-0030, 813-008-0040

Rules Ren. & Amend: 813-008-0005 to 813-065-0100, 813-008-0015 to 813-065-0110

Subject: 813-065-0100 thru 813-065-0150 This set of rules include new and amended notice requirements of landlords to tenants when a manufactured dwelling park is closed.

813-065-0200 thru 813-065-0210 These are new rules that provide the notice requirements of landlords to tenants when a marina is closed.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-008-0010

Definitions

Words and terms used in OAR 813, division 8 are consistent with the definitions in ORS 90.100.

Stat. Auth.: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02; Suspended by OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-008-0020

Alternate Manufactured Dwelling or Floating Home Space

(1) The landlord shall notify the tenant, in writing, of alternate space to which the tenant can move the manufactured dwelling or floating home at least 45 days before delivering a 180-day notice of termination.

(2) The tenant shall determine, solely at the judgment and discretion of the tenant, if the alternate space identified in the 45-day notice described above is acceptable and shall notify the landlord in writing of his or her decision within 20 days of receiving the notice of the alternative space.

(3) The landlord shall secure the space acceptable to the tenant from the time of acceptance until the date the relocated manufactured dwelling or floating home is approved for the tenant's occupancy. Costs to secure the space for this period shall be included in the landlord-paid moving expenses.

Stat. Auth.: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02; Suspended by OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-008-0025

Moving and Set Up Expenses

(1) Actual moving and set-up expenses shall be paid or reimbursed by the landlord, as agreed by the parties, for moving the tenant's manufactured dwelling or floating home, together with all possessions, to another acceptable location. Eligible expenses include, but are not limited to:

- (a) Costs for removing and reinstalling skirting;
- (b) Costs for disconnecting and reconnecting utilities, including fees related thereto;
- (c) Costs for disconnecting and reinstalling awning(s) and deck(s);
- (d) Trip permit and public inspection fees;
- (e) Transportation costs;
- (f) Set-up charges;
- (g) Costs for manufactured dwelling or floating home improvements necessary to meet destination facility space standards;
- (h) Costs for packing and unpacking manufactured dwelling or floating home contents as necessary for unit relocation for elderly and disabled persons, as those persons are defined in this Chapter;
- (i) Costs for temporary housing and meals for the tenant during unit relocation and set up; and
- (j) Landlord expenses to secure the relocation space acceptable to the tenant from the time of tenant acceptance until the date the relocated manufactured dwelling or floating home is approved for occupancy.

(2) Notwithstanding the foregoing, the amount of moving and set-up expenses required to be paid by the landlord under these rules shall not exceed actual costs or \$3,500, whichever is less, unless otherwise agreed to by the landlord.

Stat. Auth.: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650

Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02; Suspended by OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-008-0030

Payment of Expenses

(1) The tenant and landlord shall agree in writing upon the moving and set-up method and source of services to be provided for same not less than 20 days before the tenant's required moving date.

(2) The tenant shall submit billings or paid receipts for expenses eligible for reimbursement to the landlord within ten days of receipt of same. The landlord shall timely pay unpaid billings directly to the vendor and shall reimburse the tenant for appropriate expenses paid directly by the tenant. The landlord shall make payment for or reimbursement of appropriate expenses not later than 20 days following receipt of any such billings or paid receipts.

(3) Based upon written agreement with the tenant, the landlord may contract directly with vendors as may be cost advantageous in accomplishing the tenant's move so long as such services are mutually agreed upon by landlord and tenant and performed by appropriately registered or licensed and bonded tradesmen or agents.

(4) If no agreement is timely reached between landlord and tenant prior to a tenant's required moving date, the landlord shall timely reimburse the tenant for appropriate moving and set-up expenses consistent with these rules.

Stat. Auth.: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 90.630, 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 458.650

Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02; Suspended by OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-008-0040

Waiver

The Director may waive or modify any requirements of OAR 813, division 008, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 456.650
Stats. Implemented: ORS 90.800 - 90.840, 183, 456.515 - 456.723 & 458.210 - 456.650
Hist.: OHCS 17-2002, f. & cert. ef. 12-5-02; Suspended by OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0100

Purpose

OAR 813-065-0100 to 813-065-0150 are adopted for the purpose of carrying out the statutory requirements for notices that landlords of manufactured dwelling parks must give to tenants when a park is closed, under ORS 90.645, 90.650, 90.655 and 446.543.

Stat. Auth.: ORS 90.650 & 446.543
Stats. Implemented: ORS 90.645, 90.650 & 446.543
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02; Renumbered from 813-008-0005 by OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0110

Park Closure Notice When Closure Not Required by Eminent Domain or Government Order

(1) When a manufactured dwelling park, or a portion of the park that includes the space for a manufactured dwelling, is to be closed under ORS 90.645 (1) or (2), the landlord of the park shall provide at least the following information to the tenants of the park or the affected portion of the park, as applicable:

- (a) The information required by ORS 90.645(3);
- (b) The landlord's or representative agent's address for contact and communications;
- (c) The actions and activities the landlord plans to take in the facility closure that may affect the facility tenants;
- (d) The tenant's rights under ORS 90.645 for a 365-day closure notice including:

(A) A statement of the amount that the landlord is required to pay the tenant for each space for which a rental agreement is terminated;

(B) A notice that the landlord is not required to make the payment under ORS 90.645(1) unless the tenant gives the landlord not less than 30 days' and not more than 60 days' written notice of the date within the 365-day period on which the tenant will cease tenancy;

(C) A statement that if the manufactured dwelling is abandoned, the landlord may condition the payment upon waiver by the tenant under ORS

ADMINISTRATIVE RULES

90.645(5) and may not charge the tenant to store, sell or dispose of the abandoned manufactured dwelling; and

(D) A statement of the rights of the landlord and the tenant under ORS 90.645(6), (7) and (8);

(e) The tenant's rights under ORS 90.645 for a 180- day closure notice, if applicable, including:

(A) A statement of the amount that the landlord is required to pay the tenant for each space for which a rental agreement is terminated and a statement that if the circumstances eliminating the payment obligation under ORS 90.645(2) apply, the landlord is not required to make the payment; and

(B) A notice that the landlord is not required to make the payment under ORS 90.645(1) unless the tenant gives the landlord not less than 30 days and not more than 60 days written notice of the date within the 365 day period on which the tenant will cease tenancy;

(C) A statement that if the manufactured dwelling is abandoned, the landlord may condition the payment upon waiver by the tenant under ORS 90.645(5) and may not charge the tenant to store, sell or dispose of the abandoned manufactured dwelling; and

(D) A statement of the rights of the landlord and the tenant under ORS 90.645(6), (7) and (8); and

(f) A copy of ORS 90.645 and the definitions in ORS 90.100 for "landlord," "manufactured dwelling," "manufactured dwelling park," "month-to-month tenancy," "rental agreement," and "tenant"

(2) A landlord shall deliver the notice to which this rule applies either personally or by first class mail, as "first class mail" is defined in ORS 90.100, to each affected tenant. A landlord shall deliver the notice so that the tenant receives the notice not later than the 365th day or the 180th day, as applicable, before the date designated in the notice for termination. The notice shall be delivered to the tenant at the address specified in the lease or rental agreement between the tenant and the landlord. In any sublet unit, the notice shall be delivered to the tenant at the tenant's current address and to the subtenant in possession. If the tenant's address is unknown and not reasonably discoverable, the notice for the tenant shall be delivered to the subtenant with written instructions to forward it to the tenant. Failure of the subtenant to deliver the notice to the tenant does not limit the landlord's right to terminate the rental agreement because of facility closure.

(3) For the notice of the closure of a manufactured dwelling park or part of a park that the landlord of the park must give tenants under ORS 90.645(3), the Office of Manufactured Dwelling Park Community Relations establishes the sample form designated for the notice on the department's website under the Community Service connection. The sample form is also available upon request from the department.

Stat. Auth.: ORS 90.650 & 446.543

Stats. Implemented: ORS 90.645, 90.650 & 446.543

Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02; Renumbered from 813-008-0015 by OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0120

Park Closure Notice When Closure is Required by Eminent Domain or Government Order

(1) When a manufactured dwelling park or a portion of the park that includes the space for a manufactured dwelling is to be closed under ORS 90.645(9), the landlord of the park shall provide at least the following information to the tenants of the park or the affected portion of the park, as applicable:

(a) The information required by ORS 90.645(9);

(b) The landlord's or representative agent's address for contact and communications;

(c) The actions and activities the landlord plans to take in the facility closure that may affect the facility tenants;

(d) A copy of ORS 90.645 and of this OAR chapter 813, division 008, and the definitions in ORS 90.100 for "landlord," "manufactured dwelling," "manufactured dwelling park," month to month tenancy," "rental agreement" and "tenant"; and

(2) When the federal, state or local law or order that requires closure or partial closure of a manufactured dwelling park under ORS 90.645(9) is known by the landlord to provide greater rights or protections for a tenant than are provided by ORS 90.645(9), including government relocation benefits, the landlord shall do the following:

(a) Modify the notice required to be furnished to tenants by section (1) of this rule so that the notice explains the greater rights or protections and retains material that is otherwise required and applicable, or give the notice required under the federal, state or local law and include all material in the notice required by section (1) of this rule that remains applicable; and

(b) Include with the notice a copy of the applicable law or order.

(3) A landlord shall deliver the notice to which this rule applies either personally or by first class mail, as "first class mail" is defined in ORS 90.100, to each affected tenant. A landlord shall deliver the notice so as to ensure that the tenant is given the full 15 days' notice. The notice shall be delivered to the tenant at the address specified in the lease or rental agreement between the tenant and the landlord. In any sublet unit, the notice shall be delivered to the tenant at the tenant's current address and to the subtenant in possession. If the tenant's address is unknown and not reasonably discoverable, the notice for the tenant shall be delivered to the subtenant with written instructions to forward it to the tenant. Failure of the subtenant to deliver the notice to the tenant does not limit the landlord's right to terminate the rental agreement because of facility closure.

(4) For the notice of closure of a manufactured dwelling park or part of a park that the landlord of the park must give tenants under ORS 90.645(9), the Office of Manufactured Dwelling Park Community Relations establishes the sample form designated for the notice on the Department's website under the Community Service Division connection. The sample form is also available upon request from the Department.

Stat. Auth.: ORS 446.543

Stats. Implemented: ORS 90.645, 90.650 & 446.543

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0130

Park Closure Notice When Local Laws are More Stringent

When an ordinance, rule or other local law regulating manufactured dwelling park closures or partial closures adopted by a local government continues to apply to a manufactured dwelling park under ORS 90.660, if the local law provides greater rights or protections for a tenant than are provided by ORS 90.645, the landlord shall do the following:

(1) Modify the notice required to be furnished to tenants by ORS 90.645 and either OAR 813-065-0110 or 813-065-0120 as applicable, so that the notice explains the greater rights or protections under the local law and retains material that is otherwise required and applicable, or give the notice required under the local law and include all material in the notice required by section (1) of this rule that remains applicable.

(2) Include with the notice a copy of the local law that applies.

Stat. Auth.: ORS 90.650 & 446.543

Stats. Implemented: ORS 90.645, 90.650 & 446.543

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0140

Copy of Park Closure Notice to Department; Tenant Contacts

When a landlord gives notice of closure of a manufactured dwelling park to tenants of the park as required by OAR 813-065-0110, 813-065-0120 or 813-065-0130, the landlord shall also furnish all of the following to the Department:

(1) A copy of the entire notice given to the tenants. The copy must include copies of any accompanying statutes, rules and local laws, except that instead of the statutes and rules, the landlord may provide specific statute and rule number citations. If the landlord gives notices with differing content to different categories of tenants, the landlord shall furnish to the Department a copy of each such notice given. If local laws apply under OAR 813-008-0130, the landlord shall also furnish a copy of the applicable local laws.

(2) A list of the names of all tenants to whom the landlord gave the notice, with contact information for each tenant that includes the tenant's address, space number and phone number.

Stat. Auth.: ORS 90.650 & 446.543

Stats. Implemented: ORS 90.645, 90.650 & 446.543

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0150

Notice of Tax Credit Eligibility Upon Closure of Park; Sample Form

For the notice of tax credit and right to appeal that a landlord of a manufactured dwelling park is required by ORS 90.650 to give to a tenant when a manufactured dwelling park is closed, the Office of Manufactured Dwelling Park Community Relations establishes the sample form designated for the notice on the Department's website. The sample form is also available upon request from the Department.

Stat. Auth.: ORS 90.650

Stats. Implemented: ORS 90.645 & 90.650

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0200

General Purpose

OAR 813-065-0200 to 813-065-0240 are adopted for the purpose of carrying out the requirements of ORS 90.671 for notices that landlords of marinas must give to tenants when a marina is closed.

Stat. Auth.: ORS 90.671

ADMINISTRATIVE RULES

Stats. Implemented: ORS 90.671
Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0210

Closure Notice of Marina

(1) When a landlord is required by ORS 90.671(1) to give a tenant written notice of termination of a rental agreement because the marina or portion of a marina is closing and the land or leasehold is being converted to a different use, the landlord shall provide at least the following information in the notice:

(a) The landlord's or representative agent's address for contact and communications;

(b) The firm date set for the closure of the marina or of the relevant portion of the marina;

(c) The actions and activities the landlord plans to take in the closure that may affect the marina tenants;

(d) The landlord's obligations under ORS 90.671;

(e) The tenant's rights for a 365-day closure notice or 180-day closure notice, as applicable, including the right, if any, for payment of moving expenses under OAR 813-065-0240 and the eligible moving expenses described in 813-065-0230;

(f) The voluntary benefits, if any, to be provided to the tenant by the landlord or contracted between the parties, together with any shortened period between notice and termination of the rental agreement arising therefrom;

(g) A copy of ORS 90.671 and OAR 813-065-0200 to 813-065-0240;

(h) Any definitions of statutory terms used in OAR 813-065-0200 to 813-065-0240, applicable to the tenant's rights under the rules; and

(i) A copy of any city or county regulations, laws or ordinances that apply to tenant interests in closures of marinas and, if the local regulations, laws or ordinances provide greater rights and protection than are available under state law, a statement that the tenant may be entitled to the greater rights and protections and a description of the additional rights and protections that apply.

(2) When a landlord is required by ORS 90.671(7) to give a tenant written notice of termination of a rental agreement and the applicable federal, state or local law or order is known by the landlord to provide greater rights or protections for a tenant than are provided by ORS 90.671(7), including government relocation benefits, the landlord shall furnish the tenant a copy of the applicable law or order and:

(a) In the notice required by ORS 90.671(7), shall include an explanation of the greater rights; or

(b) Instead of the notice required by ORS 90.671(7), if the federal, state or local law requires a notice of the rights or protections, shall provide that notice along with all material in the notice required by ORS 90.671(7).

(3) The landlord shall deliver a notice required by ORS 90.671 personally or by first class mail to each affected tenant so that the tenant receives the notice not later than the applicable required number of days before the date designated in the notice for termination. The notice must be delivered to the tenant at the address specified in the lease or rental agreement between the tenant and the landlord. In any sublet unit, the notice must be delivered to the tenant at the tenant's current address and to the subtenant in possession. If the tenant's address is unknown and not reasonably discoverable, the landlord shall deliver the tenant's copy to the subtenant with written instructions to forward it to the tenant. Failure of the subtenant to deliver the copy to the tenant does not limit the landlord's right to terminate the rental agreement because of the closure.

Stat. Auth.: ORS 90.671

Stats. Implemented: ORS 90.671

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0220

Alternate Marina Space

(1) The landlord shall notify the tenant, in writing, of alternate space to which the tenant can move the floating home at least 45 days before delivering a 180-day notice of termination.

(2) The tenant may determine, solely at the judgment and discretion of the tenant, if the alternate space identified in the notice given under section (1) of this rule is acceptable and shall notify the landlord in writing of the tenant's decision not later than the 20th day after the tenant receives the notice.

(3) The landlord shall secure the space acceptable to the tenant from the time of acceptance until the date the relocated floating home is approved for the tenant's occupancy. Costs to secure the space for this period must be included in the landlord-paid moving expenses.

Stat. Auth.: ORS 90.671

Stats. Implemented: ORS 90.671

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0230

Moving and Set Up Expenses

(1) The landlord shall pay or reimburse actual moving and set-up expenses, as agreed by the landlord and the tenant, for moving the tenant's floating home, together with all possessions. Eligible expenses include, but are not limited to:

(a) Costs for disconnecting and reconnecting utilities, including fees related thereto;

(b) Costs for disconnecting and reinstalling any awning or deck;

(c) Any governmental fees relating to moving and inspecting the floating home;

(d) Costs of moving the floating home;

(e) Set-up charges;

(f) Costs for floating home improvements necessary to meet destination marina space standards;

(g) Costs for packing and unpacking contents of the floating home as necessary for relocation of an elderly or disabled person;

(h) Costs for temporary housing and meals for the tenant during relocation and set up; and

(i) Landlord expenses to secure the relocation space from the time of tenant acceptance until the date the relocated floating home is approved for occupancy.

(2) This rule does not require a landlord to pay an amount of moving and set-up expenses that exceeds actual costs or \$3,500, whichever is less, unless the landlord otherwise agrees.

Stat. Auth.: ORS 90.671

Stats. Implemented: ORS 90.671

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

813-065-0240

Payment of Expenses

(1) The tenant and landlord shall agree in writing upon the moving and set-up method and the source of services to be provided for the method not less than the 20th day before the tenant's required moving date.

(2) The landlord shall timely pay unpaid billings directly to the vendor and shall reimburse the tenant for appropriate expenses paid directly by the tenant if the tenant submits billings or paid receipts for the expenses within ten days after receiving the billings or receipts. The landlord shall reimburse the tenant not later than the 20th day after the tenant submits the billings or receipts.

(3) The landlord may contract directly with vendors for the tenant's move if the services are mutually agreed upon in writing by the landlord and tenant and are performed by appropriately registered or licensed and bonded personnel.

(4) If the landlord and tenant do not reach an agreement in a timely manner prior to the tenant's required moving date, the landlord shall timely reimburse the tenant for appropriate moving and set-up expenses consistent with this rule.

Stat. Auth.: ORS 90.671

Stats. Implemented: ORS 90.671

Hist.: OHCS 4-2011(Temp), f. & cert. ef. 3-1-11 thru 8-27-11

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend interest in the business rule to add clarity to the term "unlicensable".

Adm. Order No.: OLCC 1-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 11-1-2010

Rules Amended: 845-005-0311

Subject: This rule defines "interest in the business", including financial interest, for the purposes of describing to whom the Commission's license refusal reasons apply. Staff recommended amending section (4) of this rule to clarify the term "unlicensable". There has been some confusion amongst both licensees and staff as to the meaning of this term. This amendment adds language directly from the authorizing statute (ORS 471.757) in order to add more specificity to the concept of "unlicensable".

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-005-0311

True Name on Application; Interest in Business

(1) True name on application: Applications for licenses must specify the real and true names of all persons who own or have an interest in the

ADMINISTRATIVE RULES

business proposed to be licensed by the Commission, and these persons or in the case of corporations, a duly authorized officer, must sign the application.

(2) License privileges: The license privileges are available only to the persons specified in the application and only for the premises designated on the license.

(3) Interest in the business: For purposes of section (1) of this rule, the following persons have an "interest in the business":

(a) Any person who receives or is entitled to receive, directly or indirectly, any of the profits of a licensed business except persons who receive any of the profits as:

(A) A bonus paid to an employee, if the employee is on a fixed wage or salary and the bonus is not more than 25 percent of the employee's pre-bonus annual compensation, or the bonus is based on a written incentive/bonus program and is not unreasonable or out of the ordinary for the services rendered;

(B) Repayment of a loan or payment on a contract to purchase property unless the loan or contract holder exercises control over or participates in the management of the business;

(C) Reasonable payment for rent under a bona fide lease or rental obligation unless the lessor or property manager exercises control over or participates in the management of the business;

(D) Reasonable payment for a franchise under a bona fide franchise agreement;

(E) Payment of dividends to corporate stockholders.

(b) A person who does not receive any of the profits but receives compensation that is out of the ordinary for the services rendered. "Out of the ordinary" includes both over and under compensations;

(c) Any person or firm who contracts to provide food service or to manage or operate any part of the licensed premises, other than as an employee;

(d) Any person who invests money or other property in the licensed business, other than a stockholder. Any stockholder who owns ten percent or more stock must receive Commission approval (OAR 845-006-0475). For purposes of this subsection, a bona fide loan that entitles the lender to a return of only the principal and interest on the principal is not an investment;

(e) A contract purchaser of a licensed business. A contract purchaser may not operate or invest prior to Commission approval. A contract purchaser may make contract payments into an escrow account prior to Commission approval of the change of ownership, but may not operate the business other than as an employee.

(4) ORS 471.757 allows the Commission to deny, cancel or suspend a license if circumstances exist with regard to any person who has any financial interest in the licensed business or place of business such that the Commission would have a basis to cancel or refuse to issue a license to the person with a financial interest if that person were the licensee or applicant. For purposes of ORS 471.757, financial interest exists if a person may financially benefit or suffer based on the performance of the licensed business. Examples of persons having a financial interest in the business include:

(a) Any person who rents or leases property to or for the licensed business;

(b) Any person who invests or loans money or other property for the licensed business;

(c) Any person who gives money or property for the licensed business and who

(A) Exercises control over or participates in the management of the licensed business; or

(B) Is employed by the licensed business; or

(d) The spouse or domestic partner of the licensee or license applicant. For purposes of this rule, domestic partners (lower case) are individuals who share the same regular and permanent address and who share joint financial assets, resources, accounts or obligations, such as home ownership, checking or banking accounts, brokerage accounts or health care coverage. Domestic partner (lower case) also includes a "Domestic Partner" (upper case), which means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(5) For good cause shown, the Commission may waive the requirements in this rule to take into account unusual or extraordinary circumstances.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.757

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2002, f. 6-12-02 cert. ef. 7-1-02; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 1-2011, f. 2-23-11, cert. ef. 3-1-11

Rule Caption: Address neighborhood livability issues by tying license notice requirements and additional restrictions to licensing criteria.

Adm. Order No.: OLCC 2-2011

Filed with Sec. of State: 2-23-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 11-1-2010

Rules Amended: 845-005-0331, 845-005-0355, 845-006-0480

Subject: OAR 845-005-0331 Licensing Exterior Areas: This rule describes the refusal basis for licensing an exterior area of a premises. The rule lists the reasons the Commission will refuse to license an exterior area unless the applicant can show good cause to overcome the refusal basis. Staff proposed an additional refusal reason, section (5), for when an applicant or licensee will allow entertainment in the exterior area after midnight. This should assist the Commission in addressing late night noise issues that may impact neighborhood livability.

OAR 845-005-0355 Restricting License Privileges and Conduct of Operations: This rule describes the conditions under which the Commission may restrict a license or service permit. Staff proposed an additional reason to impose restrictions, section (1)(d), where if an applicant or licensee submits a qualifying control or operating plan as good cause to overcome a license refusal basis, the Commission shall impose as restrictions on the license those elements of the control plan that were essential to the decision to grant the license. As with any other restrictions, these will remain in place until removed and failure to comply with the restrictions is a Category I violation. In addition, staff proposed additional language in section (2)(b) related to determining public interest or convenience reasons to restrict a license. The new language specifies that excessive or obtrusive noise, music or sound vibrations is one of the areas of violations where restrictions can be designed to eliminate or prevent contributing conditions.

OAR 845-006-0480 Change in Premises or Operation: Prior Notice Required: This rule provides a way for a licensee to make changes in their business operation while still assuring the Commission that the changes will meet our licensing criteria. With these amendments licensees are only required to notify the Commission when there are changes to the premises that effect licensure, such as a change in the physical dimensions, a change in the business trade name, or a change that could reasonably affect the assigned minor posting.

Overall, the amendments in this rule package are designed to provide the Commission with additional tools to address neighborhood livability issues, specifically in the area of excessive and late night noise. At the same time, by tying required notices and additional restrictions to licensure, the amendments help focus both our enforcement and licensing efforts on those factors in a business' ongoing operating plan that impact what is within our authority to regulate.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-005-0331

Licensing Exterior Areas

(1) The Commission shall refuse to license an exterior area, and may revoke its approval of an outdoor area previously licensed, for any of the reasons listed in this rule unless the applicant shows good cause that outweighs the refusal basis. The following sections state the refusal reasons that apply to exterior areas.

(2) The applicant or licensee requests licensing of an area controlled by the local governing body, and the local governing body has not approved, or withdraws its approval of, the use proposed by the applicant or licensee.

(3) The exterior area proposed to be licensed is not adjacent to the licensee's existing or the applicant's proposed licensed premises.

(4) The applicant or licensee fails to demonstrate there will be adequate supervision of the area so as to prevent violations of the liquor laws.

(5) The applicant or licensee will allow entertainment in the exterior area between 12:00 a.m. and 7:00 a.m.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2011, f. 2-23-11, cert. ef. 3-1-11

ADMINISTRATIVE RULES

845-005-0355

Restricting License Privileges and Conduct of Operations

(1) The Commission may restrict a license or service permit when:

(a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the license or service permit;

(b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s);

(c) The Commission determines that a restriction is in the public interest or convenience; or

(d) The Commission has a basis to refuse the license and the applicant or licensee has submitted a qualifying control or operating plan as good cause to overcome the refusal basis. In these circumstances the Commission shall impose as restrictions those elements of the control or operating plan that the Commission determines are essential to overcoming the refusal basis.

(2) In determining public interest or convenience reasons to restrict a license or permit, the Commission considers factors that include but are not limited to:

(a) The character or environment of the neighborhood in which the licensed premises operate;

(b) The need to eliminate or prevent conditions that have contributed to or that the Commission reasonably believes will contribute to liquor or criminal law violations by the licensee, patrons of the licensed premises or the public, including conditions that have or are likely to contribute to noise, music or sound vibrations from inside or outside the premises that a reasonable person would consider excessive or obtrusive; or

(c) The need to limit the availability of alcohol to minors, visibly intoxicated persons or street drinkers.

(3) The Commission has determined that it is not in the public interest or convenience to issue or renew:

(a) A license that allows off-premises sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;

(b) A license to a relative or associate of a person whose license was cancelled, surrendered or not renewed because of problems at the premises that involved the person, unless the Commission restricts the relative or associate from permitting the person from being on the premises;

(c) A license or permit to a person who has a recent history or record of alcohol or drug problems, unless the Commission requires the person to complete an alcohol/drug treatment program and follow the program's recommendations regarding alcohol/drug use or to abstain from alcohol/drug use.

(4) When the Commission restricts a license or service permit, it notifies the licensee or permittee. If the licensee or permittee disagrees with the restriction, the licensee or permittee has the right to a hearing under the procedures in ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(5) A licensee or permittee who has a restricted license or permit must exercise license or permit privileges only in compliance with the restriction(s). Failure to comply with the restriction(s) is a Category I violation.

(6) A restriction remains in effect until the Commission removes it. The licensee or permittee may ask the Commission to remove or modify a restriction. The written request must explain why the licensee or permittee believes the Commission should remove or modify the restriction. The Commission will notify the licensee or permittee, in writing, of its decision to approve or deny the request and the basis for its decision. If the Commission denies the request, the licensee or permittee has the right to a hearing under the procedures in ORS chapter 183; OAR chapter 137, division 003; and chapter 845, division 003.

(7) As used in subsections (2)(c) and (3)(a) of this rule, "street drinkers" means people who drink unlawfully in streets, alleys, parks and other similar public places.

(8) As used in subsection (2)(b) of this rule, "conditions" means conditions in the immediate vicinity of the premises that are related to the exercise of the license privileges and conditions in the premises or in the areas around the premises that the applicant/licensee controls.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313, 471.405(1)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 6-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 7-2006(Temp), f. & cert. ef. 6-15-06 thru 12-11-06; OLCC 13-2006, f. 10-19-06, cert. ef. 12-12-06; OLCC 2-2011, f. 2-23-11, cert. ef. 3-1-11

845-006-0480

Changes in Premises or Operation: Notice Required

(1) The Commission issues licenses with the understanding that the licensee will operate the business as proposed at the time of licensing. The Commission also realizes that a licensee may need to change the business

during the licensing year. This rule provides a way for a licensee to make changes, and for the Commission to be assured that the changes will meet the criteria for licensing.

(2) A licensee licensed to sell alcoholic beverages at retail for on-premises consumption must notify the Commission in writing and provide an updated floor plan whenever the licensee changes the physical dimensions of the licensed premises within 30 days of the change.

(3) A licensee must notify the Commission in writing whenever the licensee changes the business trade name within 30 days of the change.

(4) A licensee licensed to sell alcoholic beverages for on-premises consumption must notify the Commission in writing of any change to the premises or the business operation that could reasonably affect the minor posting assigned to the premises or any room or area of the premises prior to the change.

(5) Failure to provide the notice that this rule requires is a Category V violation.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313, 471.315

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2011, f. 2-23-11, cert. ef. 3-1-11

Oregon State Lottery Chapter 177

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

Adm. Order No.: LOTT 1-2011

Filed with Sec. of State: 2-25-2011

Certified to be Effective: 3-1-11

Notice Publication Date: 1-1-2011

Rules Adopted: 177-099-0100

Subject: The Oregon State Lottery amended the above referenced administrative rule to change the percentage of gross Keno sales allocated to the Keno Jackpot Bonus prizes.

Rules Coordinator: Mark W. Hohl—(503) 540-1417

177-099-0100

Keno Jackpot Bonus

(1) **General:** In addition to the prizes described in OAR 177-099-0080 and 177-099-0090, 3.1% of gross Keno sales (excluding sales of the Keno Multiplier option) for each drawing is allocated among three prize pools held in reserve as an additional prize for winners of the top prize in the 6, 7, and 8 spot categories, i.e., 6 out of 6, 7 out of 7, and 8 out of 8. A Jackpot Bonus prize is awarded when a ticket wins the top prize for either the 6, 7, or 8 spot under OAR 177-099-0080 or OAR 177-099-0090. If the Jackpot Bonus prize pool for a specific spot is not won, the Jackpot Bonus prize pool for that spot continues to grow.

(2) **Automatic Entry:** If a game play on a ticket is for a 6, 7, or 8 spot, the ticket is automatically playing for the Jackpot Bonus prize, as well as a prize under either OAR 177-099-0080 or OAR 177-099-0090. For example, if a Keno ticket with a 6 spot game play is the only Keno or Special Keno ticket to match 6 out of 6 of the winning numbers, that ticket, subject to ticket validation requirements, would win the top prize for the 6 spot under OAR 177-099-0080 (\$1,600) and the accumulated Jackpot Bonus prize for the 6 spot.

(3) **Division of Jackpot Bonus Prize Pool:** The prize money in the Jackpot Bonus prize pool for a specific spot for any given drawing is divided by the number of tickets winning the top prize for that spot under either OAR 177-099-0080 or OAR 177-099-0090. The Jackpot Bonus prize pool is divided among those winning tickets on a pro-rata basis determined by the amount that each winning ticket played in the drawing in which the Jackpot Bonus prize was won. For example, if one Keno ticket wins the top prize for the 8 spot (\$15,000) in a drawing, and was purchased for ten drawings at \$3 per drawing, and one Special Keno ticket wins the top prize for the 8 spot (\$25,000) in the same drawing, and was purchased for one drawing at \$1, the holder of the Keno ticket would receive 75% of the prize in the Jackpot Bonus prize pool for the 8 spot and the holder of the Special Keno ticket would receive the remaining 25% of the prize in that Jackpot Bonus prize pool.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 3-2002(Temp) f. & cert. ef. 2-4-02 thru 8-2-02; LOTT 7-2002, f. & cert. ef. 4-29-02; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02; LOTT 3-2003(Temp), f. 3-28-03, cert. ef. 4-7-03 thru 9-30-03; LOTT 11-2003, f. & cert. ef. 6-30-03; LOTT 4-2009(Temp), f. & cert. ef. 8-26-09 thru 2-18-10; LOTT 3-2010, f. 1-29-10, cert. ef. 2-1-10; LOTT 1-2011, f. 2-25-11, cert. ef. 3-1-11

ADMINISTRATIVE RULES

Oregon State Marine Board Chapter 250

Rule Caption: Establish no-wake zone in Holgate Channel of the Willamette River.

Adm. Order No.: OSMB 4-2011

Filed with Sec. of State: 3-7-2011

Certified to be Effective: 5-25-11

Notice Publication Date: 12-1-2010

Rules Amended: 250-020-0280

Subject: This rule will set a 5 mph slow-no-wake zone within the Holgate Channel. Commercial vessels and safety launches accompanying an organized rowing or paddling program club or school are exempt.

Rules Coordinator: June LeTarte—(503) 378-2617

250-020-0280

Boat Operations in Multnomah County

(1) No person shall operate a boat in excess of 5 MPH:

(a) In North Portland Harbor (Oregon Slough):

(A) From the east end of North Portland Harbor (Oregon Slough) to a point 800 yards west of the Burlington Northern Railroad Bridge, as marked;

(B) Within 200 feet of a launching ramp, moorage or houseboat from the east end of North Portland Harbor (Oregon Slough) eastward along the south shore to the Lower Airport wing dike.

(b) Within 300 feet of the entrance to and in Rooster Rock boat channel;

(c) Within 200 feet of west shore, as buoyed, between the southern boundary of Willamette Park Launch Ramp and the northern boundary of the Willamette Sailing Club;

(d) Within Hayden Bay. The Bay is considered to be all waters south and west of a line 200 feet north of the Northeast point of Hayden Island and 200 feet north of the Northwest point of Tomahawk Island as marked;

(e) Within 200 feet of the Oregon Yacht Club floating home moorage as buoyed (a distance of approximately 1,5000 feet);

(f) Within 200 feet of houseboat moorages in the Government Island South Channel;

(g) No person shall operate a boat in excess of a maximum 5 MPH, "Slow-No Wake" speed on the Columbia River south of the buoys along the northern shore of Government Island in the waters adjacent to the I-205 Bridge, commonly referred to as Commodore's Cove, as marked;

(h) Within 100 feet of the Landing Boat Club at RM 15, Willamette River.

(2) No person shall operate a recreational watercraft in excess of slow-no-wake in:

(a) the Ross Island Lagoon; and

(b) the Holgate Channel from a line extending northeast from the north side of the Ross Island Lagoon mouth to the east side of the channel, and to a line extending from the southern (upstream) tip of Ross Island due south to the Oregon Yacht Club.

(c) This restriction does not apply to commercially operated vessels including those owned or operated for sand and gravel operations, nor to safety launches while accompanying an organized rowing or paddling program, club or school.

(3) No person shall operate a boat in excess of a maximum 5 MPH, "Slow — No Wake" speed on the Columbia River within 300 feet of shore between the Big Eddy Wing dike and the wing dike east of the entrance to the Chinook Landing boat Basin and within the Chinook Landing Boat Basin, as marked.

(4) A "pass-through" zone is established in the south channel of the Columbia River, adjacent to McGuire Island between the east end of Big Eddy Marina and the west end of McGuire Point Marina as marked.

(a) No person shall operate a motorboat pulling a water skier or towed device in this zone.

(b) No person shall operate a personal watercraft, as defined in OAR 250-021-0020, in continuous operation above 5 MPH in this area, except to transit directly through this zone.

(c) No person shall operate any motorboat in excess of slow-no wake maximum 5 MPH speed within 200 feet of any houseboat moorage within the "pass-through" zone.

(5) No person shall operate a boat in excess of 3 MPH in Rooster Rock Boat Basin.

(6) The following locations are designated racing motorboat testing areas:

(a) On the Willamette River in Swan Island Lagoon. Testing is limited to the hours of 3–6 p.m. on Thursdays, Fridays, and Saturdays;

(b) On the Columbia River between the county launching ramp at 43rd Street and Buoy #18 (NOS Chart #18531). Testing is limited to the hours of 8 a.m.–12 noon, Tuesday through Friday.

(7) No person shall operate a motorboat on Benson Lake.

(8) No person shall operate a boat for any reason within any restricted area at any time without first obtaining permission from the District Engineer, Corps of Engineers, U.S. Army, or his duly authorized representative.

(9) At Bonneville Dam.

(a) The Waters restricted to only Government vessels are described as all waters of the Columbia River and Bradford Slough within 1,000 feet above and 2,000 feet below the powerhouse. The restricted areas will be designated by signs;

(b) No person shall operate a boat, including a commercial recreational tour boat subject to inspection and licensing by the U.S. Coast Guard, within the Boating Restricted Zone located below Bonneville lock and dam bounded by a line commencing from the westernmost tip of Robins Island on the Oregon side of the Columbia River and running at a South 65 degrees West direction a distance of approximately 2100 feet to a point 50 feet upstream of the Hamilton Island Boat Ramp on the Washington side of the Columbia River, as marked.

(10) No person shall operate or anchor a boat in the following described zone in Oregon Slough (North Portland Harbor):

(a) Commencing at the northwesterly corner of that tract of land described in a Bargain and Sale Deed to RHODIA, Inc., recorded as Document No. 98028586, Multnomah County Deed Records; Thence, along the northeasterly line of said tract, S 47°46' E, 513.54 feet to the northwest corner of the Alexander Brown Donation Land Claim; Thence, along the north line of said Claim S 48°30' E, 764.51 feet to the POINT OF BEGINNING of the SITE AREA being described herein; Thence, N 29°58'25" E, 133.84 feet; Thence, S 62°44'22" E, 461.47 feet; Thence, S 29°58'25" W, 227.76 feet to the northeasterly line of said tract; Thence, along said northeasterly line, N 61°15' W, 60.85 feet; Thence, along said northeasterly line, N 52°30' W, 115.5 feet; Thence, along said northeasterly line, N 48°30' W, 291.49 feet to the POINT OF BEGINNING as marked.

(b) This area of land contains 2.0 acres (87,008 sq. Ft.), more or less.

(c) The intent of this description is to describe a line that surrounds the limits of the sediment cap location, plus a buffer zone.

(d) Bearings based on Document No. 98028586, Multnomah County Deed Records.

(11) No person shall anchor a boat at approximately River Mile 7 of the Willamette River in Multnomah County described in Department of State Lands Easement No. 31530-EA, Exhibit A — Legal Description — Permanent Easement.

Stat. Auth.: ORS 830.110, 830.175 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 23, f. 9-24-63; MB 26, f. 7-20-64; MB 51, f. 5-3-73, ef. 5-15-73; MB 61, f. 7-26-74, ef. 7-26-74(Temp) & 8-25-74(Perm); Renumbered from 250-020-0155; MB 10-1982, f. 10-13-82, ef. 10-15-82; MB 12-1982, f. 12-29-82, ef. 12-31-82; MB 6-1983, f. 9-28-83, ef. 10-3-83; MB 17-1984, f. & ef. 12-3-84; MB 6-1985, f. & ef. 2-5-85; MB 10-1985, f. & ef. 4-24-85; MB 15-1985, f. 10-18-85, ef. 10-21-85; MB 20-1987, f. 11-4-87, ef. 11-15-87; MB 5-1990, f. & cert. ef. 7-19-90; MB 11-1992, f. & cert. ef. 9-16-92; MB 2-1993, f. & cert. ef. 2-3-93; MB 13-1996, f. & cert. ef. 12-4-96; OSMB 7-1998(Temp), f. & cert. ef. 5-19-98 thru 11-15-98; OSMB 7-1999, f. & cert. ef. 6-18-99; OSMB 2-2005, f. & cert. ef. 1-20-05; OSMB 8-2006, f. & cert. ef. 10-12-06; OMB 3-2009, f. 10-21-09, cert. ef. 1-1-10; OSMB 4-2011, f. 3-7-11, cert. ef. 5-25-11

Oregon State Treasury Chapter 170

Rule Caption: Restructures Municipal Debt Advisory Commission Fees for tracking Municipal Debt information using Bond Tracker Software.

Adm. Order No.: OST 1-2011

Filed with Sec. of State: 2-28-2011

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Rules Amended: 170-061-0015

Subject: Amendments to this rule establish a Municipal Debt Advisory Commission (MDAC) fee to pay for Debt Management Division staff support costs related to the ongoing tracking and reporting of all local government bond issuances in the state of Oregon. These amendments also eliminate the fee charged by the MDAC through the Division for generating Overlapping Debt Reports.

Rules Coordinator: Sally Wood—(503) 378-4990

ADMINISTRATIVE RULES

170-061-0015

Fees Charged by the Debt Management Divisions

(1) State agencies. The OST shall charge the following fees in connection with the services, duties and activities of the OST related to bonds issued for state agencies by the State Treasurer:

(a) Agency Bond Issues of \$15 million or less. For a single series bond sale of \$15 million or less, a state agency will be charged \$15,000 per sale. For a bond sale of \$15 million or less by a single state agency with multiple series, the state agency will be charged the greater of (i) \$15,000 or (ii) \$6,000 per series. For a bond sale of \$15 million or less by two or more state agencies, each agency will be charged the greater of (i) \$7,500 or (ii) \$6,000 for each series sold for the agency. This subsection does not apply if the bond sale is a private placement conduit sale of \$5 million or less as described below in subsection (c).

(b) Agency Bond Issues of more than \$15 million. For a single series bond sale of more than \$15 million, a state agency will be charged \$20,000. For a bond sale of more than \$15 million by a single state agency with multiple series, the state agency will be charged the greater of (i) \$20,000 or (ii) \$7,000 per series. For a bond sale of more than \$15 million by two or more state agencies, each agency will be charged the greater of (i) \$10,000 or (ii) \$7,000 for each series sold for the state agency. This subsection does not apply if the bond sale is a private placement conduit sale described below in subsection (c).

(c) Conduit Bond Sales. A state agency will be charged: (i) \$5,000 for conduit bond sales of \$5 million or less, (ii) \$10,000 for conduit bond sales of greater than \$5 million but less than \$10 million, or (iii) \$15,000 for conduit bond sales of \$10 million or greater, that are payable solely from moneys owed by a party other than the State of Oregon, with no recourse for payment to the State of Oregon, and when the bonds are sold by a private placement, with no publicly disseminated official statement or other offering circular, to one or more sophisticated investors, accredited investors or qualified institutional buyers. Should conduit bonds be sold publicly or using an official statement then subsection (b) or subsection (c) above applies.

(d) Advance refunding plan application and review. The fee for review and approval of an advance refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged. When necessary to review complex proposals, OST may consult recognized experts whose fees will be charged to the agency, whether or not the refunding is approved or completed.

(e) Tax Anticipation Notes. A state agency shall be charged \$30,000 for each sale of tax anticipation notes.

(f) Interest Rate Exchange Agreements. In addition to any other fee, \$25,000 will be charged for the review and approval of a state agency's first executed interest rate exchange agreement for a specific bond program of the agency. After the first agreement, a fee of \$10,000 will be charged for each executed interest rate exchange agreement subsequently entered into by the agency for the same bond program or indenture. These charges do not include costs such as interest rate exchange advisor fees, rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(2) Public Bodies. OST shall charge the fees set forth below in connection with the services, duties and activities of the OST related to bonds issued by public bodies in Oregon; expenses incurred in reviewing refunding and defeasance plans may be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding plan application and review. The application fee for submission of an advance-refunding plan is \$350. The fee for review and approval of an advance refunding plan is \$3,000 per sale of refunding bonds for sales of \$2 million or less, and \$5,000 per sale of refunding bonds for sales exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged.

(b) Oregon School Bond Guarantee Program. School Districts that submit an application for participation in the Oregon School Bond Guarantee Program shall submit an application fee of \$200 to OST at the time their application is submitted. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee equal to .03% (.0003) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates. If bonds are issued as "Qualified Bonds" under OAR 170-063-000 that may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of bonds, the fee for such Qualified Bonds shall be equal

to .045% (.00045) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates and that there is no conversion to a different interest bearing format than the original terms of the bonds.

(3) Municipal Debt Advisory Commission. OST shall charge the following fees in connection with the services, duties and activities of the OST as staff to the Municipal Debt Advisory Commission.

(a) Administrative Tracking and Reporting fee. Local Government entities shall submit, at the time of closing, a fee equal to: (i) \$800 for bond sales of \$8 million or less, (ii) 0.01% (0.0001) of the principal amount for bond sales of greater than \$8 million but, less than \$50 million, or (iii) \$5,000 for bond sales of \$50 million or greater.

(b) Other fees and charges. Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of \$115 per hour.

(4) Private Activity Bonds.

(a) Current Year Allocation. State agencies or public bodies that submit an application for allocation of the state's private activity bond volume limit ("CAP") for the current year to the Private Activity Bond Committee under OAR 170-071-0005 shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive CAP shall pay to OST: (i) For a bond sale of \$10 million or less, a fee equal to \$3,000, payable within 10 business days of the closing bond sale, (ii) For a bond sale of more than \$10 million, a fee equal to \$10,000 payable within 10 business days of the closing bond sale, or (iii) for a Mortgage Credit Certificate program, a fee equal to \$2,000, payable within 10 business days of the date of the notice of allocation by OST.

(b) Carry Forward Allocation. State agencies or public bodies that submit an application for carry forward CAP allocation under OAR 170-071-0005(10) shall submit an application fee of \$200 to OST when their application is submitted. State agencies or public bodies who receive carry forward CAP shall pay to OST: (i) For a bond sale of \$10 million or less, a fee equal to \$3,000 of which the first \$500 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation, (ii) For a bond sale of more than \$10 million, a fee equal to \$10,000 of which the first \$2,000 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation, or (iii) for a Mortgage Credit Certificate program, a fee equal to \$2,000, payable within 10 business days of the date of the notice of allocation by OST.

(5) OST may, at its discretion, waive or reduce any fee outlined in sections (1) to (4) based on compelling financial reasons.

Stat. Auth.: ORS 286A.014, 287A.370 & 287A.634

Stats. Implemented: ORS 287A & 286A

Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05; OST 5-2006, f. & cert. ef. 10-25-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 2-2009, f. & cert. ef. 4-22-09; OST 3-2009, f. & cert. ef. 7-21-09; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010 f. & cert. ef. 1-15-10; OST 2-2010(Temp), f. & cert. ef. 1-26-10 thru 7-24-10; OST 4-2010(Temp), f. 6-3-10, cert. ef. 7-1-10 thru 12-27-10; Administrative correction 1-25-11; OST 1-2011, f. & cert. ef. 2-28-11

Public Utility Commission Chapter 860

Rule Caption: In the Matter of the Adoption of Temporary Amendment to OAR 860-022-0041(10).

Adm. Order No.: PUC 1-2011(Temp)

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Rules Amended: 860-022-0041

Subject: On September 2, 2005, Governor Theodore Kulongoski signed into law Chapter 757, OR Laws 2005 (SB 408), codified primarily at ORS 757.268. SB 408 requires certain public utilities to file annual tax reports and other tax information with the Public Utility Commission of Oregon (Commission). The law requires the report to provide information concerning the amount of taxes paid by the utility and the amount of taxes authorized to be collected in rates during specified time periods. Further, the law requires the Commission to review the report and determine if the amount of taxes assumed in rates differs by at least \$100,000 from the amount of taxes paid to units of government. SB 408 directs the Commission, upon finding that difference in amounts, to require the public utility to implement a rate schedule with an automatic adjustment clause

ADMINISTRATIVE RULES

accounting for the difference. To implement SB 408, the Commission adopted OAR 860-022-0041.

OAR 860-022-0041(4)(d), before this temporary amendment, required that the Commission perform a test to compare the outcome of the three methods used to calculate taxes paid (described in (4)(a)-(c)) against the balance of deferred taxes adjusted for any refunds received during the tax period (hereinafter referred to as the “(4)(d) limitation”). The (4)(d) limitation was originally adopted to ensure that the calculation of “taxes paid” under SB 408 did not result in an IRS normalization violation. During review of the utilities’ tax reports for 2009 filed in compliance with ORS 757.268 and OAR 860-022-0041, Commission Staff determined that there is no risk of a normalization violation with two of the three methods for calculating “taxes paid” (the consolidated and stand-alone methods) because those calculations use only straight-line depreciation. In addition, applying the (4)(d) limitation to the consolidated and stand-alone calculations could result in an inflated calculation of “taxes paid,” which is not in the interest of ratepayers. Staff concluded that the (4)(d) limitation should apply only to the third method of calculating “taxes paid” — the apportionment method” described in (4)(c). Under the current rules, without this amendment, the customers of one of the electric companies will be assessed in June 2011 a surcharge millions of dollars greater than is required under ORS 757.268.

Rules Coordinator: Diane Davis—(503) 378-4372

860-022-0041

Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes

(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

(2) As used in this rule:

(a) “Affiliated group” has the meaning given to “affiliated group” in ORS 757.268(13)(a).

(b) “Deferred taxes” for purposes of the utility means the total deferred tax expense of regulated operations that relate to the year being reported in the utility’s results of operations report or tax returns, excluding deferred taxes related to the establishment of a regulatory receivable or payable account for any rate adjustment imposed under ORS 757.268, in the year the deferred tax is established but not thereafter, to eliminate the iterative tax effect of the rate adjustment.

(c) “Income” means taxable income as determined by the applicable taxing authority, except that income means regulatory taxable income when reporting or computing the stand-alone tax liability resulting from a utility’s regulated operations.

(d) “Income tax losses” means the negative taxable income of an entity in the federal taxpayer or unity group, excluding the current deduction of tax depreciation on public utility property and federal investment tax credits related to public utility property.

(e) “IRC” means Internal Revenue Code.

(f) “Investment” means capital outlays for utility property necessary or useful in providing regulated service to customers.

(g) “Iterative tax effect” means the tax effect of a rate adjustment for taxes related to ORS 757.267 or 757.268 in the tax reporting period that includes the rate adjustment.

(h) “Local taxes collected” means the total amount collected by the utility from customers under the local tax line-item of customers’ bills calculated on a separate city or county basis.

(i) “Pre-tax income” means the utility’s net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding.

(j) “Properly attributed” means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g), and (4)(h) of this rule.

(k) “Public utility property” means property as defined by the Code of Federal Regulations, Title 26, Section 168(i)(10).

(l) “Regulated operations of the utility” has the meaning given to “regulated operations of the utility” in ORS 757.268(13)(c).

(m) “Results of operations report” means the utility’s annual results of operations report filed with the Commission.

(n) “Revenue” means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility’s revenue requirement and adjusted for any rate adjustment imposed under this rule.

(o) “Revenue requirement” means the total revenue the Commission authorizes a utility an opportunity to recover in rates pursuant to a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210.

(p) “Stand-alone tax liability” means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility’s results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from investment tax credits, and calculating interest expense using actual annual average weighted cost of debt derived from the actual annual average capital structure for the tax period multiplied by the annual average rate base for the tax period.

(q) “System regulated operations” means those activities of the utility, in Oregon and other jurisdictions that are subject to rate regulation by any state commission.

(r) “Tax” has the meaning given to “tax” in ORS 757.268(13)(d).

(s) “Taxes authorized to be collected in rates” means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in the utility’s results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income.

(B) For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues, or effective tax rate, then the amount of taxes authorized to be collected in rates will be calculated by weighting the amount of energy sold during the period that rates were in effect as a percentage of the total energy sold during the tax year.

(t) “Taxes paid” has the meaning given to “taxes paid” in ORS 757.268(13)(f).

(u) “Taxpayer” means the utility, the affiliated group or the unitary group that files income tax returns with units of government.

(v) “Tax report” means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268.

(w) “Unitary group” means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return.

(x) “Units of government” means federal, state, and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility is calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:

(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:

(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;

(ii) The tax benefits associated with federal investment tax credits related to public utility property; and

(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility’s gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility’s results of operations report in the numerator and amounts for the federal taxpayer in the denominator.

(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule

ADMINISTRATIVE RULES

shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:

(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group; and

(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the system regulated operations in the denominator.

(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:

(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:

(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and

(ii) Imputed Oregon tax benefits on charitable contributions of the unitary group, except those tax benefits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator.

(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing, or in the case of a change of the majority ownership of the utility's voting shares pursuant to ORS 757.511, in the first tax report filing that includes a tax reporting period reflecting the new ownership, to either:

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state by state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility.

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(e)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer, as adjusted pursuant to subparagraphs (3)(a)(A)(i), (ii) and (iii) of this rule;

(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:

(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;

(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and

(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and

(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;

(c) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule;

(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments in paragraphs (4)(d)(A)-(E). For purposes of this rule, the adjusted amount reported under (4)(c) must not be less than the deferred taxes related to depreciation of public utility property for regulated operations of the utility, reduced by any tax refunds recognized in the reporting period and allocated to the regulated operations of the utility:

(A) The items defined in subsection (2)(t) of this rule;

(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;

(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;

(D) An increase equal to the tax benefit of Oregon business energy tax credits, including those credits transferred pursuant to ORS 469.206 and 469.208, of the unitary group, excluding those credits covered by 757.268(13)(f)(B); and

(E) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(d)(A) of this rule;

(e) The amount of federal and state income taxes authorized to be collected in rates;

(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;

(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;

(h) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;

(i) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule for each local taxing authority;

(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:

(A) The items defined in subsection (2)(t) of this rule; and

(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and

ADMINISTRATIVE RULES

(C) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(j)(A) of this rule;

(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;

(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;

(m) The proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;

(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and

(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.

(5) In calculating the amount of taxes paid under sections (3) and (4) of this rule:

(a) "Taxes paid" must be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability to the tax year for which such return is filed;

(B) For each adjustment made to an originally filed federal, state, or local tax return, including adjustments resulting from an audit, the utility must include the related tax liability or tax refund in the first tax report filed after the tax liability or tax refund has been paid or received and the taxing authority has made a final determination regarding the adjustment;

(C) Taxes paid must include any interest paid to or interest received from units of government with respect to tax liabilities.

(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.

(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all work papers and documents supporting the calculations.

(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order.

(a) Within 20 days following the tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule.

(b) Within 180 days of the tax report filings, the Commission will issue an order that contains the following findings:

(A) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that is properly attributed to the regulated operations of the utility;

(B) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of taxes authorized to be collected in rates;

(C) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of local taxes collected in rates; and

(c) Any other finding or determination necessary to implement the automatic adjustment clause.

(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006.

(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment.

(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must apply a surcharge or

surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit must be calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule.

(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission.

(d) Any rate adjustment must be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission.

(e) Each balancing account must accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest, the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on July 1 of the tax year.

(f) The automatic adjustment clause must not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law.

(g) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.

(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission denies the request to terminate the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.

Stat. Auth.: ORS 183, 756, 757 & 759

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

Hist.: PUC 8-2006, f. & cert. ef. 9-18-06; PUC 11-2007, f. & cert. ef. 9-18-07; PUC 4-2009(Temp), f. & cert. ef. 4-15-09 thru 10-9-09; PUC 11-2009, f. & cert. ef. 10-2-09; PUC 3-2010, f. & cert. ef. 6-28-10; PUC 1-2011(Temp), f. & cert. ef. 2-23-11 thru 8-21-11

Secretary of State, Elections Division Chapter 165

Rule Caption: Adopts Candidate Filing Deadlines for Special District Vacancies.

Adm. Order No.: ELECT 4-2011(Temp)

Filed with Sec. of State: 2-18-2011

Certified to be Effective: 2-18-11 thru 4-1-11

Notice Publication Date:

Rules Adopted: 165-020-2028, 165-020-2029

Subject: 165-020-2028: The Deschutes Public Library District, Director Position 3, has a vacancy in office that occurred after the deadline for notifying candidates of vacancies in office, but before the 62nd day before the May 17, 2011, Regular District election. This rule provides extended deadlines for the county to provide a public notice of district election and sets the deadlines to accept candidate filings and voters' pamphlet statement filings.

165-020-2029: The Northern Wasco County Parks and Recreation District, Director Position 5, has a vacancy in office, but before the 62nd day before the May 17, 2011, regular District election. This rule provides extended deadlines for the county to provide a public notice of district election and sets the deadlines to accept candidate filings.

Rules Coordinator: Brenda Bayes—(503) 986-1518

ADMINISTRATIVE RULES

165-020-2028

Extended Deadlines for Deschutes Public Library District, Director Position 3

Due to a vacancy in the Deschutes Public Library District, Director Position 3, the following deadlines apply:

(1) February 26, 2011, last date for clerk to publish notice of district election in newspaper of general circulation in the district.

(2) March 17, 2011, last date for candidates to file declaration of candidacy or completed nominating petition with the Deschutes County Clerk.

(3) March 21, 2011, last date to file candidate statements for inclusion in county voters' pamphlet.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 198.320, 255.245 & 357.236

Hist.: ELECT 4-2011(Temp), f. & cert. ef. 2-18-11 thru 4-1-11

165-020-2029

Extended Deadlines for Northern Wasco County Park and Recreation, Director Position 5

Due to a vacancy in the Northern Wasco County Park and Recreation District, Director Position 5, the following deadlines apply:

(1) February 22, 2011, last date for clerk to publish notice of district election in newspaper of general circulation in the district.

(2) March 17, 2011, last date for candidates to file declaration of candidacy or completed nominating petition with the Wasco County Clerk.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 198.320 & 255.245

Hist.: ELECT 4-2011(Temp), f. & cert. ef. 2-18-11 thru 4-1-11

Rule Caption: Adopts Candidate Filing Deadlines for Reynolds School District, Position 1.

Adm. Order No.: ELECT 5-2011(Temp)

Filed with Sec. of State: 2-22-2011

Certified to be Effective: 2-22-11 thru 4-1-11

Notice Publication Date:

Rules Adopted: 165-020-2030

Subject: The Reynolds school District, Position 1, has a vacancy in office the occurred after the deadline for notifying candidates of vacancies in office, but before the 62nd day before the May 17, 2011 District election. This rule provides extended deadlines for the county to provide a public notice of district election and sets the deadlines to accept candidate filings and voters' pamphlet statement filings.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-2030

Extended Deadlines for Reynolds School District, Director Position 1

Due to a vacancy in the Reynolds School District, Director Position 1, the following deadlines apply:

(1) February 25, 2011, last date for clerk to publish notice of district election in newspaper of general circulation in the district.

(2) March 17, 2011, last date for candidates to file declaration of candidacy or completed nominating petition with the Multnomah County Elections.

(3) March 21, 2011, last date to file candidate statements for inclusion in county voters' pamphlet.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 255.245, 332.030

Hist.: ELECT 5-2011(Temp), f. & cert. ef. 2-22-11 thru 4-1-11

Rule Caption: Adopts Candidate Filing Deadlines for Colton School District, Position 4.

Adm. Order No.: ELECT 6-2011(Temp)

Filed with Sec. of State: 3-8-2011

Certified to be Effective: 3-8-11 thru 4-1-11

Notice Publication Date:

Rules Adopted: 165-020-2031

Subject: The Colton School, Position 4, has a vacancy in office that occurred after the deadline for notifying candidates of vacancies in office, but before the 62nd day before the May 17, 2011, Regular District election. This rule provides extended deadlines for the county to provide a public notice of district election and sets the deadlines to accept candidate filings and voters' pamphlets statement filings.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-2031

Extended Deadlines for Colton School District, Director Position 4

Due to a vacancy in the Colton School District, Director Position 4, the following deadlines apply:

(1) March 9, 2011, last date for clerk to publish notice of district election in newspaper of general circulation in the district.

(2) March 17, 2011, last date for candidates to file declaration of candidacy or completed nominating petition with the Clackamas County Elections.

(3) March 21, 2011, last date to file candidate statements for inclusion in county voters' pamphlet.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 255.245, 332.030

Hist.: ELECT 6-2011(Temp), f. & cert. ef. 3-8-11 thru 4-1-11

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Adopts world language endorsement standards; amends requirements regarding civil rights, address changes, and transitional licenses.

Adm. Order No.: TSPC 3-2011

Filed with Sec. of State: 3-15-2011

Certified to be Effective: 3-15-11

Notice Publication Date: 12-1-2010

Rules Adopted: 584-065-0125

Rules Amended: 584-021-0120, 584-036-0105, 584-060-0014, 584-060-0181, 584-060-0220, 584-070-0111, 584-080-0151, 584-080-0152

Subject: ADOPT:

584-065-0125: *Knowledge, Skills and Abilities for World Language Endorsements* — Adopts new program standards for World Language endorsements.

AMEND:

584-021-0120: *Requirements for Applying for Initial School Nurse Certification* — Updates language to require the civil rights and professional ethics test. Amends language dealing with criminal background check to ensure consistency with other rules.

584-036-0105: *Addresses and Uses of Addresses* — Amends acceptable methods for reporting address changes to also allow notification by website or email. Adds that submission of social security number is voluntary.

584-060-0014: *Initial Teaching License for Out-of-State Candidate First Application* — Clarifies that this license only applies to educators who have not completed an Oregon prep program or have not previously held an Oregon license or registration. This prevents provisional licensees from obtaining an additional 18 to complete Oregon's requirements. Also eliminates redundant language already contained in other rules.

584-060-0181: *Substitute Teaching License* — Requires that an educator from another state must hold a full license in order to obtain an Oregon Substitute Teaching License.

584-060-0220: *International Visiting Teacher License* — Allows International Visiting Teachers additional time to complete the civil rights and professional ethics test, as with the out-of-state applicants.

584-070-0111: *Transitional School Counselor License* — Prevents Oregon educators completing out-of-state online programs from obtaining additional time to complete full licensure requirements.

584-080-0151: *Transitional Administrator License* — Prevents Oregon educators completing out-of-state online programs from obtaining additional time to complete full licensure requirements.

584-080-0152: *Transitional Superintendent License* — Prevents Oregon educators completing out-of-state online programs from obtaining additional time to complete full licensure requirements.

Rules Coordinator: Lynn Beaton—(503) 373-0981

584-021-0120

Requirements for Applying for Initial School Nurse Certification

(1) An applicant for the first Oregon School Nurse Certificate must:

ADMINISTRATIVE RULES

(a) Supply all information requested on the application, Form N-1, and sign in the space provided attesting that the information is true and correct;

(b) Provide official transcripts from all colleges and universities attended. Transcripts must bear the seal of the institution and the signature of the registrar;

(c) Submit a current registered nurse license issued by the Oregon State Board of Nursing. A photocopy is acceptable;

(d) Obtain a passing score on a commission adopted test of knowledge of U.S. and Oregon civil rights and professional ethics;

(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 also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(f) Submit the evaluation fee(s) as established by OAR 584-021-0170; and

(g) Submit the employing school district's request for certification, and an explanation of why the joint application is being made, if the application is for the Emergency School Nurse Certificate.

(2) A registered nurse who applies for certification and who is employed by a school, school district or education service district to conduct and coordinate a school or district health services program or who serves in such a capacity on a voluntary basis on November 1, 1981 will be issued a certificate under this subsection without further proof of qualification by the applicant.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

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 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 3-2011, f. & cert. ef. 3-15-11

584-036-0105

Addresses and Uses of Addresses

(1) A license, registration or certificate holder must report changes of residential and email addresses to the Commission within 90 days of such change.

(2) Changes of address may be made by web account, email, telephone, in writing, or in person. Changes of address must include the educator's name, TSPC account number, and the old and new addresses the educator is changing. The educator may voluntarily submit the educator's social security number for additional address change identification purposes.

(3) All licenses, registrations, certificates, correspondence or notices sent by the Commission will be sent to the last known residential address on file for the educator.

(4) The Commission is not responsible if the educator has moved and has failed to notify the Commission of any new address and that failure to notify resulted in the educator's failure to receive important licensure, registration, certification or discipline-related information.

(5) Verification of change in employment must be accompanied by any documentation from the new employer including but not limited to: a PEER form, or notification on district letterhead from a human resources representative.

(6) The Commission may send notice for opportunity for a hearing pursuant to ORS 342.175 (notice of charges related to discipline) or 183.430 (notice of denial of renewal) to an educator at the address the educator provides in writing to the Commission. The Commission may complete service of notice under ORS 342.143(4), 342.176(5) or 183.430, by mailing the notice through certified mail addressed to the educator's address on file with the Commission and such mailing will be deemed conclusive evidence of service.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 4-1998, f. & cert. ef. 6-5-98; TSPC 13-2006, f. & cert. ef. 11-22-06; Renumbered from 584-050-0042, TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 3-2011, f. & cert. ef. 3-15-11

584-060-0014

Initial Teaching License for Out-of-State Candidate First Application

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant who is applying for licensure in Oregon for the first time and has completed an out-of-state approved teacher-education program resulting in a non-provisional teaching license may be granted an Initial Teaching License for eighteen (18) months.

(2) The Initial Teaching License is valid for teaching at the grade authorization levels indicated on the out-of-state non-provisional teaching

license and in one or more designated subject-matter endorsement areas indicated on the out-of-state non-provisional teaching license. The Initial Teaching License is also valid for substitute teaching at any level in any teaching subject-matter endorsement area. (See, OAR 584-060-0051 for Grade Authorization Levels on Teaching Licenses.)

(3) To be eligible for an Initial Teaching License, an out-of-state applicant must:

(a) Have never held an Oregon educator license, charter school registration, or completed an Oregon educator preparation program;

(b) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possess good moral character and mental and physical health necessary for employment as an educator;

(c) 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;

(d) Complete an initial teacher education program approved by any U.S. jurisdiction other than Oregon, or complete a foreign program evaluated as satisfactory by the Commission as evidenced by a license valid for unrestricted full-time teaching from another state or National Association of State Directors of Teacher Education and Certification (NASDTEC) jurisdiction, including but not limited to the U.S. Department of Defense; 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 also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(4) Upon expiration of the Initial Teaching License the applicant must qualify for a non-provisional Oregon Teaching License and must apply for any of the following:

(a) An Initial I Teaching License: Qualified applicants will be issued an Initial I Teaching License for 18 months plus time to the applicant's next birthday. The fee for the Initial I granted pursuant to this rule is \$50.

(b) An Initial II Teaching License: Qualified applicants will be issued an Initial II Teaching License for three years plus time to the applicant's next birthday. The fee for the Initial II Teaching License is \$100.

(c) A Continuing Teaching License: Qualified applicants will be issued a Continuing Teaching License for five years plus time to the applicant's next birthday. The fee for the Continuing Teaching License is \$100.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07; TSPC 5-2007, f. & cert. ef. 8-15-07; 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 5-2009, f. & cert. ef. 10-5-09; TSPC 1-2010, f. & cert. ef. 1-28-10; TSPC 3-2011, f. & cert. ef. 3-15-11

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) 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.

(b) Notwithstanding OAR 584-017-0201, hold an unrestricted license for full-time teaching in any state;

(c) Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights and professional ethics;

(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.

(4) To be eligible for renewal of the Substitute Teaching License an applicant must 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 master's degree;

ADMINISTRATIVE RULES

(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, 342.455 - 342.495 & 342.533

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; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 3-2011, f. & cert. ef. 3-15-11

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; 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 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 commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics; 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, 342.455 - 342.495 & 342.533

Hist.: TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 8-2010(Temp), f. & cert. ef. 10-4-10 thru 12-31-10; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11; TSPC 3-2011, f. & cert. ef. 3-15-11

584-065-0125

Knowledge, Skills and Abilities for World Language Endorsements

(1) Demonstrating Content Knowledge: Candidates are required to demonstrate content knowledge in one of the following ways:

(a) Passage of the Commission-approved test of world language content knowledge; or

(b) Completion of at least 45 quarter or 30 semester hours of college-level coursework in the world language subject area in language areas where the Commission has not approved a content-specific world language licensure test.

(2) Field Experience: Candidates must complete the following practicum experiences:

(a) Field experiences prior to student teaching that include experiences in world language classrooms;

(b) Field experiences, including student teaching, that are supervised by a qualified world language educator who is knowledgeable about current instructional approaches and issues in the field of world language education; and

(c) Opportunities for candidates to participate in a structured study abroad program or intensive immersion experience in a target language community.

(3) Methods requirements: Candidates must complete a methods course that deals specifically with the teaching of world languages, and that is taught by a qualified faculty member whose expertise is world language education and who is knowledgeable about current instructional approaches and issues.

(4) Technology Requirements: Candidates must demonstrate competence in technology-enhanced instruction and the use of technology in their own teaching.

(5) Language, Linguistics Comparison: Candidates must:

(a) Demonstrate a high level of proficiency in the target language, and seek opportunities to strengthen their proficiency;

(b) Know the linguistic elements of the target language system, recognize the changing nature of language, and accommodate for gaps in their own knowledge of the target language system by learning on their own; and

(c) Know the similarities and differences between the target language and other languages, identify the key differences in varieties of the target language, and seek opportunities to learn about varieties of the target language on their own.

(6) Cultures, Literatures, Cross-Disciplinary Concepts: Candidates must:

(a) Demonstrate that they understand the connections among the perspectives of a culture and its practices and products, and integrate the cultural framework for world language standards into their instructional practices;

(b) Recognize the value and role of literary and cultural texts and use them to interpret and reflect upon the perspectives of the target cultures over time; and

(c) Integrate knowledge of other disciplines into world language instruction and identify distinctive viewpoints accessible only through the target language.

(7) Language Acquisition Theories and Instructional Practices: Candidates must:

(a) Demonstrate an understanding of language acquisition at various developmental levels and use this knowledge to create a supportive classroom learning environment that includes target language input and opportunities for negotiation of meaning and meaningful interaction; and

(b) Develop a variety of instructional practices that reflect language outcomes and articulated program models and address the needs of diverse language learners.

(8) Integration of Standards into Curriculum and Instruction: Candidates must:

(a) Demonstrate an understanding of the goal areas and standards of the *Standards for World Language Learning* and their state standards, and integrate these frameworks into curricular planning.

(b) Integrate the *Standards for World Language Learning* and their state standards into language instruction.

(c) Use standards and curricular goals to evaluate, select, design, and adapt instructional resources.

(9) Assessment of Languages and Cultures: Candidates must:

(a) Believe that assessment is ongoing, and demonstrate knowledge of multiple ways of assessment that are age- and level-appropriate by implementing purposeful measures;

ADMINISTRATIVE RULES

(b) Reflect on the results of student assessments, adjust instruction accordingly, analyze the results of assessments, and use success and failure to determine the direction of instruction; and

(c) Interpret and report the results of student performances to all stakeholders and provide opportunity for discussion.

(10) Professionalism: Candidates must:

(a) Engage in professional development opportunities that strengthen their own linguistic and cultural competence and promote reflection on practice; and

(b) Know the value of world language learning to the overall success of all students and understand that they will need to become advocates with students, colleagues, and members of the community to promote the field.

(11) This endorsement is valid to teach the following designated world languages at the grade levels authorized on the license. Other language endorsement areas may be allowed upon approval of the addition of the language by any Commission-approved teaching program.

- (a) Chinese;
- (b) French;
- (c) German;
- (d) Japanese;
- (e) Latin;
- (f) Russian; and
- (g) Spanish.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 3-2011, f. & cert. ef. 3-15-11

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 who has completed an out-of-state approved school counselor program, and is applying for licensure in Oregon for the first time may be granted a Transitional School Counselor License.

(2)(a) The Transitional School Counselor License is issued for one year and is non-renewable. However, under extenuating circumstances, additional time may be allowed, as described below in section 6 of this rule.

(b) The educator must qualify for a Continuing or an Initial II School Counselor License upon expiration of six (6) years following the date the Transitional School Counselor License was first issued.

(3) The Transitional School Counselor License is valid for regular or substitute school counseling at all age or grade levels.

(4) To be eligible for a Transitional School Counselor License, the applicant must have:

(a) A master's or higher degree in counseling, education, or related behavioral sciences, from a regionally accredited institution or an approved foreign equivalent; a master's degree or a doctoral degree from a regionally accredited institution validates a non-regionally accredited bachelor's degree;

(b) Held an unrestricted school counseling license in any state; and

(c) Furnished 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) If extenuating circumstances prevent the educator from completing these requirements on time, an Emergency School Counselor License may be issued, at the sole discretion of the Executive Director. Evidence of the extenuating circumstances must be presented to the Executive Director, who then determines if and for how long an emergency license should be issued as needed to protect the district's programs or students.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 3-2010, f. & cert. ef. 4-2-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 3-2011, f. & cert. ef. 3-15-11

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 who has completed an out-of-state approved school administrator program, and is applying

for licensure in Oregon for the first time, 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 in the United States or approved foreign equivalent;

(c) Hold a non-provisional state license for school administration; 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) If extenuating circumstances prevent the educator from completing these requirements on time, an Emergency Administrator License may be issued, at the sole discretion of the Executive Director. Evidence of the extenuating circumstances must be presented to the Executive Director, who then determines if and for how long an emergency license should be issued as needed to protect the district's programs or students.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

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; TSPC 3-2011, f. & cert. ef. 3-15-11

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 who has completed an out-of-state approved school administrator program, and is applying for licensure in Oregon for the first time, may be granted a Transitional Superintendent License.

(2) The Transitional Superintendent License is not restricted as to employer, is issued only for three years and is not renewable.

(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; 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.)

(5) While holding this license, an applicant must complete:

(a) An Oregon school law and finance class; and

(b) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(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 qualifies for a Continuing Administrator License as defined in OAR 584-080-0022.

(7) If extenuating circumstances prevent the educator from completing these requirements on time, an Emergency Superintendent License may be issued, at the sole discretion of the Executive Director. Evidence of the extenuating circumstances must be presented to the Executive Director, who then determines if and for how long an emergency license should be issued as needed to protect the district's programs or students.

Stat. Auth.: ORS 342

ADMINISTRATIVE RULES

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
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; TSPC 3-2011, f. & cert. ef. 3-15-11

Veterinary Medical Examining Board
Chapter 875

Rule Caption: Eliminates application screening requirement for candidates for the North America Veterinary Licensing Examination (NAVLE).

Adm. Order No.: VMEB 1-2011

Filed with Sec. of State: 3-2-2011

Certified to be Effective: 3-2-11

Notice Publication Date: 1-1-2011

Rules Amended: 875-010-0006, 875-010-0016, 875-010-0021

Subject: Eliminates the need to NAVLE applicants to be screened by the Board.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-010-0006

Procedures for Obtaining License or Permit

(1) Graduate from a veterinary college or veterinary department of a university or college as defined in OAR 875-005-0000(8).

(2) To apply for a veterinary license, the applicant must complete an application form available from the Board office. A completed application includes:

(a) An application form completed and signed by the applicant and notarized;

(b) A copy of a college diploma or a letter from the graduate's school verifying satisfactory graduation, or, if a graduate of an unaccredited foreign veterinary school certification of satisfactory completion of requirements of the Educational Commission for Foreign Veterinary Graduates (ECFVG), or verification of completion of other foreign graduate equivalency programs approved by the Board;

(c) A completed Oregon Jurisprudence Exam/Regional Disease Test;

(d) Verification of veterinary experience and certification of status of license(s) in other states if applicable;

(e) The license application and Oregon Jurisprudence Exam/Regional Disease Test fee of \$75.00.

(3) To register for the NAVLE, the candidate shall apply to the National Board of Veterinary Medical Examiners (NBVME), www.nbvme.org.

(4) The applicant may take the NAVLE in another state. For licensing in Oregon, NAVLE scores must be directly transferred to the Board through the Veterinary Information Verifying Agency (VIVA).

(5) An applicant may request a waiver of the Clinical Competency Test requirement if all the following conditions are met:

(a) The applicant has graduated from an accredited veterinary school or earned the ECFVG certificate or completed another equivalency program approved by the Board, as described in OAR 875-010-0000, prior to and including 1990;

(b) Has been engaged in active veterinary clinical practice for at least five contiguous years immediately preceding the date of application;

(c) Has held license(s) in good standing in other state(s) or U.S. territories since graduation; and

(d) Has met continuing education requirements at least equivalent to 10 hours per year during the five years immediately preceding the date of application.

(e) The Board may request other documentation of competent clinical practice.

(7) Neither NAVLE nor the National Board Exam (NBE) requirement shall be waived.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.075 & 686.255

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 1-2011, f. & cert. ef. 3-2-11

875-010-0016

Veterinary License Examinations

"North American Veterinary Licensing Examination (NAVLE)": The National Board of Veterinary Medical Examiners (NBVME) provides this examination to test a candidate's qualification for entry-level clinical practice and comprehensive veterinary knowledge. Effective November 2000, the NAVLE replaces the National Board Examination (NBE) and Clinical Competency Test (CCT). The NAVLE is required for licensing in Oregon, except as provided in OAR 875-010-0005(6).

(1) NBVME is the sole provider of the NAVLE. The NBVME will report the scores of NAVLE to the Board.

(2) The passing score for NAVLE shall be 425. If the National Board Examination (NBE) and/or Clinical Competency (CCT) was taken December 1992, or later, the candidate must receive a passing score according to the criterion-referenced scoring method implemented by the Professional Exam Service in December 1992.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.075

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 1-2011, f. & cert. ef. 3-2-11

875-010-0021

Recalculation, Review and Appeal of Examination Results

(1) The Oregon Jurisprudence Exam/Regional Disease Test may be taken more than once.

(2) Any applicant who does not pass the Oregon Jurisprudence Exam/Regional Disease Test may request a review of his or her examination results. A request shall be made in writing to the Board within 30 days following the notification of exam results, and the reason(s) for the review request. The applicant may inspect his or her Oregon Jurisprudence Exam/regional Disease Test answer sheet at the Board office in the presence of the Executive Officer or Board member. The applicant may request a review of the NAVLE examination results according to the review procedures of the NBVME.

(3) Any applicant may request a formal appeal before the Board if not satisfied with the review of the exam. An appeal shall be submitted in writing to the Board office no later than 21 days following notification of the results of the Oregon Jurisprudence Exam/Regional Disease Test review. The Board will consider only those appeals concerning significant errors that result in substantial disadvantage to the applicant and if the results of the appeal could result in the issuance of a license.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.075

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 1-2011, f. & cert. ef. 3-2-11

Rule Caption: Aligns Oregon rules with eligibility revisions for the Veterinary Technician National Exam (VTNE) implemented by the American Association of Veterinary State Boards (AAVSB).

Adm. Order No.: VMEB 2-2011

Filed with Sec. of State: 3-2-2011

Certified to be Effective: 3-2-11

Notice Publication Date: 1-1-2011

Rules Amended: 875-030-0010, 875-030-0020, 875-030-0025

Subject: Eliminates on-the-job experience as an eligibility criterion for the Veterinary technician National Exam (VTNE). Updates VTNE information and application process.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-030-0010

Criteria for Becoming a Certified Veterinary Technician

In order to become a certified veterinary technician, an individual must:

(1) Pass the examinations referred to in OAR 875-030-0020; and

(2) Hold a certificate in veterinary technology (or a comparable certificate) from a college accredited by the American Veterinary Medical Association, or other program approved by the board; or

(3)(a) Have at a minimum a Bachelor's degree in a field approved by the Board, e.g., pre-veterinary or animal husbandry, and a minimum of 1,500 hours of on-the-job training that meets the requirements of (4); or

(b) Have at a minimum an Associate's degree in a field approved by the Board and a minimum of 3,000 hours of on-the-job training and that meets the requirements of (4); or

(c) Have acquired a minimum of 30 credit hours of training from a school or program approved by the Board in a field approved by the Board, and a minimum of 4,500 hours of on-the-job training that meets the requirements of (4).

(d) For purposes of this section, on-the-job experience must have been obtained in Oregon and must be verified by a licensed Oregon veterinarian.

(4) Applicants who have not graduated from a college accredited by the American Veterinary Medical Association must provide proof of on-the-job training by submitting W-2 tax forms and payroll-to-date information that substantiates the number of experience hours claimed. Competency in the following technical procedures must be certified by the veterinarian or veterinarians with valid Oregon veterinary licensure who provided or supervised the training:

(a) Medical Terminology;

ADMINISTRATIVE RULES

- (b) Basic Comparative Animal Anatomy and Physiology;
- (c) Veterinary Office Procedures;
- (d) Basic Pharmacology;
- (e) Practical Animal Nutrition;
- (f) Nursing Care and Handling of Animals;
- (g) Animal Behavior;
- (h) Applied Radiography;
- (i) Applied Anesthesiology;
- (j) Applied Clinical Laboratory Procedures;
- (k) Principles and Practices of Medical and Surgical Assistance;
- (l) Animal Diseases;
- (5) The Veterinary Technician National Exam (VTNE) eligibility criteria in 3(a)(b) and (c) are effective through 2012. Effective 2013, only applicants who have graduated from a college approved by the American Veterinary Medical Association will be eligible to sit for the VTNE.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VMEB 2-2000, f. & cert. ef. 6-21-00; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 10-2008, f. & cert. ef. 7-22-08; VMEB 15-2008, f. & cert. ef. 12-15-08; VMEB 3-2009, f. & cert. ef. 10-15-09; VMEB 3-2010, f. & cert. ef. 5-6-10; VMEB 2-2011, f. & cert. ef. 3-2-11

875-030-0020

Examinations for Certified Veterinary Technicians

(1) Applicants for certification as veterinary technicians shall pass the Veterinary Technician National Examination (VTNE) with a criterion score of 425 or greater. The Board will accept VTNE scores transferred to Oregon through the Veterinary Information Verifying Agency (VIVA) if the examination was taken in another state.

(2) In addition to the VTNE, applicants must successfully complete an open book examination on the Oregon Veterinary Practice Act and Administrative Rules relating to veterinary medicine and veterinary technology, with a passing score of at least 95 percent, and the Regional Disease Test, with a passing score of 100 percent.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VME 2-1996, f. & cert. ef. 11-6-96; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 3-2009, f. & cert. ef. 10-15-09; VMEB 2-2011, f. & cert. ef. 3-2-11

875-030-0025

Application for Certified Veterinary Technicians

- (1) Applications for certification shall include:
- (a) An application form available from the Board office signed by the applicant;
 - (b) The application fee of \$25 payable to the Board;
 - (c)(A) Copy of diploma or verification of impending graduation from school; or
 - (B) Proof of experience as required in OAR 875-030-0010(4).
 - (d) Completion of the Oregon Jurisprudence Exam and Regional Disease Test; and
 - (e) The VTNE score report if the examination was taken in another state.

(f) Letters of good standing from any other state the applicant is or has been licensed in as a veterinary technician.

(2) All applications for the VTNE, including those from applicants claiming on-the-job experience, must be made directly to the American Association of Veterinary State Boards (AAVSB, www.aavsb.org). Applicants referred to the Board from AAVSB will be evaluated on an individual basis according to the requirements of (2)(b), (c) and (d). The application fee for certification if the VTNE was taken in another state is \$25 payable to the Board.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.225 & 686.350 - 686.370

Hist.: VE 5, f. & ef. 8-3-76; VME 3-1983, f. & ef. 1-21-83; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 1-1991, f. & cert. ef. 1-24-91; VME 3-1991, f. & cert. ef. 12-9-91; VME 3-1992, f. & cert. ef. 10-9-92; Renumbered from 875-010-0025; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 3-2009, f. & cert. ef. 10-15-09; VMEB 2-2011, f. & cert. ef. 3-2-11

Rule Caption: Repeals Euthanasia Task Force rules.

Adm. Order No.: VMEB 3-2011

Filed with Sec. of State: 3-2-2011

Certified to be Effective: 3-2-11

Notice Publication Date: 1-1-2011

Rules Repealed: 875-020-0005, 875-020-0010, 875-020-0015, 875-020-0020, 875-020-0025, 875-020-0030, 875-020-0035, 875-020-0040, 875-020-0045, 875-020-0050, 875-020-0055

Subject: The Euthanasia Task Force ceased to exist in 2008. Division 20 rules are obsolescent and are repealed.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
101-010-0005	1-1-2011	Amend	1-1-2011	111-030-0045	2-11-2011	Adopt	3-1-2011
101-015-0005	1-1-2011	Amend	1-1-2011	111-030-0045(T)	2-11-2011	Repeal	3-1-2011
101-015-0005	3-9-2011	Suspend	4-1-2011	111-030-0050	2-11-2011	Adopt	3-1-2011
101-015-0006	3-9-2011	Adopt(T)	4-1-2011	111-030-0050(T)	2-11-2011	Repeal	3-1-2011
101-015-0011	1-1-2011	Amend	1-1-2011	111-040-0001	2-11-2011	Amend	3-1-2011
101-015-0012(T)	11-29-2010	Suspend	1-1-2011	111-040-0001(T)	2-11-2011	Repeal	3-1-2011
101-015-0013(T)	11-29-2010	Suspend	1-1-2011	111-040-0005	2-11-2011	Amend	3-1-2011
101-015-0014	11-29-2010	Adopt(T)	1-1-2011	111-040-0005(T)	2-11-2011	Repeal	3-1-2011
101-015-0014(T)	1-1-2011	Repeal	1-1-2011	111-040-0015	2-11-2011	Amend	3-1-2011
101-015-0026	1-1-2011	Adopt	1-1-2011	111-040-0015(T)	2-11-2011	Repeal	3-1-2011
101-015-0026(T)	1-1-2011	Repeal	1-1-2011	111-040-0020	2-11-2011	Amend	3-1-2011
101-020-0002	1-1-2011	Amend	1-1-2011	111-040-0020(T)	2-11-2011	Repeal	3-1-2011
101-020-0005	1-1-2011	Amend	1-1-2011	111-040-0025	2-11-2011	Amend	3-1-2011
101-020-0015	1-1-2011	Amend	1-1-2011	111-040-0025(T)	2-11-2011	Repeal	3-1-2011
101-020-0018	1-1-2011	Amend	1-1-2011	111-040-0030	2-11-2011	Amend	3-1-2011
101-020-0025	1-1-2011	Amend	1-1-2011	111-040-0030(T)	2-11-2011	Repeal	3-1-2011
101-020-0025	3-9-2011	Suspend	4-1-2011	111-040-0040	2-11-2011	Amend	3-1-2011
101-020-0026	3-9-2011	Adopt(T)	4-1-2011	111-040-0040	2-15-2011	Amend(T)	3-1-2011
101-020-0032	1-1-2011	Amend	1-1-2011	111-040-0040(T)	2-11-2011	Repeal	3-1-2011
101-020-0037	1-1-2011	Amend	1-1-2011	111-040-0050	2-11-2011	Amend	3-1-2011
101-020-0045	1-1-2011	Amend	1-1-2011	111-040-0050(T)	2-11-2011	Repeal	3-1-2011
101-020-0050	1-1-2011	Amend	1-1-2011	111-050-0001	2-11-2011	Amend	3-1-2011
101-020-0070	1-1-2011	Am. & Ren.	1-1-2011	111-050-0001(T)	2-11-2011	Repeal	3-1-2011
101-030-0010	1-1-2011	Amend	1-1-2011	111-050-0010	2-11-2011	Amend	3-1-2011
101-030-0015	1-1-2011	Amend	1-1-2011	111-050-0010(T)	2-11-2011	Repeal	3-1-2011
101-030-0022	1-1-2011	Amend	1-1-2011	111-050-0015	2-11-2011	Amend	3-1-2011
105-040-0010	11-28-2010	Amend	1-1-2011	111-050-0015(T)	2-11-2011	Repeal	3-1-2011
105-040-0020	11-28-2010	Amend	1-1-2011	111-050-0016	2-11-2011	Amend	3-1-2011
105-040-0030	11-28-2010	Amend	1-1-2011	111-050-0016(T)	2-11-2011	Repeal	3-1-2011
105-040-0060	11-28-2010	Amend	1-1-2011	111-050-0020	2-11-2011	Amend	3-1-2011
111-002-0005	12-13-2010	Amend(T)	1-1-2011	111-050-0020(T)	2-11-2011	Repeal	3-1-2011
111-005-00070	12-13-2010	Amend(T)	1-1-2011	111-050-0025	2-11-2011	Amend	3-1-2011
111-005-0010	12-13-2010	Amend(T)	1-1-2011	111-050-0025(T)	2-11-2011	Repeal	3-1-2011
111-005-0015	12-13-2010	Amend(T)	1-1-2011	111-050-0030	2-11-2011	Amend	3-1-2011
111-005-0020	12-13-2010	Amend(T)	1-1-2011	111-050-0030(T)	2-11-2011	Repeal	3-1-2011
111-005-0040	12-13-2010	Amend(T)	1-1-2011	111-050-0035	2-11-2011	Amend	3-1-2011
111-005-0042	12-13-2010	Amend(T)	1-1-2011	111-050-0035(T)	2-11-2011	Repeal	3-1-2011
111-005-0044	12-13-2010	Amend(T)	1-1-2011	111-050-0045	2-11-2011	Amend	3-1-2011
111-005-0046	12-13-2010	Amend(T)	1-1-2011	111-050-0045(T)	2-11-2011	Repeal	3-1-2011
111-005-0047	12-13-2010	Adopt(T)	1-1-2011	111-050-0050	2-11-2011	Amend	3-1-2011
111-005-0050	12-13-2010	Amend(T)	1-1-2011	111-050-0050(T)	2-11-2011	Repeal	3-1-2011
111-005-0055	12-13-2010	Adopt(T)	1-1-2011	111-050-0060	2-11-2011	Amend	3-1-2011
111-005-0060	12-13-2010	Suspend	1-1-2011	111-050-0060(T)	2-11-2011	Repeal	3-1-2011
111-005-0080	12-13-2010	Adopt(T)	1-1-2011	111-050-0065	2-11-2011	Amend	3-1-2011
111-010-0015	2-11-2011	Amend	3-1-2011	111-050-0065(T)	2-11-2011	Repeal	3-1-2011
111-010-0015	2-15-2011	Amend(T)	3-1-2011	111-050-0070	2-11-2011	Amend	3-1-2011
111-010-0015(T)	2-11-2011	Repeal	3-1-2011	111-050-0070(T)	2-11-2011	Repeal	3-1-2011
111-030-0005	2-11-2011	Amend	3-1-2011	111-050-0075	2-11-2011	Amend	3-1-2011
111-030-0005(T)	2-11-2011	Repeal	3-1-2011	111-050-0075(T)	2-11-2011	Repeal	3-1-2011
111-030-0010	2-11-2011	Adopt	3-1-2011	111-050-0080	2-11-2011	Amend	3-1-2011
111-030-0010(T)	2-11-2011	Repeal	3-1-2011	111-050-0080(T)	2-11-2011	Repeal	3-1-2011
111-030-0030	2-11-2011	Repeal	3-1-2011	111-070-0030	2-11-2011	Amend	3-1-2011
111-030-0035	2-11-2011	Adopt	3-1-2011	111-070-0030(T)	2-11-2011	Repeal	3-1-2011
111-030-0035(T)	2-11-2011	Repeal	3-1-2011	111-070-0040	2-11-2011	Amend	3-1-2011
111-030-0040	2-11-2011	Adopt	3-1-2011	111-070-0040(T)	2-11-2011	Repeal	3-1-2011
111-030-0040(T)	2-11-2011	Repeal	3-1-2011	111-080-0040	12-10-2010	Adopt	1-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
111-080-0040	2-15-2011	Amend(T)	3-1-2011	137-078-0030	12-1-2010	Amend	1-1-2011
111-080-0045	12-10-2010	Adopt	1-1-2011	137-078-0030(T)	12-1-2010	Repeal	1-1-2011
111-080-0045	2-15-2011	Amend(T)	3-1-2011	137-078-0035	12-1-2010	Amend	1-1-2011
111-080-0050	12-10-2010	Adopt	1-1-2011	137-078-0035(T)	12-1-2010	Repeal	1-1-2011
111-080-0050	2-15-2011	Amend(T)	3-1-2011	137-078-0040	12-1-2010	Amend	1-1-2011
123-001-0700	12-1-2010	Amend	1-1-2011	137-078-0040(T)	12-1-2010	Repeal	1-1-2011
123-001-0725	12-1-2010	Amend	1-1-2011	137-078-0041	12-1-2010	Adopt	1-1-2011
123-001-0750	12-1-2010	Amend	1-1-2011	137-078-0041(T)	12-1-2010	Repeal	1-1-2011
123-042-0010	12-1-2010	Amend	1-1-2011	137-078-0045	12-1-2010	Amend	1-1-2011
123-042-0020	12-1-2010	Amend	1-1-2011	137-078-0045(T)	12-1-2010	Repeal	1-1-2011
123-042-0026	12-1-2010	Amend	1-1-2011	137-078-0050	12-1-2010	Amend	1-1-2011
123-042-0036	12-1-2010	Amend	1-1-2011	137-078-0050(T)	12-1-2010	Repeal	1-1-2011
123-042-0038	12-1-2010	Amend	1-1-2011	137-078-0051	12-1-2010	Adopt	1-1-2011
123-042-0045	12-1-2010	Amend	1-1-2011	137-078-0051(T)	12-1-2010	Repeal	1-1-2011
123-042-0055	12-1-2010	Amend	1-1-2011	141-040-0211	1-1-2011	Amend	1-1-2011
123-042-0065	12-1-2010	Amend	1-1-2011	141-040-0212	1-1-2011	Amend	1-1-2011
123-042-0076	12-1-2010	Amend	1-1-2011	141-040-0213	1-1-2011	Amend	1-1-2011
123-042-0122	12-1-2010	Amend	1-1-2011	141-040-0214	1-1-2011	Amend	1-1-2011
123-042-0132	12-1-2010	Amend	1-1-2011	141-040-0220	1-1-2011	Amend	1-1-2011
123-042-0155	12-1-2010	Amend	1-1-2011	141-085-0506	3-1-2011	Amend	4-1-2011
123-042-0165	12-1-2010	Amend	1-1-2011	141-085-0510	3-1-2011	Amend	4-1-2011
123-042-0175	12-1-2010	Amend	1-1-2011	141-085-0515	3-1-2011	Amend	4-1-2011
123-042-0180	12-1-2010	Amend	1-1-2011	141-085-0520	3-1-2011	Amend	4-1-2011
123-042-0190	12-1-2010	Amend	1-1-2011	141-085-0525	3-1-2011	Amend	4-1-2011
123-043-0025	12-1-2010	Amend	1-1-2011	141-085-0530	3-1-2011	Amend	4-1-2011
123-155-0000	1-3-2011	Am. & Ren.	2-1-2011	141-085-0534	3-1-2011	Amend	4-1-2011
123-155-0100	1-3-2011	Am. & Ren.	2-1-2011	141-085-0535	3-1-2011	Amend	4-1-2011
123-155-0150	1-3-2011	Am. & Ren.	2-1-2011	141-085-0540	3-1-2011	Amend	4-1-2011
123-155-0175	1-3-2011	Am. & Ren.	2-1-2011	141-085-0545	3-1-2011	Amend	4-1-2011
123-155-0200	1-3-2011	Am. & Ren.	2-1-2011	141-085-0550	3-1-2011	Amend	4-1-2011
123-155-0250	1-3-2011	Am. & Ren.	2-1-2011	141-085-0555	3-1-2011	Amend	4-1-2011
123-155-0270	1-3-2011	Am. & Ren.	2-1-2011	141-085-0560	3-1-2011	Amend	4-1-2011
123-155-0300	1-3-2011	Am. & Ren.	2-1-2011	141-085-0565	3-1-2011	Amend	4-1-2011
123-155-0350	1-3-2011	Am. & Ren.	2-1-2011	141-085-0575	3-1-2011	Amend	4-1-2011
123-155-0400	1-3-2011	Am. & Ren.	2-1-2011	141-085-0585	3-1-2011	Amend	4-1-2011
123-450-0000	1-3-2011	Adopt	2-1-2011	141-085-0590	3-1-2011	Amend	4-1-2011
123-635-0050	1-3-2011	Repeal	2-1-2011	141-085-0595	3-1-2011	Amend	4-1-2011
137-020-0150	1-1-2011	Amend	2-1-2011	141-085-0665	3-1-2011	Amend	4-1-2011
137-020-0160	1-1-2011	Amend	2-1-2011	141-085-0675	3-1-2011	Repeal	4-1-2011
137-050-0700	1-4-2011	Amend	2-1-2011	141-085-0676	3-1-2011	Amend	4-1-2011
137-050-0700(T)	1-4-2011	Repeal	2-1-2011	141-085-0680	3-1-2011	Amend	4-1-2011
137-050-0745	1-26-2011	Amend(T)	3-1-2011	141-085-0685	3-1-2011	Amend	4-1-2011
137-055-3430	12-27-2010	Amend	2-1-2011	141-085-0690	3-1-2011	Amend	4-1-2011
137-055-3430(T)	12-27-2010	Repeal	2-1-2011	141-085-0695	3-1-2011	Amend	4-1-2011
137-078-0000	12-1-2010	Amend	1-1-2011	141-085-0700	3-1-2011	Amend	4-1-2011
137-078-0000(T)	12-1-2010	Repeal	1-1-2011	141-085-0705	3-1-2011	Amend	4-1-2011
137-078-0005	12-1-2010	Amend	1-1-2011	141-085-0710	3-1-2011	Amend	4-1-2011
137-078-0005(T)	12-1-2010	Repeal	1-1-2011	141-085-0715	3-1-2011	Amend	4-1-2011
137-078-0010	12-1-2010	Amend	1-1-2011	141-085-0720	3-1-2011	Amend	4-1-2011
137-078-0010(T)	12-1-2010	Repeal	1-1-2011	141-085-0725	3-1-2011	Amend	4-1-2011
137-078-0015	12-1-2010	Amend	1-1-2011	141-085-0730	3-1-2011	Amend	4-1-2011
137-078-0015(T)	12-1-2010	Repeal	1-1-2011	141-085-0735	3-1-2011	Amend	4-1-2011
137-078-0020	12-1-2010	Amend	1-1-2011	141-085-0740	3-1-2011	Amend	4-1-2011
137-078-0020(T)	12-1-2010	Repeal	1-1-2011	141-085-0745	3-1-2011	Amend	4-1-2011
137-078-0025	12-1-2010	Amend	1-1-2011	141-085-0755	3-1-2011	Amend	4-1-2011
137-078-0025(T)	12-1-2010	Repeal	1-1-2011	141-085-0760	3-1-2011	Amend	4-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
141-089-0805	3-1-2011	Adopt	4-1-2011	150-465.101(5)-(B) (T)	1-1-2011	Repeal	2-1-2011
141-089-0810	3-1-2011	Adopt	4-1-2011	162-001-0010	1-27-2011	Repeal	3-1-2011
141-089-0815	3-1-2011	Adopt	4-1-2011	162-010-0030	1-27-2011	Amend	3-1-2011
141-089-0820	3-1-2011	Adopt	4-1-2011	162-011-0000	1-27-2011	Repeal	3-1-2011
141-089-0825	3-1-2011	Adopt	4-1-2011	162-011-0010	1-27-2011	Repeal	3-1-2011
141-089-0830	3-1-2011	Adopt	4-1-2011	162-011-0020	1-27-2011	Repeal	3-1-2011
141-089-0835	3-1-2011	Adopt	4-1-2011	162-011-0030	1-27-2011	Repeal	3-1-2011
141-093-0100	3-1-2011	Adopt	4-1-2011	162-011-0040	1-27-2011	Repeal	3-1-2011
141-093-0103	3-1-2011	Adopt	4-1-2011	162-012-0000	1-27-2011	Repeal	3-1-2011
141-093-0104	3-1-2011	Adopt	4-1-2011	162-012-0010	1-27-2011	Repeal	3-1-2011
141-093-0105	3-1-2011	Adopt	4-1-2011	162-012-0020	1-27-2011	Repeal	3-1-2011
141-093-0107	3-1-2011	Adopt	4-1-2011	162-012-0030	1-27-2011	Repeal	3-1-2011
141-093-0110	3-1-2011	Adopt	4-1-2011	162-012-0040	1-27-2011	Repeal	3-1-2011
141-093-0115	3-1-2011	Adopt	4-1-2011	162-012-0050	1-27-2011	Repeal	3-1-2011
141-093-0120	3-1-2011	Adopt	4-1-2011	162-013-0000	1-27-2011	Repeal	3-1-2011
141-093-0125	3-1-2011	Adopt	4-1-2011	162-013-0010	1-27-2011	Repeal	3-1-2011
141-093-0130	3-1-2011	Adopt	4-1-2011	162-013-0020	1-27-2011	Repeal	3-1-2011
141-093-0135	3-1-2011	Adopt	4-1-2011	162-013-0030	1-27-2011	Repeal	3-1-2011
141-093-0140	3-1-2011	Adopt	4-1-2011	162-013-0040	1-27-2011	Repeal	3-1-2011
141-093-0141	3-1-2011	Adopt	4-1-2011	162-013-0050	1-27-2011	Repeal	3-1-2011
141-093-0145	3-1-2011	Adopt	4-1-2011	162-013-0060	1-27-2011	Repeal	3-1-2011
141-093-0150	3-1-2011	Adopt	4-1-2011	162-014-0000	1-27-2011	Repeal	3-1-2011
141-093-0151	3-1-2011	Adopt	4-1-2011	162-014-0010	1-27-2011	Repeal	3-1-2011
141-093-0155	3-1-2011	Adopt	4-1-2011	162-014-0020	1-27-2011	Repeal	3-1-2011
141-093-0160	3-1-2011	Adopt	4-1-2011	162-014-0030	1-27-2011	Repeal	3-1-2011
141-093-0165	3-1-2011	Adopt	4-1-2011	162-014-0040	1-27-2011	Repeal	3-1-2011
141-093-0170	3-1-2011	Adopt	4-1-2011	162-014-0050	1-27-2011	Repeal	3-1-2011
141-093-0175	3-1-2011	Adopt	4-1-2011	162-014-0060	1-27-2011	Repeal	3-1-2011
141-100-0000	3-1-2011	Am. & Ren.	4-1-2011	162-014-0070	1-27-2011	Repeal	3-1-2011
141-100-0010	3-1-2011	Amend	4-1-2011	162-014-0080	1-27-2011	Repeal	3-1-2011
141-100-0020	3-1-2011	Amend	4-1-2011	162-014-0090	1-27-2011	Repeal	3-1-2011
141-100-0030	3-1-2011	Amend	4-1-2011	162-014-0100	1-27-2011	Repeal	3-1-2011
141-100-0035	3-1-2011	Adopt	4-1-2011	162-014-0110	1-27-2011	Repeal	3-1-2011
141-100-0040	3-1-2011	Amend	4-1-2011	162-014-0120	1-27-2011	Repeal	3-1-2011
141-100-0050	3-1-2011	Am. & Ren.	4-1-2011	162-014-0130	1-27-2011	Repeal	3-1-2011
141-100-0052	3-1-2011	Adopt	4-1-2011	162-014-0140	1-27-2011	Repeal	3-1-2011
141-100-0055	3-1-2011	Amend	4-1-2011	162-014-0150	1-27-2011	Repeal	3-1-2011
141-100-0060	3-1-2011	Amend	4-1-2011	162-014-0160	1-27-2011	Repeal	3-1-2011
141-100-0070	3-1-2011	Amend	4-1-2011	162-014-0170	1-27-2011	Repeal	3-1-2011
141-100-0080	3-1-2011	Amend	4-1-2011	162-014-0180	1-27-2011	Repeal	3-1-2011
141-100-0090	3-1-2011	Amend	4-1-2011	162-014-0190	1-27-2011	Repeal	3-1-2011
150-280.075	1-1-2011	Amend	2-1-2011	162-014-0200	1-27-2011	Repeal	3-1-2011
150-293.525(1)(b)	1-1-2011	Amend	2-1-2011	162-014-0210	1-27-2011	Repeal	3-1-2011
150-294.175(2)-(B)	1-1-2011	Amend	2-1-2011	162-014-0220	1-27-2011	Repeal	3-1-2011
150-307.126	1-1-2011	Adopt	2-1-2011	162-014-0230	1-27-2011	Repeal	3-1-2011
150-311.160	1-1-2011	Repeal	2-1-2011	162-014-0240	1-27-2011	Repeal	3-1-2011
150-314.402(1)	1-1-2011	Amend	2-1-2011	162-015-0000	1-27-2011	Repeal	3-1-2011
150-314.665(2)-(A)	12-1-2010	Amend(T)	1-1-2011	162-015-0010	1-27-2011	Repeal	3-1-2011
150-314.665(2)-(C)	12-1-2010	Suspend	1-1-2011	162-015-0020	1-27-2011	Repeal	3-1-2011
150-314.760	1-1-2011	Repeal	2-1-2011	162-015-0030	1-27-2011	Repeal	3-1-2011
150-315.354	12-17-2010	Amend(T)	2-1-2011	162-015-0040	1-27-2011	Repeal	3-1-2011
150-316.587(8)-(A)	1-1-2011	Amend	2-1-2011	162-015-0050	1-27-2011	Repeal	3-1-2011
150-316.OL2010.CH66	1-1-2011	Adopt	2-1-2011	162-015-0060	1-27-2011	Repeal	3-1-2011
150-323.500(9)	1-1-2011	Amend	2-1-2011	162-015-0070	1-27-2011	Repeal	3-1-2011
150-323.500(9) (T)	1-1-2011	Repeal	2-1-2011	162-015-0080	1-27-2011	Repeal	3-1-2011
150-465.101(5)-(B)	1-1-2011	Adopt	2-1-2011	162-015-0090	1-27-2011	Repeal	3-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
162-015-0100	1-27-2011	Repeal	3-1-2011	213-070-0050	1-1-2011	Adopt	1-1-2011
162-015-0110	1-27-2011	Repeal	3-1-2011	250-010-0430	2-1-2011	Amend	2-1-2011
162-015-0120	1-27-2011	Repeal	3-1-2011	250-010-0450	2-1-2011	Amend	2-1-2011
162-015-0130	1-27-2011	Repeal	3-1-2011	250-010-0650	2-1-2011	Amend	2-1-2011
162-016-0000	1-27-2011	Repeal	3-1-2011	250-020-0151	1-3-2011	Amend(T)	2-1-2011
165-010-0005	2-4-2011	Amend	3-1-2011	250-020-0280	5-25-2011	Amend	4-1-2011
165-020-0005	2-4-2011	Amend	3-1-2011	250-021-0040	1-3-2011	Amend(T)	2-1-2011
165-020-2027	2-11-2011	Adopt(T)	3-1-2011	255-001-0005	1-11-2011	Amend	2-1-2011
165-020-2028	2-18-2011	Adopt(T)	4-1-2011	255-001-0010	1-11-2011	Amend	2-1-2011
165-020-2029	2-18-2011	Adopt(T)	4-1-2011	255-001-0016	1-11-2011	Amend	2-1-2011
165-020-2030	2-22-2011	Adopt(T)	4-1-2011	255-005-0005	12-1-2010	Amend	1-1-2011
165-020-2031	3-8-2011	Adopt(T)	4-1-2011	255-005-0005(T)	12-1-2010	Repeal	1-1-2011
170-061-0015	2-28-2011	Amend	4-1-2011	255-015-0015	12-1-2010	Amend	1-1-2011
170-062-0000	12-1-2010	Amend(T)	1-1-2011	255-020-0005	3-4-2011	Amend	4-1-2011
172-001-0005	1-10-2011	Amend	2-1-2011	255-020-0015	3-4-2011	Amend	4-1-2011
172-005-0000	1-10-2011	Amend	2-1-2011	255-030-0027	12-1-2010	Amend	1-1-2011
172-005-0010	1-10-2011	Amend	2-1-2011	255-030-0027(T)	12-1-2010	Repeal	1-1-2011
172-005-0020	1-10-2011	Amend	2-1-2011	255-060-0018	1-11-2011	Adopt	2-1-2011
172-005-0030	1-10-2011	Amend	2-1-2011	255-080-0001	12-1-2010	Amend	1-1-2011
172-005-0040	1-10-2011	Amend	2-1-2011	255-080-0005	12-1-2010	Amend	1-1-2011
172-005-0050	1-10-2011	Amend	2-1-2011	255-080-0008	12-1-2010	Adopt	1-1-2011
172-005-0060	1-10-2011	Amend	2-1-2011	255-080-0008	12-1-2010	Amend	1-1-2011
172-005-0065	1-10-2011	Adopt	2-1-2011	255-080-0011	12-1-2010	Amend	1-1-2011
172-005-0070	1-10-2011	Amend	2-1-2011	257-010-0015	2-28-2011	Amend	3-1-2011
177-040-0000	1-1-2011	Amend	2-1-2011	257-010-0015(T)	2-28-2011	Repeal	3-1-2011
177-040-0001	1-1-2011	Amend	2-1-2011	257-010-0020	2-28-2011	Amend	3-1-2011
177-040-0003	1-1-2011	Amend	2-1-2011	257-010-0020(T)	2-28-2011	Repeal	3-1-2011
177-040-0024	1-1-2011	Adopt	2-1-2011	257-010-0025	2-28-2011	Amend	3-1-2011
177-040-0070	1-1-2011	Amend	2-1-2011	257-010-0025(T)	2-28-2011	Repeal	3-1-2011
177-085-0065	12-12-2010	Amend	1-1-2011	257-010-0045	2-28-2011	Amend	3-1-2011
177-094-0080	12-1-2010	Amend	1-1-2011	257-010-0045(T)	2-28-2011	Repeal	3-1-2011
177-098-0010	12-12-2010	Amend	1-1-2011	257-010-0050	2-28-2011	Amend	3-1-2011
177-098-0040	12-12-2010	Amend	1-1-2011	257-010-0050(T)	2-28-2011	Repeal	3-1-2011
177-098-0060	12-12-2010	Amend	1-1-2011	257-010-0055	2-28-2011	Amend	3-1-2011
177-098-0110	12-12-2010	Amend	1-1-2011	257-010-0055(T)	2-28-2011	Repeal	3-1-2011
177-099-0100	3-1-2011	Adopt	4-1-2011	257-050-0200	3-8-2011	Amend	4-1-2011
190-001-0000	12-1-2010	Repeal	1-1-2011	259-008-0011	12-23-2010	Amend	2-1-2011
190-001-0005	12-1-2010	Repeal	1-1-2011	259-008-0011(T)	12-23-2010	Repeal	2-1-2011
190-010-0000	1-3-2011	Repeal	2-1-2011	259-009-0070	4-1-2011	Amend	4-1-2011
190-010-0005	1-3-2011	Repeal	2-1-2011	291-006-0005	3-1-2011	Amend	4-1-2011
190-010-0010	1-3-2011	Repeal	2-1-2011	291-006-0011	3-1-2011	Adopt	4-1-2011
190-010-0015	1-3-2011	Repeal	2-1-2011	291-006-0012	3-1-2011	Adopt	4-1-2011
190-010-0020	1-3-2011	Repeal	2-1-2011	291-006-0015	3-1-2011	Amend	4-1-2011
190-010-0025	1-3-2011	Repeal	2-1-2011	291-006-0020	3-1-2011	Repeal	4-1-2011
190-010-0030	1-3-2011	Repeal	2-1-2011	291-006-0025	3-1-2011	Repeal	4-1-2011
190-010-0035	1-3-2011	Am. & Ren.	2-1-2011	291-006-0031	3-1-2011	Adopt	4-1-2011
190-010-0040	1-3-2011	Repeal	2-1-2011	291-006-0035	3-1-2011	Adopt	4-1-2011
213-013-0010	1-1-2012	Amend	1-1-2011	291-006-0040	3-1-2011	Adopt	4-1-2011
213-017-0006	12-26-2010	Amend	1-1-2011	291-006-0045	3-1-2011	Adopt	4-1-2011
213-017-0006(T)	12-26-2010	Repeal	1-1-2011	291-015-0100	11-19-2010	Amend	1-1-2011
213-070-0000	1-1-2011	Adopt	1-1-2011	291-015-0100(T)	11-19-2010	Repeal	1-1-2011
213-070-0005	1-1-2011	Adopt	1-1-2011	291-015-0105	11-19-2010	Amend	1-1-2011
213-070-0010	1-1-2011	Adopt	1-1-2011	291-015-0105(T)	11-19-2010	Repeal	1-1-2011
213-070-0020	1-1-2011	Adopt	1-1-2011	291-015-0110	11-19-2010	Amend	1-1-2011
213-070-0030	1-1-2011	Adopt	1-1-2011	291-015-0110(T)	11-19-2010	Repeal	1-1-2011
213-070-0040	1-1-2011	Adopt	1-1-2011	291-015-0115	11-19-2010	Amend	1-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
291-015-0115(T)	11-19-2010	Repeal	1-1-2011	291-124-0085	11-19-2010	Amend	1-1-2011
291-015-0120	11-19-2010	Amend	1-1-2011	291-124-0090	11-19-2010	Adopt	1-1-2011
291-015-0120(T)	11-19-2010	Repeal	1-1-2011	291-124-0095	11-19-2010	Repeal	1-1-2011
291-015-0125	11-19-2010	Amend	1-1-2011	291-131-0020	4-1-2011	Amend(T)	4-1-2011
291-015-0125(T)	11-19-2010	Repeal	1-1-2011	291-131-0025	4-1-2011	Amend(T)	4-1-2011
291-015-0130	11-19-2010	Repeal	1-1-2011	291-131-0035	4-1-2011	Amend(T)	4-1-2011
291-015-0135	11-19-2010	Amend	1-1-2011	291-131-0037	4-1-2011	Amend(T)	4-1-2011
291-015-0135(T)	11-19-2010	Repeal	1-1-2011	291-180-0115	3-4-2011	Suspend	4-1-2011
291-015-0140	11-19-2010	Repeal	1-1-2011	291-180-0125	3-4-2011	Suspend	4-1-2011
291-015-0145	11-19-2010	Repeal	1-1-2011	291-180-0135	3-4-2011	Suspend	4-1-2011
291-015-0150	11-19-2010	Repeal	1-1-2011	291-180-0145	3-4-2011	Suspend	4-1-2011
291-048-0100	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0155	3-4-2011	Suspend	4-1-2011
291-048-0110	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0165	3-4-2011	Suspend	4-1-2011
291-048-0115	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0175	3-4-2011	Suspend	4-1-2011
291-048-0120	12-13-2010	Suspend	1-1-2011	291-180-0185	3-4-2011	Suspend	4-1-2011
291-048-0130	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0195	3-4-2011	Suspend	4-1-2011
291-048-0140	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0205	3-4-2011	Suspend	4-1-2011
291-048-0150	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0215	3-4-2011	Suspend	4-1-2011
291-048-0160	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0225	3-4-2011	Suspend	4-1-2011
291-048-0170	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0235	3-4-2011	Suspend	4-1-2011
291-048-0180	12-13-2010	Suspend	1-1-2011	291-180-0245	3-4-2011	Suspend	4-1-2011
291-048-0190	12-13-2010	Am. & Ren.(T)	1-1-2011	291-180-0251	3-4-2011	Adopt(T)	4-1-2011
291-048-0230	12-13-2010	Adopt(T)	1-1-2011	291-180-0255	3-4-2011	Suspend	4-1-2011
291-048-0240	12-13-2010	Adopt(T)	1-1-2011	291-180-0261	3-4-2011	Adopt(T)	4-1-2011
291-048-0270	12-13-2010	Adopt(T)	1-1-2011	291-180-0285	3-4-2011	Suspend	4-1-2011
291-048-0280	12-13-2010	Adopt(T)	1-1-2011	291-180-0295	3-4-2011	Suspend	4-1-2011
291-048-0320	12-13-2010	Adopt(T)	1-1-2011	291-180-0305	3-4-2011	Suspend	4-1-2011
291-063-0010	12-1-2010	Amend(T)	1-1-2011	291-180-0315	3-4-2011	Suspend	4-1-2011
291-063-0016	12-1-2010	Amend(T)	1-1-2011	291-180-0325	3-4-2011	Suspend	4-1-2011
291-063-0030	12-1-2010	Amend(T)	1-1-2011	291-180-0335	3-4-2011	Suspend	4-1-2011
291-109-0100	3-1-2011	Amend	4-1-2011	291-180-0345	3-4-2011	Suspend	4-1-2011
291-109-0110	3-1-2011	Amend	4-1-2011	291-180-0355	3-4-2011	Suspend	4-1-2011
291-109-0120	3-1-2011	Amend	4-1-2011	291-180-0365	3-4-2011	Suspend	4-1-2011
291-109-0125	3-1-2011	Adopt	4-1-2011	291-180-0375	3-4-2011	Suspend	4-1-2011
291-109-0140	3-1-2011	Amend	4-1-2011	291-180-0385	3-4-2011	Suspend	4-1-2011
291-109-0150	3-1-2011	Amend	4-1-2011	291-180-0395	3-4-2011	Suspend	4-1-2011
291-109-0160	3-1-2011	Amend	4-1-2011	291-180-0405	3-4-2011	Suspend	4-1-2011
291-109-0170	3-1-2011	Amend	4-1-2011	291-180-0415	3-4-2011	Suspend	4-1-2011
291-109-0180	3-1-2011	Amend	4-1-2011	291-180-0425	3-4-2011	Suspend	4-1-2011
291-109-0190	3-1-2011	Amend	4-1-2011	291-180-0435	3-4-2011	Suspend	4-1-2011
291-124-0005	11-19-2010	Amend	1-1-2011	291-180-0445	3-4-2011	Suspend	4-1-2011
291-124-0010	11-19-2010	Amend	1-1-2011	291-180-0455	3-4-2011	Suspend	4-1-2011
291-124-0015	11-19-2010	Repeal	1-1-2011	291-180-0465	3-4-2011	Suspend	4-1-2011
291-124-0016	11-19-2010	Adopt	1-1-2011	291-180-0475	3-4-2011	Suspend	4-1-2011
291-124-0017	11-19-2010	Adopt	1-1-2011	291-180-0485	3-4-2011	Suspend	4-1-2011
291-124-0020	11-19-2010	Amend	1-1-2011	291-180-0495	3-4-2011	Suspend	4-1-2011
291-124-0025	11-19-2010	Repeal	1-1-2011	291-180-0505	3-4-2011	Suspend	4-1-2011
291-124-0030	11-19-2010	Amend	1-1-2011	291-180-0515	3-4-2011	Suspend	4-1-2011
291-124-0035	11-19-2010	Amend	1-1-2011	291-180-0525	3-4-2011	Suspend	4-1-2011
291-124-0041	11-19-2010	Amend	1-1-2011	291-180-0535	3-4-2011	Suspend	4-1-2011
291-124-0055	11-19-2010	Amend	1-1-2011	291-180-0545	3-4-2011	Suspend	4-1-2011
291-124-0060	11-19-2010	Amend	1-1-2011	291-180-0555	3-4-2011	Suspend	4-1-2011
291-124-0065	11-19-2010	Amend	1-1-2011	291-180-0565	3-4-2011	Suspend	4-1-2011
291-124-0070	11-19-2010	Amend	1-1-2011	291-180-0575	3-4-2011	Suspend	4-1-2011
291-124-0075	11-19-2010	Amend	1-1-2011	291-180-0585	3-4-2011	Suspend	4-1-2011
291-124-0080	11-19-2010	Amend	1-1-2011	291-180-0595	3-4-2011	Suspend	4-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
291-180-0605	3-4-2011	Suspend	4-1-2011	309-041-1370	2-1-2011	Renumber	3-1-2011
291-180-0615	3-4-2011	Suspend	4-1-2011	309-043-0000	2-1-2011	Repeal	3-1-2011
291-180-0625	3-4-2011	Suspend	4-1-2011	309-043-0005	2-1-2011	Repeal	3-1-2011
291-180-0635	3-4-2011	Suspend	4-1-2011	309-043-0010	2-1-2011	Repeal	3-1-2011
291-180-0645	3-4-2011	Suspend	4-1-2011	309-043-0015	2-1-2011	Repeal	3-1-2011
291-180-0655	3-4-2011	Suspend	4-1-2011	309-043-0020	2-1-2011	Repeal	3-1-2011
291-180-0665	3-4-2011	Suspend	4-1-2011	309-043-0025	2-1-2011	Repeal	3-1-2011
291-202-0020	1-28-2011	Amend	3-1-2011	309-043-0030	2-1-2011	Repeal	3-1-2011
291-202-0100	1-28-2011	Adopt	3-1-2011	309-043-0035	2-1-2011	Repeal	3-1-2011
291-202-0110	1-28-2011	Adopt	3-1-2011	309-043-0040	2-1-2011	Repeal	3-1-2011
291-202-0120	1-28-2011	Adopt	3-1-2011	309-043-0045	2-1-2011	Repeal	3-1-2011
291-202-0130	1-28-2011	Adopt	3-1-2011	309-043-0050	2-1-2011	Repeal	3-1-2011
309-034-0150	2-4-2011	Repeal	3-1-2011	309-043-0055	2-1-2011	Repeal	3-1-2011
309-034-0160	2-4-2011	Repeal	3-1-2011	309-043-0060	2-1-2011	Repeal	3-1-2011
309-034-0170	2-4-2011	Repeal	3-1-2011	309-043-0065	2-1-2011	Repeal	3-1-2011
309-034-0180	2-4-2011	Repeal	3-1-2011	309-043-0070	2-1-2011	Repeal	3-1-2011
309-034-0190	2-4-2011	Repeal	3-1-2011	309-043-0075	2-1-2011	Repeal	3-1-2011
309-034-0205	2-4-2011	Repeal	3-1-2011	309-043-0080	2-1-2011	Repeal	3-1-2011
309-034-0210	2-4-2011	Repeal	3-1-2011	309-043-0085	2-1-2011	Repeal	3-1-2011
309-034-0240	2-4-2011	Repeal	3-1-2011	309-043-0090	2-1-2011	Repeal	3-1-2011
309-034-0250	2-4-2011	Repeal	3-1-2011	309-043-0095	2-1-2011	Repeal	3-1-2011
309-034-0260	2-4-2011	Repeal	3-1-2011	309-043-0100	2-1-2011	Repeal	3-1-2011
309-034-0270	2-4-2011	Repeal	3-1-2011	309-043-0105	2-1-2011	Repeal	3-1-2011
309-034-0290	2-4-2011	Repeal	3-1-2011	309-043-0110	2-1-2011	Repeal	3-1-2011
309-034-0310	2-4-2011	Repeal	3-1-2011	309-043-0115	2-1-2011	Repeal	3-1-2011
309-034-0320	2-4-2011	Repeal	3-1-2011	309-043-0120	2-1-2011	Repeal	3-1-2011
309-034-0400	2-4-2011	Amend	3-1-2011	309-043-0125	2-1-2011	Repeal	3-1-2011
309-034-0410	2-4-2011	Amend	3-1-2011	309-043-0130	2-1-2011	Repeal	3-1-2011
309-034-0420	2-4-2011	Amend	3-1-2011	309-043-0135	2-1-2011	Repeal	3-1-2011
309-034-0430	2-4-2011	Amend	3-1-2011	309-043-0140	2-1-2011	Repeal	3-1-2011
309-034-0440	2-4-2011	Amend	3-1-2011	309-043-0145	2-1-2011	Repeal	3-1-2011
309-034-0450	2-4-2011	Amend	3-1-2011	309-043-0150	2-1-2011	Repeal	3-1-2011
309-034-0460	2-4-2011	Amend	3-1-2011	309-043-0155	2-1-2011	Repeal	3-1-2011
309-034-0470	2-4-2011	Amend	3-1-2011	309-043-0160	2-1-2011	Repeal	3-1-2011
309-034-0480	2-4-2011	Amend	3-1-2011	309-043-0165	2-1-2011	Repeal	3-1-2011
309-034-0490	2-4-2011	Amend	3-1-2011	309-043-0170	2-1-2011	Repeal	3-1-2011
309-034-0500	2-4-2011	Adopt	3-1-2011	309-043-0175	2-1-2011	Repeal	3-1-2011
309-041-0200	2-1-2011	Repeal	3-1-2011	309-043-0180	2-1-2011	Repeal	3-1-2011
309-041-0205	2-1-2011	Repeal	3-1-2011	309-043-0185	2-1-2011	Repeal	3-1-2011
309-041-0210	2-1-2011	Repeal	3-1-2011	309-043-0190	2-1-2011	Repeal	3-1-2011
309-041-0215	2-1-2011	Repeal	3-1-2011	309-043-0195	2-1-2011	Repeal	3-1-2011
309-041-0220	2-1-2011	Repeal	3-1-2011	309-043-0200	2-1-2011	Repeal	3-1-2011
309-041-0225	2-1-2011	Repeal	3-1-2011	309-049-0000	2-1-2011	Renumber	3-1-2011
309-041-0230	2-1-2011	Repeal	3-1-2011	309-049-0005	2-1-2011	Renumber	3-1-2011
309-041-0235	2-1-2011	Repeal	3-1-2011	309-049-0010	2-1-2011	Renumber	3-1-2011
309-041-0240	2-1-2011	Repeal	3-1-2011	309-049-0015	2-1-2011	Renumber	3-1-2011
309-041-0245	2-1-2011	Repeal	3-1-2011	309-049-0020	2-1-2011	Renumber	3-1-2011
309-041-0250	2-1-2011	Repeal	3-1-2011	309-100-0100	1-7-2011	Adopt(T)	2-1-2011
309-041-0255	2-1-2011	Repeal	3-1-2011	309-100-0110	1-7-2011	Adopt(T)	2-1-2011
309-041-1300	2-1-2011	Renumber	3-1-2011	309-100-0120	1-7-2011	Adopt(T)	2-1-2011
309-041-1310	2-1-2011	Renumber	3-1-2011	309-100-0130	1-7-2011	Adopt(T)	2-1-2011
309-041-1320	2-1-2011	Renumber	3-1-2011	309-100-0140	1-7-2011	Adopt(T)	2-1-2011
309-041-1330	2-1-2011	Renumber	3-1-2011	309-100-0150	1-7-2011	Adopt(T)	2-1-2011
309-041-1340	2-1-2011	Renumber	3-1-2011	309-102-0000	1-7-2011	Suspend	2-1-2011
309-041-1350	2-1-2011	Renumber	3-1-2011	309-102-0005	1-7-2011	Suspend	2-1-2011
309-041-1360	2-1-2011	Renumber	3-1-2011	309-102-0010	1-7-2011	Suspend	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
309-102-0015	1-7-2011	Suspend	2-1-2011	330-112-0000(T)	12-15-2010	Repeal	1-1-2011
309-102-0020	1-7-2011	Suspend	2-1-2011	330-112-0010	12-15-2010	Adopt	1-1-2011
309-102-0025	1-7-2011	Suspend	2-1-2011	330-112-0010(T)	12-15-2010	Repeal	1-1-2011
309-114-0005	11-19-2010	Amend(T)	1-1-2011	330-112-0020	12-15-2010	Adopt	1-1-2011
309-114-0020	11-19-2010	Amend(T)	1-1-2011	330-112-0020(T)	12-15-2010	Repeal	1-1-2011
309-114-0030	11-19-2010	Amend(T)	1-1-2011	330-112-0030	12-15-2010	Adopt	1-1-2011
309-114-0040	11-19-2010	Adopt(T)	1-1-2011	330-112-0030(T)	12-15-2010	Repeal	1-1-2011
309-114-0050	11-19-2010	Adopt(T)	1-1-2011	330-112-0040	12-15-2010	Adopt	1-1-2011
309-114-0060	11-19-2010	Adopt(T)	1-1-2011	330-112-0040(T)	12-15-2010	Repeal	1-1-2011
309-114-0070	11-19-2010	Adopt(T)	1-1-2011	330-112-0050	12-15-2010	Adopt	1-1-2011
330-070-0010	12-22-2010	Amend	2-1-2011	330-112-0050(T)	12-15-2010	Repeal	1-1-2011
330-070-0010(T)	12-22-2010	Repeal	2-1-2011	330-112-0060	12-15-2010	Adopt	1-1-2011
330-070-0013	12-22-2010	Amend	2-1-2011	330-112-0060(T)	12-15-2010	Repeal	1-1-2011
330-070-0013(T)	12-22-2010	Repeal	2-1-2011	330-112-0070	12-15-2010	Adopt	1-1-2011
330-070-0014	12-22-2010	Amend	2-1-2011	330-112-0070(T)	12-15-2010	Repeal	1-1-2011
330-070-0019	12-22-2010	Adopt	2-1-2011	330-112-0080	12-15-2010	Adopt	1-1-2011
330-070-0019(T)	12-22-2010	Repeal	2-1-2011	330-112-0080(T)	12-15-2010	Repeal	1-1-2011
330-070-0020	12-22-2010	Amend	2-1-2011	330-112-0090	12-15-2010	Adopt	1-1-2011
330-070-0021	12-22-2010	Amend	2-1-2011	330-112-0090(T)	12-15-2010	Repeal	1-1-2011
330-070-0022	12-22-2010	Amend	2-1-2011	330-112-0100	12-15-2010	Adopt	1-1-2011
330-070-0022(T)	12-22-2010	Repeal	2-1-2011	330-112-0100(T)	12-15-2010	Repeal	1-1-2011
330-070-0024	12-22-2010	Amend	2-1-2011	330-160-0015	2-22-2011	Amend	4-1-2011
330-070-0025	12-22-2010	Amend	2-1-2011	330-160-0015	3-4-2011	Amend	4-1-2011
330-070-0026	12-22-2010	Amend	2-1-2011	330-160-0015(T)	2-22-2011	Repeal	4-1-2011
330-070-0027	12-22-2010	Amend	2-1-2011	330-160-0020	3-4-2011	Amend	4-1-2011
330-070-0045	12-22-2010	Amend	2-1-2011	330-160-0025	3-4-2011	Amend	4-1-2011
330-070-0055	12-22-2010	Amend	2-1-2011	330-160-0030	3-4-2011	Amend	4-1-2011
330-070-0059	12-22-2010	Amend	2-1-2011	330-160-0040	2-22-2011	Adopt	4-1-2011
330-070-0060	12-22-2010	Amend	2-1-2011	330-160-0040(T)	2-22-2011	Repeal	4-1-2011
330-070-0062	12-22-2010	Amend	2-1-2011	330-160-0050	3-4-2011	Adopt	4-1-2011
330-070-0063	12-22-2010	Amend	2-1-2011	331-010-0050	3-1-2011	Adopt(T)	4-1-2011
330-070-0064	12-22-2010	Amend	2-1-2011	331-020-0040	3-1-2011	Amend(T)	4-1-2011
330-070-0070	12-22-2010	Amend	2-1-2011	332-015-0000	1-1-2011	Amend	2-1-2011
330-070-0073	12-22-2010	Amend	2-1-2011	332-015-0010	1-1-2011	Repeal	2-1-2011
330-070-0089	12-22-2010	Amend	2-1-2011	332-015-0030	1-1-2011	Amend	2-1-2011
330-070-0091	12-22-2010	Amend	2-1-2011	332-015-0040	1-1-2011	Amend	2-1-2011
330-070-0097	12-22-2010	Amend	2-1-2011	332-015-0050	1-1-2011	Amend	2-1-2011
330-090-0105	11-23-2010	Amend	1-1-2011	332-015-0060	1-1-2011	Repeal	2-1-2011
330-090-0105(T)	11-23-2010	Repeal	1-1-2011	332-015-0065	1-1-2011	Repeal	2-1-2011
330-090-0110	11-23-2010	Amend	1-1-2011	332-015-0070	1-1-2011	Amend	2-1-2011
330-090-0110(T)	11-23-2010	Repeal	1-1-2011	332-015-0080	1-1-2011	Adopt	2-1-2011
330-090-0120	11-23-2010	Amend	1-1-2011	332-020-0000	1-1-2011	Amend	2-1-2011
330-090-0120(T)	11-23-2010	Repeal	1-1-2011	332-020-0010	1-1-2011	Amend	2-1-2011
330-090-0130	11-23-2010	Amend	1-1-2011	332-020-0015	1-1-2011	Amend	2-1-2011
330-090-0130(T)	11-23-2010	Repeal	1-1-2011	332-020-0017	1-1-2011	Adopt	2-1-2011
330-090-0133	11-23-2010	Amend	1-1-2011	332-020-0020	1-1-2011	Amend	2-1-2011
330-090-0133(T)	11-23-2010	Repeal	1-1-2011	332-020-0020(T)	1-1-2011	Repeal	2-1-2011
330-090-0140	11-23-2010	Amend	1-1-2011	332-025-0020	1-1-2011	Amend	2-1-2011
330-090-0140(T)	11-23-2010	Repeal	1-1-2011	332-025-0021	1-1-2011	Amend	2-1-2011
330-090-0150	11-23-2010	Amend	1-1-2011	332-025-0022	1-1-2011	Amend	2-1-2011
330-090-0150(T)	11-23-2010	Repeal	1-1-2011	332-025-0030	1-1-2011	Amend	2-1-2011
330-090-0350	11-23-2010	Adopt	1-1-2011	332-025-0040	1-1-2011	Amend	2-1-2011
330-090-0350(T)	11-23-2010	Repeal	1-1-2011	332-025-0050	1-1-2011	Amend	2-1-2011
330-090-0450	11-23-2010	Adopt	1-1-2011	332-025-0060	1-1-2011	Amend	2-1-2011
330-090-0450(T)	11-23-2010	Repeal	1-1-2011	332-025-0070	1-1-2011	Adopt	2-1-2011
330-112-0000	12-15-2010	Adopt	1-1-2011	332-025-0080	1-1-2011	Adopt	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
332-025-0100	1-1-2011	Adopt	2-1-2011	333-076-0190	12-15-2010	Amend	1-1-2011
332-030-0000	1-1-2011	Amend	2-1-2011	333-076-0250	12-15-2010	Adopt	1-1-2011
333-002-0000	3-1-2011	Amend	4-1-2011	333-076-0255	12-15-2010	Adopt	1-1-2011
333-002-0010	3-1-2011	Amend	4-1-2011	333-076-0260	12-15-2010	Adopt	1-1-2011
333-002-0020	3-1-2011	Amend	4-1-2011	333-076-0265	12-15-2010	Adopt	1-1-2011
333-002-0030	3-1-2011	Amend	4-1-2011	333-076-0270	12-15-2010	Adopt	1-1-2011
333-002-0035	3-1-2011	Amend	4-1-2011	333-255-0070	1-6-2011	Amend	2-1-2011
333-002-0040	3-1-2011	Amend	4-1-2011	333-255-0070(T)	1-6-2011	Repeal	2-1-2011
333-002-0050	3-1-2011	Amend	4-1-2011	333-255-0071	1-6-2011	Amend	2-1-2011
333-002-0060	3-1-2011	Amend	4-1-2011	333-255-0072	1-6-2011	Amend	2-1-2011
333-002-0070	3-1-2011	Amend	4-1-2011	333-255-0073	1-6-2011	Amend	2-1-2011
333-002-0080	3-1-2011	Amend	4-1-2011	333-265-0050	1-6-2011	Amend	2-1-2011
333-002-0090	3-1-2011	Repeal	4-1-2011	333-265-0090	1-6-2011	Amend	2-1-2011
333-002-0100	3-1-2011	Amend	4-1-2011	333-265-0090(T)	1-6-2011	Repeal	2-1-2011
333-002-0110	3-1-2011	Repeal	4-1-2011	333-265-0105	1-6-2011	Amend	2-1-2011
333-002-0120	3-1-2011	Amend	4-1-2011	333-265-0105(T)	1-6-2011	Repeal	2-1-2011
333-002-0130	3-1-2011	Amend	4-1-2011	333-265-0110	1-6-2011	Amend	2-1-2011
333-002-0140	3-1-2011	Amend	4-1-2011	333-500-0005	12-15-2010	Amend	1-1-2011
333-002-0150	3-1-2011	Amend	4-1-2011	333-500-0010	12-15-2010	Amend	1-1-2011
333-002-0160	3-1-2011	Amend	4-1-2011	333-500-0020	12-15-2010	Amend	1-1-2011
333-002-0170	3-1-2011	Amend	4-1-2011	333-500-0025	12-15-2010	Amend	1-1-2011
333-002-0180	3-1-2011	Amend	4-1-2011	333-500-0030	12-15-2010	Amend	1-1-2011
333-002-0190	3-1-2011	Amend	4-1-2011	333-500-0031	12-15-2010	Adopt	1-1-2011
333-002-0200	3-1-2011	Amend	4-1-2011	333-500-0034	12-15-2010	Amend	1-1-2011
333-002-0210	3-1-2011	Amend	4-1-2011	333-500-0040	12-15-2010	Amend	1-1-2011
333-002-0220	3-1-2011	Amend	4-1-2011	333-500-0065	12-15-2010	Amend	1-1-2011
333-002-0230	3-1-2011	Amend	4-1-2011	333-501-0010	12-15-2010	Amend	1-1-2011
333-005-0000	1-1-2011	Am. & Ren.	2-1-2011	333-501-0015	12-15-2010	Amend	1-1-2011
333-005-0010	1-1-2011	Am. & Ren.	2-1-2011	333-501-0035	12-15-2010	Amend	1-1-2011
333-005-0020	1-1-2011	Am. & Ren.	2-1-2011	333-501-0040	12-15-2010	Amend	1-1-2011
333-005-0030	1-1-2011	Am. & Ren.	2-1-2011	333-501-0045	12-15-2010	Amend	1-1-2011
333-005-0040	1-1-2011	Am. & Ren.	2-1-2011	333-501-0055	12-15-2010	Amend	1-1-2011
333-005-0050	1-1-2011	Am. & Ren.	2-1-2011	333-501-0060	12-15-2010	Adopt	1-1-2011
333-005-0060	1-1-2011	Am. & Ren.	2-1-2011	333-505-0005	12-15-2010	Amend	1-1-2011
333-008-0020	12-28-2010	Amend	2-1-2011	333-505-0020	12-15-2010	Amend	1-1-2011
333-008-0020(T)	12-28-2010	Repeal	2-1-2011	333-505-0030	12-15-2010	Amend	1-1-2011
333-008-0040	12-28-2010	Amend	2-1-2011	333-505-0033	12-15-2010	Amend	1-1-2011
333-008-0045	12-28-2010	Adopt	2-1-2011	333-505-0050	12-15-2010	Amend	1-1-2011
333-076-0101	12-15-2010	Amend	1-1-2011	334-001-0012	1-1-2011	Amend	2-1-2011
333-076-0106	12-15-2010	Amend	1-1-2011	334-001-0055	1-1-2011	Amend	2-1-2011
333-076-0108	12-15-2010	Amend	1-1-2011	334-010-0033	1-1-2011	Amend	2-1-2011
333-076-0109	12-15-2010	Amend	1-1-2011	335-001-0009	2-1-2011	Amend	3-1-2011
333-076-0111	12-15-2010	Amend	1-1-2011	335-060-0005	2-1-2011	Amend	3-1-2011
333-076-0114	12-15-2010	Amend	1-1-2011	335-060-0010	2-1-2011	Amend	3-1-2011
333-076-0115	12-15-2010	Amend	1-1-2011	335-060-0030	2-1-2011	Amend	3-1-2011
333-076-0125	12-15-2010	Amend	1-1-2011	335-070-0020	2-1-2011	Amend	3-1-2011
333-076-0130	12-15-2010	Amend	1-1-2011	335-070-0055	2-1-2011	Amend	3-1-2011
333-076-0135	12-15-2010	Amend	1-1-2011	335-070-0085	2-1-2011	Amend	3-1-2011
333-076-0140	12-15-2010	Amend	1-1-2011	335-095-0030	2-1-2011	Amend	3-1-2011
333-076-0145	12-15-2010	Amend	1-1-2011	335-095-0040	2-1-2011	Amend	3-1-2011
333-076-0155	12-15-2010	Amend	1-1-2011	335-095-0055	2-1-2011	Repeal	3-1-2011
333-076-0160	12-15-2010	Amend	1-1-2011	338-005-0030	3-1-2011	Amend(T)	4-1-2011
333-076-0165	12-15-2010	Amend	1-1-2011	338-005-0030	3-4-2011	Amend(T)	4-1-2011
333-076-0170	12-15-2010	Amend	1-1-2011	340-012-0054	3-15-2011	Amend	4-1-2011
333-076-0175	12-15-2010	Amend	1-1-2011	340-012-0140	3-15-2011	Amend	4-1-2011
333-076-0180	12-15-2010	Amend	1-1-2011	340-016-0080	12-20-2010	Amend	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
340-016-0088	12-20-2010	Adopt	2-1-2011	340-262-0240	3-15-2011	Repeal	4-1-2011
340-016-0100	12-20-2010	Repeal	2-1-2011	340-262-0250	3-15-2011	Repeal	4-1-2011
340-016-0110	12-20-2010	Repeal	2-1-2011	340-262-0300	3-15-2011	Repeal	4-1-2011
340-016-0120	12-20-2010	Repeal	2-1-2011	340-262-0310	3-15-2011	Repeal	4-1-2011
340-016-0130	12-20-2010	Repeal	2-1-2011	340-262-0320	3-15-2011	Repeal	4-1-2011
340-016-0140	12-20-2010	Repeal	2-1-2011	340-262-0330	3-15-2011	Repeal	4-1-2011
340-016-0150	12-20-2010	Repeal	2-1-2011	340-262-0400	3-15-2011	Adopt	4-1-2011
340-016-0210	12-20-2010	Amend	2-1-2011	340-262-0450	3-15-2011	Adopt	4-1-2011
340-041-0033	12-21-2010	Amend	2-1-2011	340-262-0500	3-15-2011	Adopt	4-1-2011
340-045-0100	3-15-2011	Amend(T)	4-1-2011	340-262-0600	3-15-2011	Adopt	4-1-2011
340-141-0010	12-23-2010	Amend	2-1-2011	340-262-0700	3-15-2011	Adopt	4-1-2011
340-200-0040	12-10-2010	Amend	1-1-2011	340-262-0800	3-15-2011	Adopt	4-1-2011
340-200-0040	2-24-2011	Amend	4-1-2011	340-262-0900	3-15-2011	Adopt	4-1-2011
340-200-0040	3-15-2011	Amend	4-1-2011	407-020-0000	2-1-2011	Am. & Ren.	3-1-2011
340-216-0020	2-24-2011	Amend	4-1-2011	407-020-0005	2-1-2011	Am. & Ren.	3-1-2011
340-216-0060	2-24-2011	Amend	4-1-2011	407-020-0010	2-1-2011	Am. & Ren.	3-1-2011
340-216-0064	2-24-2011	Amend	4-1-2011	407-020-0015	2-1-2011	Am. & Ren.	3-1-2011
340-220-0030	12-20-2010	Amend	2-1-2011	407-045-0260	1-1-2011	Amend	2-1-2011
340-220-0040	12-20-2010	Amend	2-1-2011	407-045-0260(T)	1-1-2011	Repeal	2-1-2011
340-220-0050	12-20-2010	Amend	2-1-2011	407-045-0820	1-1-2011	Amend	2-1-2011
340-223-0010	12-10-2010	Amend	1-1-2011	407-045-0820(T)	1-1-2011	Repeal	2-1-2011
340-223-0020	12-10-2010	Amend	1-1-2011	409-015-0010	3-1-2011	Amend	3-1-2011
340-223-0030	12-10-2010	Amend	1-1-2011	409-030-0000	3-1-2011	Renumber	3-1-2011
340-223-0040	12-10-2010	Amend	1-1-2011	409-030-0005	3-1-2011	Renumber	3-1-2011
340-223-0050	12-10-2010	Amend	1-1-2011	409-030-0010	3-1-2011	Renumber	3-1-2011
340-223-0060	12-10-2010	Adopt	1-1-2011	409-030-0020	3-1-2011	Renumber	3-1-2011
340-223-0070	12-10-2010	Adopt	1-1-2011	409-030-0030	3-1-2011	Renumber	3-1-2011
340-223-0080	12-10-2010	Adopt	1-1-2011	409-030-0050	3-1-2011	Renumber	3-1-2011
340-230-0030	2-24-2011	Amend	4-1-2011	409-030-0065	3-1-2011	Renumber	3-1-2011
340-230-0300	2-24-2011	Amend	4-1-2011	409-110-0000	2-1-2011	Amend	3-1-2011
340-230-0400	2-24-2011	Repeal	4-1-2011	409-110-0005	2-1-2011	Amend	3-1-2011
340-230-0410	2-24-2011	Repeal	4-1-2011	409-110-0010	2-1-2011	Amend	3-1-2011
340-238-0040	2-24-2011	Amend	4-1-2011	409-110-0015	2-1-2011	Amend	3-1-2011
340-238-0060	2-24-2011	Amend	4-1-2011	409-110-0020	2-1-2011	Amend	3-1-2011
340-242-0500	2-24-2011	Amend	4-1-2011	410-050-0401	2-1-2011	Renumber	3-1-2011
340-244-0030	2-24-2011	Amend	4-1-2011	410-050-0411	2-1-2011	Renumber	3-1-2011
340-244-0220	2-24-2011	Amend	4-1-2011	410-050-0421	2-1-2011	Renumber	3-1-2011
340-244-0234	2-24-2011	Amend	4-1-2011	410-050-0431	2-1-2011	Renumber	3-1-2011
340-244-0236	2-24-2011	Amend	4-1-2011	410-050-0451	2-1-2011	Renumber	3-1-2011
340-244-0238	2-24-2011	Amend	4-1-2011	410-050-0461	2-1-2011	Renumber	3-1-2011
340-244-0242	2-24-2011	Amend	4-1-2011	410-050-0471	2-1-2011	Renumber	3-1-2011
340-244-0244	2-24-2011	Amend	4-1-2011	410-050-0481	2-1-2011	Renumber	3-1-2011
340-244-0248	2-24-2011	Amend	4-1-2011	410-050-0491	2-1-2011	Renumber	3-1-2011
340-262-0010	3-15-2011	Repeal	4-1-2011	410-050-0501	2-1-2011	Renumber	3-1-2011
340-262-0020	3-15-2011	Repeal	4-1-2011	410-050-0511	2-1-2011	Renumber	3-1-2011
340-262-0030	3-15-2011	Repeal	4-1-2011	410-050-0521	2-1-2011	Renumber	3-1-2011
340-262-0040	3-15-2011	Repeal	4-1-2011	410-050-0531	2-1-2011	Renumber	3-1-2011
340-262-0050	3-15-2011	Repeal	4-1-2011	410-050-0541	2-1-2011	Renumber	3-1-2011
340-262-0100	3-15-2011	Repeal	4-1-2011	410-050-0551	2-1-2011	Renumber	3-1-2011
340-262-0110	3-15-2011	Repeal	4-1-2011	410-050-0561	2-1-2011	Renumber	3-1-2011
340-262-0120	3-15-2011	Repeal	4-1-2011	410-050-0591	2-1-2011	Renumber	3-1-2011
340-262-0130	3-15-2011	Repeal	4-1-2011	410-050-0601	2-1-2011	Renumber	3-1-2011
340-262-0200	3-15-2011	Repeal	4-1-2011	410-120-0030	1-1-2011	Amend	2-1-2011
340-262-0210	3-15-2011	Repeal	4-1-2011	410-120-1195	1-1-2011	Amend	2-1-2011
340-262-0220	3-15-2011	Repeal	4-1-2011	410-120-1200	1-1-2011	Amend	2-1-2011
340-262-0230	3-15-2011	Repeal	4-1-2011	410-120-1230	1-1-2011	Amend	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
410-120-1280	1-1-2011	Amend	2-1-2011	410-136-0820	1-1-2011	Amend	1-1-2011
410-120-1295	1-1-2011	Amend	2-1-2011	410-136-0840	1-1-2011	Amend	1-1-2011
410-120-1340	1-1-2011	Amend	2-1-2011	410-136-0860	1-1-2011	Amend	1-1-2011
410-121-0000	1-1-2011	Amend	2-1-2011	410-138-0000	1-1-2011	Amend	2-1-2011
410-121-0030	1-1-2011	Amend	2-1-2011	410-138-0005	1-1-2011	Amend	2-1-2011
410-121-0030	3-1-2011	Amend(T)	4-1-2011	410-138-0007	1-1-2011	Amend	2-1-2011
410-121-0040	1-1-2011	Amend	2-1-2011	410-138-0009	1-1-2011	Amend	2-1-2011
410-121-0149	1-1-2011	Amend	2-1-2011	410-138-0020	1-1-2011	Amend	2-1-2011
410-121-0155	1-1-2011	Amend	2-1-2011	410-138-0040	1-1-2011	Amend	2-1-2011
410-121-0160	1-1-2011	Amend	2-1-2011	410-138-0060	1-1-2011	Amend	2-1-2011
410-121-0320	1-1-2011	Repeal	2-1-2011	410-138-0080	1-1-2011	Amend	2-1-2011
410-123-1000	1-1-2011	Amend	1-1-2011	410-138-0300	1-1-2011	Repeal	2-1-2011
410-123-1085	1-1-2011	Repeal	1-1-2011	410-138-0360	1-1-2011	Repeal	2-1-2011
410-123-1220	1-1-2011	Amend	1-1-2011	410-138-0380	1-1-2011	Repeal	2-1-2011
410-123-1260	1-1-2011	Amend	1-1-2011	410-138-0390	1-1-2011	Amend	2-1-2011
410-123-1540	1-1-2011	Amend	1-1-2011	410-138-0400	1-1-2011	Repeal	2-1-2011
410-125-0047	1-1-2011	Amend	1-1-2011	410-138-0420	1-1-2011	Amend	2-1-2011
410-125-0080	1-1-2011	Amend	1-1-2011	410-138-0440	1-1-2011	Repeal	2-1-2011
410-125-0085	1-1-2011	Amend	1-1-2011	410-138-0460	1-1-2011	Repeal	2-1-2011
410-125-0100	1-1-2011	Repeal	1-1-2011	410-138-0500	1-1-2011	Repeal	2-1-2011
410-125-0140	1-1-2011	Amend	1-1-2011	410-138-0540	1-1-2011	Repeal	2-1-2011
410-125-0360	1-1-2011	Amend	1-1-2011	410-138-0560	1-1-2011	Repeal	2-1-2011
410-125-0410	1-1-2011	Amend	1-1-2011	410-138-0600	1-1-2011	Repeal	2-1-2011
410-125-0450	1-1-2011	Adopt	1-1-2011	410-138-0640	1-1-2011	Repeal	2-1-2011
410-125-1020	1-1-2011	Amend	1-1-2011	410-138-0660	1-1-2011	Repeal	2-1-2011
410-125-2000	1-1-2011	Amend	1-1-2011	410-138-0680	1-1-2011	Repeal	2-1-2011
410-125-2020	1-1-2011	Amend	1-1-2011	410-138-0700	1-1-2011	Repeal	2-1-2011
410-125-2030	1-1-2011	Amend	1-1-2011	410-138-0710	1-1-2011	Repeal	2-1-2011
410-127-0020	1-1-2011	Amend	1-1-2011	410-138-0740	1-1-2011	Repeal	2-1-2011
410-127-0060	1-1-2011	Amend	1-1-2011	410-138-0760	1-1-2011	Repeal	2-1-2011
410-127-0065	1-1-2011	Amend	1-1-2011	410-138-0780	1-1-2011	Repeal	2-1-2011
410-127-0080	1-1-2011	Amend	1-1-2011	410-141-0000	1-1-2011	Amend	2-1-2011
410-130-0200	1-1-2011	Amend	1-1-2011	410-141-0070	1-1-2011	Amend	2-1-2011
410-130-0255	1-1-2011	Amend	1-1-2011	410-141-0080	1-1-2011	Amend	2-1-2011
410-130-0580	1-1-2011	Amend	1-1-2011	410-141-0120	1-1-2011	Amend	2-1-2011
410-130-0585	1-1-2011	Amend	1-1-2011	410-141-0220	1-1-2011	Amend	2-1-2011
410-130-0587	1-1-2011	Amend	1-1-2011	410-141-0260	1-1-2011	Amend	2-1-2011
410-136-0030	1-1-2011	Amend	1-1-2011	410-141-0263	1-1-2011	Amend	2-1-2011
410-136-0040	1-1-2011	Amend	1-1-2011	410-141-0280	1-1-2011	Amend	2-1-2011
410-136-0045	1-1-2011	Amend	1-1-2011	410-141-0300	1-1-2011	Amend	2-1-2011
410-136-0050	1-1-2011	Amend	1-1-2011	410-141-0420	1-1-2011	Amend	2-1-2011
410-136-0060	1-1-2011	Amend	1-1-2011	410-141-0520	1-1-2011	Amend	2-1-2011
410-136-0070	1-1-2011	Amend	1-1-2011	410-141-0520(T)	1-1-2011	Repeal	2-1-2011
410-136-0080	1-1-2011	Amend	1-1-2011	410-142-0020	1-1-2011	Amend	1-1-2011
410-136-0140	1-1-2011	Amend	1-1-2011	410-142-0100	1-1-2011	Amend	1-1-2011
410-136-0160	1-1-2011	Amend	1-1-2011	410-142-0110	1-1-2011	Adopt	1-1-2011
410-136-0180	1-1-2011	Amend	1-1-2011	410-142-0200	1-1-2011	Amend	1-1-2011
410-136-0200	1-1-2011	Amend	1-1-2011	410-142-0225	1-1-2011	Amend	1-1-2011
410-136-0220	1-1-2011	Amend	1-1-2011	410-142-0240	1-1-2011	Amend	1-1-2011
410-136-0240	1-1-2011	Amend	1-1-2011	410-142-0280	1-1-2011	Amend	1-1-2011
410-136-0300	1-1-2011	Amend	1-1-2011	410-142-0300	1-1-2011	Amend	1-1-2011
410-136-0320	1-1-2011	Amend	1-1-2011	410-146-0021	1-1-2011	Amend	1-1-2011
410-136-0340	1-1-2011	Amend	1-1-2011	410-146-0085	1-1-2011	Amend	1-1-2011
410-136-0350	1-1-2011	Amend	1-1-2011	410-146-0086	1-1-2011	Amend	1-1-2011
410-136-0440	1-1-2011	Amend	1-1-2011	410-146-0120	1-1-2011	Amend	1-1-2011
410-136-0800	1-1-2011	Amend	1-1-2011	410-146-0140	1-1-2011	Repeal	1-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
410-147-0120	1-1-2011	Amend	1-1-2011	413-010-0081	12-29-2010	Amend	2-1-2011
410-147-0140	1-1-2011	Amend	1-1-2011	413-010-0082	12-29-2010	Amend	2-1-2011
410-147-0200	1-1-2011	Amend	1-1-2011	413-010-0083	12-29-2010	Amend	2-1-2011
410-147-0220	1-1-2011	Repeal	1-1-2011	413-010-0084	12-29-2010	Repeal	2-1-2011
410-147-0320	1-1-2011	Amend	1-1-2011	413-010-0085	12-29-2010	Amend	2-1-2011
410-147-0480	1-1-2011	Amend	1-1-2011	413-010-0086	12-29-2010	Repeal	2-1-2011
410-147-0610	1-1-2011	Repeal	1-1-2011	413-010-0360	12-29-2010	Repeal	2-1-2011
411-031-0020	12-1-2010	Amend	1-1-2011	413-010-0370	12-29-2010	Repeal	2-1-2011
411-031-0020(T)	12-1-2010	Repeal	1-1-2011	413-010-0380	12-29-2010	Repeal	2-1-2011
411-031-0040	12-1-2010	Amend	1-1-2011	413-040-0240	1-4-2011	Amend	2-1-2011
411-031-0040(T)	12-1-2010	Repeal	1-1-2011	413-040-0240(T)	1-4-2011	Repeal	2-1-2011
411-034-0010	1-1-2011	Amend	2-1-2011	413-070-0500	12-29-2010	Amend	2-1-2011
411-034-0020	1-1-2011	Amend	2-1-2011	413-070-0505	12-29-2010	Amend	2-1-2011
411-050-0412	1-1-2011	Amend	2-1-2011	413-070-0510	12-29-2010	Amend	2-1-2011
411-050-0499	1-1-2011	Repeal	2-1-2011	413-070-0514	12-29-2010	Adopt	2-1-2011
411-304-0035	1-1-2011	Amend	2-1-2011	413-070-0515	12-29-2010	Am. & Ren.	2-1-2011
411-308-0020	2-1-2011	Amend(T)	3-1-2011	413-070-0516	12-29-2010	Adopt	2-1-2011
411-308-0050	2-1-2011	Amend(T)	3-1-2011	413-070-0517	12-29-2010	Repeal	2-1-2011
411-308-0060	2-1-2011	Amend(T)	3-1-2011	413-070-0518	12-29-2010	Adopt	2-1-2011
411-308-0070	2-1-2011	Amend(T)	3-1-2011	413-070-0519	12-29-2010	Adopt	2-1-2011
411-308-0080	2-1-2011	Amend(T)	3-1-2011	413-070-0520	12-29-2010	Amend	2-1-2011
411-308-0090	2-1-2011	Amend(T)	3-1-2011	413-070-0524	12-29-2010	Amend	2-1-2011
411-308-0120	2-1-2011	Amend(T)	3-1-2011	413-070-0532	12-29-2010	Amend	2-1-2011
411-320-0020	1-1-2011	Amend	2-1-2011	413-070-0536	12-29-2010	Amend	2-1-2011
411-320-0020(T)	1-1-2011	Repeal	2-1-2011	413-070-0540	12-29-2010	Amend	2-1-2011
411-320-0030	12-1-2010	Amend(T)	1-1-2011	413-070-0548	12-29-2010	Am. & Ren.	2-1-2011
411-320-0045	12-1-2010	Amend(T)	1-1-2011	413-070-0550	12-29-2010	Amend	2-1-2011
411-320-0080	1-1-2011	Amend	2-1-2011	413-070-0552	12-29-2010	Amend	2-1-2011
411-320-0080(T)	1-1-2011	Repeal	2-1-2011	413-070-0556	12-29-2010	Amend	2-1-2011
411-320-0130	12-1-2010	Amend(T)	1-1-2011	413-070-0565	12-29-2010	Amend	2-1-2011
411-320-0170	12-1-2010	Amend(T)	1-1-2011	413-070-0570	12-28-2010	Adopt	2-1-2011
411-320-0175	1-1-2011	Amend	2-1-2011	413-070-0572	12-28-2010	Adopt	2-1-2011
411-320-0175(T)	1-1-2011	Repeal	2-1-2011	413-070-0574	12-28-2010	Adopt	2-1-2011
411-328-0570	2-7-2011	Amend(T)	3-1-2011	413-070-0600	12-29-2010	Amend	2-1-2011
411-328-0810	2-7-2011	Amend(T)	3-1-2011	413-070-0620	12-29-2010	Amend	2-1-2011
411-335-0030	2-7-2011	Amend(T)	3-1-2011	413-070-0625	12-29-2010	Amend	2-1-2011
411-335-0050	2-7-2011	Amend(T)	3-1-2011	413-070-0630	12-29-2010	Amend	2-1-2011
411-335-0380	2-7-2011	Amend(T)	3-1-2011	413-070-0640	12-29-2010	Amend	2-1-2011
411-340-0030	11-17-2010	Amend(T)	1-1-2011	413-070-0645	12-29-2010	Amend	2-1-2011
411-340-0040	11-17-2010	Amend(T)	1-1-2011	413-070-0651	12-29-2010	Adopt(T)	2-1-2011
411-340-0060	11-17-2010	Amend(T)	1-1-2011	413-070-0655	12-29-2010	Adopt(T)	2-1-2011
411-340-0120	11-17-2010	Amend(T)	1-1-2011	413-070-0660	12-29-2010	Adopt(T)	2-1-2011
411-345-0030	2-7-2011	Amend(T)	3-1-2011	413-070-0665	12-29-2010	Adopt(T)	2-1-2011
411-345-0100	2-7-2011	Amend(T)	3-1-2011	413-070-0670	12-29-2010	Adopt(T)	2-1-2011
411-345-0260	2-7-2011	Amend(T)	3-1-2011	413-110-0100	12-29-2010	Amend	2-1-2011
411-346-0110	2-10-2011	Amend(T)	3-1-2011	413-110-0110	12-29-2010	Amend	2-1-2011
411-346-0150	2-10-2011	Amend(T)	3-1-2011	413-110-0120	12-29-2010	Repeal	2-1-2011
411-346-0160	2-10-2011	Amend(T)	3-1-2011	413-110-0130	12-29-2010	Amend	2-1-2011
411-346-0165	2-10-2011	Amend(T)	3-1-2011	413-110-0132	12-29-2010	Adopt	2-1-2011
411-346-0190	2-10-2011	Amend(T)	3-1-2011	413-110-0140	12-29-2010	Repeal	2-1-2011
411-346-0200	2-10-2011	Amend(T)	3-1-2011	413-110-0150	12-29-2010	Adopt	2-1-2011
411-346-0220	2-10-2011	Amend(T)	3-1-2011	413-120-0000	12-29-2010	Amend	2-1-2011
411-360-0070	1-1-2011	Amend	2-1-2011	413-120-0010	12-29-2010	Amend	2-1-2011
411-360-0070(T)	1-1-2011	Repeal	2-1-2011	413-120-0015	12-29-2010	Repeal	2-1-2011
413-010-0055	12-29-2010	Amend	2-1-2011	413-120-0020	12-29-2010	Amend	2-1-2011
413-010-0055(T)	12-29-2010	Repeal	2-1-2011	413-120-0021	12-29-2010	Adopt	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
413-120-0025	12-29-2010	Adopt	2-1-2011	413-120-0860	12-29-2010	Adopt	2-1-2011
413-120-0030	12-29-2010	Repeal	2-1-2011	413-120-0870	12-29-2010	Adopt	2-1-2011
413-120-0033	12-29-2010	Am. & Ren.	2-1-2011	413-120-0900	12-28-2010	Adopt	2-1-2011
413-120-0035	12-29-2010	Amend	2-1-2011	413-120-0905	12-28-2010	Adopt	2-1-2011
413-120-0040	12-29-2010	Repeal	2-1-2011	413-120-0910	12-28-2010	Adopt	2-1-2011
413-120-0045	12-29-2010	Am. & Ren.	2-1-2011	413-120-0920	12-28-2010	Adopt	2-1-2011
413-120-0053	12-29-2010	Adopt	2-1-2011	413-120-0925	12-28-2010	Adopt	2-1-2011
413-120-0057	12-29-2010	Adopt	2-1-2011	413-120-0930	12-28-2010	Adopt	2-1-2011
413-120-0060	12-29-2010	Amend	2-1-2011	413-120-0940	12-28-2010	Adopt	2-1-2011
413-120-0075	12-29-2010	Am. & Ren.	2-1-2011	413-120-0945	12-28-2010	Adopt	2-1-2011
413-120-0080	12-29-2010	Repeal	2-1-2011	413-120-0950	12-28-2010	Adopt	2-1-2011
413-120-0190	12-29-2010	Amend	2-1-2011	413-120-0960	12-28-2010	Adopt	2-1-2011
413-120-0195	12-29-2010	Amend	2-1-2011	413-120-0970	12-28-2010	Adopt	2-1-2011
413-120-0200	12-29-2010	Repeal	2-1-2011	413-130-0150	12-29-2010	Repeal	2-1-2011
413-120-0210	12-29-2010	Repeal	2-1-2011	413-130-0160	12-29-2010	Repeal	2-1-2011
413-120-0220	12-29-2010	Amend	2-1-2011	413-130-0170	12-29-2010	Repeal	2-1-2011
413-120-0222	12-29-2010	Adopt	2-1-2011	413-130-0180	12-29-2010	Repeal	2-1-2011
413-120-0225	12-29-2010	Adopt	2-1-2011	414-205-0055	1-1-2011	Amend	2-1-2011
413-120-0230	12-29-2010	Repeal	2-1-2011	414-205-0100	1-1-2011	Amend	2-1-2011
413-120-0240	12-29-2010	Amend	2-1-2011	414-205-0110	1-1-2011	Amend	2-1-2011
413-120-0243	12-29-2010	Adopt	2-1-2011	414-205-0170	1-1-2011	Amend	2-1-2011
413-120-0246	12-29-2010	Adopt	2-1-2011	414-300-0005	1-1-2011	Amend	2-1-2011
413-120-0250	12-29-2010	Repeal	2-1-2011	414-300-0010	1-1-2011	Amend	2-1-2011
413-120-0255	12-29-2010	Repeal	2-1-2011	414-300-0015	1-1-2011	Amend	2-1-2011
413-120-0260	12-29-2010	Repeal	2-1-2011	414-300-0030	1-1-2011	Amend	2-1-2011
413-120-0265	12-29-2010	Repeal	2-1-2011	414-300-0040	1-1-2011	Amend	2-1-2011
413-120-0270	12-29-2010	Repeal	2-1-2011	414-300-0110	1-1-2011	Amend(T)	2-1-2011
413-120-0275	12-29-2010	Repeal	2-1-2011	414-300-0120	1-1-2011	Amend	2-1-2011
413-120-0280	12-29-2010	Repeal	2-1-2011	414-300-0250	1-1-2011	Amend	2-1-2011
413-120-0285	12-29-2010	Repeal	2-1-2011	414-300-0415	1-1-2011	Amend	2-1-2011
413-120-0290	12-29-2010	Repeal	2-1-2011	414-350-0010	1-1-2011	Amend	2-1-2011
413-120-0300	12-29-2010	Repeal	2-1-2011	414-350-0020	1-1-2011	Amend	2-1-2011
413-120-0310	12-29-2010	Repeal	2-1-2011	414-350-0030	1-1-2011	Amend	2-1-2011
413-120-0500	12-29-2010	Amend	2-1-2011	414-350-0050	1-1-2011	Amend	2-1-2011
413-120-0510	12-29-2010	Amend	2-1-2011	414-350-0060	1-1-2011	Amend	2-1-2011
413-120-0520	12-29-2010	Repeal	2-1-2011	414-350-0090	1-1-2011	Amend	2-1-2011
413-120-0521	12-29-2010	Adopt	2-1-2011	414-350-0100	1-1-2011	Amend	2-1-2011
413-120-0530	12-29-2010	Repeal	2-1-2011	414-350-0110	1-1-2011	Amend(T)	2-1-2011
413-120-0540	12-29-2010	Repeal	2-1-2011	414-350-0115	1-1-2011	Amend	2-1-2011
413-120-0541	12-29-2010	Adopt	2-1-2011	414-350-0200	1-1-2011	Amend	2-1-2011
413-120-0550	12-29-2010	Am. & Ren.	2-1-2011	414-350-0210	1-1-2011	Amend	2-1-2011
413-120-0570	12-29-2010	Adopt	2-1-2011	414-350-0375	1-1-2011	Amend	2-1-2011
413-120-0590	12-29-2010	Adopt	2-1-2011	414-350-0380	1-1-2011	Amend	2-1-2011
413-120-0595	12-29-2010	Adopt	2-1-2011	415-054-0005	3-9-2011	Repeal	4-1-2011
413-120-0700	12-29-2010	Adopt	2-1-2011	415-054-0010	3-9-2011	Repeal	4-1-2011
413-120-0710	12-29-2010	Adopt	2-1-2011	415-054-0015	3-9-2011	Repeal	4-1-2011
413-120-0720	12-29-2010	Adopt	2-1-2011	415-054-0017	3-9-2011	Repeal	4-1-2011
413-120-0730	12-29-2010	Adopt	2-1-2011	415-054-0018	3-9-2011	Repeal	4-1-2011
413-120-0750	12-29-2010	Adopt	2-1-2011	415-054-0045	3-9-2011	Repeal	4-1-2011
413-120-0760	12-29-2010	Adopt	2-1-2011	415-054-0050	3-9-2011	Repeal	4-1-2011
413-120-0800	12-29-2010	Amend	2-1-2011	415-054-0055	3-9-2011	Repeal	4-1-2011
413-120-0810	12-29-2010	Amend	2-1-2011	415-054-0060	3-9-2011	Repeal	4-1-2011
413-120-0820	12-29-2010	Repeal	2-1-2011	415-054-0070	3-9-2011	Repeal	4-1-2011
413-120-0830	12-29-2010	Amend	2-1-2011	415-054-0075	3-9-2011	Repeal	4-1-2011
413-120-0840	12-29-2010	Adopt	2-1-2011	415-054-0076	3-9-2011	Repeal	4-1-2011
413-120-0850	12-29-2010	Adopt	2-1-2011	415-054-0080	3-9-2011	Repeal	4-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
415-054-0090	3-9-2011	Repeal	4-1-2011	436-009-0070	4-1-2011	Amend	4-1-2011
415-054-0100	3-9-2011	Repeal	4-1-2011	436-009-0080	4-1-2011	Amend	4-1-2011
415-054-0200	3-9-2011	Repeal	4-1-2011	436-009-0090	4-1-2011	Amend	4-1-2011
415-054-0210	3-9-2011	Repeal	4-1-2011	436-009-0114	4-1-2011	Adopt	4-1-2011
415-054-0220	3-9-2011	Repeal	4-1-2011	436-009-0120	4-1-2011	Amend	4-1-2011
415-054-0230	3-9-2011	Repeal	4-1-2011	436-009-0125	4-1-2011	Amend	4-1-2011
415-054-0240	3-9-2011	Repeal	4-1-2011	436-009-0155	4-1-2011	Amend	4-1-2011
415-054-0300	3-9-2011	Repeal	4-1-2011	436-009-0160	4-1-2011	Amend	4-1-2011
415-054-0310	3-9-2011	Repeal	4-1-2011	436-009-0180	4-1-2011	Amend	4-1-2011
415-054-0320	3-9-2011	Repeal	4-1-2011	436-009-0199	4-1-2011	Am. & Ren.	4-1-2011
415-054-0330	3-9-2011	Repeal	4-1-2011	436-009-0200	4-1-2012	Adopt	4-1-2011
415-054-0340	3-9-2011	Repeal	4-1-2011	436-009-0205	4-1-2012	Adopt	4-1-2011
415-054-0350	3-9-2011	Repeal	4-1-2011	436-009-0206	4-1-2012	Adopt	4-1-2011
415-054-0360	3-9-2011	Repeal	4-1-2011	436-009-0207	4-1-2012	Adopt	4-1-2011
415-054-0370	3-9-2011	Repeal	4-1-2011	436-009-0210	4-1-2012	Adopt	4-1-2011
415-054-0400	3-9-2011	Adopt	4-1-2011	436-009-0215	4-1-2012	Adopt	4-1-2011
415-054-0400(T)	3-9-2011	Repeal	4-1-2011	436-009-0220	4-1-2012	Adopt	4-1-2011
415-054-0410	3-9-2011	Adopt	4-1-2011	436-009-0225	4-1-2012	Adopt	4-1-2011
415-054-0410(T)	3-9-2011	Repeal	4-1-2011	436-009-0230	4-1-2012	Adopt	4-1-2011
415-054-0420	3-9-2011	Adopt	4-1-2011	436-009-0235	4-1-2012	Adopt	4-1-2011
415-054-0420(T)	3-9-2011	Repeal	4-1-2011	436-009-0240	4-1-2012	Adopt	4-1-2011
415-054-0430	3-9-2011	Adopt	4-1-2011	436-009-0245	4-1-2012	Adopt	4-1-2011
415-054-0430(T)	3-9-2011	Repeal	4-1-2011	436-009-0250	4-1-2012	Adopt	4-1-2011
415-054-0440	3-9-2011	Adopt	4-1-2011	436-009-0255	4-1-2012	Adopt	4-1-2011
415-054-0440(T)	3-9-2011	Repeal	4-1-2011	436-009-0260	4-1-2012	Adopt	4-1-2011
415-054-0450	3-9-2011	Adopt	4-1-2011	436-009-0265	4-1-2012	Adopt	4-1-2011
415-054-0450(T)	3-9-2011	Repeal	4-1-2011	436-009-0270	4-1-2012	Adopt	4-1-2011
415-054-0460	3-9-2011	Adopt	4-1-2011	436-009-0275	4-1-2012	Adopt	4-1-2011
415-054-0460(T)	3-9-2011	Repeal	4-1-2011	436-009-0280	4-1-2012	Adopt	4-1-2011
415-054-0470	3-9-2011	Adopt	4-1-2011	436-009-0285	4-1-2012	Adopt	4-1-2011
415-054-0470(T)	3-9-2011	Repeal	4-1-2011	436-009-0290	4-1-2012	Adopt	4-1-2011
415-054-0480	3-9-2011	Adopt	4-1-2011	436-010-0230	4-1-2011	Amend	4-1-2011
415-054-0480(T)	3-9-2011	Repeal	4-1-2011	436-010-0265	4-1-2011	Amend	4-1-2011
415-054-0490	3-9-2011	Adopt	4-1-2011	436-010-0290	4-1-2011	Amend	4-1-2011
415-054-0490(T)	3-9-2011	Repeal	4-1-2011	436-060-0095	4-1-2011	Amend	4-1-2011
415-054-0500	3-9-2011	Adopt	4-1-2011	437-003-0001	2-9-2011	Amend	3-1-2011
415-054-0500(T)	3-9-2011	Repeal	4-1-2011	437-003-1423	2-9-2011	Adopt	3-1-2011
415-054-0510	3-9-2011	Adopt	4-1-2011	437-003-3600	2-9-2011	Adopt	3-1-2011
415-054-0510(T)	3-9-2011	Repeal	4-1-2011	441-035-0010	2-15-2011	Amend	3-1-2011
415-054-0520	3-9-2011	Adopt	4-1-2011	441-505-1135	12-1-2010	Adopt	1-1-2011
415-054-0520(T)	3-9-2011	Repeal	4-1-2011	441-674-0005	1-1-2011	Adopt	2-1-2011
415-054-0530	3-9-2011	Adopt	4-1-2011	441-674-0005	1-20-2011	Amend	3-1-2011
415-054-0540	3-9-2011	Adopt	4-1-2011	441-674-0005(T)	1-1-2011	Repeal	2-1-2011
415-054-0550	3-9-2011	Adopt	4-1-2011	441-674-0100	1-1-2011	Adopt	2-1-2011
415-054-0560	3-9-2011	Adopt	4-1-2011	441-674-0100(T)	1-1-2011	Repeal	2-1-2011
415-054-0570	3-9-2011	Adopt	4-1-2011	441-674-0120	1-1-2011	Adopt	2-1-2011
415-054-0580	3-9-2011	Adopt	4-1-2011	441-674-0120(T)	1-1-2011	Repeal	2-1-2011
415-065-0055	2-11-2011	Amend(T)	3-1-2011	441-674-0130	1-1-2011	Adopt	2-1-2011
436-009-0003	4-1-2011	Amend	4-1-2011	441-674-0130(T)	1-1-2011	Repeal	2-1-2011
436-009-0004	4-1-2011	Amend	4-1-2011	441-674-0140	1-1-2011	Adopt	2-1-2011
436-009-0005	4-1-2011	Amend	4-1-2011	441-674-0140(T)	1-1-2011	Repeal	2-1-2011
436-009-0010	4-1-2011	Amend	4-1-2011	441-674-0210	1-1-2011	Adopt	2-1-2011
436-009-0020	4-1-2011	Amend	4-1-2011	441-674-0210(T)	1-1-2011	Repeal	2-1-2011
436-009-0030	4-1-2011	Amend	4-1-2011	441-674-0220	1-1-2011	Adopt	2-1-2011
436-009-0040	4-1-2011	Amend	4-1-2011	441-674-0220(T)	1-1-2011	Repeal	2-1-2011
436-009-0050	4-1-2011	Amend	4-1-2011	441-674-0230	1-1-2011	Adopt	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
441-674-0230(T)	1-1-2011	Repeal	2-1-2011	442-010-0040	1-18-2011	Amend	3-1-2011
441-674-0240	1-1-2011	Adopt	2-1-2011	442-010-0040	3-8-2011	Amend	4-1-2011
441-674-0240(T)	1-1-2011	Repeal	2-1-2011	442-010-0050	3-8-2011	Amend	4-1-2011
441-674-0250	1-1-2011	Adopt	2-1-2011	442-010-0055	1-18-2011	Amend	3-1-2011
441-674-0250(T)	1-1-2011	Repeal	2-1-2011	442-010-0055	3-8-2011	Amend	4-1-2011
441-674-0310	1-1-2011	Adopt	2-1-2011	442-010-0060	1-18-2011	Amend	3-1-2011
441-674-0310(T)	1-1-2011	Repeal	2-1-2011	442-010-0060	3-8-2011	Amend	4-1-2011
441-674-0510	1-20-2011	Adopt	3-1-2011	442-010-0065	3-8-2011	Adopt	4-1-2011
441-674-0520	1-20-2011	Adopt	3-1-2011	442-010-0070	1-18-2011	Amend	3-1-2011
441-674-0910	1-1-2011	Adopt	2-1-2011	442-010-0070	3-8-2011	Amend	4-1-2011
441-674-0910(T)	1-1-2011	Repeal	2-1-2011	442-010-0075	3-8-2011	Adopt	4-1-2011
441-674-0915	1-1-2011	Adopt	2-1-2011	442-010-0080	1-18-2011	Amend	3-1-2011
441-674-0915(T)	1-1-2011	Repeal	2-1-2011	442-010-0080	3-8-2011	Amend	4-1-2011
441-674-0920	1-1-2011	Adopt	2-1-2011	442-010-0085	3-8-2011	Adopt	4-1-2011
441-674-0920(T)	1-1-2011	Repeal	2-1-2011	442-010-0090	3-8-2011	Amend	4-1-2011
441-710-0035	12-1-2010	Amend	1-1-2011	442-010-0100	1-18-2011	Amend	3-1-2011
441-710-0071	12-1-2010	Adopt	1-1-2011	442-010-0100	3-8-2011	Amend	4-1-2011
441-710-0500	3-8-2011	Amend	4-1-2011	442-010-0110	1-18-2011	Amend	3-1-2011
441-930-0010	1-1-2011	Amend	2-1-2011	442-010-0110	3-8-2011	Amend	4-1-2011
441-930-0030	1-1-2011	Amend	2-1-2011	442-010-0120	1-18-2011	Amend	3-1-2011
441-930-0035	1-1-2011	Adopt	2-1-2011	442-010-0120	3-8-2011	Amend	4-1-2011
441-930-0045	1-1-2011	Adopt	2-1-2011	442-010-0130	1-18-2011	Amend	3-1-2011
441-930-0065	1-1-2011	Adopt	2-1-2011	442-010-0130	3-8-2011	Amend	4-1-2011
441-930-0068	1-1-2011	Adopt	2-1-2011	442-010-0140	1-18-2011	Amend	3-1-2011
441-930-0070	1-1-2011	Amend	2-1-2011	442-010-0140	3-8-2011	Amend	4-1-2011
441-930-0080	1-1-2011	Amend	2-1-2011	442-010-0150	1-18-2011	Amend	3-1-2011
441-930-0210	1-1-2011	Amend	2-1-2011	442-010-0150	3-8-2011	Amend	4-1-2011
441-930-0220	1-1-2011	Amend	2-1-2011	442-010-0160	1-18-2011	Amend	3-1-2011
441-930-0230	1-1-2011	Amend	2-1-2011	442-010-0160	3-8-2011	Amend	4-1-2011
441-930-0240	1-1-2011	Amend	2-1-2011	442-010-0170	1-18-2011	Amend	3-1-2011
441-930-0250	1-1-2011	Amend	2-1-2011	442-010-0170	3-8-2011	Amend	4-1-2011
441-930-0255	1-1-2011	Adopt	2-1-2011	442-010-0180	1-18-2011	Amend	3-1-2011
441-930-0260	1-1-2011	Amend	2-1-2011	442-010-0180	3-8-2011	Amend	4-1-2011
441-930-0267	1-1-2011	Adopt	2-1-2011	442-010-0190	1-18-2011	Amend	3-1-2011
441-930-0270	1-1-2011	Amend	2-1-2011	442-010-0190	3-8-2011	Amend	4-1-2011
441-930-0280	1-1-2011	Repeal	2-1-2011	442-010-0200	1-18-2011	Adopt	3-1-2011
441-930-0290	1-1-2011	Amend	2-1-2011	442-010-0200	3-8-2011	Amend	4-1-2011
441-930-0300	1-1-2011	Amend	2-1-2011	442-010-0210	1-18-2011	Adopt	3-1-2011
441-930-0310	1-1-2011	Amend	2-1-2011	442-010-0210	3-8-2011	Amend	4-1-2011
441-930-0320	1-1-2011	Amend	2-1-2011	442-010-0220	1-18-2011	Adopt	3-1-2011
441-930-0330	1-1-2011	Amend	2-1-2011	442-010-0220	3-8-2011	Amend	4-1-2011
441-930-0340	1-1-2011	Repeal	2-1-2011	442-010-0230	1-18-2011	Adopt	3-1-2011
441-930-0350	1-1-2011	Amend	2-1-2011	442-010-0230	3-8-2011	Amend	4-1-2011
441-930-0360	1-1-2011	Amend	2-1-2011	442-010-0240	1-18-2011	Adopt	3-1-2011
442-005-0010	2-25-2011	Amend	4-1-2011	442-010-0240	3-8-2011	Amend	4-1-2011
442-005-0030	1-5-2011	Amend(T)	2-1-2011	442-010-0250	1-18-2011	Adopt	3-1-2011
442-005-0030(T)	1-5-2011	Suspend	2-1-2011	442-010-0250	3-8-2011	Amend	4-1-2011
442-005-0050	2-25-2011	Amend	4-1-2011	442-010-0260	1-18-2011	Adopt	3-1-2011
442-005-0060	2-25-2011	Amend	4-1-2011	442-010-0260	3-8-2011	Amend	4-1-2011
442-005-0100	2-25-2011	Amend	4-1-2011	442-010-0270	1-18-2011	Adopt	3-1-2011
442-010-0010	1-18-2011	Amend	3-1-2011	442-010-0270	3-8-2011	Amend	4-1-2011
442-010-0010	3-8-2011	Amend	4-1-2011	442-010-0280	1-18-2011	Adopt	3-1-2011
442-010-0020	1-18-2011	Amend	3-1-2011	442-010-0280	3-8-2011	Amend	4-1-2011
442-010-0020	3-8-2011	Amend	4-1-2011	443-002-0070	1-26-2011	Amend	3-1-2011
442-010-0030	1-18-2011	Amend	3-1-2011	443-002-0190	1-26-2011	Amend	3-1-2011
442-010-0030	3-8-2011	Amend	4-1-2011	459-005-0040	11-24-2010	Adopt	1-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
459-060-0020	11-24-2010	Amend	1-1-2011	461-155-0180(T)	1-1-2011	Repeal	2-1-2011
459-070-0100	2-2-2011	Amend	3-1-2011	461-155-0225	1-1-2011	Amend	2-1-2011
459-070-0110	2-2-2011	Amend	3-1-2011	461-155-0225(T)	1-1-2011	Repeal	2-1-2011
461-001-0000	1-1-2011	Amend	2-1-2011	461-155-0235	1-20-2011	Amend	3-1-2011
461-025-0311	1-1-2011	Amend	2-1-2011	461-155-0290	3-1-2011	Amend(T)	4-1-2011
461-025-0311(T)	1-1-2011	Repeal	2-1-2011	461-155-0291	3-1-2011	Amend(T)	4-1-2011
461-101-0010	1-1-2011	Amend	2-1-2011	461-155-0295	3-1-2011	Amend(T)	4-1-2011
461-101-0010(T)	1-1-2011	Repeal	2-1-2011	461-155-0320	1-1-2011	Amend	2-1-2011
461-110-0630	1-1-2011	Amend	2-1-2011	461-155-0320(T)	1-1-2011	Repeal	2-1-2011
461-110-0630(T)	1-1-2011	Repeal	2-1-2011	461-155-0528	1-1-2011	Adopt	2-1-2011
461-115-0071	1-1-2011	Amend	2-1-2011	461-155-0528	2-1-2011	Amend(T)	3-1-2011
461-115-0071(T)	1-1-2011	Repeal	2-1-2011	461-155-0528(T)	1-1-2011	Repeal	2-1-2011
461-115-0530	3-1-2011	Amend(T)	4-1-2011	461-155-0688	1-1-2011	Amend	2-1-2011
461-120-0210	1-1-2011	Amend	2-1-2011	461-155-0688(T)	1-1-2011	Repeal	2-1-2011
461-130-0305	1-1-2011	Amend	2-1-2011	461-155-0693	1-1-2011	Amend	2-1-2011
461-130-0310	1-1-2011	Amend	2-1-2011	461-155-0693	2-1-2011	Amend(T)	3-1-2011
461-130-0315	1-1-2011	Amend	2-1-2011	461-155-0693(T)	1-1-2011	Repeal	2-1-2011
461-130-0320	1-1-2011	Repeal	2-1-2011	461-160-0015	1-1-2011	Amend(T)	2-1-2011
461-130-0323	1-1-2011	Repeal	2-1-2011	461-160-0410	1-1-2011	Amend	2-1-2011
461-130-0325	1-1-2011	Repeal	2-1-2011	461-160-0430	1-1-2011	Amend	2-1-2011
461-130-0327	1-1-2011	Amend	2-1-2011	461-160-0430	1-1-2011	Amend(T)	2-1-2011
461-130-0328	1-1-2011	Amend	2-1-2011	461-160-0430(T)	1-1-2011	Repeal	2-1-2011
461-130-0330	1-1-2011	Amend	2-1-2011	461-160-0530	1-1-2011	Repeal	2-1-2011
461-130-0335	1-1-2011	Amend	2-1-2011	461-160-0700	1-1-2011	Amend	2-1-2011
461-135-0010	1-1-2011	Amend	2-1-2011	461-160-0700	1-1-2011	Amend(T)	2-1-2011
461-135-0210	1-1-2011	Amend	2-1-2011	461-160-0700(T)	1-1-2011	Repeal	2-1-2011
461-135-0210(T)	1-1-2011	Repeal	2-1-2011	461-170-0011	1-1-2011	Amend	2-1-2011
461-135-0400	1-1-2011	Amend	2-1-2011	461-175-0010	1-1-2011	Amend	2-1-2011
461-135-0400	2-16-2011	Amend(T)	4-1-2011	461-175-0010(T)	1-1-2011	Repeal	2-1-2011
461-135-0400(T)	1-1-2011	Repeal	2-1-2011	461-175-0200	1-1-2011	Amend	2-1-2011
461-135-0780	1-1-2011	Amend	2-1-2011	461-175-0200(T)	1-1-2011	Repeal	2-1-2011
461-135-1100	1-1-2011	Amend	2-1-2011	461-175-0250	1-1-2011	Amend	2-1-2011
461-135-1100(T)	1-1-2011	Repeal	2-1-2011	461-175-0250(T)	1-1-2011	Repeal	2-1-2011
461-135-1120	3-1-2011	Amend(T)	4-1-2011	461-190-0211	1-1-2011	Amend(T)	2-1-2011
461-135-1125	1-1-2011	Amend	2-1-2011	461-190-0416	2-14-2011	Amend(T)	3-1-2011
461-135-1125(T)	1-1-2011	Repeal	2-1-2011	461-193-0560	1-1-2011	Amend	2-1-2011
461-135-1195	1-1-2011	Amend	2-1-2011	461-193-0560(T)	1-1-2011	Repeal	2-1-2011
461-135-1197	1-1-2011	Adopt	2-1-2011	471-010-0111	12-13-2010	Adopt	1-1-2011
461-135-1250	1-1-2011	Amend	2-1-2011	471-030-0037	3-1-2011	Amend(T)	4-1-2011
461-135-1250(T)	1-1-2011	Repeal	2-1-2011	471-030-0038	3-1-2011	Amend(T)	4-1-2011
461-145-0140	1-1-2011	Amend(T)	2-1-2011	471-031-0140	12-13-2010	Amend	1-1-2011
461-145-0143	1-1-2011	Suspend	2-1-2011	471-031-0141	12-13-2010	Amend	1-1-2011
461-145-0220	1-1-2011	Amend(T)	2-1-2011	471-031-0200	12-13-2010	Amend	1-1-2011
461-145-0530	2-4-2011	Amend(T)	3-1-2011	471-031-0225	12-13-2010	Repeal	1-1-2011
461-150-0055	1-1-2011	Amend	2-1-2011	471-031-0230	12-13-2010	Repeal	1-1-2011
461-150-0055	1-1-2011	Amend(T)	2-1-2011	471-031-0235	12-13-2010	Adopt	1-1-2011
461-150-0055	2-4-2011	Amend(T)	3-1-2011	471-040-0005	2-9-2011	Amend(T)	3-1-2011
461-150-0055(T)	1-1-2011	Repeal	2-1-2011	571-004-0020	2-7-2011	Amend	3-1-2011
461-150-0055(T)	2-4-2011	Suspend	3-1-2011	571-004-0025	2-7-2011	Amend	3-1-2011
461-155-0030	1-1-2011	Amend	2-1-2011	571-004-0030	2-7-2011	Amend	3-1-2011
461-155-0030	1-1-2011	Amend(T)	2-1-2011	571-004-0035	2-7-2011	Repeal	3-1-2011
461-155-0030(T)	1-1-2011	Repeal	2-1-2011	571-004-0040	2-7-2011	Repeal	3-1-2011
461-155-0035	1-1-2011	Amend	2-1-2011	571-004-0045	2-7-2011	Amend	3-1-2011
461-155-0035(T)	1-1-2011	Repeal	2-1-2011	571-004-0050	2-7-2011	Amend	3-1-2011
461-155-0180	1-1-2011	Amend	2-1-2011	571-004-0055	2-7-2011	Amend	3-1-2011
461-155-0180	1-20-2011	Amend(T)	3-1-2011	573-001-0075	12-8-2010	Amend	1-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
574-050-0005	2-2-2011	Amend	3-1-2011	584-036-0055	1-1-2011	Amend	1-1-2011
575-080-0100	11-16-2010	Adopt	1-1-2011	584-036-0105	3-15-2011	Amend	4-1-2011
575-080-0110	11-16-2010	Adopt	1-1-2011	584-042-0002	1-1-2011	Repeal	2-1-2011
575-080-0120	11-16-2010	Adopt	1-1-2011	584-042-0006	1-1-2011	Repeal	2-1-2011
575-080-0130	11-16-2010	Adopt	1-1-2011	584-042-0009	1-1-2011	Repeal	2-1-2011
575-080-0135	11-16-2010	Adopt	1-1-2011	584-042-0044	1-1-2011	Amend	1-1-2011
575-080-0140	11-16-2010	Adopt	1-1-2011	584-048-0065	1-1-2011	Am. & Ren.	2-1-2011
575-080-0145	11-16-2010	Adopt	1-1-2011	584-060-0014	3-15-2011	Amend	4-1-2011
580-040-0035	1-20-2011	Amend	3-1-2011	584-060-0062	1-28-2011	Amend	3-1-2011
581-020-0345	2-1-2011	Amend	3-1-2011	584-060-0162	1-1-2011	Amend	1-1-2011
581-020-0350	12-17-2010	Repeal	2-1-2011	584-060-0171	1-1-2011	Amend	1-1-2011
581-022-0421	2-1-2011	Amend	3-1-2011	584-060-0181	1-1-2011	Amend	1-1-2011
581-022-0617	12-17-2010	Adopt	2-1-2011	584-060-0181	3-15-2011	Amend	4-1-2011
581-045-0009	1-1-2011	Amend	2-1-2011	584-060-0182	1-1-2011	Amend	1-1-2011
581-051-0305	2-1-2011	Amend	3-1-2011	584-060-0190	1-1-2011	Amend	1-1-2011
581-051-0306	2-1-2011	Amend	3-1-2011	584-060-0200	1-1-2011	Amend	1-1-2011
582-001-0010	3-1-2011	Amend(T)	3-1-2011	584-060-0210	1-1-2011	Amend	2-1-2011
582-030-0040	3-1-2011	Amend(T)	3-1-2011	584-060-0220	1-1-2011	Amend	2-1-2011
582-050-0000	3-1-2011	Amend(T)	3-1-2011	584-060-0220	3-15-2011	Amend	4-1-2011
582-050-0005	3-1-2011	Amend(T)	3-1-2011	584-065-0125	3-15-2011	Adopt	4-1-2011
582-050-0010	3-1-2011	Amend(T)	3-1-2011	584-070-0001	1-1-2011	Amend	1-1-2011
582-050-0020	3-1-2011	Amend(T)	3-1-2011	584-070-0111	1-1-2011	Amend	1-1-2011
582-050-0060	3-1-2011	Amend(T)	3-1-2011	584-070-0111	3-15-2011	Amend	4-1-2011
582-060-0010	3-1-2011	Amend(T)	3-1-2011	584-070-0112	1-1-2011	Amend	1-1-2011
582-060-0020	3-1-2011	Amend(T)	3-1-2011	584-070-0132	1-1-2011	Amend	1-1-2011
582-070-0010	3-1-2011	Amend(T)	3-1-2011	584-070-0205	1-1-2011	Adopt	2-1-2011
582-070-0020	3-1-2011	Amend(T)	3-1-2011	584-070-0211	1-1-2011	Amend	2-1-2011
582-070-0025	3-1-2011	Amend(T)	3-1-2011	584-070-0221	1-1-2011	Amend	2-1-2011
582-070-0030	3-1-2011	Amend(T)	3-1-2011	584-070-0271	1-1-2011	Amend	2-1-2011
582-070-0040	3-1-2011	Amend(T)	3-1-2011	584-070-0310	1-1-2011	Amend	1-1-2011
582-070-0042	3-1-2011	Amend(T)	3-1-2011	584-070-0401	1-1-2011	Adopt	2-1-2011
582-070-0043	3-1-2011	Amend(T)	3-1-2011	584-070-0411	1-1-2011	Adopt	2-1-2011
582-070-0044	3-1-2011	Amend(T)	3-1-2011	584-070-0421	1-1-2011	Adopt	2-1-2011
583-030-0010	11-16-2010	Amend	1-1-2011	584-070-0431	1-1-2011	Adopt	2-1-2011
583-030-0035	11-16-2010	Amend	1-1-2011	584-080-0031	1-1-2011	Amend	1-1-2011
583-050-0011	11-16-2010	Amend	1-1-2011	584-080-0151	3-15-2011	Amend	4-1-2011
583-050-0016	11-16-2010	Amend	1-1-2011	584-080-0152	3-15-2011	Amend	4-1-2011
584-010-0090	1-1-2011	Amend	2-1-2011	584-080-0153	1-1-2011	Amend	1-1-2011
584-017-0200	1-1-2011	Amend	2-1-2011	584-080-0161	1-1-2011	Amend	1-1-2011
584-017-0201	1-1-2011	Amend	2-1-2011	584-080-0171	1-1-2011	Amend	1-1-2011
584-017-0300	1-1-2011	Amend	2-1-2011	603-011-0250	1-7-2011	Amend	2-1-2011
584-017-0390	1-1-2011	Amend	2-1-2011	603-011-0255	1-6-2011	Amend	2-1-2011
584-017-0480	1-1-2011	Amend	2-1-2011	603-011-0256	1-7-2011	Amend	2-1-2011
584-017-0500	1-26-2011	Adopt	3-1-2011	603-011-0263	1-6-2011	Amend	2-1-2011
584-017-0510	1-26-2011	Adopt	3-1-2011	603-011-0264	1-6-2011	Amend	2-1-2011
584-017-0520	1-26-2011	Adopt	3-1-2011	603-011-0281	1-7-2011	Amend	2-1-2011
584-017-0530	1-26-2011	Adopt	3-1-2011	603-011-0340	1-6-2011	Amend	2-1-2011
584-017-0541	1-26-2011	Adopt	3-1-2011	603-011-0365	1-6-2011	Repeal	2-1-2011
584-017-0551	1-26-2011	Adopt	3-1-2011	603-027-0420	1-26-2011	Amend	3-1-2011
584-017-0555	1-26-2011	Adopt	3-1-2011	603-052-0347	11-23-2010	Amend	1-1-2011
584-017-0560	1-26-2011	Adopt	3-1-2011	603-052-1230	12-17-2010	Amend	2-1-2011
584-017-0570	1-26-2011	Adopt	3-1-2011	603-052-1250	12-17-2010	Amend	2-1-2011
584-017-0580	1-26-2011	Adopt	3-1-2011	629-001-0015	1-7-2011	Amend(T)	2-1-2011
584-021-0120	3-15-2011	Amend	4-1-2011	629-001-0015	3-15-2011	Amend	4-1-2011
584-021-0165	1-1-2011	Amend	1-1-2011	629-001-0015(T)	3-15-2011	Repeal	4-1-2011
584-023-0005	1-1-2011	Amend	1-1-2011	629-001-0020	1-7-2011	Amend(T)	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
629-001-0020	3-15-2011	Amend	4-1-2011	635-019-0080	1-1-2011	Amend	2-1-2011
629-001-0020(T)	3-15-2011	Repeal	4-1-2011	635-019-0090	1-1-2011	Amend	2-1-2011
629-041-0035	1-7-2011	Amend(T)	2-1-2011	635-021-0080	1-1-2011	Amend	2-1-2011
629-041-0035	3-15-2011	Amend	4-1-2011	635-021-0090	1-1-2011	Amend	2-1-2011
629-041-0035(T)	3-15-2011	Repeal	4-1-2011	635-023-0080	1-1-2011	Amend	2-1-2011
635-004-0017	3-4-2011	Amend(T)	4-1-2011	635-023-0090	1-1-2011	Amend	2-1-2011
635-004-0018	1-1-2011	Amend	1-1-2011	635-023-0095	1-1-2011	Amend	2-1-2011
635-004-0019	12-7-2010	Amend(T)	1-1-2011	635-023-0095	1-1-2011	Amend(T)	2-1-2011
635-004-0019	1-1-2011	Amend	1-1-2011	635-023-0095	2-11-2011	Amend(T)	3-1-2011
635-004-0019	1-1-2011	Amend(T)	2-1-2011	635-023-0095(T)	2-11-2011	Suspend	3-1-2011
635-004-0019	1-11-2011	Amend(T)	2-1-2011	635-023-0125	1-1-2011	Amend	2-1-2011
635-004-0019	3-3-2011	Amend(T)	4-1-2011	635-023-0125	2-14-2011	Amend(T)	3-1-2011
635-004-0019(T)	12-7-2010	Suspend	1-1-2011	635-023-0128	1-1-2011	Amend	2-1-2011
635-004-0019(T)	1-1-2011	Suspend	2-1-2011	635-023-0130	1-1-2011	Amend	2-1-2011
635-004-0019(T)	1-11-2011	Suspend	2-1-2011	635-023-0134	1-1-2011	Amend	2-1-2011
635-004-0019(T)	3-3-2011	Suspend	4-1-2011	635-039-0080	1-1-2011	Amend	1-1-2011
635-004-0025	1-1-2011	Amend	1-1-2011	635-039-0090	1-1-2011	Amend	1-1-2011
635-004-0035	1-1-2011	Amend	1-1-2011	635-041-0065	2-1-2011	Amend(T)	3-1-2011
635-004-0070	1-1-2011	Amend	1-1-2011	635-041-0065	2-10-2011	Amend(T)	3-1-2011
635-004-0075	1-1-2011	Amend	1-1-2011	635-041-0065(T)	2-10-2011	Suspend	3-1-2011
635-005-0045	12-10-2010	Amend(T)	1-1-2011	635-042-0130	12-1-2010	Amend(T)	1-1-2011
635-005-0055	3-15-2011	Amend(T)	4-1-2011	635-042-0135	1-15-2011	Amend(T)	2-1-2011
635-005-0190	1-1-2011	Amend	1-1-2011	635-042-0145	2-13-2011	Amend(T)	3-1-2011
635-006-0215	1-1-2011	Amend	1-1-2011	635-042-0160	2-13-2011	Amend(T)	3-1-2011
635-006-0232	1-10-2011	Amend	2-1-2011	635-042-0170	2-13-2011	Amend(T)	3-1-2011
635-006-1075	11-23-2010	Amend(T)	1-1-2011	635-042-0180	2-13-2011	Amend(T)	3-1-2011
635-006-1095	12-15-2010	Amend(T)	1-1-2011	635-043-0100	1-28-2011	Amend(T)	3-1-2011
635-007-0545	12-6-2010	Amend	1-1-2011	635-044-0000	2-15-2011	Amend	3-1-2011
635-007-0825	12-6-2010	Repeal	1-1-2011	635-044-0060	2-15-2011	Amend	3-1-2011
635-007-0830	12-6-2010	Repeal	1-1-2011	635-045-0002	1-1-2011	Amend	2-1-2011
635-008-0055	1-1-2011	Amend	2-1-2011	635-049-0025	1-1-2011	Amend(T)	2-1-2011
635-008-0148	1-14-2011	Amend	2-1-2011	635-049-0265	1-1-2011	Amend(T)	2-1-2011
635-008-0149	1-14-2011	Amend	2-1-2011	635-051-0048	1-19-2011	Amend(T)	3-1-2011
635-008-0151	1-14-2011	Amend	2-1-2011	635-051-0076	1-28-2011	Adopt(T)	3-1-2011
635-008-0153	1-1-2011	Amend	2-1-2011	635-051-0078	1-28-2011	Adopt(T)	3-1-2011
635-010-0157	1-1-2011	Amend	2-1-2011	635-055-0000	1-14-2011	Amend	2-1-2011
635-011-0100	1-1-2011	Amend	2-1-2011	635-055-0030	1-14-2011	Amend	2-1-2011
635-013-0003	1-1-2011	Amend	2-1-2011	635-055-0035	1-14-2011	Amend	2-1-2011
635-013-0004	1-1-2011	Amend	2-1-2011	635-055-0037	1-14-2011	Amend	2-1-2011
635-014-0080	1-1-2011	Amend	2-1-2011	635-056-0000	2-15-2011	Amend	3-1-2011
635-014-0090	1-1-2011	Amend	2-1-2011	635-056-0010	2-15-2011	Amend	3-1-2011
635-016-0080	1-1-2011	Amend	2-1-2011	635-056-0020	2-15-2011	Amend	3-1-2011
635-016-0090	1-1-2011	Amend	2-1-2011	635-056-0050	2-15-2011	Amend	3-1-2011
635-017-0080	1-1-2011	Amend	2-1-2011	635-056-0060	2-15-2011	Amend	3-1-2011
635-017-0090	1-1-2011	Amend	2-1-2011	635-056-0070	2-15-2011	Amend	3-1-2011
635-017-0095	1-1-2011	Amend	2-1-2011	635-056-0075	2-15-2011	Amend	3-1-2011
635-017-0095	1-1-2011	Amend(T)	2-1-2011	635-056-0080	2-15-2011	Amend	3-1-2011
635-017-0095	2-17-2011	Amend(T)	3-1-2011	635-056-0130	2-15-2011	Amend	3-1-2011
635-017-0095(T)	2-17-2011	Suspend	3-1-2011	635-057-0000	2-15-2011	Amend	3-1-2011
635-018-0080	1-1-2011	Amend	2-1-2011	635-060-0023	1-1-2011	Amend	2-1-2011
635-018-0090	1-1-2011	Amend	2-1-2011	635-060-0030	1-1-2011	Amend	2-1-2011
635-018-0090	1-1-2011	Amend(T)	2-1-2011	635-060-0055	1-1-2011	Amend	2-1-2011
635-018-0090	4-15-2011	Amend(T)	4-1-2011	635-065-0001	1-1-2011	Amend	2-1-2011
635-018-0090	4-15-2011	Amend(T)	4-1-2011	635-065-0015	1-1-2011	Amend	2-1-2011
635-018-0090(T)	4-15-2011	Suspend	4-1-2011	635-065-0090	1-1-2011	Amend	2-1-2011
635-018-0090(T)	4-15-2011	Suspend	4-1-2011	635-065-0401	1-1-2011	Amend	2-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-065-0625	1-1-2011	Amend	2-1-2011	660-006-0010	2-2-2011	Amend	3-1-2011
635-065-0700	1-1-2011	Amend	2-1-2011	660-006-0015	2-2-2011	Amend	3-1-2011
635-065-0705	1-1-2011	Amend	2-1-2011	660-006-0020	2-2-2011	Amend	3-1-2011
635-065-0740	1-1-2011	Amend	2-1-2011	660-006-0025	2-2-2011	Amend	3-1-2011
635-065-0760	1-1-2011	Amend	2-1-2011	660-006-0026	2-2-2011	Amend	3-1-2011
635-066-0000	1-1-2011	Amend	2-1-2011	660-006-0027	2-2-2011	Amend	3-1-2011
635-067-0000	1-1-2011	Amend	2-1-2011	660-006-0029	2-2-2011	Amend	3-1-2011
635-068-0000	3-1-2011	Amend	3-1-2011	660-006-0031	2-2-2011	Amend	3-1-2011
635-069-0000	2-1-2011	Amend	3-1-2011	660-006-0035	2-2-2011	Amend	3-1-2011
635-072-0000	1-1-2011	Amend	2-1-2011	660-006-0040	2-2-2011	Amend	3-1-2011
635-073-0000	2-1-2011	Amend	3-1-2011	660-006-0050	2-2-2011	Amend	3-1-2011
635-073-0065	2-1-2011	Amend	3-1-2011	660-006-0055	2-2-2011	Amend	3-1-2011
635-073-0070	2-1-2011	Amend	3-1-2011	660-006-0057	2-2-2011	Amend	3-1-2011
635-073-0076	1-1-2011	Amend	2-1-2011	660-006-0060	2-2-2011	Amend	3-1-2011
635-075-0001	1-1-2011	Amend	2-1-2011	660-033-0130	11-23-2010	Amend	1-1-2011
635-075-0010	1-1-2011	Amend	2-1-2011	660-033-0130(T)	11-23-2010	Repeal	1-1-2011
635-080-0016	1-1-2011	Amend	2-1-2011	678-030-0027	11-19-2010	Amend	1-1-2011
635-080-0021	1-1-2011	Amend	2-1-2011	690-095-0005	12-14-2010	Adopt	1-1-2011
635-080-0023	1-1-2011	Amend	2-1-2011	690-095-0010	12-14-2010	Adopt	1-1-2011
635-080-0026	1-1-2011	Amend	2-1-2011	690-095-0015	12-14-2010	Adopt	1-1-2011
635-170-0015	12-29-2010	Amend(T)	2-1-2011	690-095-0020	12-14-2010	Adopt	1-1-2011
635-200-0030	3-2-2011	ReNUMBER	4-1-2011	690-095-0025	12-14-2010	Adopt	1-1-2011
644-010-0010	1-1-2011	Amend(T)	1-1-2011	690-095-0030	12-14-2010	Adopt	1-1-2011
644-010-0010	2-14-2011	Amend	3-1-2011	690-095-0035	12-14-2010	Adopt	1-1-2011
644-010-0010(T)	2-14-2011	Repeal	3-1-2011	690-095-0040	12-14-2010	Adopt	1-1-2011
660-001-0000	12-8-2010	Amend	1-1-2011	690-095-0045	12-14-2010	Adopt	1-1-2011
660-001-0005	12-8-2010	Amend	1-1-2011	690-095-0050	12-14-2010	Adopt	1-1-2011
660-001-0007	12-8-2010	Amend	1-1-2011	690-095-0055	12-14-2010	Adopt	1-1-2011
660-001-0201	12-8-2010	Amend	1-1-2011	690-095-0060	12-14-2010	Adopt	1-1-2011
660-001-0210	12-8-2010	Amend	1-1-2011	690-095-0065	12-14-2010	Adopt	1-1-2011
660-001-0220	12-8-2010	Amend	1-1-2011	690-095-0070	12-14-2010	Adopt	1-1-2011
660-001-0230	12-8-2010	Amend	1-1-2011	690-095-0075	12-14-2010	Adopt	1-1-2011
660-003-0005	12-8-2010	Amend	1-1-2011	690-095-0080	12-14-2010	Adopt	1-1-2011
660-003-0010	12-8-2010	Amend	1-1-2011	690-095-0085	12-14-2010	Adopt	1-1-2011
660-003-0015	12-8-2010	Amend	1-1-2011	690-095-0090	12-14-2010	Adopt	1-1-2011
660-003-0020	12-8-2010	Amend	1-1-2011	690-095-0095	12-14-2010	Adopt	1-1-2011
660-003-0025	12-8-2010	Amend	1-1-2011	690-095-0100	12-14-2010	Adopt	1-1-2011
660-003-0032	12-8-2010	Amend	1-1-2011	731-017-0005	12-22-2010	Adopt	2-1-2011
660-003-0033	12-8-2010	Amend	1-1-2011	731-017-0010	12-22-2010	Adopt	2-1-2011
660-003-0050	12-8-2010	Amend	1-1-2011	731-017-0015	12-22-2010	Adopt	2-1-2011
660-004-0000	2-2-2011	Amend	3-1-2011	731-017-0020	12-22-2010	Adopt	2-1-2011
660-004-0005	2-2-2011	Amend	3-1-2011	731-017-0025	12-22-2010	Adopt	2-1-2011
660-004-0010	2-2-2011	Amend	3-1-2011	731-017-0030	12-22-2010	Adopt	2-1-2011
660-004-0015	2-2-2011	Amend	3-1-2011	731-017-0035	12-22-2010	Adopt	2-1-2011
660-004-0018	2-2-2011	Amend	3-1-2011	731-017-0040	12-22-2010	Adopt	2-1-2011
660-004-0020	2-2-2011	Amend	3-1-2011	731-017-0045	12-22-2010	Adopt	2-1-2011
660-004-0022	2-2-2011	Amend	3-1-2011	731-017-0050	12-22-2010	Adopt	2-1-2011
660-004-0025	2-2-2011	Amend	3-1-2011	731-017-0055	12-22-2010	Adopt	2-1-2011
660-004-0028	2-2-2011	Amend	3-1-2011	731-035-0070	12-22-2010	Amend	2-1-2011
660-004-0030	2-2-2011	Amend	3-1-2011	734-051-0020	1-19-2011	Amend	3-1-2011
660-004-0035	2-2-2011	Amend	3-1-2011	734-051-0020(T)	1-19-2011	Repeal	3-1-2011
660-004-0040	2-2-2011	Amend	3-1-2011	734-051-0040	1-19-2011	Amend	3-1-2011
660-006-0000	2-2-2011	Amend	3-1-2011	734-051-0040(T)	1-19-2011	Repeal	3-1-2011
660-006-0003	2-2-2011	Amend	3-1-2011	734-051-0045	1-19-2011	Amend	3-1-2011
660-006-0004	2-2-2011	Amend	3-1-2011	734-051-0045(T)	1-19-2011	Repeal	3-1-2011
660-006-0005	2-2-2011	Amend	3-1-2011	734-051-0070	1-19-2011	Amend	3-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
734-051-0070(T)	1-19-2011	Repeal	3-1-2011	800-010-0015	2-1-2011	Amend	3-1-2011
734-051-0080	1-19-2011	Amend	3-1-2011	800-010-0030	2-1-2011	Amend	3-1-2011
734-051-0080(T)	1-19-2011	Repeal	3-1-2011	800-010-0040	2-1-2011	Amend	3-1-2011
734-051-0135	1-19-2011	Amend	3-1-2011	800-010-0041	2-1-2011	Amend	3-1-2011
734-051-0135(T)	1-19-2011	Repeal	3-1-2011	800-010-0050	2-1-2011	Amend	3-1-2011
734-051-0245	1-19-2011	Amend	3-1-2011	800-015-0010	2-1-2011	Amend	3-1-2011
734-051-0245(T)	1-19-2011	Repeal	3-1-2011	800-015-0015	2-1-2011	Amend	3-1-2011
734-051-0255	1-19-2011	Amend	3-1-2011	800-015-0030	2-1-2011	Amend	3-1-2011
734-051-0255(T)	1-19-2011	Repeal	3-1-2011	800-020-0015	2-1-2011	Amend	3-1-2011
734-051-0295	1-19-2011	Amend	3-1-2011	800-020-0020	7-1-2011	Amend	3-1-2011
734-051-0295(T)	1-19-2011	Repeal	3-1-2011	800-020-0025	2-1-2011	Amend	3-1-2011
734-051-0315	1-19-2011	Amend	3-1-2011	800-020-0025	7-1-2011	Amend	3-1-2011
734-051-0315(T)	1-19-2011	Repeal	3-1-2011	800-020-0026	2-1-2011	Amend	3-1-2011
734-051-0345	1-19-2011	Amend	3-1-2011	800-025-0020	2-1-2011	Amend	3-1-2011
734-051-0345(T)	1-19-2011	Repeal	3-1-2011	800-025-0023	2-1-2011	Amend	3-1-2011
734-051-0500	1-19-2011	Amend	3-1-2011	800-025-0025	2-1-2011	Amend	3-1-2011
734-051-0500(T)	1-19-2011	Repeal	3-1-2011	800-025-0027	2-1-2011	Amend	3-1-2011
734-051-0530	1-19-2011	Amend	3-1-2011	800-025-0030	2-1-2011	Amend	3-1-2011
734-051-0530(T)	1-19-2011	Repeal	3-1-2011	800-025-0050	2-1-2011	Amend	3-1-2011
734-070-0017	1-28-2011	Adopt	3-1-2011	800-025-0060	2-1-2011	Amend	3-1-2011
735-032-0065	12-22-2010	Adopt	2-1-2011	800-030-0025	2-1-2011	Amend	3-1-2011
735-040-0098	1-28-2011	Amend	3-1-2011	800-030-0030	2-1-2011	Adopt	3-1-2011
735-040-0098(T)	1-28-2011	Repeal	3-1-2011	800-030-0050	2-1-2011	Amend	3-1-2011
735-046-0050	1-1-2011	Amend	2-1-2011	801-001-0035	1-1-2011	Amend	1-1-2011
735-060-0000	1-1-2011	Amend	1-1-2011	801-005-0010	1-1-2011	Amend	1-1-2011
735-060-0120	1-1-2011	Amend	1-1-2011	801-010-0010	1-1-2011	Amend	1-1-2011
735-062-0002	1-1-2011	Amend	1-1-2011	801-010-0050	1-1-2011	Amend	1-1-2011
735-062-0070	1-1-2011	Amend	1-1-2011	801-010-0060	1-1-2011	Amend	1-1-2011
735-062-0200	1-1-2011	Amend	1-1-2011	801-010-0065	1-1-2011	Amend	1-1-2011
735-072-0020	3-2-2011	Amend	4-1-2011	801-010-0073	1-1-2011	Amend	1-1-2011
735-072-0050	3-2-2011	Amend	4-1-2011	801-010-0075	1-1-2011	Amend	1-1-2011
735-090-0000	1-1-2011	Amend	2-1-2011	801-010-0078	1-1-2011	Amend	1-1-2011
735-090-0020	1-1-2011	Amend	2-1-2011	801-010-0079	1-1-2011	Amend	1-1-2011
735-090-0042	1-1-2011	Adopt	2-1-2011	801-010-0080	1-1-2011	Amend	1-1-2011
735-090-0101	1-1-2011	Amend	2-1-2011	801-010-0100	1-1-2011	Amend	1-1-2011
735-100-0030	3-11-2011	Am. & Ren.	4-1-2011	801-010-0110	1-1-2011	Amend	1-1-2011
735-150-0055	1-1-2011	Amend	2-1-2011	801-010-0115	1-1-2011	Amend	1-1-2011
735-176-0000	1-1-2011	Amend	1-1-2011	801-010-0120	1-1-2011	Amend	1-1-2011
735-176-0010	1-1-2011	Amend	1-1-2011	801-010-0125	1-1-2011	Amend	1-1-2011
735-176-0017	1-1-2011	Amend	1-1-2011	801-010-0130	1-1-2011	Amend	1-1-2011
735-176-0019	1-1-2011	Amend	1-1-2011	801-010-0170	1-1-2011	Amend	1-1-2011
735-176-0020	1-1-2011	Amend	1-1-2011	801-010-0190	1-1-2011	Amend	1-1-2011
735-176-0021	1-1-2011	Amend	1-1-2011	801-010-0340	1-1-2011	Amend	1-1-2011
735-176-0022	1-1-2011	Amend	1-1-2011	801-010-0345	1-1-2011	Amend	1-1-2011
735-176-0023	1-1-2011	Adopt	1-1-2011	801-040-0010	1-1-2011	Amend	1-1-2011
735-176-0030	1-1-2011	Amend	1-1-2011	801-040-0050	1-1-2011	Amend	1-1-2011
735-176-0040	1-1-2011	Amend	1-1-2011	806-010-0105	12-14-2010	Amend	1-1-2011
735-176-0045	1-1-2011	Amend	1-1-2011	808-002-0020	1-28-2011	Amend(T)	3-1-2011
736-010-0066	2-15-2011	Adopt	3-1-2011	808-003-0130	1-27-2011	Amend	3-1-2011
737-010-0020	1-28-2011	Amend	3-1-2011	812-001-0200	12-1-2010	Amend(T)	1-1-2011
737-100-0010	2-18-2011	Adopt	4-1-2011	812-001-0200	3-1-2011	Amend	4-1-2011
737-100-0040	2-18-2011	Adopt	4-1-2011	812-001-0200(T)	3-1-2011	Repeal	4-1-2011
740-200-0010	2-18-2011	Amend	4-1-2011	812-001-0290	3-1-2011	Amend	4-1-2011
740-200-0020	2-18-2011	Amend	4-1-2011	812-002-0320	1-1-2011	Amend	2-1-2011
740-200-0040	2-18-2011	Amend	4-1-2011	812-002-0677	1-1-2011	Adopt	2-1-2011
741-125-0010	12-22-2010	Repeal	2-1-2011	812-005-0800	3-1-2011	Amend	4-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
812-006-0150	3-1-2011	Amend	4-1-2011	818-013-0005(T)	2-1-2011	Repeal	2-1-2011
812-006-0250	3-1-2011	Amend	4-1-2011	818-013-0010	2-1-2011	Amend	2-1-2011
812-007-0323	12-22-2010	Adopt(T)	2-1-2011	818-013-0010(T)	2-1-2011	Repeal	2-1-2011
812-007-0323	3-1-2011	Adopt	4-1-2011	818-013-0015	2-1-2011	Amend	2-1-2011
812-007-0323(T)	3-1-2011	Repeal	4-1-2011	818-013-0015(T)	2-1-2011	Repeal	2-1-2011
812-008-0070	3-1-2011	Amend	4-1-2011	818-013-0020	2-1-2011	Amend	2-1-2011
812-008-0072	3-1-2011	Amend	4-1-2011	818-013-0020(T)	2-1-2011	Repeal	2-1-2011
812-008-0074	1-1-2011	Amend	2-1-2011	818-013-0025	2-1-2011	Amend	2-1-2011
812-008-0074	3-1-2011	Amend	4-1-2011	818-013-0025(T)	2-1-2011	Repeal	2-1-2011
812-020-0090	1-1-2011	Amend	2-1-2011	818-013-0030	2-1-2011	Amend	2-1-2011
812-025-0000	1-1-2011	Adopt	2-1-2011	818-013-0030(T)	2-1-2011	Repeal	2-1-2011
812-025-0005	1-1-2011	Adopt	2-1-2011	818-013-0035	2-1-2011	Amend	2-1-2011
812-025-0010	1-1-2011	Adopt	2-1-2011	818-013-0035(T)	2-1-2011	Repeal	2-1-2011
812-025-0015	1-1-2011	Adopt	2-1-2011	820-010-0209	1-14-2011	Amend	2-1-2011
812-025-0020	1-1-2011	Adopt	2-1-2011	820-010-0210	1-14-2011	Amend	2-1-2011
812-025-0025	1-1-2011	Adopt	2-1-2011	820-010-0212	1-14-2011	Amend	2-1-2011
812-025-0030	1-1-2011	Adopt	2-1-2011	820-010-0213	1-14-2011	Amend	2-1-2011
812-025-0035	1-1-2011	Adopt	2-1-2011	820-010-0214	1-14-2011	Amend	2-1-2011
812-025-0040	1-1-2011	Adopt	2-1-2011	820-010-0215	12-28-2010	Amend(T)	2-1-2011
812-025-0045	1-1-2011	Adopt	2-1-2011	820-010-0215	1-14-2011	Amend	2-1-2011
813-001-0060	12-1-2010	Adopt(T)	1-1-2011	820-010-0215(T)	1-14-2011	Repeal	2-1-2011
813-008-0005	3-1-2011	Am. & Ren.(T)	4-1-2011	820-010-0305	1-14-2011	Amend	2-1-2011
813-008-0010	3-1-2011	Suspend	4-1-2011	820-010-0400	1-14-2011	Amend	2-1-2011
813-008-0015	3-1-2011	Am. & Ren.(T)	4-1-2011	820-010-0417	1-14-2011	Amend	2-1-2011
813-008-0020	3-1-2011	Suspend	4-1-2011	820-010-0427	1-14-2011	Amend	2-1-2011
813-008-0025	3-1-2011	Suspend	4-1-2011	820-010-0435	1-14-2011	Repeal	2-1-2011
813-008-0030	3-1-2011	Suspend	4-1-2011	820-010-0463	1-14-2011	Amend	2-1-2011
813-008-0040	3-1-2011	Suspend	4-1-2011	820-010-0505	1-14-2011	Amend	2-1-2011
813-041-0020	12-15-2010	Amend	1-1-2011	820-010-0520	1-14-2011	Amend	2-1-2011
813-042-0030	2-17-2011	Amend	4-1-2011	833-020-0011	2-1-2011	Amend	2-1-2011
813-043-0030	2-17-2011	Amend	4-1-2011	833-020-0051	2-1-2011	Amend	2-1-2011
813-065-0120	3-1-2011	Adopt(T)	4-1-2011	833-020-0081	1-1-2011	Amend	1-1-2011
813-065-0130	3-1-2011	Adopt(T)	4-1-2011	833-040-0021	1-1-2011	Amend	1-1-2011
813-065-0140	3-1-2011	Adopt(T)	4-1-2011	833-050-0081	1-1-2011	Amend	1-1-2011
813-065-0150	3-1-2011	Adopt(T)	4-1-2011	833-055-0001	1-1-2011	Repeal	1-1-2011
813-065-0200	3-1-2011	Adopt(T)	4-1-2011	833-055-0010	1-1-2011	Repeal	1-1-2011
813-065-0210	3-1-2011	Adopt(T)	4-1-2011	833-055-0020	1-1-2011	Repeal	1-1-2011
813-065-0220	3-1-2011	Adopt(T)	4-1-2011	833-060-0012	1-1-2011	Amend	1-1-2011
813-065-0230	3-1-2011	Adopt(T)	4-1-2011	833-060-0062	1-1-2011	Adopt	1-1-2011
813-065-0240	3-1-2011	Adopt(T)	4-1-2011	833-100-0021	1-1-2011	Amend	1-1-2011
813-230-0000	2-7-2011	Amend	3-1-2011	833-110-0021	1-1-2011	Amend	1-1-2011
813-230-0000(T)	2-7-2011	Repeal	3-1-2011	833-130-0080	1-1-2011	Adopt	1-1-2011
813-230-0005	2-7-2011	Amend	3-1-2011	836-009-0007	1-1-2011	Amend	2-1-2011
813-230-0005(T)	2-7-2011	Repeal	3-1-2011	836-011-0000	1-1-2011	Amend	2-1-2011
813-230-0007	2-7-2011	Adopt	3-1-2011	836-011-0250	2-4-2011	Adopt	3-1-2011
813-230-0007(T)	2-7-2011	Repeal	3-1-2011	836-011-0253	2-4-2011	Adopt	3-1-2011
813-230-0015	2-7-2011	Amend	3-1-2011	836-011-0255	2-4-2011	Adopt	3-1-2011
813-230-0015(T)	2-7-2011	Repeal	3-1-2011	836-011-0258	2-4-2011	Adopt	3-1-2011
817-030-0005	3-1-2011	Amend(T)	4-1-2011	836-011-0260	2-4-2011	Adopt	3-1-2011
817-030-0015	3-1-2011	Amend(T)	4-1-2011	836-011-0515	12-15-2010	Amend	1-1-2011
817-030-0018	3-1-2011	Amend(T)	4-1-2011	836-031-0600	2-23-2011	Amend	4-1-2011
817-035-0050	3-1-2011	Amend(T)	4-1-2011	836-031-0620	2-23-2011	Amend	4-1-2011
817-040-0003	3-1-2011	Amend(T)	4-1-2011	836-031-0630	2-23-2011	Amend	4-1-2011
818-013-0001	2-1-2011	Amend	2-1-2011	836-031-0640	2-23-2011	Amend	4-1-2011
818-013-0001(T)	2-1-2011	Repeal	2-1-2011	836-031-0650	2-23-2011	Repeal	4-1-2011
818-013-0005	2-1-2011	Amend	2-1-2011	836-031-0660	2-23-2011	Repeal	4-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
836-031-0670	2-23-2011	Amend	4-1-2011	837-047-0120	12-28-2010	Adopt	1-1-2011
836-031-0680	2-23-2011	Amend	4-1-2011	837-047-0130	12-28-2010	Adopt	1-1-2011
836-031-0690	2-23-2011	Amend	4-1-2011	837-047-0135	12-28-2010	Adopt	1-1-2011
836-051-0030	2-23-2011	Adopt	4-1-2011	837-047-0140	12-28-2010	Adopt	1-1-2011
836-051-0032	2-23-2011	Adopt	4-1-2011	837-047-0150	12-28-2010	Adopt	1-1-2011
836-051-0034	2-23-2011	Adopt	4-1-2011	837-047-0160	12-28-2010	Adopt	1-1-2011
836-051-0036	2-23-2011	Adopt	4-1-2011	837-047-0170	12-28-2010	Adopt	1-1-2011
836-051-0038	2-23-2011	Adopt	4-1-2011	839-001-0200	1-1-2011	Amend	2-1-2011
836-051-0040	2-23-2011	Adopt	4-1-2011	839-020-0027	1-1-2011	Amend	2-1-2011
836-052-0114	2-23-2011	Amend	4-1-2011	839-025-0004	1-1-2011	Amend	2-1-2011
836-052-0145	2-23-2011	Amend	4-1-2011	839-025-0013	1-1-2011	Amend	2-1-2011
836-052-0151	2-23-2011	Amend	4-1-2011	839-025-0020	1-1-2011	Amend	2-1-2011
836-052-0160	2-23-2011	Amend	4-1-2011	839-025-0035	1-1-2011	Amend	2-1-2011
836-052-0636	2-10-2011	Amend	3-1-2011	839-025-0060	1-1-2011	Amend	2-1-2011
836-052-0756	2-10-2011	Amend	3-1-2011	839-025-0100	1-1-2011	Amend	2-1-2011
836-052-0776	2-10-2011	Amend	3-1-2011	839-025-0230	1-1-2011	Amend	2-1-2011
836-052-0790	2-10-2011	Adopt	3-1-2011	839-025-0700	1-1-2011	Amend	2-1-2011
836-052-1000	2-23-2011	Amend	4-1-2011	839-050-0440	2-1-2011	Amend	3-1-2011
836-053-0510	2-23-2011	Amend	4-1-2011	839-050-0445	2-1-2011	Amend	3-1-2011
836-071-0110	1-1-2011	Amend	2-1-2011	845-003-0670	1-1-2011	Amend	2-1-2011
836-071-0118	1-1-2011	Adopt	2-1-2011	845-005-0311	3-1-2011	Amend	4-1-2011
836-071-0120	1-1-2011	Amend	2-1-2011	845-005-0331	3-1-2011	Amend	4-1-2011
836-080-0090	2-4-2011	Amend	3-1-2011	845-005-0355	3-1-2011	Amend	4-1-2011
836-080-0095	2-4-2011	Am. & Ren.	3-1-2011	845-005-0440	1-1-2011	Amend	2-1-2011
836-080-0170	2-4-2011	Adopt	3-1-2011	845-006-0345	1-1-2011	Amend	2-1-2011
836-080-0172	2-4-2011	Adopt	3-1-2011	845-006-0480	3-1-2011	Amend	4-1-2011
836-080-0175	2-4-2011	Adopt	3-1-2011	845-008-0050	1-1-2011	Adopt	2-1-2011
836-080-0178	2-4-2011	Adopt	3-1-2011	845-008-0070	1-1-2011	Adopt	2-1-2011
836-080-0180	2-4-2011	Adopt	3-1-2011	845-008-0080	1-1-2011	Adopt	2-1-2011
836-080-0183	2-4-2011	Adopt	3-1-2011	845-008-0090	1-1-2011	Adopt	2-1-2011
836-080-0185	2-4-2011	Adopt	3-1-2011	845-009-0010	1-1-2011	Amend	2-1-2011
836-080-0188	2-4-2011	Adopt	3-1-2011	845-010-0146	11-20-2010	Adopt(T)	1-1-2011
836-080-0193	2-4-2011	Adopt	3-1-2011	845-010-0154	1-1-2011	Am. & Ren.	2-1-2011
836-080-0800	3-1-2011	Adopt	2-1-2011	845-013-0070	12-3-2010	Amend(T)	1-1-2011
836-080-0805	3-1-2011	Adopt	2-1-2011	845-015-0138	1-1-2011	Adopt	2-1-2011
836-080-0810	3-1-2011	Adopt	2-1-2011	847-010-0100	2-11-2011	Renumber	3-1-2011
836-100-0010	2-10-2011	Adopt	3-1-2011	847-035-0001	2-11-2011	Amend	3-1-2011
836-100-0010(T)	2-10-2011	Repeal	3-1-2011	847-035-0030	2-11-2011	Amend	3-1-2011
836-100-0015	2-10-2011	Adopt	3-1-2011	847-050-0027	2-11-2011	Amend	3-1-2011
836-100-0015(T)	2-10-2011	Repeal	3-1-2011	847-065-0005	2-11-2011	Amend	3-1-2011
837-012-0315	1-1-2011	Amend(T)	2-1-2011	850-060-0212	12-13-2010	Amend	1-1-2011
837-012-0330	1-1-2011	Amend(T)	2-1-2011	850-060-0226	12-13-2010	Amend	1-1-2011
837-012-0510	5-2-2011	Amend	4-1-2011	851-002-0010	11-29-2010	Amend	1-1-2011
837-012-0515	5-2-2011	Amend	4-1-2011	851-002-0040	11-29-2010	Amend	1-1-2011
837-012-0520	5-2-2011	Amend	4-1-2011	851-021-0005	11-29-2010	Amend	1-1-2011
837-012-0525	5-2-2011	Amend	4-1-2011	851-021-0010	11-29-2010	Amend	1-1-2011
837-012-0535	5-2-2011	Amend	4-1-2011	851-021-0045	11-29-2010	Amend	1-1-2011
837-012-0540	5-2-2011	Amend	4-1-2011	851-021-0055	11-29-2010	Amend	1-1-2011
837-012-0550	5-2-2011	Amend	4-1-2011	851-021-0065	11-29-2010	Amend	1-1-2011
837-012-0555	5-2-2011	Amend	4-1-2011	851-021-0090	11-29-2010	Amend	1-1-2011
837-012-0560	5-2-2011	Amend	4-1-2011	851-031-0045	11-29-2010	Amend	1-1-2011
837-012-0565	5-2-2011	Amend	4-1-2011	851-031-0070	11-29-2010	Amend	1-1-2011
837-040-0020	4-1-2011	Amend	4-1-2011	851-046-0000	12-2-2010	Repeal	1-1-2011
837-041-0050	12-1-2010	Amend	1-1-2011	851-046-0005	12-2-2010	Repeal	1-1-2011
837-047-0100	12-28-2010	Adopt	1-1-2011	851-046-0010	12-2-2010	Repeal	1-1-2011
837-047-0110	12-28-2010	Adopt	1-1-2011	851-046-0020	12-2-2010	Repeal	1-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
851-046-0030	12-2-2010	Repeal	1-1-2011	859-300-0001	2-15-2011	Adopt	3-1-2011
851-046-0040	12-2-2010	Repeal	1-1-2011	859-300-0001(T)	2-15-2011	Repeal	3-1-2011
851-070-0000	12-2-2010	Adopt	1-1-2011	859-300-0010	2-15-2011	Adopt	3-1-2011
851-070-0000(T)	12-2-2010	Repeal	1-1-2011	859-300-0010(T)	2-15-2011	Repeal	3-1-2011
851-070-0005	12-2-2010	Adopt	1-1-2011	859-300-0020	2-15-2011	Adopt	3-1-2011
851-070-0005(T)	12-2-2010	Repeal	1-1-2011	859-300-0020(T)	2-15-2011	Repeal	3-1-2011
851-070-0010	12-2-2010	Adopt	1-1-2011	859-300-0030	2-15-2011	Adopt	3-1-2011
851-070-0010(T)	12-2-2010	Repeal	1-1-2011	859-300-0030(T)	2-15-2011	Repeal	3-1-2011
851-070-0020	12-2-2010	Adopt	1-1-2011	859-300-0040	2-15-2011	Adopt	3-1-2011
851-070-0020(T)	12-2-2010	Repeal	1-1-2011	859-300-0040(T)	2-15-2011	Repeal	3-1-2011
851-070-0030	12-2-2010	Adopt	1-1-2011	859-300-0050	2-15-2011	Adopt	3-1-2011
851-070-0030(T)	12-2-2010	Repeal	1-1-2011	859-300-0050(T)	2-15-2011	Repeal	3-1-2011
851-070-0040	12-2-2010	Adopt	1-1-2011	859-300-0060	2-15-2011	Adopt	3-1-2011
851-070-0040(T)	12-2-2010	Repeal	1-1-2011	859-300-0060(T)	2-15-2011	Repeal	3-1-2011
851-070-0050	12-2-2010	Adopt	1-1-2011	859-300-0070	2-15-2011	Adopt	3-1-2011
851-070-0050(T)	12-2-2010	Repeal	1-1-2011	859-300-0070(T)	2-15-2011	Repeal	3-1-2011
851-070-0060	12-2-2010	Adopt	1-1-2011	859-300-0080	2-15-2011	Adopt	3-1-2011
851-070-0060(T)	12-2-2010	Repeal	1-1-2011	859-300-0080(T)	2-15-2011	Repeal	3-1-2011
851-070-0070	12-2-2010	Adopt	1-1-2011	859-300-0090	2-15-2011	Adopt	3-1-2011
851-070-0070(T)	12-2-2010	Repeal	1-1-2011	859-300-0090(T)	2-15-2011	Repeal	3-1-2011
851-070-0080	12-2-2010	Adopt	1-1-2011	859-300-0100	2-15-2011	Adopt	3-1-2011
851-070-0080(T)	12-2-2010	Repeal	1-1-2011	859-300-0100(T)	2-15-2011	Repeal	3-1-2011
851-070-0090	12-2-2010	Adopt	1-1-2011	859-300-0110	2-15-2011	Adopt	3-1-2011
851-070-0090(T)	12-2-2010	Repeal	1-1-2011	859-300-0110(T)	2-15-2011	Repeal	3-1-2011
851-070-0100	12-2-2010	Adopt	1-1-2011	859-300-0120	2-15-2011	Adopt	3-1-2011
851-070-0100(T)	12-2-2010	Repeal	1-1-2011	859-300-0120(T)	2-15-2011	Repeal	3-1-2011
855-010-0050	2-8-2011	Adopt(T)	3-1-2011	859-300-0130	2-15-2011	Adopt	3-1-2011
855-010-0055	2-8-2011	Adopt(T)	3-1-2011	859-300-0130(T)	2-15-2011	Repeal	3-1-2011
855-010-0057	2-8-2011	Adopt(T)	3-1-2011	859-300-0140	2-15-2011	Adopt	3-1-2011
855-010-0060	2-8-2011	Adopt(T)	3-1-2011	859-300-0140(T)	2-15-2011	Repeal	3-1-2011
855-010-0065	2-8-2011	Adopt(T)	3-1-2011	859-300-0150	2-15-2011	Adopt	3-1-2011
855-010-0067	2-8-2011	Adopt(T)	3-1-2011	859-300-0150(T)	2-15-2011	Repeal	3-1-2011
855-010-0070	2-8-2011	Adopt(T)	3-1-2011	859-300-0160	2-15-2011	Adopt	3-1-2011
855-010-0075	2-8-2011	Adopt(T)	3-1-2011	859-300-0160(T)	2-15-2011	Repeal	3-1-2011
855-010-0080	2-8-2011	Adopt(T)	3-1-2011	859-300-0170	2-15-2011	Adopt	3-1-2011
855-010-0085	2-8-2011	Adopt(T)	3-1-2011	859-300-0170(T)	2-15-2011	Repeal	3-1-2011
855-010-0087	2-8-2011	Adopt(T)	3-1-2011	859-300-0180	2-15-2011	Adopt	3-1-2011
855-011-0005	12-23-2010	Adopt	2-1-2011	859-300-0180(T)	2-15-2011	Repeal	3-1-2011
855-011-0005(T)	12-23-2010	Repeal	2-1-2011	859-300-0190	2-15-2011	Adopt	3-1-2011
855-011-0020	12-23-2010	Adopt	2-1-2011	859-300-0190(T)	2-15-2011	Repeal	3-1-2011
855-011-0020(T)	12-23-2010	Repeal	2-1-2011	859-300-0200	2-15-2011	Adopt	3-1-2011
855-011-0030	12-23-2010	Adopt	2-1-2011	859-300-0200(T)	2-15-2011	Repeal	3-1-2011
855-011-0030(T)	12-23-2010	Repeal	2-1-2011	859-300-0210	2-15-2011	Adopt	3-1-2011
855-011-0040	12-23-2010	Adopt	2-1-2011	859-300-0210(T)	2-15-2011	Repeal	3-1-2011
855-011-0040(T)	12-23-2010	Repeal	2-1-2011	859-300-0220	2-15-2011	Adopt	3-1-2011
855-011-0050	12-23-2010	Adopt	2-1-2011	859-300-0220(T)	2-15-2011	Repeal	3-1-2011
855-011-0050(T)	12-23-2010	Repeal	2-1-2011	859-300-0230	2-15-2011	Adopt	3-1-2011
855-021-0010	12-23-2010	Amend	2-1-2011	859-300-0230(T)	2-15-2011	Repeal	3-1-2011
855-041-0065	12-23-2010	Amend	2-1-2011	860-022-0041	2-23-2011	Amend(T)	4-1-2011
856-010-0014	12-14-2010	Amend	1-1-2011	860-027-0050	12-20-2010	Amend	2-1-2011
858-010-0007	1-25-2011	Amend	3-1-2011	860-027-0175	12-2-2010	Adopt	1-1-2011
858-010-0010	1-25-2011	Amend	3-1-2011	860-034-0393	12-20-2010	Amend	2-1-2011
858-010-0015	1-25-2011	Amend	3-1-2011	860-034-0730	12-20-2010	Amend	2-1-2011
858-010-0036	1-25-2011	Amend	3-1-2011	860-084-0190	11-19-2010	Amend	1-1-2011
858-010-0039	1-25-2011	Amend	3-1-2011	863-014-0020	1-1-2011	Amend	1-1-2011
858-040-0015	1-25-2011	Amend	3-1-2011	863-020-0025	2-4-2011	Amend(T)	3-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
863-025-0065	1-1-2011	Amend	1-1-2011	877-025-0021	1-1-2011	Amend	1-1-2011
863-025-0068	1-1-2011	Adopt	1-1-2011	877-030-0025	1-1-2011	Amend	1-1-2011
875-010-0006	3-2-2011	Amend	4-1-2011	877-030-0030	1-1-2011	Amend	1-1-2011
875-010-0016	3-2-2011	Amend	4-1-2011	877-030-0040	1-1-2011	Amend	1-1-2011
875-010-0021	3-2-2011	Amend	4-1-2011	877-030-0050	1-1-2011	Repeal	1-1-2011
875-020-0005	3-2-2011	Repeal	4-1-2011	877-030-0070	1-1-2011	Amend	1-1-2011
875-020-0010	3-2-2011	Repeal	4-1-2011	877-030-0080	1-1-2011	Amend	1-1-2011
875-020-0015	3-2-2011	Repeal	4-1-2011	877-030-0090	1-1-2011	Amend	1-1-2011
875-020-0020	3-2-2011	Repeal	4-1-2011	877-030-0100	1-1-2011	Amend	1-1-2011
875-020-0025	3-2-2011	Repeal	4-1-2011	877-035-0000	1-1-2011	Repeal	1-1-2011
875-020-0030	3-2-2011	Repeal	4-1-2011	877-035-0010	1-1-2011	Repeal	1-1-2011
875-020-0035	3-2-2011	Repeal	4-1-2011	877-035-0012	1-1-2011	Repeal	1-1-2011
875-020-0040	3-2-2011	Repeal	4-1-2011	877-035-0013	1-1-2011	Repeal	1-1-2011
875-020-0045	3-2-2011	Repeal	4-1-2011	877-035-0015	1-1-2011	Repeal	1-1-2011
875-020-0050	3-2-2011	Repeal	4-1-2011	877-040-0000	1-1-2011	Amend	1-1-2011
875-020-0055	3-2-2011	Repeal	4-1-2011	877-040-0003	1-1-2011	Amend	1-1-2011
875-030-0010	3-2-2011	Amend	4-1-2011	877-040-0010	1-1-2011	Amend	1-1-2011
875-030-0020	3-2-2011	Amend	4-1-2011	877-040-0019	1-1-2011	Adopt	1-1-2011
875-030-0025	3-2-2011	Amend	4-1-2011	877-040-0050	1-1-2011	Amend	1-1-2011
877-001-0006	1-1-2011	Adopt	1-1-2011	918-098-1000	3-11-2011	Amend	4-1-2011
877-001-0015	1-1-2011	Adopt	1-1-2011	918-098-1010	3-11-2011	Amend	4-1-2011
877-001-0020	1-1-2011	Adopt	1-1-2011	918-098-1015	3-11-2011	Amend	4-1-2011
877-001-0025	1-1-2011	Adopt	1-1-2011	918-098-1020	3-11-2011	Amend	4-1-2011
877-005-0101	1-1-2011	Adopt	1-1-2011	918-098-1025	3-11-2011	Amend	4-1-2011
877-010-0005	1-1-2011	Amend	1-1-2011	918-098-1028	3-11-2011	Adopt	4-1-2011
877-010-0010	1-1-2011	Amend	1-1-2011	918-098-1210	3-11-2011	Amend	4-1-2011
877-010-0015	1-1-2011	Amend	1-1-2011	918-098-1215	3-11-2011	Amend	4-1-2011
877-010-0020	1-1-2011	Amend	1-1-2011	918-098-1300	3-11-2011	Amend	4-1-2011
877-010-0025	1-1-2011	Amend	1-1-2011	918-098-1305	3-11-2011	Amend	4-1-2011
877-010-0030	1-1-2011	Amend	1-1-2011	918-098-1310	3-11-2011	Amend	4-1-2011
877-010-0040	1-1-2011	Amend	1-1-2011	918-098-1315	3-11-2011	Amend	4-1-2011
877-010-0045	1-1-2011	Amend	1-1-2011	918-098-1320	3-11-2011	Amend	4-1-2011
877-015-0105	1-1-2011	Adopt	1-1-2011	918-098-1325	3-11-2011	Amend	4-1-2011
877-015-0108	1-1-2011	Adopt	1-1-2011	918-098-1330	3-11-2011	Amend	4-1-2011
877-015-0131	1-1-2011	Adopt	1-1-2011	918-098-1450	3-11-2011	Amend	4-1-2011
877-015-0136	1-1-2011	Adopt	1-1-2011	918-251-0000	4-1-2011	Amend	4-1-2011
877-015-0146	1-1-2011	Adopt	1-1-2011	918-251-0010	4-1-2011	Repeal	4-1-2011
877-015-0155	1-1-2011	Adopt	1-1-2011	918-251-0020	4-1-2011	Repeal	4-1-2011
877-020-0000	1-1-2011	Amend	1-1-2011	918-251-0050	4-1-2011	Repeal	4-1-2011
877-020-0005	1-1-2011	Amend	1-1-2011	918-251-0060	4-1-2011	Repeal	4-1-2011
877-020-0008	1-1-2011	Amend	1-1-2011	918-251-0080	4-1-2011	Repeal	4-1-2011
877-020-0009	1-1-2011	Amend	1-1-2011	918-251-0090	3-11-2011	Amend	4-1-2011
877-020-0010	1-1-2011	Amend	1-1-2011	918-305-0005	4-1-2011	Amend	4-1-2011
877-020-0015	1-1-2011	Repeal	1-1-2011	918-305-0030	3-11-2011	Amend	4-1-2011
877-020-0016	1-1-2011	Amend	1-1-2011	918-305-0100	4-1-2011	Amend	4-1-2011
877-020-0020	1-1-2011	Repeal	1-1-2011	918-305-0105	4-1-2011	Amend	4-1-2011
877-020-0030	1-1-2011	Repeal	1-1-2011	918-305-0110	4-1-2011	Repeal	4-1-2011
877-020-0046	1-1-2011	Amend	1-1-2011	918-305-0120	4-1-2011	Repeal	4-1-2011
877-020-0055	1-1-2011	Amend	1-1-2011	918-305-0130	4-1-2011	Repeal	4-1-2011
877-020-0057	1-1-2011	Amend	1-1-2011	918-305-0150	4-1-2011	Repeal	4-1-2011
877-020-0060	1-1-2011	Amend	1-1-2011	918-305-0160	4-1-2011	Repeal	4-1-2011
877-022-0005	1-1-2011	Amend	1-1-2011	918-305-0165	4-1-2011	Repeal	4-1-2011
877-025-0001	1-1-2011	Amend	1-1-2011	918-305-0180	4-1-2011	Repeal	4-1-2011
877-025-0006	1-1-2011	Amend	1-1-2011	918-305-0190	4-1-2011	Repeal	4-1-2011
877-025-0011	1-1-2011	Amend	1-1-2011	918-305-0205	4-1-2011	Repeal	4-1-2011
877-025-0016	1-1-2011	Amend	1-1-2011	918-305-0210	4-1-2011	Repeal	4-1-2011

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
918-305-0250	4-1-2011	Repeal	4-1-2011	918-460-0050	3-11-2011	Amend	4-1-2011
918-305-0265	4-1-2011	Repeal	4-1-2011	918-460-0500	3-11-2011	Adopt	4-1-2011
918-305-0270	4-1-2011	Repeal	4-1-2011	918-460-0510	3-11-2011	Adopt	4-1-2011
918-305-0280	4-1-2011	Repeal	4-1-2011	918-480-0010	1-1-2011	Amend	2-1-2011
918-305-0290	4-1-2011	Repeal	4-1-2011	918-480-0010	2-15-2011	Amend	3-1-2011
918-305-0300	4-1-2011	Repeal	4-1-2011	918-674-0033	3-11-2011	Amend	4-1-2011
918-305-0310	4-1-2011	Repeal	4-1-2011	918-690-0300	2-15-2011	Amend	3-1-2011
918-305-0320	4-1-2011	Repeal	4-1-2011	918-690-0310	2-15-2011	Repeal	3-1-2011
918-400-0645	12-1-2010	Adopt	1-1-2011	918-690-0325	2-15-2011	Repeal	3-1-2011
918-400-0660	12-1-2010	Amend	1-1-2011	918-690-0330	2-15-2011	Repeal	3-1-2011
918-400-0755	1-1-2011	Adopt	2-1-2011	918-690-0360	2-15-2011	Repeal	3-1-2011
918-400-0800	12-1-2010	Amend	1-1-2011	918-690-0410	2-15-2011	Amend	3-1-2011
918-440-0000	3-11-2011	Amend	4-1-2011	918-690-0420	2-15-2011	Amend	3-1-2011
918-440-0010	3-11-2011	Amend	4-1-2011	918-690-0430	2-15-2011	Repeal	3-1-2011
918-440-0015	3-11-2011	Amend	4-1-2011	918-750-0100	2-15-2011	Amend	3-1-2011
918-440-0030	3-11-2011	Amend	4-1-2011	918-750-0110	2-15-2011	Amend	3-1-2011
918-440-0040	3-11-2011	Am. & Ren.	4-1-2011	918-750-0120	2-15-2011	Repeal	3-1-2011
918-440-0050	3-11-2011	Amend	4-1-2011	918-750-0130	2-15-2011	Repeal	3-1-2011
918-440-0500	3-11-2011	Amend	4-1-2011	918-750-0140	2-15-2011	Repeal	3-1-2011
918-440-0510	3-11-2011	Amend	4-1-2011	918-750-0150	2-15-2011	Repeal	3-1-2011
918-460-0000	3-11-2011	Amend	4-1-2011	918-750-0160	2-15-2011	Repeal	3-1-2011
918-460-0010	3-11-2011	Amend	4-1-2011	918-750-0170	2-15-2011	Repeal	3-1-2011
918-460-0015	1-1-2011	Amend	2-1-2011	918-750-0180	2-15-2011	Repeal	3-1-2011
918-460-0015	2-15-2011	Amend	3-1-2011	918-750-0190	2-15-2011	Repeal	3-1-2011
918-460-0016	3-11-2011	Repeal	4-1-2011	972-040-0000	3-7-2011	Amend	4-1-2011